



Blaenau Gwent County Borough Council
Cyngor Bwrdeisdref Sirol Blaenau Gwent

Supplementary Planning Guidance - Note 7

Planning Obligations

September 2011

BLAENAU GWENT COUNTY BOROUGH COUNCIL

SUPPLEMENTARY PLANNING GUIDANCE NOTE 7
PLANNING OBLIGATIONS

SEPTEMBER 2011

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- **Restrict the development of use of land;**
- **Require specific operations to be carried out;**
- **Require land to be used in a specified way;**
- **Require a sum of money to be paid to the Council in accordance with a payment schedule.**

A planning obligation - which may take the form of a Bilateral Section 106 Agreement or a Unilateral Undertaking - is a legally binding agreement which usually runs with the title of the land rather than with the person entering into the agreement. Planning obligations are therefore enforceable against the original covenantor and their successors in title.

Welsh Office *Circular 13/97: Planning Obligations* provides guidance on the implementation of planning obligations in Wales by setting out the benefits that can be secured from planning obligations and the role of development plan policy. It also identifies broad principles governing the use of planning obligations, based on the fact the planning system should operate in the public interest and should aim to foster sustainable development. Importantly

regeneration benefits to be achieved from new development as set out in General Policy G1 below:

General Policy G1

Regeneration will be secured by favouring developments which:

- (A) Strengthen and broaden the economic base and increase employment opportunities; and/or**
- (B) Improve infrastructure and secure the re-use of land or buildings and the improvement of their surroundings, and/or**
- (C) Benefit the most economically deprived parts of Blaenau Gwent, and/or**
- (D) Improve leisure and community facilities to enhance the quality of life for residents, and/or**
- (E) Conserve or enhance Blaenau Gwent's character and appearance, and/or**
- (F) Strengthen and broaden the housing supply and provide increased flexibility and choice of residential accommodation.**

The relevant UDP policies regarding the provision of infrastructure, facilities and services specific to the planning obligation matters detailed in this guidance are set out at the beginning of each of the topic-based Annex's.

The overarching policy context set out in the emerging Local Development Plan (LDP), which is to be the subject of independent examination in due course, states:

Policy DM4 Infrastructure Provision

Proposals for new development will be required to meet the infrastructure needs that it generates, including the improvement or provision of infrastructure, services and community facilities. Where on site provision cannot be achieved, off-site provision or a financial contribution will be required. Arrangements for the provision of infrastructure will be secured by the use of planning conditions attached to a planning permission or planning obligations in legal agreements or via the Community Infrastructure Levy. The Council will seek to ensure that, where appropriate, the impact of new development is mitigated to ensure that it contributes the regeneration of local communities in Blaenau Gwent

The relevant draft LDP policies regarding the provision of planning obligations are set out at the beginning of each of the topic-based Annex's. The SPG will be reviewed following the adoption of the LDP to ensure that it is relevant and consistent with the policies, aims and objectives of the LDP.

3. The Use of Planning Obligations

3.1 The Use of Planning Obligations in Blaenau Gwent

Blaenau Gwent Council faces significant challenges in respect of the regeneration of the Borough. This manifests in many social, economic and physical issues, which can often be exacerbated by the impact of new development. Planning obligations are therefore an important mechanism to help mitigate these impacts and ensure new development makes a positive and sustainable contribution to the County Borough. It must be recognised that planning obligations will only be sought to mitigate the impact of the development itself and not to remedy existing deficiencies in infrastructure and services that may already exist.

The Council endorses the principles of the use of planning obligations as set out in Circular 13/97, including the fundamental principle that planning permission may not be bought or sold.

It understands that this principle is best served when negotiations are conducted in a way which is seen to be fair, open and reasonable. To this end, this guidance provides clarification to all interested parties on where, when and what planning obligations will be sought in association with new development in Blaenau Gwent.

Circular 13/97 further advises that unacceptable development should never be allowed because of unrelated benefits, and acceptable development should never be refused simply because an applicant is unwilling to offer such benefits. Planning Agreements are voluntary and require the co-operation of the developer in order to be delivered. However, where a developer fails to show they can adequately mitigate the impacts their development, either through planning obligations or other measures, it is likely that the planning application will be refused or determination delayed until such time that the developer agrees to make the necessary provision or addresses the impact of the development via revisions to the design of the scheme.

In preparing this SPG, the Council has also reflected upon and taken into account the Government advice that planning obligations should not duplicate planning conditions. If there is a choice between the use of a condition and an obligation, preference will be given to a planning condition as this affords the developer a right to appeal. It is also a more straightforward basis for amendment or removal that provides the Council with a more robust enforcement mechanism in the event that the provisions contained within the condition are not fully satisfied.

Following the adoption of this SPG all planning applications that meet the thresholds and triggers set out in the Annex's to the guidance will come within its remit. This includes applications for the renewal of extant planning permissions. The SPG represents a material change in the planning circumstances since the original permission was granted and will therefore be taken into account in determining such applications. The planning obligation requirements set out in the Annex's to this guidance are summarised in Table 1 below.

3.2 Circumstances in which Planning Obligations will be Sought

The Council will normally seek planning obligations on larger scale developments or where development may impact on a particularly sensitive site. The Council recognises that, due to the post-industrial character of the area, it is the norm for the majority of development sites in the Borough to give rise to abnormal development costs, due to a legacy of mining operations or contamination for example. The ability of smaller scale developments to absorb these costs, deliver planning obligations and return a reasonable profit for the developer is considered both unrealistic and unreasonable. The thresholds set out in Table 1 have been set taking these issues into account.

The Council however reserves the right to seek planning obligations on smaller development sites where there are specific impacts created by the proposed development, which if not met would prevent planning permission being granted.

The formulae contained in the guidance are provided as a guide to developers as to the Council's general expectations in respect of planning obligations. However, each case will be considered on its own merits having regard to existing provision in the area and the quantity and quality of existing facilities and services.

Where a site is sub-divided, the Council will treat such sites in their totality. In these circumstances each sub-divided plot will be required to provide a contribution towards the

Where developments are proposed that fall short of a threshold by up to 10%, it will be necessary for the Council to consider whether the proposals constitutes deliberate under development of the site to avoid the planning obligation requirement. If so, there is planning case law to support a stance that the requirement should be applied. As a general rule, a minimum density of 35 dwellings per hectare will be considered appropriate. Where site specific constraints make lower densities necessary, this will be considered by the Council on a site by site basis.

Table 1 Summary of Planning Obligation Requirements

Type of Obligation	Residential
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3.3 Types of Obligations

Planning obligations may be sought for a wide range of facilities, infrastructure and / or services in association with new development. The topic based Annexes listed in Table 1 and appended to this guidance explain the Council's approach to those obligations which tend to occur most frequently. However, the Council reserves the right to seek obligations relating to matters not covered by

topic based Annex's of this guidance as a basis for drafting the agreement. Where the applicant chooses to draft the legal agreement themselves, the agreement will need to satisfy the planning obligation requirements deemed necessary by the Local Planning Authority and must be checked by the Council's legal department. This includes where the applicant presents a Unilateral Undertaking to the Council.

Standard legal templates and clauses have been prepared by the Law Society's Planning and Environmental Law Committee (June 2010). The Council has prepared templates of a standard Section 106 Agreement and Unilateral Undertaking based upon the Law Society Model which will be posted on the Council's website (www.blaenau-gwent.gov.uk).

4.3 Commencement, Modification or Discharge of Planning Obligations

All planning obligations come into effect at the time that the planning permission is granted. Planning permission will not be formally granted until the legal agreement has been finalised and signed by all parties. Once granted all planning obligations are placed on the Local Land Charges Register until such time that they are discharged.

A planning obligation contained in a signed legal agreement may be modified or discharged by agreement, executed as a deed, between the Council and the relevant party or by way of application to the Council after *five* years from the date of the agreement.

4.4 Trigger Points and Phasing

Where a planning obligation has been drawn up seeking a developer to provide facilities, services or commuted sums, the legal agreement must contain clearly defined trigger points which specify when a particular planning obligation is due to ensure that the delivery of those obligations is timely. The trigger points will usually be at key stages in the implementation of the planning permission such as 'the 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 being delivered by the planning obligation are needed to serve the development and also have regard to site viability and delivery issues. It is essential that the trigger points are clear, specific and enforceable to ensure that planning obligations are delivered.

When assessing major developments or mixed-use schemes the phasing of the development is often an important consideration. Legal agreements provide a useful mechanism to ensure that developments are phased to secure the delivery of mixed communities and appropriate infrastructure. When stipulating phasing obligations, the Council will need to have regard to site specific circumstances and viability issues.

4.5 Development Viability and Development Appraisal

Developers should make themselves aware of the likely planning obligation liabilities associated with a proposed development to ensure that these are reflected in land value assumptions. Where an applicant submits that the planning obligation requirements associated with a scheme are too onerous and will potentially render the proposed development scheme unviable, they will be expected to submit an 'open book' financial assessment of the costs and anticipated profits of the scheme based on properly sourced evidence in accordance with the Council's procedure for Financial Assessment attached at Appendix A.

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 adopted 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 will usually 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.

Where a development appraisal indicates that 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.

4.6 Reduced Planning Obligations

Where a reduction in planning obligations is justified on the basis of unusual market circumstances, the Council will usually require developers to agree to a time limiting clause of two years. If the development has not reached a specified stage of completion within two

Heads of Terms for the obligations will be set out in the Planning Officers report which becomes publicly available upon a resolution to grant permission. Signed legal agreements, both S106 and Unilateral Undertakings, are a matter of public record. The Council keeps a register of all such legal agreements and retains a copy of each legal agreement on the relevant planning application file. The register and relevant planning application files are available for members of the public to view at the Council's Planning Control office.

5. Further Information and Advice

Copies of this guidance and accompanying documents can be downloaded from the Council's website at www.blaenau-gwent.gov.uk.

Further information can be sought from:

Planning Control Section

Tel: 01495 355555

E-mail: planning@blaenau-gwent.gov.uk

Planning Control Section
Neighbourhood Services Division
Blaenau Gwent County Borough Council
Council Offices
High Street
Blaina
Gwent NP13 3XD

1.2 Definition of Affordable Housing

requirement for the 5-year period 433 affordable housing units (34%) are required. The

and then, only if no other options are available, provision may be acceptable elsewhere in the County Borough where there is evidence of need.

Circumstances that might justify full off-site provision of affordable housing include:

- Where the Council or an RSL consider management of the affordable housing on site cannot be effectively secured, or
- The development site is in an unsuitable location with no or limited local services/facilities nearby, or
- The affordable housing is more effectively secured by bringing vacant stock back into active use, e.g. via the Council's Empty property Strategy, or
- Providing the affordable housing elsewhere in the local area is more likely to widen housing choice and encourage better household mix, or
- It is not physically possible to provide affordable housing of the size or type that is needed in that area, or
- Other exceptional situations where the Council considers that it may be more appropriate to fund another affordable housing scheme in the housing market area.

1.4.4 Delivering Affordable Housing with Commuted Payments

In exceptional circumstances where on-site provision is not considered appropriate and off-site units cannot be delivered as an alternative site is not available, the Council will consider whether a commuted payment in lieu of on site affordable housing provision would be appropriate.

The commuted sum should be of equivalent value to the developer contribution if the affordable housing was provided on site. This will be determined by calculating the difference between the residual value of providing 100% market housing and the residual value of providing the required levels and mixes of affordable housing.

Where the contributions secured would fund less than a whole dwelling, contributions can be pooled until sufficient funding has been secured for the provision of one or more dwellings. The provision of affordable units should then be provided in the same settlement as the application site. Should no suitable options for the provision of affordable housing be available within a specific settlement, provision should be made within the same Local Housing Market Area. If neither of the options is achievable within an appropriate timeframe, the Local Authority retains the right to provide affordable housing.

Alternatively, the Local Authority may determine on a site-by-site basis that financial contributions collected may be used for the following:

- The purchase and refurbishment of long-term empty properties by a RSL, in accordance with the Council's Empty Property Strategy (2009), which will be managed as affordable housing
- Delivery of the Mortgage Rescue scheme.
- The provision of Homebuy Loans.
-

should have regard to the nature of the site and consult the Council at the earliest stage to agree the details of the affordable housing, including ensuring that the units assist in meeting local housing need in the area.

1.6.3 Integration of Market and Affordable Homes

In pursuit of creating mixed and balanced communities affordable housing should be properly integrated physically and visually with the market housing. The same design considerations should be applied to the design and appearance of the affordable housing as to the open market housing so that they are indistinguishable, including build quality, materials, details, levels of amenity space and privacy. The affordable housing should be 'pepperpotted' in small groups throughout the site. Planning applications should include plans which identify the location of the affordable homes.

In communities experiencing severe housing pressure, the Welsh Government has confirmed it will exceptionally provide local authorities with the ability to secure 100% affordable housing on development sites.

1.7 **Securing Affordable Housing**

Where affordable housing is provided by the developer, the Council will normally expect the affordable housing element to be completed before 50% of the development is finished, to ensure that the affordable homes are delivered in a timely manner alongside market homes. Planning obligations will be used to secure phased completion by making provision for 'trigger points' in S106 agreements to ensure that the affordable housing is provided at agreed stages. Developers should bear this requirement in mind when designing the development,

'Chargee' any mortgagee or chargee of the RSL or the successors in title to such mortgagee

Clauses:

The Developer shall enter into a legal agreement to secure obligations with regard to the provision of affordable housing as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Affordable Housing Land shall be used for the provision of the Affordable Housing Units and not occupied or used in any other manner.

The Developer shall (transfer) sell the Affordable Housing Land to the Nominated RSL fully serviced with all associated rights of access at a (nil) value ascribed to the land by the District Valuer for the purpose of affordable housing.

The Developer shall construct the Affordable Housing Units in accordance with the planning permission and to a standard which satisfies the Design Quality Requirements (2005) issued by the Welsh Government.

The Developer shall pay to the Council (c/o...) immediately prior to the commencement of development the Affordable Housing Payment, index linked to the Retail Price Index (RPI).

The Council undertakes to utilise the Affordable Housing Payment to provide, enable and enhance affordable housing provision to meet local housing needs.

No more than ...% of the Market Housing Units shall be occupied until 100% of the Affordable Housing Units have been transferred to the Nominated RSL on terms that accord with relevant Welsh Assembly funding requirements current at the date of construction of the Affordable Housing Units.

Within seven days of the commencement of construction of each affordable housing unit the Developer shall: (i) serve a Sale Notice on the Nominated RSL and offer to sell the Affordable Housing Unit to the Nominated RSL at the Affordable Value pursuant to the provisions of this agreement and (ii) serve a copy of the Sale Notice on the Council (c/o...). The Developer shall not sell any Affordable Housing Unit without having first served a Sale Notice on the Nominated RSL and the Council.

The Nominated RSL may accept the offer referred to in paragraph (...above) by signing and returning a copy of the Sale Notice to the Developer within the Notice Period.

If the Nominated RSL does not accept the offer referred to in paragraph (...above) or fails to respond within the Notice Period the Developer shall be at liberty in the case of a Social Rented Unit to dispose of the Social Rented Unit free from the obligations set out in this Schedule provided that an Affordable Housing Payment is paid to the Council within 7 days of the completion of the sale of the relevant Social Rented Unit equivalent to the difference between the Affordable Value and the Market Value.

During the Notice Period, the Nominated RSL or the Council shall be entitled to introduce any

relevant Intermediate Unit as general market housing free from the obligations in this Schedule provided that an Affordable Housing Payment is paid to the Council within 7 days of the completion of the sale of the relevant Intermediate Unit equivalent to the difference between the Affordable Value and the Market Value.

Any Chargee shall prior to seeking to dispose of an Affordable Housing Unit pursuant to any default under the terms of the mortgage or charge shall give not less than 3 months prior notice to the RSL of its intention to dispose and

- (a) in the event that the Council responds within 3 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer
- (b) if the Council does not serve its response to the notice served under paragraph (...above) within the 3 months then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply
- (c) if the Council or any other person cannot within 3 months of the date of service of its response under paragraph (... above) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph (... above) the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

all and protects the environment; where walking, cycling, public transport, and sustainable freight provide real travel alternatives'.

In implementing this vision the South East Wales Transport Authorities (including Blaenau Gwent) will seek to ensure that Local Development Plans, supplementary planning guidance and development control processes establish a pattern of land use that reduces the need to

Use

Threshold

- Funding for additional or improved bus services linking the site with local facilities (usually at least three years worth of subsidy required)
- Funding for provision or promotion of public transport information services and ticket availability
- Funding for new and existing pedestrian and cycle routes serving the site including enhancement of public rights of way (e.g. surfacing, lighting, signage) and secure cycle parking with emphasis on secure-by-design principles
- Funding of mitigation measures such as off site car parking/ public off street parking where this complements local strategies
- Funding towards operation of a car club where car parking is limited
- Road safety schemes and controlled parking zones
- Maintenance of individual structures e.g. retaining walls, culverts
- Travel plan initiatives.

Proposed obligations should demonstrate that such provision mitigates the effect of the development and provides sufficient transport capacity/improvements to the network to accommodate movement generated by the development.

2.3.3 Delivery of Works

The Council's expectation is that highways and transportation works should 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.

In exceptional circumstances, a financial sum to contribute towards off-site facilities/infrastructure to be delivered by the Council may be acceptable in principle. In such cases, the developer will be required to provide a detailed scheme for the works accompanied by full costings. The scheme should be submitted for agreement with the Council and upon agreement the corresponding payment made. The Council will then use the payment to undertake the works in accordance with the agreed scheme.

2.3.4 Maintenance of Works

In all circumstances, highways and transportation works undertaken as part of a planning obligation will be required to be maintained in perpetuity. Where features such as retaining walls, culverts and other structures would form part of the highway a proposal may be refused if appropriate maintenance is not provided. In such cases, the developer may choose to redesign a scheme to avoid the need for the specific feature.

To maintain the infrastructure/works/land the developer can either choose to establish a management company to operate in perpetuity, secured by legal agreement, or can request that it be adopted by the Council. Any transfer of land or infrastructure must be accompanied by a commuted sum to enable the Council to undertake the maintenance of the infrastructure/works/land for a period of 20 years. In such cases, the infrastructure/works/land must be to adoptable standard and have been maintained at such standard for a minimum period of one year. The Council will consider adopting infrastructure/works/land on a site by site basis.

2.4 **Standard Heads of Terms**

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where highways and transport contributions are required.

Definitions:

'Highways Agreement' means an Agreement to undertake specific works within the public highway under Section 278 of the Highways Act 1980

with the Highways Infrastructure Works Scheme (Sustainable Transport Works Scheme) and not occupied or used in any other manner.

The Developer shall transfer the Highways Infrastructure Land (Sustainable Transport Land) serviced as appropriate with all associated rights of access at no cost immediately prior to the commencement of development.

The Developer shall submit the Highways Infrastructure Works Scheme (Sustainable Transport Scheme) prior to the commencement of development for agreement with the

ANNEX 3: EDUCATIONAL FACILITIES

Education infrastructure is an integral part of achieving and maintaining sustainable communities. The need for the provision of high quality education facilities is recognised in Blaenau Gwent's Community Plan 2006-2009, the Draft Blaenau Gwent Community Strategy 2010-2030 and the 2008-2012 Corporate Improvement Plan. The Councils future approach to education delivery will be guided by the 21st Century Schools Programme, as set out in the 21st Century Schools Strategic Outline Plan.

All new residential development that is likely to accommodate school aged children creates additional demand for places at existing schools and places pressure upon educational services. Where a new development generates additional pupil numbers in excess of existing

developer would be required to fund the development of the detailed scheme and carry out the works to the appropriate standard.

Any transfer of land or works should be accompanied by a commuted sum to enable the Council to undertake the maintenance of the land / facility for a minimum period of 20 years. Any commuted sum will be calculated on a case by case basis.

3.4 Use of the Education Facilin UsUcaFL ,Byf8,UyF,Myf8, y5:dALTAnU

for Education (DfE)) Education Projects Cost and Performance Data. The DCSF advises that the costs per pupil for the construction of accommodation to provide for additional pupil places for 2006-2007

The Developer shall undertake the provision of the Education Facilities in accordance with the Education Facilities Scheme agreed with the Council. The Education Facilities shall be completed and transferred to the Council prior to the occupation of the (nth) dwelling.

The Developer shall enter into a legal agreement to secure an Education Facilities Obligation as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Council undertakes to utilise the Education Facilities Payment to provide for (...) no. of additional primary school places and (...) no. of additional secondary school places at appropriate schools serving the Development.

The Council undertakes to accept the transfer of the Education Land and utilise the land in the provision of the Education Facilities.

ANNEX 4: RECREATION AND PUBLIC OPEN SPACE

Formal and informal public open space can have a significant recreational and amenity value,

Planning obligations will therefore be sought in appropriate circumstances to mitigate the impact of the development.

The Council's Play Strategy (2004) identifies existing static play facilities within the County Borough (known as Local Play Areas, Visitor Play Areas, Multi-Use Games Areas (MUGA) and Wheeled Sports Areas). The Strategy also sets out an implementation program; identifying those Wards where there is a need for new facilities, improvements to existing facilities and decommissioning. The Strategy therefore provides a basis for identifying whether or not a development is likely to generate the need for planning obligations in relation to play provision.

The Council's Leisure Services Division maintains up-to-date information on the capacity of all play, sport and recreation facilities in the County Borough. Accordingly, the advice of Leisure Services will always be sought to determine the impact of each qualifying development on local facilities and this will form the evidence base of any request for planning obligations.

Exemptions to the above requirement apply in specific circumstances. A contribution towards the enhancement and development of play areas may be sought in appropriate circumstances.

Although Fields in Trust advocate that the benchmark standard detailed in Figure 1 should be a minimum, the standard states that '*where the minimum standards cannot be met, due to the scarcity of open land, the local planning authority should adopt them as a target*'. As such due to the topographical characteristics of Blaenau Gwent the FIT standard is utilised as a *target* rather than a minimum standard.

4.4.2 Recreation & Open Space Provision

The Council's approach to assessing if a new residential development will be required to make provision for recreation and open space, and calculating the amount of provision, is as follows:

- i. The expected occupancy of the development is first estimated by multiplying the total number of qualifying proposed dwellings by the average household size in Blaenau Gwent, which is 2.4 persons/household (Source: 2001 Census).
- ii. An assessment is undertaken of existing provision for children's play space and outdoor sport within the vicinity of the development.

The value of the Open Space and Recreation

4.5 Design Guidance for Recreation and Public Open Space Facilities

The Council will assess proposals for new recreation and public open space facilities taking into account guidance set out in the Fields in Trust document 'Planning and Design for

Full Planning Application

‘Open Space and Recreation Payment’ means the sum of ... pounds (£...) to be utilised to provide or enhance Open Space and / or Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme

Outline Planning Application (1)

‘Open Space and Recreation Payment’ means the commuted payment to be calculated using the Council’s formula contained in the adopted Planning Obligations SPG in place at the time of submission of the Reserved Matters to be utilised to provide or enhance Open Space and / or Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme,

Outline Planning Application (2)

‘Open Space and Recreation Payment’ means the sum of ... pounds (£...) per dwelling to be utilised to provide or enhance Outdoor Sport Facilities and / or the sum of ... pounds (£...) per dwelling to provide or enhance Children’s Play Facilities secured in accordance with the formula in the adopted Planning Obligations SPG in place when outline planning permission was granted to be utilised in accordance with the Open Space and Recreation Facilities Scheme

‘Recreation Facilities Maintenance Payment’ means a financial contribution of ... pounds (£...) to be paid to the Council as a commuted sum to maintain the Recreational Facilities for a period of 20 years in accordance with the Open Space and Recreation Facilities Scheme

‘Open Space Maintenance Payment’ means a financial contribution of ... pounds (£...) to be paid to the Council as a commuted sum to maintain the Public Open Space Land for a period of 20 years in accordance with the Open Space and Recreation Facilities Scheme

Clauses:

The Developer shall enter into a legal agreement to secure obligations with regard to open space and recreation as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Open Space and Recreation Land must be used for the provision of the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme and not occupied or used in any other manner.

The Developer shall transfer the Open Space and Recreation Facilities Land fully serviced with all associated rights or access at no cost immediately prior to the commencement of the Development

The Developer shall submit the Open Space and Recreation Facilities Scheme prior to the commencement of the Development for agreement with the Local Planning Authority. Approval of the scheme shall not be unreasonably withheld or delayed.

The Developer shall undertake the provision of the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme agreed with the Council. The Open Space and Recreation Facilities shall be completed (and transferred to the Council) prior to the occupation of the (.n)th dwelling.

The Developer shall pay to the Council (c/o ...) immediately prior to the commencement of development the Open Space and Recreation Payment index linked to the Retail Price Index (RPI).

ANNEX 5: BIODIVERSITY AND GEODIVERSITY

Conserving and enhancing biodiversity and geodiversity is one of the key aims of sustainable development. Blaenau Gwent's outstanding landscape is characterised by narrow valleys with fast flowing rivers and streams, wooded slopes, and large area of upland habitat rich in ponds, unimproved grassland and heathland habitats. Industrialised sites previously used for coal mining and heavy industry have been reclaimed or naturally regenerated, resulting in the creation of natural spaces that are valuable for wildlife. Within the County Borough there are two sites protected for their National nature conservation value - Brynmawr Sections and Cwm Merdogg Woodlands Sites of Special Scientific Interest (SSSI). Located adjacent to the Borough within the Brecon Beacons National Park are two European sites of nature conservation value - Usk Bat and Cwm Clydach Special Areas of Conservation (SACs). The Borough also has a large number of local sites of nature conservation interest including, Sites of Importance of Nature Conservation Value (SINCs) and Local Nature Reserves (LNRs), which are plotted on the Deposit Draft Local Development Plan Constraints Map. The Local Blaenau Gwent Biodiversity Action Plan (2010) contains targets and action plans for local habitats and species of significance that are at risk or whose status is uncertain.

The principles of biodiversity conservation also apply to geodiversity and geological conservation, which is a matter of significance in the Borough. The geology of the area is dominated by Carboniferous Limestone, Millstone Grit, Lower Coal Measures, Upper Coal Measures and Pennant Series and includes the Brynmawr Sections SSSI, a designated geological site of national importance. Geological evaluations carried out by LANDMAP have also identified outstanding features which have the potential to be designated as Regionally

TAN 5 confirms that under Section 40(1) of the Natural Environment and Rural Communities Act (NERC) 2006, every public authority has a duty to, '*have regard so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.*' Nature conservation incorporates both biodiversity, geodiversity, to include flora, fauna, geological and geomorphological features.

The Conservation of Habitats and Species Regulations (2010)

Blaenau Gwent County Borough Council Unitary Development Plan (2006) Policies EN1, EN12, EN13, EN14, EN15, EN16, EN17, EN20, EN21, EN24

Blaenau Gwent County Borough Council Local Development Plan Deposit Draft (January 2011) Policies SP10, DM4, DM14, DM15, DM16

Blaenau Gwent County Borough Council Local Biodiversity Action Plan (Revised) (2010)

Blaenau Gwent County Borough Council, Best Practice in Biodiversity and Geodiversity Conservation in Planning and Development, Draft Supplementary Planning Guidance (March 2008)

The draft Best Practice in Biodiversity and Geodiversity SPG supplements policies in the adopted UDP and draft LDP with guidance that is focused on local issues, design and good practice in development. Importantly it links together the Development Plan and Local Biodiversity Action Plan. When adopted it should be read alongside this SPG.

Please note that in the remainder of this Annex reference to 'biodiversity' incorporates 'geodiversity' unless otherwise stated.

5.2 Circumstances in which Obligations will be Sought

An obligation relating to biodiversity may apply to any scale and any type of development according to the specific characteristics of the proposed site and the potential impact from the proposed development. There is no standard threshold or trigger.

In considering proposed development, the most up to date information sources will be used to evaluate the ecological value of the site and the potential impacts of the development. In most cases, developers will be required to provide this information in the form of up-to-date ecological surveys. Existing records can also be accessed from the South East Wales Biodiversity Records Centre (SEWBRC). This information will then be assessed against the Blaenau Gwent LBAP, Section 42 listings (NERC Act 2002) and the relevant National and European legislation. All proposals will be considered on their individual merits and assessed on a case by case basis.

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(s) will reflect the impact of the development and the need for improvements, management and monitoring of biodiversity.

5.3 Nature of the Obligation

In determining whether it will be necessary to seek a planning obligation for biodiversity the effect of the proposed development on the biodiversity interest of the site and the surrounding area needs to be established and these effects considered with regard to the adopted policies

conservation value. Accordingly, the provision of enhancements for biodiversity will be encouraged by the Council as part of new development.

Where the management of an area of land will be undertaken by a third party appropriate arrangements will need to be put in place via planning obligations to expedite the process, for example the transfer of commuted sums to the third party, the production of a management plan or the setting up of a management company.

5.5 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where a biodiversity obligation is required.

Definitions:

'Biodiversity Land' means the land hatched on plan (ref...) attached to the deed where the Biodiversity Works shall be provided.

'Biodiversity Obligation' means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations Supplementary Planning Guidance as amended from time to time, in the interest of protecting biodiversity/geodiversity resources at the site.

'Biodiversity Payment' means the sum of ... pounds (£...) to undertake the Biodiversity Works

'Biodiversity Safeguarded Land' means the land hatched on plan (ref...) attached to this deed where no development or occupation shall occur in the interests of protecting biodiversity and/or geodiversity resources.

'Biodiversity Scheme' means a detailed specification for the avoidance/mitigation/compensation/ enhancement of wildlife habitats or features or biodiversity/geodiversity importance on the specified land including timescales and costings.

'Biodiversity Works' means the works to be undertaken to avoid/mitigate/compensate/enhance wildlife habitats or features of ecological importance on the specified land in accordance with the Biodiversity Scheme.

'Management Agreement' means an agreement for the management of an area of land under the terms of Section 39 of the Wildlife and Countryside Act 1981 (as amended)

'Management (and Monitoring) Plan' means a detailed and costed scheme submitted in support of the planning application for the management (and monitoring) of the specified land over a period of ...years produced in accordance with the Countryside Council for Wales Minimum Format Management Plan.

'Management (and Monitoring) Payment' means the sum of ... pounds (£...) to fully implement the Management (and Monitoring) Plan.

Clauses:

The Developer shall under no circumstances utilise or occupy the Biodiversity Safeguarded Land.

The Developer shall transfer the Biodiversity (Safeguarded) Land to the Council with all associated rights of access at no cost immediately prior to the commencement of development.

ANNEX 6: REGENERATION

Blaenau Gwent suffers a legacy of deprivation in terms of income, health, education and opportunity, and business performance is lagging behind other parts of Wales. According to the new Welsh Index of Multiple Deprivation (2008) 21% of the Borough's 'small areas' (as defined by the Welsh Government) are in the most deprived 10% in Wales. This is the second

Making a Difference – A Community Strategy for Blaenau Gwent 2010-2030 Consultation Draft (2010)

6.2 Employment and Enterprise

The socio-economic conditions within the County Borough reveal that improving the prospects for employment, training and enterprise is a high priority. In Blaenau Gwent in January 2009 7.3% of the working age population claimed Job Seekers Allowance (a total of 3,062 people), which is the highest rate in Wales. There are also higher proportions of people claiming incapacity benefits, income support and pensions credit in Blaenau Gwent than the Welsh average. Long-term unemployment is a persistent problem. In January 2009, 31% of claimants had been unemployed for over six months, and over 16% for a year. The proportion of claimants under 25 is 37%. The proportion of the working age population who are economically active is 70.9%, which is much lower than that of Wales. It is predicted that these indicators will further deteriorate, making the case for increased regeneration activity even clearer.

In 2008 employment levels in Blaenau Gwent were lower than those of Wales as a whole – 67.9% of Blaenau Gwent's working age population compared with 71.5% in Wales. Despite improvements since 2002, Blaenau Gwent still suffers from low levels of skills. Surveys show most adults would like to be involved in learning, but experience some barriers that stop them. The majority of employers who recruit young people report a significant skills gap.

The Council recognises that new development, both public and private sector, provides important training, employment and procurement opportunities which will aid the social and economic regeneration of the Borough and help create sustainable communities. It will therefore seek to maximise opportunities, via planning obligations, for new development to contribute towards ensuring that the local workforce and businesses are actively involved in the development of the area. This may be through the provision of recruitment initiatives, job opportunities and facilitation of skills training, or active consideration of local suppliers and sub-contractors in procurement processes. This approach will ensure that the benefits of development are realised for the local community for years to come.

6.2.1 Circumstances in which obligations will be sought

The Council considers that **major development schemes** (defined as 10 dwellings and above, commercial developments of 1,000sqm and above, or DDF T,M?F,lj[dj [U[j jDjW,M?FMVj[" [U[" [

- 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/ floorspace ratios for those uses;
- Identified recruitment and training issues or problems related to specific uses and the local area.

6.2.2 Nature of the Obligation

Depending on the nature and context of the development proposal (as detailed above), planning obligations will be either: the provision of an Employment and Enterprise Payment, to be paid to the Council at an agreed stage of the development, or the direct provision of employment/training opportunities and local procurement by the developer/end user.

Furthermore, the Council has a statutory duty under section 17 of the Crime and Disorder Act 1988 to “*exercise its functions with due regard to...the need to do all it reasonably can to prevent crime and disorder in its area including anti-social behaviour, substance misuse and other behaviour adversely affecting the local environment*”. In doing so the Council must review how current service provision impacts on crime and disorder reduction and how it can take active steps to reduce crime and disorder in the County Borough.

Even where the principles of Secured by Design have been applied to a new development, the design and layout may not always be sufficient to achieve satisfactory safety and crime prevention measures, for either community safety purposes or for the security of the site itself. Planning obligations may therefore be sought from new development to fund the provision of additional community safety infrastructure/schemes.

6.3.1 Circumstances in which an obligation will be sought

on or off-site community safety infrastructure, or the direct provision of on-site community safety infrastructure (normally by the developer). The Council will only seek an obligation where it can be demonstrated that, where appropriate, the development incorporates Secured by Design principles, but that these alone are not adequate to overcome community safety concerns

A Community Safety Payment will primarily be for the off site delivery of new infrastructure or the upgrading/extension of existing infrastructure by the Council to off-set the need generated by the development. The Payment will be required to cover the cost of the identified infrastructure, including the cost of the designing the scheme, installation, and running and maintenance costs over an agreed period of time.

In the case of the provision of infrastructure that is to be provided by the developer, the Council's expectation is that the developer should carry out the direct delivery of the works in accordance with details and specification to be first agreed with the Council. The developer will be required to fund the development of the detailed scheme and carry out the works to an appropriate standard. If land or infrastructure is to be transferred to the Council, they must be accompanied by a commuted sum towards the running and maintenance costs over an agreed period of time.

6.3.4 Use of the Community Safety Payment

site upgrading/extension of an existing facility. In the case of the upgrading/extension of an existing facility the Payment will be calculated in accordance with the formula set out in Figure 1 below. The Council will use the Payment to upgrade/extend an existing facility to meet the need generated by the development.

In the case of the provision of an entirely new facility that is to be funded by the developer but delivered by the Council, the developer will be required to fund the development of the detailed scheme, together with the cost of its initial provision. A financial contribution to cover maintenance costs over a 20 year period will also be required. The scheme should be submitted to the Council for agreement and the corresponding Payment made. A land transfer to the Council may also be required to enable the works to be delivered. The Council will use the Payment to undertake the works in accordance with the agreed scheme.

Where it is agreed that the developer will deliver a new facility on site, the Council's expectation is that the developer should carry out the direct delivery of the works in accordance with details and specification to first be agreed with the Council. The developer will be required to fund the development of the detailed scheme and carry out the works to the appropriate standard. If land or facilities are to be transferred to the Council, they must be accompanied by a commuted sum to enable the Council to maintain the facility for 20 years heW-UOVM6,,

The approach adopted by the Council toward the calculation of an appropriate community facility contribution therefore reflects the average build costs of new community centres and a standard community floorspace provision for each new dwelling as set out in Figure 1.

<p>Figure 1 Calculating the Communities Facilities Payment</p> <p style="text-align: center;">Build Cost per sq m (£1,169)</p> <p style="text-align: center;">x</p> <p style="text-align: center;">Community Floorspace Provision per Dwelling (0.5)</p> <p style="text-align: center;">x</p> <p style="text-align: center;">Number of Dwellings Proposed</p> <p style="text-align: center;">=</p> <p style="text-align: center;">Total Community Facilities Payment</p>

6.6.6 Applications for Outline Planning Permission

The formula set out above is applied when the actual number of dwellings to be provided on site is finalised. However, in the case of Outline planning applications agreement on this matter is not always reached until the Reserved Matters stage. In these cases the planning obligation will be identified as the 'per dwelling' charge that will apply on all qualifying dwellings based on the cost data for a community facility at the time planning permission is granted, or at the time the Reserved Matters application is submitted.

6.7 Standard Heads of Terms

Definitions:

Employment and Enterprise:

'Employment and Enterprise Contribution' means the sum of ... pounds (£...) to enable the Council to implement a scheme for the provision of training and development or other such mechanism for residents within Blaenau Gwent County Borough.

'Employment and Enterprise Scheme' means a scheme for the provision of training and development or other such mechanism which enables local people to secure local employment within Blaenau Gwent County Borough.

Community Safety:

'Community Safety Improvements' means the provision or improvement of facilities, services or infrastructure to address community safety issues in Blaenau Gwent County Borough.

'Community Safety Payment' means a sum of [...] pounds [£...] to be set aside to provide community safety improvements in Blaenau Gwent County Borough.

Town Centre Improvements:

'Town Centre Improvements' means the provision or improvement of facilities, services or infrastructure serving [name] centre which will assist in enhancing the vitality and viability of

that retail centre.

‘Town Centre Improvement Payment’ means a sum of [...] pounds [£...] to be set aside to provide town centre improvements within [name] centre.

Public Art:

‘Public Art’ means art that is the original work of a living professional artist and is created for a particular place, commissioned by or working in collaboration with others such as architects, landscape designers, planners, developers, arts officers and community representatives or the provision of facilities which enable the creation of art.

For Full applications:

‘Public Art Payment’ means a sum of [...] pounds [£...] to be set aside to provide public art on site and / or to be paid as a financial contribution to the Council for the provision of Public Art.

For Outline applications:

‘Public Art Payment’ means the value of the public art to be provided on site, or the value of the financial contribution to be paid in lieu of on site provision, calculated as the average building costs of the development.

Community Facilities

‘Community Facilities’ means the provision of facilities (a building or structure) or services which meet local community needs and are publicly available

‘Community Facilities Land’ means the land hatched on plan (ref...) attached to this Deed where the Community Facilities are to be provided

‘Community Facilities Payment’ means the sum of ...pounds (£...) to be utilised to provide or enhance Community Facilities in accordance with the Community Facilities scheme

‘Community Facilities Scheme’ means a detailed specification of works to provide for Community Facilities to address the need generated or exacerbated by the development to include initial provision and management for a period of 20 years

Clauses:

Employment and Enterprise:

The developer shall pay the Employment and Enterprise Payment to the Council upon

Or

The developer shall submit the Employment and Enterprise Scheme to the Local Planning Authority for their approval prior to The scheme shall thereafter be implemented in accordance with the approved details.

Community Safety:

Prior to beneficial occupation of any part of the development, the developer shall provide o p detai L

The developer will provide the community safety scheme on site in accordance with the approved details and timeframes, and no later than ... after substantial completion of the development.

The developer shall pay the Community Safety Payment prior to the beneficial occupation of any part of the development.

Town Centre Improvements:

Prior to beneficial occupation of any part of the development, the developer shall provide details including timeframes for implementation of the town centre improvement scheme to be provided on site. These details must be approved by the Council prior to the beneficial occupation and the works thereafter be implemented in accordance with the approved scheme.

The developer will provide the town centre improvement scheme on site in accordance with the approved details and timeframes, and no later than ... after substantial completion of the development.

The developer shall pay the Town Centre Improvement Payment prior to the beneficial occupation of any part of the development.

Public Art:

Prior to beneficial occupation of any part of the development, the developer aevIUaA,,Ue6MUI6-UED

The Council undertakes to utilise the Community Facilities Payment to provide the Communities Facilities in accordance with the Community Facilities Scheme.

The Council undertakes to accept the transfer of the Community Facilities Land and utilise the land in the provision of the Community Facilities.

Following approval from Planning Committee, the Council will aim to provide a first draft legal agreement to the developer or their solicitor within 3 weeks and thereafter the matter will be progressed as quickly as possible depending on the developer's acceptance of the agreement.

An annual report will be produced every April by the Local Planning Authority until complete implementation of the legal agreement, to let the developer know the Council's progress on the implementation of the planning obligation. At effective completion a closing report will be prepared outlining how the planning obligation has been implemented.

The service you can expect from us as an interested party:

The Council will encourage consultation and feedback on draft local policies and guidance, particularly through the ongoing preparation of the Local Development Plan.

A database of planning obligations will be set up to store information on all planning agreements so that requests for information can be easily answered and the information readily provided.

Public consultation will be carried out during the assessment of all planning applications and potential issues may be highlighted that could be addressed by means of planning obligations. However, each case will be considered on its own merits.

Planning obligations shall be constantly monitored to ensure they are implemented successfully to the benefit of the community of Blaenau Gwent in response to the pressures resulting from new development.

An annual report will be sent to Planning Committee outlining the Council's overall position on planning obligations in terms of receipts and spend. The report will be made publicly available.

Customer comments and complaints:

The Council is committed to improving customer service and we would like you to tell us if we are doing something well and suggest if there are areas where we could improve. However, if you are dissatisfied with the level of service you have received then please let us know.

In the first instance you should use the main point of contact for all issues relating to planning obligations in the Council's Planning Control section:- Principal Planning Officer (Planning Obligations), Tel: 01495 355555 or E-mail planning@blaenau-gwent.gov.uk

Alternatively you may write to:

Head of Planning & Building Control
Planning Control Section
Neighbourhood Services Division
Blaenau Gwent County Borough Council
Council Office
High Street
Blaina
Gwent NP13 3XD

APPENDIX C: GLOSSARY

Acceptable Cost Guidance (ACG) A document that is currently published by the Welsh Government that specifies the total cost of providing an affordable dwelling dependant on the size and specification of the dwelling proposed and its location.

Affordable Housing Subsidised and non-subsidised housing for people who can't afford to buy or rent on the open market (*see Annex 1 for definitions of the different types of Affordable Housing*)

Affordable Housing Viability Study A study undertaken to assess whether a specified level of planning obligations would compromise the viability of development schemes. The planning obligations set out in this SPG have been subject to viability testing.

Building Cost Information Service (BCIS) Administered by the Royal Institute of Chartered Surveyors it provides an Index identifying the inflationary % increase in the costs of construction year on year.

Biodiversity The whole variety of life on earth. It includes all species of plants and animals, their genetic variation and the ecosystems of which they are part.

Code for Sustainable Homes (CfSH) The national standard for the sustainable design and construction of new homes. The Code aims to reduce carbon emissions and create homes that are more sustainable.

Commuted Sum A sum of money paid by a developer to cover the future maintenance costs of specified areas or items that are going to be adopted and maintained at public expense.

Compensation Biodiversity compensation is usually carried out offsite and involves major habitat restoration or creation to offset what is being lost.

Deed (of Variation) A legal document which has been "signed, sealed and delivered" not just signed, but signed and witnessed, with a seal appended and formally handed over.

Density A measure of the number of dwellings per hectare.

Detailed / Full Application A planning application seeking full permission for a development proposal, with no matters reserved for later planning approval.

Development Appraisal Toolkit (DAT) An Access based database which provides the user, in most cases the local authority, with an assessment of the economics of residential development for specific schemes. It allows the user to test the economic implications of

Heads of Terms (HOTS) Agreement in principle of the planning obligations that will be the subject of a planning legal agreement, either a UU or a S106 agreement.

Intermediate Housing This is a type of Affordable Housing where prices or rents are above those of social rented housing but below market housing and includes equity sharing schemes.

Local Biodiversity Action Plan The Local Biodiversity Action Plan is the agreed strategy for conservation and enhancement in a particular area which will help meet the UK Biodiversity

Neutral Tenure Where the tenure of affordable housing is not predetermined but can vary according to the needs, means and preferences of households over the lifetime of a development.

Open Market Value The value a property might reasonably fetch if sold on the open market where there is a willing buyer and a willing seller.

Open Space All land that is predominantly undeveloped other than by buildings or structures that are ancillary to the open space use. The definition covers the broad range of types of open space, whether in public or private ownership and whether public access is unrestricted, limited or restricted.

Outline Application A general application for planning permission to establish that a development is acceptable in principle, subject to subsequent approval of detailed matters.

Planning Obligation

