

PLANNING OBLIGATIONS SUPPLEMENTARY
PLANNING GUIDANCE

CONSULTATION REPORT AND OFFICER'S
RECOMMENDATIONS



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1.0 BACKGROUND

Purpose of Supplementary Planning Guidance (SPG)

- 1.1 The Purpose of SPGs are to:
- assist the applicants and their agents in preparing planning applications and in guiding them in discussions with officers about how to apply relevant policies in the Joint Local Development Plan before submitting planning applications,
 - assist officers to assess planning applications, and officers and councillors to make decisions about planning applications
 - help Planning Inspectors make decisions on appeals.
- 1.2 The general aim is to improve the quality of new developments and facilitate a consistent and transparent way of making decisions that align with relevant policies in the Joint Local Development Plan.

The Policy Context

Local Development Plan

- 1.3 Under planning legislation, the planning policies for every area are contained within the 'development plan'. The Gwynedd and Anglesey Joint Local Development Plan (JLDP) was adopted on 31 July 2017. It relates to the Gwynedd and Anglesey Planning Authority areas.
- 1.4 The Plan provides wide-ranging policies along with allocations for the main land uses, such as housing, employment and retail; it will help shape the future of the Plan area physically and environmentally, and will also influence it economically, socially and culturally. The Plan, therefore:
- enables the Local Planning Authorities to make rational and consistent decisions on planning applications by providing a policy framework that is consistent with national policy; and
 - guides developments to suitable areas during the period up to 2026.

The need for Supplementary Planning Guidance

- 1.5 Although the Plan contains policies that enable the Local Planning Authority to make consistent and transparent decisions on development applications, it cannot provide all the detailed advice required by officers and prospective applicants to steer proposals locally. In order to provide this detailed advice, the Councils are preparing a range of SPGs to support the Plan that will provide more detailed guidance on a variety of topics and matters to help interpret and implement the Plan's policies and proposals.

The Status of Supplementary Planning Guidance

- 1.6 Supplementary Planning Guidance (SPG) will be material planning considerations during the process of assessing and determining planning applications. Welsh Government and the Planning Inspectorate will place considerable weight on supplementary planning guidance that stem from, and are consistent with, a development plan. The SPGs cannot introduce any new planning policies or amend existing policies.

1.7 Once they have been adopted SPGs should, therefore, be given substantial weight as a material planning consideration.

2.0 PLANNING OBLIGATIONS SPG

2.1 New development will often require new or rely on existing infrastructure, services and facilities to make proposals acceptable in land use planning terms. The infrastructure need generated by a proposed development is a material consideration in the determination of a planning application. The capacity of existing infrastructure may be exceeded as a consequence of new development, generating a need for new infrastructure or facilities. The use of planning obligations may be appropriate to require developers to make contributions for the provision of infrastructure to support proposed development. The aim of this guidance is to give more detail and additional information to assist both planning authorities to implement Policies PS2 ('Infrastructure and Developer Contributions') and Policy ISA1 ('Infrastructure provision') and clarify what types of obligations developers may be expected to enter into, their content and the thresholds at which different obligations are triggered.

Public Consultation

2.2 A draft version of this SPG was approved for public consultation by the Joint Planning Policy Committee on the 25 January, 2019. This draft was prepared in consultation with relevant officers from both Authorities. Prior to this the SPG was reviewed by the Joint Local Development Plan Panel on the 16 November, 2018.

2.3 The SPG was the subject of a public consultation exercise between the 21st February, 2019 and the 4th April 2019.

2.4 Details of the public consultation were placed on both Council's websites and emails/ letters were sent to all Councillors, Community Councils, planning agents, statutory consultees, environmental bodies, neighbouring authorities and those who had declared an interest in the SPG. Hard copies of the SPG were also available to inspect in all public libraries, Anglesey County Council's main office in Llangefni, and in Siop Gwynedd (Caernarfon, Dolgellau and Pwllheli).

2.5 A number of platforms were available for interested parties to respond to the consultation which were:

- Online word and pdf response form - available on both websites and paper copies were made available in all libraries and Siop Gwynedd. Paper copies of the response form were also available on request from the JPPU
- Email
- Letter

2.6 A total of 11 representations were received, all from Natural Resources Wales. Due consideration was given to all of the representations received.

2.7 The following section (Appendix A) summarises the representations received, the Councils' response to them and where appropriate, recommends any changes required to the SPG in lieu of the comment. Any proposed change to the wording of the SPG is noted in a **bold font that has been underlined**.

Joint Local Development Panel

- 2.8 The Consultation Report was presented to the Joint Local Development Panel on 17 July 2019 in order to consider and comment upon the representations received and the Officer's response to them.

3.0 LEGAL ISSUES

- 3.1 The Councils received a copy of a legal opinion by a barrister commissioned by the Cymdeithas yr Iaith Gymraeg. The opinion deals with a number of aspects and challenges the legitimacy of national policy, the Joint Local Development Plan and this Guidance. We are aware that all members of the Joint Committee have received a copy of this correspondence.
- 3.2 The Legal Service has responded to Cymdeithas on behalf of Isle of Anglesey County Council and Gwynedd Council with a detailed letter of objection to the challenge and clearly stating that any legal action will be defended by the Councils. In any event, the lawfulness of a Development Plan may not be challenged after six weeks **following its adoption**.
- 3.3 It must be kept in mind that the Joint Local Development Plan is a key Policy document for the Councils which plays a fundamental part in daily planning permission determinations. In the face of public statements that the Policies are 'unlawful', we have given detailed and specialised attention to these claims, confirmed by a specialist barrister acting on behalf of the Councils.
- 3.4 In relation to the Supplementary planning Guidance: Planning Obligations (Consultation Draft) it is noted:
- This is the Guidance that specifically supplements Policy PS2 and Policy ISA, relating to infrastructure and contributions from developers to mitigate any impact.
 - The Planning Obligations (Draft) guidance is merely a peripheral document in relation to linguistic assessments and statements.
 - In light of this the only observation the Council made in relation to the Obligations Guidance is that the guidance advises what the Councils would expect regarding contributions to mitigate the impact of any development. Any planning obligation will be based on the nature of the development, and must conform to specific statutory requirements, and any mitigation measures must be justified based on evidence.

APPENDIX A

Rep Id	Type of Comment	Organisation	Part	Summary of Representation	Officer Comments and Recommendation
1	Objection	NRW	3.5	Paragraph 3.5 - Does this apply to green infrastructure and/or conservation/biodiversity works? If yes, we are concerned about the potential implications of conservation action given the application for no more than five separate planning obligations (secured since April 2010).	<p>Comment noted</p> <p>From April 2015 the UK Government has restricted the number of Section 106 contributions that can be “pooled” to pay for new infrastructure to five. Previously such contributions from a number of different developments could be collected together to help pay for new infrastructure. In light of this, it is important that any contribution obtained is for a specific identified area to reduce the potential impact over ‘pooled’ contributions.</p> <p>Recommendation</p> <p>No change</p>
2	Comment	NRW	3.6	<p>Policy ISA 1 - We welcome the inclusion of nature conservation. In terms of the provision of financial resources, we advise that it includes both:</p> <ul style="list-style-type: none"> • Payment of commuted sum; and or • Establishing the imposition of index linked ground rent service charge regimes. 	<p>Comment noted</p> <p>Policy ISA1 has already been subject to public consultation as part of the JLDP public consultation process and cannot be changed through the SPG.</p> <p>Recommendation</p>

Rep Id	Type of Comment	Organisation	Part	Summary of Representation	Officer Comments and Recommendation
					No change.
3	Comment	NRW	4.4	<p>1. Paragraph 4.4 – Types of Payment - We suggest an additional funding mechanism ‘Establishing the imposition of index-linked ground rent service charge regimes’.</p> <p>2. Timescales - We advise the inclusion of the timescales for payments.</p> <p>3. What if payments are not received? Could ‘bonds’ also be included?</p>	<p>Comment noted</p> <p>1) Agree that an index linked mechanism ensuring perpetuity funding should be included.</p> <p>2) Agree that the timescales for payments should be referred to in the Guidance.</p> <p>3) See response to representation 4 below.</p> <p>Recommendations</p> <p>1) Insert the following text to section 4.4:</p> <p><u>vii) Index-linked Payments - In some cases a one-off payment may not be sufficient and funding over much longer timescales will be required. An example would be the protection and enhancement of biodiversity assets which may need to be subject to regular management, payment for wardening and monitoring over a long-term period. In appropriate cases, therefore, financial contributions should be index linked so that the agreed sums of money retain their relative value and allow for the fluctuation of prices. The method of</u></p>

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					<p><u>indexation should be specified within the planning obligation and will usually be the Retail Price Index (RPI published by the Department of Trade and Industry (DTI) or the Building Cost Information Service Index (BCIS) published by the Royal Institution of Chartered Surveyors (RICS), depending on the nature of the contribution.</u></p> <p>2) Insert following text following paragraph 4.4:</p> <p>vi)limits the number of planning obligations that can be pooled (maximum of 5).</p> <p><u>Trigger dates for the payment of financial contributions will be included in the planning agreement, as will any time periods by which the contribution is to be spent.</u></p> <p>3) No change</p>
4	Comment	NRW	5.21	Paragraph 5.21 - We welcome provisions concerning enforcement. However, what priority is given to enforcement? We would suggest the use of 'bonds' could be used to facilitate enforcement.	<p>Comment noted</p> <p>Agree that the payment of bonds can facilitate the delivery of planning obligations in appropriate circumstances.</p> <p>Recommendation</p>

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					<p>Insert new text at beginning of paragraph 5.22:</p> <p>5.22 <u>The Council will require the developer in some cases to pay a bond to ensure delivery of obligations in the event that the land owner defaults against a payment or fails to deliver infrastructure.</u></p>
5	Comment	NRW	Section 12 - Environment	<p>Section 12 – Environment - Section 106’s to include provisions concerning the long term, including but not limited to:</p> <ul style="list-style-type: none"> • Integration of payment schedules and occupancy; <ul style="list-style-type: none"> • Long term implementation of targeted conservation management via management plans and/or supplementary management agreements, e.g. Wildlife and Countryside Act 1981 (as amended) Section 39 Agreements; • Long term surveillance, monitoring and data management; • Provision of long term resources (commuted sum or ground rent service charges) <ul style="list-style-type: none"> • Changes in tenure • Biosecurity • Bond that can be accessed in the event of non-compliance <p>It is advocated that an additional section is added to Section 12 in respect of the above.</p>	<p>Comment noted</p> <p>Agree that it would be useful to provide details with regards to possible provisions contained within S106 agreements to add clarity:</p> <p>Recommendation</p> <p>Insert new paragraph after 12.5:</p> <p><u>12.6 Section 106’s could include the following provisions concerning the long term protection and enhancement of the environment,:</u></p> <ul style="list-style-type: none"> • <u>Integration of payment schedules and occupancy;</u> • <u>Long term implementation of targeted conservation management via management plans and/or supplementary management agreements, e.g. Wildlife and</u>

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					<p><u>Countryside Act 1981 (as amended) Section 39 Agreements;</u></p> <ul style="list-style-type: none"> • <u>Long term surveillance, monitoring and data management;</u> • <u>Provision of long term resources (commuted sum or ground rent service charges);</u> • <u>Changes in tenure;</u> • <u>Biosecurity;</u> • <u>Bond that can be accessed in the event of non-compliance.</u>
6	Comment	NRW	Section 19 – Flood Risk	<p>There are areas of Gwynedd and Anglesey where there is a lack of sewage infrastructure and where development could be hindered by the lack of mains drainage, or already cause environmental issues, in particular: <u>Ynys Môn – Brynteg, Carreglefn, Traeth Coch and Llanbedr-goch.</u> <u>Gwynedd - Rhoshirwaun, Rhydlios, Llangwnadl, Penygroeslon, Uwchmynydd, Garn Fadryn, Rhiw a Thudweiliog.</u></p> <p>Although the above “settlements” are relatively small, you may wish to consider whether the use of planning obligations may be appropriate in these areas in terms of contributing to suitable sewerage services for any new developments.</p>	<p>Comment noted</p> <p>The relevant water utility company (i.e. Dŵr Cymru) is consulted on individual applications as part of the planning process. The inclusion of the settlements noted would provide unnecessary detail to the Guidance.</p> <p>Recommendation</p> <p>No change</p>
7	Comment	NRW	19.6	In addition to the measures outlined in your Planning Obligations SPG, your Authority may	Comment noted

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				<p>consider the inclusion of the following mitigation measures to be appropriate.</p> <ul style="list-style-type: none"> • Property Level Resilient Design – minimise the amount of flood water that can enter a property and limit the damage caused if water does enter. • Site Level Resilient Design - minimise the amount of flood water entering a site, and effectively managing any water that does reach the site so that it does not adversely affect development. 	<p>Agree that inclusion of the suggested mitigation measures would add clarity to the Guidance.</p> <p>Recommendation</p> <p>Insert new paragraph after paragraph 19.6:</p> <p><u>19.7 Improving the resilience of communities should be a priority for planning authorities, and design consideration should be a key factor when development is considered acceptable in flood risk areas. Where the tests set out in TAN15 have been shown to have been met, then new development should be resilient to potential flooding at both the property and site levels:</u></p> <ul style="list-style-type: none"> • <u>Property Level Resilient Design – minimise the amount of flood water that can enter a property and limit the damage caused if water does enter.</u> • <u>Site Level Resilient Design - minimise the amount of flood water entering a site, and effectively managing any water that does reach the site so that it does not adversely affect development.</u>
8	Comment	NRW	19.6	We generally welcome the inclusion of paragraph 19.6 which confirms that there should be a demonstration that flood risk from	Comment noted

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				<p>all sources has been accounted for. We would recommend that reference to climate change be included in this section, to re-affirm the position that flood risk should be considered over a development's lifetime i.e. take account of climate change.</p>	<p>Agree that reference should be made to climate change in this section so that flood risk is considered over a development's lifetime.</p> <p>Recommendation</p> <p>Insert new paragraph after 19.7 new paragraph (see representation 7 above):</p> <p><u>19.8 Developer contributions will be used to both mitigate and adapt to the effects of climate change, and minimise emissions of carbon dioxide arising from development, so that flood risk is considered over a development's lifetime. These could include:</u></p> <p><u>Mitigation:</u></p> <ul style="list-style-type: none"> • <u>Using less energy, in particular by adopting sustainable design and construction measures;</u> • <u>Supplying energy efficiently in particular by prioritising decentralised energy generation; and</u> • <u>Using renewable energy.</u> <p><u>Adaptation:</u></p> <ul style="list-style-type: none"> • <u>contributing to reducing flood risk including applying principles of sustainable urban drainage;</u>

Rep Id	Type of Comment	Organisation	Part	Summary of Representation	Officer Comments and Recommendation
					<ul style="list-style-type: none"> • <u>minimising water use;</u> • <u>carbon fund contributions; and protecting and enhancing green infrastructure.</u>
9	Comment	NRW	Section 19	Where new development can be justified (see section 6 of TAN15), then it may be possible for flood risk mitigation measures to be incorporated into new development to reduce flood risks.	<p>Comment noted</p> <p>Agree that flood risk mitigation using measures such as using Sustainable Drainage Systems (SuDS) as outlined in section 6 of TAN15 should be incorporated into new development. The changes made in response to representation 8 above address this.</p> <p>Recommendation</p> <p>No change.</p>
10	Comment	NRW	19.4	There may be merit in better defining the term “flood prevention schemes” within the SPG.	<p>Comment noted</p> <p>Agree that ‘flood prevention’ schemes should be clearly defined to add clarity.</p> <p>Recommendation</p> <p>Amend the first bullet point of paragraph 19.4 to read:</p> <p>19.4</p> <ul style="list-style-type: none"> • Flood prevention scheme - <u>a scheme for the management of flood risk</u>

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					<u>within the authority area. This includes defence measures.</u>
11	Comment	NRW	Section 19 – Flood Risk	In terms of flood risk from surface water, and the management of surface water from individual development sites, we would recommend that you liaise with you drainage/flood risk departments, who act as the Lead Local Flood Authority.	<p>Comment noted</p> <p>Relevant departments within both Local Planning Authorities are consulted upon where potential development may be affected by flood risk.</p> <p>Recommendation</p> <p>No change</p>