

# **Powys Local Development Plan (2011 to 2026)**

## **Supplementary Planning Guidance Planning Obligations Working Draft – June 2018**

**Mae'r ddogfen hon hefyd ar gael yn Gymraeg**

**This document is also available in Welsh**



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## PART 1

### 1. Introduction

1.1 This guidance supplements the policy relating to planning obligations contained in the Powys Local Development Plan (LDP) (2011-2026), which was adopted by Powys County Council on the 17<sup>th</sup> of April 2018. It has been prepared to assist decision-making on planning applications within the Powys LDP area. This guidance does not apply to areas of the County of Powys located within the Brecon Beacons National Park Authority area (BBNP).

1.2 This Supplementary Planning Guidance (SPG) is intended to be read alongside the relevant policies of the LDP (see Section 4), along with any other related adopted SPG. The guidance within the Affordable Housing SPG, in particular, complements this guidance in respect of using planning obligations for affordable housing purposes.

1.3 It is important that sufficient new development is secured to meet the needs of our communities. It is similarly important to ensure that the impacts of new development are addressed by the planning system where possible.

1.4 New development often creates a need for additional infrastructure or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. The Council considers that it is appropriate to expect developers to pay for, or contribute to, improvements to infrastructure that would not otherwise be needed. This SPG has been prepared to explain how the Council, through relevant LDP policy, will use planning obligations to secure such improvements.

### 2. Purpose of the guidance

2.1 In determining planning applications the Council must assess the impacts of new development and, where possible, identify means by which negative impacts can be mitigated. The planning system provides a mechanism for achieving mitigation through legally binding agreements known as Section 106 (S.106) Agreements. Such agreements between a developer, or developers, and the Council as Local Planning Authority (LPA) and, where appropriate, other parties, detail all the planning obligations that need to be fulfilled to enable the development to be implemented. In cases where development is unacceptable due to negative impacts which cannot be suitably mitigated, planning permission should be refused.

2.2 The purpose of this guidance is to assist in the delivery of development by providing more information on:

- The types of development likely to require planning obligations and the thresholds and trigger points that apply to different types of development;
- The approach and procedures the Council will apply where obligations are required;
- The scale and, where appropriate, the mechanism for calculating the obligation.

2.3 All planning applications will be considered on their merits and planning obligations will be negotiated in accordance with Welsh Office Circular 13/97 and Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations (see Section 4).

2.4 This SPG establishes the national and local legislative and policy framework for planning obligations and provides additional detail on the following topic areas for which Powys County Council will seek obligations:

1. Affordable Housing\*;
2. Education;
3. Leisure, Recreation and Open Space\*;
4. Transportation and Access;
5. Welsh Language;
6. Other topic areas referenced in the LDP.

\*note that separate, more detailed SPG are to be published on Affordable Housing and Open Space.

2.5 Whilst the above topic areas are accentuated in this SPG as they are the most common obligations with respect to typical development schemes in the Powys LDP area, as each planning application is assessed on its merits there will always be scope for other relevant obligations depending on the case specifics.

### **3. Status of the guidance**

3.1 This SPG supports policies in the adopted Powys Local Development Plan (2011-26). It has regard to relevant national planning policy and legislation and other available guidance and information.

3.2 This SPG was adopted by the Council on **[insert date]**. It has been prepared in accordance with the Council's approved Protocol for Preparation and Adoption of SPG (June 2018), which includes a Community Involvement Scheme. It has been drawn up with reference to an expert topic stakeholder group and subject to a six week public consultation stage undertaken 11<sup>th</sup> July - 21<sup>st</sup> August 2018. A summary of the responses received to the public consultation along with an explanation as to how the responses have been addressed can be found within the SPG Consultation Statement.

3.3 While only policies in the LDP have special status in the determination of planning applications, this SPG will be taken into account as a material consideration in the decision making process.

3.4 This SPG has been subject to an impact assessment.

## PART 2

### 4. Legislative Background and Policy Context

#### National Context

##### Town and Country Planning Act 1990

4.1 The legislative basis for planning obligations is S.106 of the Town and Country Planning Act 1990 (“the 1990 Act”) (as amended). Typically obligations are negotiated in the context of granting planning permission and are used to secure provisions, to enable the development of land, that are not suitable or capable of being contained in a condition attached to the planning permission. The agreement is made between the Council and persons with an interest in the land.

4.2 Planning obligations can also be given unilaterally to the Council by the persons with an interest in the land (Unilateral Undertaking). Unilateral Undertakings are commitments offered by the applicant to the LPA with the intention of overcoming any obstacles that may arise in preventing the awarding of planning permission. They can be offered by the developer at any stage in the planning process and are usually drafted by solicitors representing the developers.

4.3 S.106 of the 1990 Act enables planning obligations to:

- Restrict development or use of land;
- Require specific operations or activities to be carried out in, on, under or over the land;
- Require land to be used in a certain way;
- Require a sum or sums of money to be paid to the Council to help mitigate the impact of the development.

4.4 Planning obligations secured by way of an agreement or Unilateral Undertaking under S.106, are registerable land charges which are binding on the land and are therefore enforceable against all successors in title.

##### Welsh Office Circulars and Planning Policy Wales (PPW)

4.5 Welsh Government advice and guidance on planning obligations is contained in Circular 13/97 (Planning Obligations). Planning obligations should play a positive role in the planning system. When used properly they can remedy genuine planning problems and enhance the quality of development. However, the Circular reminds local planning authorities and developers to place more emphasis on the overall quality of a development proposal than on the number or nature (or value) of planning benefits they can obtain or offer.

4.6 Circular 13/97 re-iterates two broad objectives of the planning system, i) that it operates in the public interest and ii) that it fosters sustainable development by providing homes, investment and jobs in a way that adds to rather than detracts from the quality of the environment. In seeking to enter into planning obligations with a developer, such arrangements must be operated in accordance with the fundamental principle that planning permission may not be bought or sold. In accordance with Circular 13/97 planning obligations should only be used where they are:

- Necessary
- Relevant to planning

- Directly related to the proposed development
- Fairly and reasonably related in scale and kind to the proposed development
- Reasonable in all other respects

4.7 Planning Policy Wales (PPW) (Edition 9, November 2016) sets out the key requirements of the 1990 Act and Circular 13/97, providing national context for development plan policies. PPW is supplemented by a number of topic based Technical Advice Notes (TANs).

4.8 Both planning conditions and planning obligations are tools used to ensure that development, which might otherwise be refused, is acceptable in planning terms.

4.9 Conditions on a planning permission can enable many development proposals to proceed where it would otherwise be necessary to refuse planning permission and the Council has wide-ranging powers under the 1990 Act to impose them. Where there is a choice between imposing conditions or entering into a planning obligation, the use of a condition is preferable. Conditions should comply with Circular 16/2014 (the Use of Planning Conditions for Development Management) which sets out the six policy tests, as determined by the Courts, applicable to the validity of planning conditions. They should be:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

Circular 16/2014 contains model conditions. In granting conditional planning permission, the Council is obliged to give clear and precise reasons for the imposition of every condition.

4.10 Conditions cannot be used to require works on land outside the application site or outside the control of the applicant and they cannot be used to collect financial contributions. Therefore S.106 agreements are used both to secure off-site works and to secure financial contributions in lieu of the developer providing direct benefits. Financial contributions can also be sought through S.106 agreements to provide for upkeep and long term maintenance.

### **Community Infrastructure Levy (CIL)**

4.11 The CIL is a levy that Councils can choose to charge on new developments in their area to fund infrastructure that the Council and local community want. Unlike contributions under S.106 agreements, the CIL once in force is non-negotiable. The CIL Regulations 2010 came into force on 6th April 2010 and have implications for the range and nature of contributions sought through planning obligations during the Plan period.

4.12 Regulation 122 gives legal effect to three of the established tests for planning obligations, requiring obligations to be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

4.13 Primarily to encourage the take-up of the levy, CIL Regulation 123 with effect from April 2015, restricted the use of planning obligations, so that “pooled” contributions intended to serve new infrastructure are limited to a maximum of five. This means that, where relevant, up to five separate developments could be required, through S.106 agreements to contribute, for example, to the provision of a particular roundabout to improve the local highways infrastructure and mitigate the traffic impacts of the new development but no further obligations could be sought towards that same purpose from subsequent developers. Equally the Council cannot fund any general infrastructure provision (where no specific project is identified, e.g. education in broad terms) once the limit of five separate contributions has been reached as calculated from a base-date in April 2010 (when the CIL Regulations came into force).

4.14 In practice, the effect of Regulation 123 has meant that those Councils who are not CIL charging authorities (at 1 October 2016, only three of the 22 Welsh Councils had a CIL charging schedule in place) have been careful to work within the restrictions set out in the CIL Regulations. S.106 monies can still be sought and combined where necessary to fund development-specific items, or identified infrastructure “project pots” within the locality, as long as each item or project pot accepts no more than five contributions. This detailed approach complies with the CIL restrictions on pooled funding pots by focussing on local needs (relevant to the development in question) and not attempting to fund general infrastructure across a wider area (which would better suit a CIL charging schedule).

4.15 As CIL is concerned with infrastructure provision, other locally-specific mitigation matters (e.g. biodiversity measures) are not affected by the restrictions. Furthermore the CIL regulations do not apply in respect of affordable housing.

4.16 As of July 2018, Powys County Council had not introduced a CIL charging schedule as it had assessed all of the essential infrastructure needed to deliver the Local Development Plan strategy and established that it could be delivered through other mechanisms outside the remit of CIL. The Council will continue to rely on planning obligations where relevant to provide necessary facilities.

4.17 The Council will continue to monitor the suitability of introducing a CIL in the light of emerging guidance and legislation.

## Local context

4.18 The policy context for negotiating planning obligations is contained in Policy DM1 of the Powys LDP:

### **Powys Local Development Plan (2011-2026)**

#### **Policy DM1 – Planning Obligations**

**Planning obligations will be sought by agreement with applicants, where necessary, to ensure that:**

- 1. The development provides for adequate infrastructure necessary to serve the proposal, and that satisfactory maintenance and / or restoration arrangements are achieved;**
- 2. Significant adverse socio-economic and environmental impacts are addressed and mitigated;**
- 3. Benefits are secured in the public interest to meet the additional demands of development proposals on local communities.**

**Where on-site provision or mitigation is not appropriate, off-site provision, or a financial contribution towards it, may be sought.**

**Should it be demonstrated that for viability reasons not all of the identified contributions can be reasonably required, priority will be determined on the basis of the individual circumstances of each case.**

4.19 The policy recognises the requirement set out in PPW and Circular 13/97 in relation to the tests for the use of planning obligations. The Plan's reasoned justification to Policy DM1 includes a broad list of the types of obligation which may be sought:

- Essential infrastructure or utilities.
- The provision of affordable housing within residential developments.
- Community, educational, health, recreation, leisure and open space facilities.
- Transport infrastructure including sustainable transport measures and the rights of way network.
- Renewable/low carbon energy infrastructure.
- Ecological mitigation.
- Welsh Language mitigation.
- Other facilities and services and/or mitigation measures as considered necessary.

#### **Links to Other LDP Policies**

4.20 Many of the issues identified by Policy DM1 are contained within the suite of LDP Development Management (DM) policies (DM2-DM16) which set out the matters which must be addressed in order for development to proceed. DM policies include those on the natural environment (DM2), public open space (DM3), development in Welsh speaking strongholds (DM12) and design and resources (DM13).

4.21 In assessing planning applications, the Council may determine that planning conditions and/or planning obligations are suitable in order to make otherwise unacceptable development, acceptable.

4.22 LDP strategic and topic based policies on affordable housing (SP3, H5, H6), renewable energy (RE1), and minerals restoration and aftercare (M5) also reference the potential for planning obligations. Note that some topic based policies in the LDP will be supported by individual SPG, for example on Affordable Housing which, when available, should be read alongside this SPG. The full programme of SPG is listed in Appendix 2 of the LDP.

4.23 Appendix 1 of the LDP provides details on the Plan's housing and employment sites ("site allocations") and includes commentary on the constraints already identified at site level which may necessitate a S.106 agreement in order to make the proposed development acceptable in planning terms.

## **5. The use of planning obligations by Powys County Council**

### **General Principles**

5.1 Planning obligations can be used to address the impacts of new development. Some forms of development place added strain on existing infrastructure. This increased strain would not necessarily have arisen if not for the development proposal. For a development proposal to be acceptable, the provision of, or contribution towards, new or existing infrastructure may be required to meet the additional needs arising as a direct result of the implementation of that particular proposal.

5.2 In real terms, for example, a new residential development may result in an influx of people into a community placing additional pressure on existing infrastructure such as local schools. Large scale residential development may warrant the construction of a new school, whereas relatively modest development may only require improvements to the existing facilities, e.g. a new classroom or improved school sports facilities.

5.3 Planning obligations can also help ensure that new development is fully integrated into the local environment which is essential if more sustainable forms of development are to be promoted. Planning obligations may also be used to either restrict specific forms of development, or encourage and promote the provision of others, for example, in relation to the development of affordable housing.

5.4 All planning applications which meet the thresholds and triggers set out in detail in Part 3 of this SPG (Topic Specific Planning Obligations) will be required to make contributions in light of this SPG. This includes applications for the renewal of extant planning permissions. Likewise, material changes in planning circumstances will be considered regarding Section 73 applications (often used to extend the times limits on a planning permission), the practical effect of which is to grant a fresh consent (check with DM)

5.5 Each planning application will be considered in line with Policy DM1. Obligations relating to matters not specifically covered by this SPG may be sought where there is sufficient robust evidence to justify such obligations.

5.6 Developers should make themselves aware of the likely planning obligation requirements associated with a proposed development. This has a direct bearing on development viability, and should be considered in any land-value negotiations surrounding land purchase.

### Costs

5.7 Applicants will be required to pay the costs incurred by the Council in administering, drafting and completing the agreements. The applicant will be advised of the likely scale of such costs at the outset.

### When Can Obligations Be Applied?

5.8 It is expected that discussions will take place at an early stage between the Council and the developer prior to the formal submission of the planning application. This will allow for the early consideration of the issues specific to both the development proposal and the site location.

5.9 The S.106 agreement will be drafted by Legal Services within the Council. A standard S.106 template is available on request.

5.10 As detailed in paragraph 4.6, planning obligations may only be applied where a number of criteria have been satisfied. One of the criteria is that the contributions must be fair and reasonable in the context of the scale and type of development that is proposed.

5.11 As a general rule, unless otherwise identified in the LDP, planning obligations are most likely to be sought for “major” development which is defined in planning law (Town and Country Planning (Development Management Procedure) (Wales) Order 2012) as the “*winning or working of minerals, or use of the land for mineral working deposits; waste development; the provision of 10 or more dwelling houses or the site is 0.5 ha or larger; the provision of building or buildings where the floor space to be created by the development is 1000sq m or more; or, development carried out on site having an area of 1ha or more*”, provided the impacts of the development are significant and can be readily identified and assessed. However, each case will be considered on its individual merits.

5.12 In accordance with national policy and advice and the approach taken by Planning Inspectors in appeal decisions, the Council will only seek to use a planning obligation where the matter(s) cannot be adequately addressed by planning condition.

### Types of Developer Contributions

5.13 Planning obligations can take various forms and the nature of the contribution that developers can make will depend on the specific circumstances of the location of the development site and the scale and type of development scheme that is being proposed. The types of contribution are:

- **In Kind or Direct Provision**

5.14 This is where the developer builds or directly provides the proposed subject of the planning obligation, for example a children’s play area or affordable housing. Such provision may often be made within the development site in question. The issue of whether the developer should provide the mitigation measures in kind or whether the Council or another organisation would be in the best position to provide the necessary works will be determined on a case by case basis and will be addressed via the negotiation involving all interested parties.

5.15 In general terms, as identified in Policy DM1, it is considered appropriate for obligations to be provided in kind and on-site. Other types of contribution (off site or financial) are generally the exception rather than the norm. However, in the case of public open space, Policy DM3 acknowledges that this type of obligation may be provided on or off site depending on the local context and circumstances.

5.16 In the case of affordable housing, when provided 'in kind' by a developer, it forms an integral part of the overall proposal for new residential development. The developer can make direct provision either by themselves or in partnership with others. Given the particular need for social rented accommodation in Powys, private developers will be expected to partner with a Registered Social Landlord (RSL) or equivalent (see Policy H5, paragraph 4.6.17) so as to secure the right type and tenure of affordable homes within open market housing developments.

5.17 Where obligations are to be delivered 'in-kind' by a developer, the facilities can be provided at one particular time, or in a phased manner when there are identified advantages in providing the relevant facilities over time to match stages in the development process. The negotiation process will establish the most appropriate approach to apply on a case by case basis.

- **Financial Contributions (also known as Commuted Sums)**

5.18 In some cases it will be more appropriate for the developer to make a financial contribution to fulfil the planning obligation rather than directly provide infrastructure or facilities.

5.19 Planning obligations in the form of financial contributions can be made by developers as a one-off contribution or as a series of payments phased over time, depending on a range of factors including the scale of the facilities involved and the timetable for delivery of the obligation.

5.20 Where such payments are phased over a significant period of time then it will be necessary to ensure that the agreed sums of money retain their relative value (i.e. Index-Linking). **Finance to comment**

5.21 The guidance in Part 3 of this document includes further detail on how financial contributions are expected to be managed and utilised for each topic area. For example, the handling of monies for affordable housing will be the responsibility of the Council's Strategic Housing Authority.

- **Pooled Contributions**

5.22 It is anticipated, given the requirement that planning obligations should relate to the development, that financial contributions secured through planning obligations will be spent in the vicinity of the development site.

5.23 In circumstances where a number of development proposals are in close proximity and where the cumulative impact of the development would require specific issues to be addressed, the Council, having full regard to the requirements set out within the CIL Regulations, may combine contributions from the individual development proposals.

5.24 This will help ensure that the need for infrastructure improvements can be effectively and equitably addressed with all parties making an appropriate contribution.

5.25 Regulation 123 of the CIL Regulations limits the number of infrastructure planning obligations (excluding affordable housing) that can be combined (or pooled). This means that once five contributions to a scheme/infrastructure improvement have been made, the Council cannot request further S.106 contributions from any developer towards that specific scheme/infrastructure improvement.

5.26 To assist in transparency and open-ness and to enable effective monitoring for compliance with the restrictions set by CIL, the S.106 'Heads of Terms' will specify the amount of contribution, the project (infrastructure pot) and the geographical area within which the money will be spent.  
**Legal to check/comment**

5.27 In cases where a S.106 agreement makes provision for a number of staged payments as part of a planning obligation, these payments will collectively count as a single obligation.

### **Who May Enter Into a Planning Obligation with the Council?**

5.28 Planning obligations run with the land and are enforceable against the original landowner or owners and anyone subsequently acquiring an interest in the land.

5.29 As such it is expected that those parties with an interest in the land in question at the point in time that the S.106 agreement is signed will be expected to enter into planning obligations.

### **Establishing a Consistent Process**

5.30 The process of determining planning obligations can inevitably take time given the level of discussion and negotiation that can be involved before matters are agreed. This SPG can play an integral role in helping to speed up the process by giving developers a firm indication of the type of obligation they will be expected to enter into.

5.31 The process will involve a number of key stages:

- Establishing the impact of the proposed development - this will depend upon a number of factors including the scale and nature of the proposed development;
- Establishing the need for a developer contribution - this will depend upon a number of factors including the geographical location, the timing of the proposed development and the existing level of infrastructure provision; and
- Determining the scale and type of developer contribution.

5.32 For some planning obligations, the identification of a set formula which can be applied consistently in specific circumstances to calculate the scale of the obligation provides a level of predictability and clarity within the overall process for the benefit of all parties. Where set formulae have been determined by the Council they are detailed in Part 3 of this SPG (Topic Specific Planning Obligations).

5.33 Early discussions with relevant officers can establish whether such a formula will be applicable in an individual case. Where this is the case, it is hoped that many applicants will be able to gauge the likely scale and cost of the planning obligations that will be expected by the Council and will be able to factor this in with regard to land-value negotiations and to their detailed proposals and plans for a site. This has the benefit of potentially reducing delays in the application and approval process.

## Summary of Development Thresholds and Trigger Points

5.34 Some forms of planning obligation will be subject to thresholds (i.e. points at which a planning obligation will be sought). Table 1 provides a summary of the thresholds detailed in the LDP, whilst Part 3 of this SPG (Topic Specific Planning Obligations) provides further detailed guidance related to these topic areas.

**Table 1 Development Thresholds for Planning Obligations**

Type of Contribution	Applies to (types of development)	Threshold
Affordable Housing	Residential	The threshold is set at 5 dwellings or 0.25 ha.
Public Open Space	Residential	The threshold is set at 10 dwellings.
Welsh Language	Residential development in the Community Council Areas identified as Welsh Speaking Strongholds (where more than 25% of the population speak Welsh).	The threshold is set at 10 dwellings.

5.35 Where a site is subdivided, the Council will treat such sites in their totality if the schemes, together, would accommodate more than the threshold number of dwellings. Under such circumstances, each subdivided plot will be required to provide a contribution towards the relevant obligation proportionate to its size and relative to the overall site requirements for such facilities. Where the new development involves more than one developer, the Council may seek joint contributions from developers to implement or pay for improved facilities/services.

5.36 Similarly in cases where the Council consider there to be deliberate underdevelopment of a site to avoid the relevant planning obligation threshold, the Council will consider whether the requirement should still apply. In assessing the case of underdevelopment the Council will have regard to Policy H4 which sets out the housing densities considered appropriate to most sites. Where the density of a housing development falls below the relevant guide ranges, and appears to have been done so as to either avoid or reduce the contributions required, applications may be refused.

5.37 Planning obligations are identified at the time that planning permission is granted, but they don't normally become effective until the implementation of the planning permission. The decision notice will not be issued until the S.106 agreement has been signed by all parties and legally completed. Where a planning obligation has been drawn seeking a developer to provide facilities, services or commuted sums, the S.106 will provide trigger points which specify when a particular planning obligation is due to ensure that the delivery of those obligations are timely. Trigger points can also allow for the planning obligations to be met in a phased manner. A common trigger point in agreements is that the obligation is due upon the construction/occupation of a particular unit of accommodation.

5.38 The process of discussion and negotiation between the Council and the applicant will establish which thresholds are relevant to the development proposal in question and which trigger points may be appropriate and how they will be applied.

## 6. How agreements are established

### Introduction

6.1 Not all development proposals will be subject to planning obligations. Each case will be considered on its individual merits but it is generally expected (see paragraph 5.11) that only those proposals for development where the impacts are significant and can be readily identified and assessed will require a planning obligation in line with the requirements of the CIL Regulations and Welsh Office Circular 'Planning Obligations' 13/97.

6.2 Each planning application will be considered in line with Policy DM1 of the LDP and those planning applications which meet the thresholds shown in Table 1, as further detailed in Part 3 of this SPG, will be required to make contributions in light of this SPG. The topic based guidance in this document does not preclude the Council seeking other contributions where they meet the statutory tests and enable an otherwise unacceptable development proposal to be acceptable.

### Step by Step Guide

6.3 Figure 1 explains the procedures the Council and applicant take to establish the S.106 agreement.

### Scope of Agreements

6.4 Whilst all S.106 agreements are unique, in addition to the statutory requirements, it is expected that they will usually contain the following:

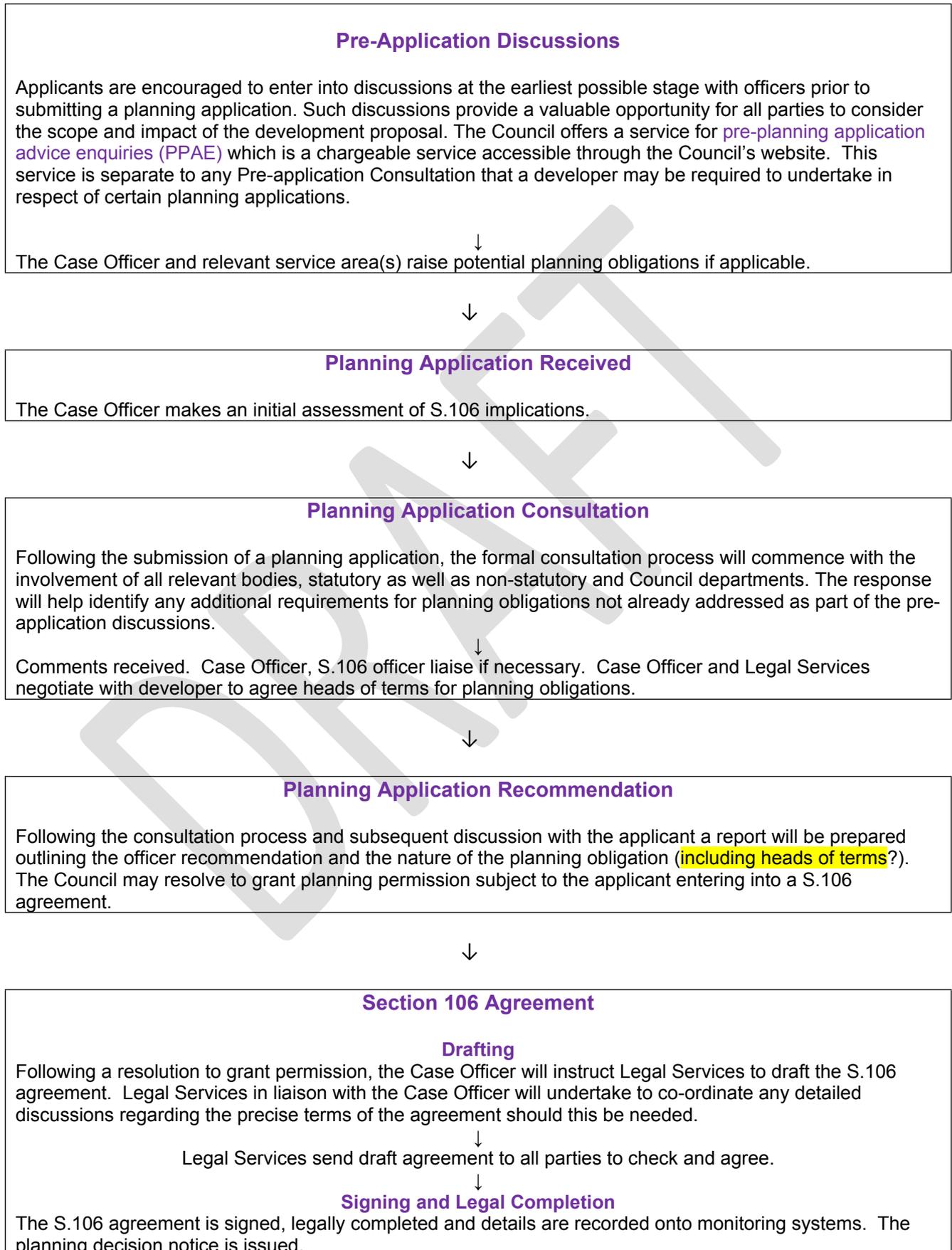
- Date of the agreement;
- Identification of the parties involved;
- Definition of any terms contained within the document;
- Site and development proposal details;
- Relevant conditions;
- Details of any provisions or restrictions required under the agreement; and
- Signatures of all the parties involved.

A template S.106 agreement is available on request.

### Expediting Agreements

6.5 Should an application be approved subject to the signing of a S.106 agreement, the Council expects the agreement to be signed without undue delay. The Council aims is to issue decision notices within 6 months (in some cases sooner) from the date of the resolution to approve. Where evidence is provided by the applicant to the Council's satisfaction that the agreement cannot be signed within this period, then a variation on the stipulated time limit will be considered on a case by case basis. Should this information not be forthcoming, the Council may refuse the application based on the non-completion of the S.106 agreement.

**Figure 1: Step by Step Guide to establishing an agreement (for DM to check)**



## Prioritising Contributions

6.6 The LDP's Viability Assessment Update (August 2016) provides evidence to support both the delivery of housing site allocations in the LDP and to inform the Plan's affordable housing policy requirements. This Assessment included a degree of headroom to take into account changes in viability and site specifics. This means that site specific viability assessments should not generally need to be carried out at the planning application stage.

6.7 However, Policy DM1 provides for the prioritisation of contributions where it is demonstrated that not all of the contributions can be reasonably required due to viability reasons. Where an applicant/developer wishes to negotiate on the grounds of development viability, they will be required to submit a detailed financial appraisal. Further guidance on the requirements for the financial appraisal is provided in Section 6.6 and Appendix D of the Affordable Housing SPG.

6.8 The Council's costs for assessing the financial appraisal (whether in-house or otherwise) will be borne by the applicant/developer.

6.9 Where the Council determines that the financial appraisal submitted by the applicant or developer (taking into account the conclusions of the viability assessment) fails to demonstrate that the required (or a reduced) contribution(s) for a development is not viable, or where the evidence submitted is insufficient to allow for a proper assessment, the Council may refuse the application. Where development viability is a proven issue, the LDP, as an aid to negotiations, firstly prioritises essential transport and utility infrastructure and then, where relevant, Affordable Housing provision unless there is an overwhelming need for the available contribution to be allocated for some other necessary purpose/s. The individual circumstances of each case will always be taken into account in prioritising contributions.

## Viability Evidence and Consideration of Time Limited S.106 Agreements and Review Points

6.10 In exceptional circumstances, where the Council accepts that the scheme is unable to make any, or all the required contributions based on viability evidence, it may, where applicable, impose a planning obligation or condition (as appropriate) setting a limited timeframe within which the development must be substantially completed or reducing the standard time limits (under the 1990 Act) in which development must begin.

6.11 Where reductions are justified, the Council may require developers to agree to timely review points in their S.106 agreement to take account of any subsequent change in the economy, which may have altered the development viability, hence making the original/additional planning obligations feasible. **To check with DM**

## Process for Handling Financial Contributions

**Payment to the Council:** **To check with Finance**

6.12 Where possible, the procedures for the payment and timing of any financial contributions will be established and agreed through negotiation between the relevant parties.

6.13 Where financial contributions have been secured they will be **index linked** (see para 5.20) from the date approval is granted for the proposal in question.

6.14 Where commuted maintenance payments have been secured, the payment will be **index linked** to the point at which the maintenance costs are agreed.

#### **Use of Financial Contributions:**

6.15 Financial contributions secured will be used for the agreed purposes and may be required to be spent within an agreed time period. **Insert additional text: agreed purposes are set out where? Clarify this/consistency with table in Part 3.**

6.16 The Council may be responsible for distributing funds to other bodies as well as internally to services within the Council. In particular, the Affordable Housing SPG sets out further detail on how affordable housing financial contributions will be managed and utilised.

6.17 With the exception of Unilateral Undertakings, contributions remaining unspent at the end of the agreed time period (if specified) will be returned unless alternative provision is agreed between the payee (or successor) and the Council. If specifying a time period, the Council will generally propose the time period as 10 years.

#### **Monitoring and Enforcement of Agreements** **Richard Edwards to check/comment**

6.18 Whilst planning obligations are negotiated by the Case Officer (Planning Development Management) with the assistance of the Council's Legal Services, the Council employs a dedicated Planning and Monitoring Officer who is responsible for recording all S.106 agreements, maintaining a S.106 Register and monitoring compliance.

6.19 Effective planning obligation monitoring systems allow greater transparency and accountability for all parties. Such monitoring systems will mean that all planning obligations are held on a register and progress towards meeting them can be tracked. Any financial contributions that have been secured as part of the planning obligations process can be highlighted and the point in time at which they have to be paid will be identified. The monitoring system will also address the matter of when monies have been paid as part of a planning obligation and the point in time at which they have been spent, and for what purpose.

6.20 It should be noted that it is the responsibility of the developer to notify the Council upon commencement of development and also when any triggers specified in the agreement are reached.

6.21 An Annual Performance Report will be prepared by the Planning and Monitoring Officer at the end of each financial year summarising the types of planning obligations completed, and how any contributions that have been collected have been used.

6.22 Under separate requirements, the LDP is subject to an Annual Monitoring Report (AMR), to be submitted to the Welsh Government each year. Under the Powys LDP monitoring framework an AMR will be due annually from October 2019 and this includes an indicator which involves monitoring of the number of major developments where new or improved infrastructure has been secured through developer contributions.

6.23 Where it is found that an agreement is not being complied with, the Council will, in the first instance, seek an informal resolution with the developer concerned to ensure timely and satisfactory compliance with the agreement. If this approach remains unsuccessful, the Council's Head of Legal

Services in conjunction with the Professional Lead (Planning Development Management) will consider the most appropriate course of action to be taken. This may comprise securing a mandatory injunction upon the landowner and/or other parties to the agreement or with an interest in the property, or debt recovery proceedings to ensure compliance.

### **Varying S.106 Agreements**

#### **6.24 To be completed**

### **7. SPG Review**

6.25 This SPG will be kept under review and, where necessary, updated to take into account changes in any relevant policy, guidance, evidence or circumstances, and in response to relevant issues raised with the SPG in practice.

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## PART 3

### 8. Topic specific planning obligations

This section of the SPG considers how each type of planning obligation will be assessed including the justification, thresholds/trigger points and the amount, type and nature of the requirements. The section covers the following topic areas:

1. Affordable Housing
2. Education;
3. Leisure, Recreation and Open Space;
4. Transportation and Access;
5. Welsh Language.
6. Other Topic Areas (Infrastructure/Utilities; Community and Health Facilities, Renewable and Low Carbon Energy, Ecology; Minerals Restoration and Aftercare).

#### 1. Affordable Housing

##### Synopsis

Affordable housing is housing provided to meet the needs of those who cannot afford general market housing. It is retained as affordable for the first and any subsequent occupiers. Further information on the different types of affordable housing is set out in the Council's separate Affordable Housing SPG.

There is a need to provide additional affordable housing in the County as highlighted in the Council's Corporate Improvement Plan 2018-2023 which pledges significant investment in the development of affordable and sustainable housing and contains a corporate objective for communities to have access to a choice of both affordable and market housing.

The LDP identifies a target to provide, through the planning system, 952 new affordable homes between 2011 and 2026 (the LDP plan period). The unmet and demonstrable need for affordable housing is a material planning consideration to be taken into account when planning applications are determined.

The Council will seek planning obligations (or impose planning conditions) in connection with new developments which meet the thresholds set out in the LDP to ensure the provision of affordable housing.

##### Justification

The detailed policy basis and justification for seeking developer contributions in respect of affordable housing is set out in:

- Planning Policy Wales and TAN 2, TAN 6
- Local Development Plan – Generic Policy DM1 (Planning Obligations) and notably Strategic Policy SP3 (Affordable Housing Target) and Housing Policies H5 (Affordable Housing Contributions) and H6 (Affordable Housing Exception Sites).
- Powys County Council – SPG: Affordable Housing

- LDP Background/Other Evidence Documents:
  - Local Housing Strategy for Powys (2016-2020)
  - Local Housing Market Assessment (2010, update 2014)
  - LDP Viability Assessment Update (2016)

## Application and Use

Type of Planning Obligation:	Affordable Housing
<p><b>Threshold:</b> All housing development of <b>5 or more dwellings</b> or on sites of <b>0.25 hectares and above</b>, where developed for market housing, will be expected to make a contribution towards affordable housing in line with Policy H5.</p> <p>Further detailed guidance provided in the SPG: Affordable Housing.</p>	
The Type of Contribution:	Policy Approach/Nature of the Requirements:
<p>1. In Kind (Direct Provision)</p>	<p>The Council will expect on-site provision unless it can be demonstrated that on-site provision is not appropriate.</p> <p>On-site provision will be secured either through planning condition or by a S.106 agreement. The Affordable Housing SPG sets out more detail on how planning conditions may be used in this context.</p> <p>The possibility of off-site provision on an alternative site may be explored where on-site provision is not appropriate. Off-site provision of affordable housing, if agreed, would be secured by a S.106 agreement.</p>
<p>2. Financial Contribution</p>	<p>Given the presumption for on-site provision, a financial contribution towards the provision of affordable housing is not generally acceptable. However, this approach can be applied where the contribution calculated does not equate to a full unit.</p> <p>The Council will seek financial contributions for part units (unless the developer prefers to provide one whole affordable housing unit instead of a separate financial contribution). The Affordable Housing SPG sets out how such contributions will be calculated.</p> <p>Financial contributions will be secured by a S.106 agreement.</p>
<p>3. Financial “Pooled” Contribution</p>	<p>The CIL restrictions do not apply to affordable housing. Financial contributions (eg arising from part units) from several developments can be combined.</p>

<p>Amount of Contribution and Guidelines to Requirements</p>	<p>The target contributions are set out in Policy H5 and depend on the relevant housing sub-market area (see Appendix 4 of the LDP) and comprise:</p> <ul style="list-style-type: none"> <li>30% contribution in Central Powys</li> <li>20% contribution in Severn Valley</li> <li>10% contribution in North Powys</li> <li>0% in South West Powys</li> </ul> <p>The type and tenure of the affordable housing provision should respond to the evidenced needs. The Local Housing Market Assessment determined that the greatest need in Powys is for social rented accommodation. However, given the range of local needs and circumstances, developers should seek early discussions with the Council in order to clarify requirements.</p> <p>Occupants of affordable homes should meet the Council's definition of being in Local Need (see the LDP Glossary), the assessment process for which is set out in the Council's Affordable Housing SPG.</p> <p>The homes will be secured as affordable in perpetuity through either planning conditions or a S.106 agreement.</p>
<p>Delivery Timescales</p>	<p>The timescales for delivery of Affordable Units or payment of financial contributions will be agreed with the Council and will form part of the planning conditions or S.106 agreement.</p> <p>The Council normally requires the delivery of affordable housing alongside market housing. In cases where this is not considered possible, sufficient justification must be provided by the developer. Provision must normally be made in a phased manner and always before the completion of the last market unit.</p>
<p>Management and Use of Financial Contributions</p>	<p>Financial contributions secured in lieu of affordable housing on-site will be used to support affordable housing provision in the Powys LDP Area.</p> <p>The Council as Strategic Housing Authority will manage the sums paid. More detail on the use of financial contributions can be found in the Affordable Housing SPG.</p>

## 2. Education Schools Services to input

### Synopsis

Overview of education provision in the county, current demands, needs and forward plans etc.

### Justification

The detailed policy basis and justification for seeking developer provision or contributions in respect of educational facilities is set out in:-

- Planning Policy Wales
- National Assembly for Wales Circular 09/2006 ‘Measuring the Capacity of Schools in Wales’  
(check it is still current and Powys use this)
- Local Development Plan – Generic Policy DM1 (Planning Obligations)
- LDP Background/Other Evidence Documents:
  - E.g. Schools Modernisation Evidence Base/Costings?

### Application and Use

Type of Planning Obligation:	Education
<p><b>Threshold:</b> Planning obligations for education may be sought in connection with new residential development. Development will be assessed on a case by case basis on individual factors and there are no set thresholds. Planning obligations for education are most likely to be sought in connection with major housing development proposals (i.e. 10 or more dwellings). Check with DM</p> <p>Contributions will be sought from proposed developments that have the potential to increase demand on local schools where those schools do not have sufficient capacity to sustain the impact of the new development. This will be for primary and secondary provision. Nursery/pre-school education? Schools Services, Powys County Council will assess whether capacity issues exist. Empty places do not necessarily equate to there being sufficient capacity. Investment in infrastructure may be needed to bring a local school(s) up to the required standard to make it suitable for the pupils generated from the proposed development.</p>	
The Type of Contribution:	Policy Approach/Nature of the Requirements
1. In Kind (Direct Provision)	Direct provision is not normally appropriate for educational requirements as the control and responsibility for schools lies with the Council as the Education Authority.
2. Financial Contribution	Financial contributions will be sought for educational requirements and will be secured by a S.106 agreement.
3. Financial “Pooled” Contribution	Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional facilities, the Council may combine contributions as necessary to negate the cumulative effect (fully taking into account the pooling restrictions set by the CIL regulations).

	<p>The S.106 'Heads of Terms' will specify the amount of contribution, the project (infrastructure pot) and the geographical area within which the money will be spent.</p>
<p>Amount of Contribution and Guidelines to Requirements</p>	<p>Insert any formula currently in use – see para 3.25</p> <p>How do we currently assess capacity?</p>
<p>Delivery Timescales</p>	<p>The timescales for delivery of contributions will be agreed with the Council and will form part of the S.106 agreement. We would normally require contributions to be made in a phased manner alongside completion of the new homes, depending on both the nature of the development and type of contribution required and always before the completion of the last home. In cases where this is not considered possible, sufficient justification must be provided by the developer.</p>
<p>Management and Use of Financial Contributions</p>	<p>Financial contributions collected for education will be managed and utilised by the Council's Schools Service. Contributions collected will be used to increase capacity at education facilities affected by the development.</p> <p>Financial contributions may be used for:-</p> <ul style="list-style-type: none"> <li>- The provision of new classrooms to accommodate an increase in pupil places within existing schools;</li> <li>- Replacement and/or improvement of existing school facilities to adequately facilitate an increase in pupil places;</li> <li>- Provision of land for a new school where required and related to the scale of the development;</li> <li>- Provision of additional facilities (for example, playing fields) necessitated by an increase in pupil numbers.</li> </ul> <p>Only those schools affected by the development will receive the benefit of the financial contribution.</p> <p>The S.106 agreement will set out the use for which the contribution is being sought.</p>

### Exceptions

The exceptions (to be checked with DM) to the provision of school places will be the following type of residential development from which Powys County Council, in common with other planning authorities, will not seek contributions: -

- Housing specifically designed for occupation by elderly persons (i.e. restricted by planning condition or agreement to occupation by those over aged 55 years or more).
- One bed dwellings or one bed apartments or flats.
- **Check:** Dispensations for 100% affordable housing schemes? **Check CIL regs**

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### 3. Leisure, Recreation and Open Space

Section being considered by Leisure and Recreation, and Claire Seddon, Planning Policy (Open Space Assessment)

#### Synopsis

Public open space and recreation facilities are important to the overall quality of life. They contribute to the general well-being of the community in respect of providing for sport and recreation and in contributing to biodiversity, the conservation of nature and landscape, air quality and the protection of groundwater. They also provide the opportunity to exercise, with potential positive health and well-being impacts.

Open space can include public parks and gardens, natural and semi-natural green spaces, formal sports pitches, allotments, play areas, and amenity space. In proposing new development there may be scope to combine open space and landscaping provision with sustainable drainage schemes and habitat creation to enhance biodiversity. Further guidance provided in the Open Space SPG.

Policy DM13 requires developers to provide appropriate landscaping and planting within all new developments in addition to providing adequate amenity space, with the aim of contributing to the delivery of high quality, well-designed developments. The amenity space should provide for passive, informal recreation and should be appropriate to the scale and type of the proposal.

The cumulative effect of even small scale residential developments can create a significant additional demand for recreational open space. The Council will, where appropriate, seek planning obligations or impose planning conditions to ensure provision or improvement of public open space and recreation facilities in connection with new developments where the development meets the threshold set out in Policy DM3.

#### Justification

The detailed policy basis and justification for seeking developer provision or contributions in respect of leisure, recreation and open space is set out in:

- Planning Policy Wales and TAN 16
- Local Development Plan – Generic Policy DM1 (Planning Obligations) and notably Development Management policies DM13 (Design and Resources) and DM3 (Public Open Space)
- Powys County Council SPG: Open Space (when available)
- Evidence Documents:
  - Powys Open Space Assessment (2018)
  - Fields in Trust (FIT) Standards
  - Providing Accessible Natural Greenspace in Towns and Cities ((Countryside Council for Wales 2006 (now part of Natural Resources Wales))

## Application and Use

Type of Planning Obligation:	Leisure, Recreation and Open Space
<p><b>Threshold:</b> All housing developments of <b>10 or more dwellings</b> will be required to make provision for public Open Space in line with Policy DM3.</p> <p>Contributions will be sought taking into account the evidence in the Open Space Assessment for the locality. The Open Space Assessment highlights where deficiencies exist in current provision and will inform and help identify the type and nature of the provision required.</p> <p>Further detailed guidance provided in the SPG: Open Space.</p>	
The Type of Contribution:	Policy Approach/ Nature of the Requirements
<p>1. In Kind (Direct Provision)</p>	<p>Contributions will be assessed taking into account the evidence in the Powys Open Space Assessment (and any other local evidence relating to provision and needs).</p> <p>On-site provision may be appropriate depending on the scale and nature of the proposed development.</p> <p>In certain circumstances provision off-site will improve the quality of both the development and result in open space which better meets the needs of the local area.</p> <p>On-site provision will be secured by either planning conditions or S.106 agreement.</p> <p>Off-site provision will be secured by S.106 agreement.</p>
<p>2. Financial Contribution</p>	<p>Financial contributions may be required in respect of the provision or improvement of open space and for maintenance and aftercare.</p> <p>Financial contributions will be secured by a S.106 agreement.</p>
<p>3. Financial “Pooled” Contribution</p>	<p>Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional facilities, the Council may combine contributions as necessary to negate the cumulative effect (fully taking into account the pooling restrictions set by the CIL regulations).</p> <p>The S.106 'Heads of Terms' will specify the amount of contribution, the project (infrastructure pot) and the geographical area within which the money will be spent.</p>
<p>Amount of Contribution and Guidelines to Requirements</p>	<p>Insert any formula currently in use (eg requirement per dwelling)</p>

	<p>Colin Edwards comment: We usually go into some detail now where play/recreation/amenity areas are required such as requiring the developer to submit a scheme for approval and requiring the area to be constructed to the appropriate Field in Trust standard (LAP or a LEAP)</p> <p>With Leisure and Recreation for Comment</p>
<p>Delivery Timescales</p>	<p>The timescales for delivery of the required works will be agreed with the Council and form part of the S.106 or planning conditions. Proposals should be discussed at an early stage to ensure that where necessary, appropriate provision is provided in a planned way and forms an integral part of the design of the development. The timing of contributions will depend on both the nature of the development and type of contribution required.</p> <p>On site open space should normally be provided in a phased manner alongside completion of the new homes and always before the completion of the development. In cases where this is not considered possible, sufficient justification must be provided by the developer.</p>
<p>Management and Use of Financial Contributions</p>	<p>Financial contributions collected for open space, leisure and recreation will be managed and utilised by the Council’s Leisure and Recreation Service. Financial contributions may be used to:</p> <ul style="list-style-type: none"> <li>- improve existing recreation facilities;</li> <li>- improve access to existing facilities ; or</li> <li>- to provide new facilities within the local area affected by the development.</li> </ul> <p>Only those areas affected by the development will receive the benefit of the financial contribution.</p>

**Future Maintenance and Aftercare**

Where new open space is provided, in order to ensure the continued use of the open space, the Council will require developers to make appropriate arrangements for its future maintenance and care. Appropriate arrangements must be in place for long term aftercare and maintenance of the open space.

When the space is to be adopted by either the Council or a Town or Community Council, S.106 agreements can be utilised to secure financial sums which provide for the maintenance of the

facility for an agreed period. In most circumstances this will be more a period of **25 years**, however there may be situations where a different maintenance period is required.

**Insert text to explain possible management arrangements when not T or CC.**

### **Exceptions/Suitability of Open Space**

Developments comprising sheltered, extra care, elderly housing and other specialist forms of development where children will not be resident will not be expected to provide children's play areas, however, alternative open space should be provided on site for residents. This could include gardens, sitting areas, etc.

**DM to check – other exceptions/special considerations?**

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## 4. Transportation and Access

### Section for consideration by Highways

#### Synopsis

All developments are expected to meet highways standards to ensure a safe and efficient transport network. Developments should in particular promote pedestrian and cycle friendly access. Schemes may be required to demonstrate sustainability through satisfactory travel plans and/or transport assessments.

Enhancement and improvements to provide new or upgrade existing transport infrastructure (including Public Rights of Way, pedestrian and cycling facilities and Active Travel routes and related facilities) may be sought through planning obligations.

#### Justification

The detailed policy basis and justification for seeking developer provision or contributions in respect of transport is set out in:

- Planning Policy Wales and TAN 18
- Local Development Plan – Generic Policy DM1 (Planning Obligations) and notably Development Management DM13 (Design and Resources) and Transport Policy T1 (Travel, Traffic and Transport Infrastructure)
- LDP Background/Other Evidence Documents: **To complete**

#### Application and Use

Type of Planning Obligation:	Transportation and Access
<p><b>Threshold:</b> All development will be assessed on its individual merits and there are no set thresholds. All types (e.g. residential, employment, tourism, agriculture) and sizes of development may be subject to planning obligations in respect of transport or traffic requirements where there is a requirement to mitigate the identified development impacts.</p>	
The Type of Contribution:	Policy Approach/Nature of the Requirements:
1. In Kind (Direct Provision)	tbc
2. Financial Contribution	tbc
3. Financial “Pooled” Contribution	<p>Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional facilities, the Council may combine contributions as necessary to negate the cumulative effect (fully taking into account the pooling restrictions set by the CIL regulations).</p> <p>Pooled contributions may be required for larger highway schemes and contributions to these will be based on the proportionate increase in vehicular movements generated by the new development.</p>

	<p>The S.106 'Heads of Terms' will specify the amount of contribution, the project (infrastructure pot) and the geographical area within which the money will be spent.</p>
Amount of Contribution and Guidelines to Requirements	<p>Consultation will be undertaken with the Council's highway department and, when relevant, with the Welsh Government Trunk Roads Agency.</p> <p>There are no standardised highway contributions required by the Council in its role as County Highways Authority. Each application is assessed on the requirements necessary to bring a development forward and will be agreed at the negotiation stage.</p> <p>Developers will be normally be required to fund the design and construction of both on site and off site infrastructure works, such as junction improvements and the provision of links to a local pedestrian/cycle system and other sustainable transport forms. This will include Active Travel routes where appropriate.</p> <p>Levels of contributions will be calculated on a site by site basis to reflect the impact of the development and the need for improved transport facilities, as well as the requirement to ensure that necessary and adequate maintenance is provided.</p>
Delivery Timescales	<p>The timescales for delivery of the required works will be agreed with the Council and form part of the S.106 agreement.</p> <p>The timescales for payment of contributions will depend on both the nature of the development and type of contribution required. However, some works may be required prior to the commencement of development, particularly when necessary for safety reasons. Costs will be worked out on a site by site basis depending on the issues involved and the mitigation or management measures required.</p> <p>In terms of obligations coming from a Travel Plan, public transport contributions may be required before the development is occupied. Additional measures such as parking provision and cycle links can be phased throughout the development period.</p>
Management and Use of Financial Contributions	<p>Financial contributions collected for transport and access will generally be managed and</p>

	<p>utilised by the relevant highway authority (i.e. County Highway Authority or WG Trunk Road Agency) or, in the case of some improvements (eg PROW), by the Council's Environment Directorate. A Transport Assessment, where applicable, is likely to form the basis of any required contributions with regards to traffic, transport and highways initiatives particularly for major developments. The types of works to mitigate impacts from the proposed development may include:</p> <ul style="list-style-type: none"> <li>- Traffic management/calming;</li> <li>- Traffic engineering/highway works, temporary or permanent;</li> <li>- Provision of ULEV (Ultra Low Emission Vehicles) charging points;</li> <li>- Cycle routes, management, safety;</li> <li>- Pedestrianisation, pedestrian crossings;</li> <li>- Provision/improvement of footpaths or pathways including Active Travel routes;</li> <li>- Public transport initiative or improvements</li> </ul>
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### Travel Plans

Through PPW/TAN 18, it is likely that only major traffic generating schemes will be expected to prepare and implement Travel Plans. Travel Plans will be expected to promote sustainable methods of travel and aim to reduce travel and car use. Obligations and contributions covered by Travel Plans may include:-

- The provision of public transport infrastructure / initiatives in order to serve the development.
- The provision of information and schemes to promote cycling, walking and car sharing.
- The provision of ULEV charging points.
- The provision of car parking to serve the development.

An off-site contribution for public car parking may be appropriate for developments proposed within or on the edge of town centres or for developments with insufficient car parking provision to meet its own needs.

## 5. Welsh Language

### Synopsis

The future of the Welsh language in the County and across Wales will depend on a wide range of factors, particularly education, demographic change, community activities and a sound economic base. The land use planning system can assist in providing a framework to enable sustainable communities to grow and thrive, protecting the social and cultural use of language.

To protect, promote and enhance the Welsh language, the Council will, where appropriate, seek planning obligations or impose planning conditions on large housing developments located in the Welsh Speaking Strongholds of Powys.

### Justification

The detailed policy basis and justification for seeking developer provision or contributions in respect of the future of the Welsh Language and Culture is set out in:

- Planning Policy Wales and TAN 20
- Local Development Plan – Generic Policy DM1 (Planning Obligations) and notably Development Management Policy DM12 (Development in Welsh Speaking Strongholds)
- LDP Background/Other Evidence Documents:
  - Powys LDP Welsh Language Impact Assessment of Communities in the Upper Swansea Valley (June 2013)
  - Cymraeg 2050: Welsh language strategy – WG (2017)
  - Welsh language and culture Topic Paper

### Application and Use

<b>Type of Planning Obligation:</b>	<b>Welsh Language</b>						
<p><b>Threshold:</b> Residential development of <b>10 or more dwellings</b> in named settlements within the Town or Community Council Areas identified as Welsh Speaking Strongholds (where more than 25% of the population speak Welsh) in line with Policy DM12.</p> <p>The 21 Community Council areas identified in the LDP as Welsh Speaking Strongholds are listed in paragraph 4.2.63 of the Plan and include the following named Town and Large Village settlements:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="2" style="text-align: center;"><b>Settlements in Welsh Speaking Strongholds</b></th> </tr> </thead> <tbody> <tr> <td style="width: 25%;">Towns</td> <td>Llanfair Caereinion, Llanfyllin, Machynlleth and Ystradgynlais</td> </tr> <tr> <td>Large Villages</td> <td>Abercrave, Carno, Coelbren, Llanbryn-mair, Llangynog, Llanrhaeadr-ym-Mochnant, Llansilin, Pontrobert, Penybontfawr, Trefeglwys.</td> </tr> </tbody> </table>		<b>Settlements in Welsh Speaking Strongholds</b>		Towns	Llanfair Caereinion, Llanfyllin, Machynlleth and Ystradgynlais	Large Villages	Abercrave, Carno, Coelbren, Llanbryn-mair, Llangynog, Llanrhaeadr-ym-Mochnant, Llansilin, Pontrobert, Penybontfawr, Trefeglwys.
<b>Settlements in Welsh Speaking Strongholds</b>							
Towns	Llanfair Caereinion, Llanfyllin, Machynlleth and Ystradgynlais						
Large Villages	Abercrave, Carno, Coelbren, Llanbryn-mair, Llangynog, Llanrhaeadr-ym-Mochnant, Llansilin, Pontrobert, Penybontfawr, Trefeglwys.						
<b>The Type of Contribution:</b>	<b>Policy Approach/ Nature of the Requirements:</b>						
1. <b>In Kind (Direct Provision)</b>	Measures identified within Language Action Plans (see requirements below) will be secured by planning conditions or, where necessary, by planning obligations.						

	<p>In terms of on site measures, the phasing of the construction of new housing may be used to assist in mitigating the impact of new development on the Welsh Language. On site affordable housing can also offer mitigation as it is occupied by those with local connections and in local need.</p>
2. Financial Contribution	<p>Some mitigation measures will be of a financial nature (e.g. funding of Welsh courses or local community initiatives, education provision and places).</p> <p>Financial contributions will be secured by S.106 agreement.</p>
3. Financial “Pooled” Contribution	<p>Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional facilities or initiatives, the Council may combine contributions as necessary to negate the cumulative effect.</p> <p>The S.106 'Heads of Terms' will specify the amount of contribution, the project (infrastructure pot) and the geographical area within which the money will be spent.</p>
Amount of Contribution and Guidelines to Requirements	<p>The impact of LDP <b>Housing Site Allocations</b> has already been language impact assessed as part of the LDP process. In order to address the potential impact of new large housing developments within the Welsh Speaking Strongholds, housing allocations of 10 or more units <u>will</u> require a <b>Welsh Language Action Plan (LAP)</b>. A LAP sets out measures to protect, promote and enhance the Welsh language. Responsibility for preparing the LAP lies with the developer.</p> <p>New housing (10+) on <b>windfall</b> sites (ie those not identified and allocated for development in the LDP) <i>located in</i> or <i>adjacent</i> (as a logical extension) to the Towns and Large Villages identified within the Welsh Speaking Strongholds <u>will</u> require a <b>Welsh Language Impact Assessment (WLIA)</b> which will then identify if a LAP is appropriate. Responsibility for carrying out the WLIA lies with the Council which will inform any LAP to be prepared by the developer.</p> <p>Any other housing proposals which meet the threshold, located on windfall sites <i>outside</i> the Towns and Large Villages of the Welsh</p>

	<p>Speaking Strongholds but <i>within the identified Community Council areas</i> may require a WLIA. Each case will be considered individually.</p> <p>Each proposal will be treated on its own merits and therefore mitigation measures will vary. The Council will identify local issues and potential mitigation measures working in conjunction with partner organisations if required.</p> <p>Typical mitigation measures identified by LAPs include:</p> <ul style="list-style-type: none"> <li>- Phasing of housing proposals;</li> <li>- Education provision and places;</li> <li>- Signage and place names (including marketing name, street names and other signage);</li> <li>- Employment initiatives and training;</li> <li>- Contribution to community facilities and group;</li> <li>- Funding for Welsh courses or other related initiatives active in the Community.</li> </ul>
<p>Delivery Timescales</p>	<p>The timescales for delivery will be agreed with the Council and form part of the S.106 agreement or planning conditions. Proposals should be discussed at an early stage to ensure that appropriate mitigation measures can be agreed. The timing of contributions will depend on both the nature of the development and type of contribution required. Obligations and contributions in respect of the Welsh language may be required prior to commencement of development or prior to occupation and may continue throughout the development period and beyond.</p>
<p>Management and Use of Financial Contributions</p>	<p>Financial contributions will be managed and utilised by a relevant service within the Council, or an appropriate third party, as determined at the time of the drafting of the S.106 agreement.</p> <p>Where a financial contribution is sought, only those areas affected by the development will receive the benefit of the contribution.</p>

## 6. Other Topic Areas referenced in the Local Development Plan

As identified in Part 2 of this SPG (Local Context), the LDP highlights that the Council may seek obligations in respect of:

- Infrastructure/Utilities
- Community and Health Facilities
- Renewable and Low Carbon Energy
- Ecology
- Minerals Restoration and Aftercare

Due to the bespoke nature of the above obligations, these topics are not detailed further in this SPG. As each application is assessed on a case by case basis, any obligations relating to these topic areas which are necessary to bring a development forward will, amongst any other relevant issues, be discussed and negotiated upon at the pre-application and application stage. Where planning conditions can be used, in the alternative, to secure the necessary mitigation, they will be used in preference to S.106 agreements.

Some topic areas will be subject to separate SPG which will be of relevance. To support LDP policy areas, the Council will be producing Biodiversity SPG, Land Drainage SPG and Renewable Energy SPG.

**Appendix A**

**To follow**

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