DEVELOPER CONTRIBUTIONS
A BRIEF GUIDE FOR DEVELOPERS AND THE PUBLIC

What are Developer Contributions?

Developer Contributions (also known as ‘section 106 agreements’ or ‘planning obligations’ under the Town and Country Planning Act 1990) can be sought to mitigate the impact of a proposed new development on local infrastructure and services. They are negotiated as part of the planning application process, and are secured by a legal agreement, which can either bind one party (normally the developer, termed as a ‘unilateral undertaking’) or several parties (typically the developer, plus a housing association and/or the Council, known as ‘bilateral agreements’ or ‘multilateral agreements’).

Legal agreements are specific to each development, and can be used to:

- Secure payments for physical works (referred to below as ‘projects’);
- Ensure affordable housing is provided;
- Place a limitation on the activities of future occupiers, such as preventing householders from obtaining parking permits in areas of existing high demand, or keeping dogs where these could give rise to increased disturbance, through dog walking, to the Thames Basin Heaths Special Protection Area.

In the case of larger developments, legal agreements can be used to:

- Secure a workplace travel plan;
- Secure a land management plan;
- In the case of mineral workings, for example, to limit the number and route of lorries serving the development.

These are some of the commonest requirements, this list being by no means exhaustive.

In accordance with the Governments advice as set out in Circular 05/2005 ‘Planning Obligations’ (available on the following web link: http://www.communities.gov.uk/publications/planningandbuilding/circularplanningobligations) developer contributions may only be sought where they meet all the following criteria:

- They must be necessary to make the development acceptable in planning terms.
They must be related to planning and to the development in question
They must be fairly and reasonably related in scale and kind to the proposed development, and must be reasonable in all other respects

Contributions may only be sought where the link between the impact of a proposed development and its effect on local infrastructure and services can be established. It follows that developers’ contributions cannot be used to make up for any existing shortfall in these two areas.

Supplementary Planning Guidance (SPD)

To assist developers, the Council has published a supplementary planning document (SPD). It is in two parts comprising ‘Planning Obligations and Developers Contributions: A Developers Guide’ and ‘Planning Obligations and Developers Contributions: Infrastructure and Amenity Requirements (and Approved Programme of Schemes) 2005/2010’. The latter document includes projects relating to physical infrastructure and provision/expansion of services that the Council has approved as being projects that justify planning obligations being sought from development over a five year period. The formulae and projects are updated annually following consultation with Councillors, the Parishes and the Councils’ Officers within individual service areas, and the updated SPD endorsed by the Council’s Cabinet for use in conjunction with the assessment of planning applications. The document is therefore a material consideration in the determination of a planning application, and the failure to make provision for contributions towards additional infrastructure and services made necessary by a development can be a reason for refusal of a planning application.

The SPD covers a number of the Council’s service areas, corresponding to section headings within the document. Each section starts with a brief explanation of the rationale in planning terms of the anticipated functional and geographical justification for requesting contributions, followed by the formula that will be applied to calculate the contribution, based on the anticipated pressures of different types of development on the service. So, for example, an additional 5 bedroom house would give rise to a contribution towards schooling, whereas a new office block would not.

The current SPD covers the following service areas:

- Affordable housing
- Transport (including workplace travel plans and highways, public transport and public rights of way)
- Education
- Community facilities
- Library services
- Recreation and leisure (including public open space, biodiversity, indoor sports facilities and allotments)
- Public art and heritage (including archives)
- Town management and improvement
- Economic development
• Landscaping
• Thames Basin Heath Special Protection Area
• Air quality
• Waste disposal
• Archaeology
• Flood risk management and draining
• Parish projects

Both documents may be viewed on the following web link:

http://www.rbwm.gov.uk/web/pp_planning_obligations.htm

**Developer Contribution Calculator**

The Developer Contribution Calculator is a spreadsheet which can be used to estimate the contributions that are likely to be requested from a proposed development. It utilises the formulae within the current SPD to calculate contributions from proposed development, allowing credit for any existing residential units or floorspace which are to be lost as a result of the development.

It is suitable for use in connection with the majority of applications for built development and changes of use, including those which include units of affordable housing.

However, since the need for planning obligations has to be considered on a case-by-case basis, the results should be taken as a guide only. For this reason, the calculator is unlikely to be suitable for the most complex applications, and does not cover those for minerals working.

The spreadsheet comprises three pages. The first (entitled ‘Residential’) covers any residential elements that are to be gained or lost, and the second (entitled ‘BIDs’) covers any commercial elements that are to be gained or lost. The third sheet (entitled ‘RES + BIDs’) is a summation of the residential and commercial elements.

To perform a calculation for any residential elements, use the ‘Residential’ page, and enter the number of residential units by unit type/size that are to be gained in the ‘proposed’ cells in row 5, and the number of residential units by type/size that are to be lost in the ‘existing’ cells in row 5. For developments including units of affordable housing, the cells in rows 21, 22 and 24 should also be completed.

To perform a calculation for any commercial elements, use the ‘BIDs’ page, and enter the gross internal floorspace in square metres; the mean build cost and the project capital cost for accommodation that is proposed to be gained in the ‘proposed’ cells according to each use class, or use description; and the gross internal floorspace in square metres; the mean build cost and the project capital cost for accommodation that is proposed to be lost in the ‘existing’ cells according to each use class, or use description. The distance in metres from the Town Centre Commercial Boundaries of Maidenhead or Windsor should be entered in cell F2.
For mixed use developments, a summation of the residential and commercial elements will appear on the third page (entitled ‘RES + BIDs’).

**Please be aware that this calculator is to be used purely as a guide. The amounts and projects to which the Developers Contributions are to be directed towards will be confirmed by the Development Control Case Officer following submission of a planning application.**

The following link leads to the Developer Contribution Calculator:


**How can I find out about developer contributions linked to a particular site?**

A completed legal agreement which links to the grant of planning consent may be viewed as a scanned document on the Council’s web site. It can be found with the plans and other documents by searching on the planning application number on the Planning Public Access Module found on the following web link: www.rbwm.gov.uk/pam.

A completed legal agreement will also be revealed if a Local Land Charges Search is undertaken, for example, in connection with the purchase of property or land within the Borough.

Since planning obligations only run with a planning consent, it follows that if planning permission is refused for a development, no obligations can be sought from the developer.

If a development is granted consent on appeal following a refusal by the Council, the suggested amounts and projects within the legal agreement may be varied by the Planning Inspector, and in some cases, may be considered unnecessary.

**When do developer contributions become payable?**

The planning obligations within a legal agreement only come into effect once a development commences. Developers’ contributions are normally payable within 14 days of commencement, but phased payments upon completion or occupation may also be specified, particularly in the case of larger developments.

The ‘commencement of development’ has a legal definition, but can include the digging of trenches ready for foundations. In many cases, the demolition of buildings to clear a site does not trigger the requirements within an agreement.

**How does the Council collect the contributions, and what happens to them?**

The legal agreement normally specifies that the onus is on the developer or land owner to notify the Council that development has commenced. Notification should
be made to John Maniscalco, S106 Compliance Officer on 01628 796554, email john.maniscalco@rbwm.gov.uk

Once a planning consent is implemented the S106 Team is also notified electronically via the Council’s Building Control system, and the process of monitoring compliance with the legal agreement commences. If the developer has failed to notify the S106 Compliance Officer, and is required to pay financial contributions, these will be sought at the appropriate time as set out in the legal agreement.

In either event, the amount payable will be calculated in accordance with the wording of the legal agreement, and an invoice(s) issued. The amount payable may include an uplift to cover increases in the Retail Price Index, and interest for late payment.

Once payment has been received by the Council, it is distributed to the relevant service areas within the Council, and allocated to the projects as written into the appropriate S106 legal agreement. In this way, each service area is responsible for implementing the projects, and accounting for available funds.

It should be noted that in the case of larger projects, these may rely on funds being pooled from a number of S106 agreements, and possibly combined with funds from a number of other Council and/or external sources. Such projects cannot be implemented until all these funds are in place, which may result in a delay from the time when a particular development is started, and the time new infrastructure is completed or an expanded service is provided.

A developer may request repayment of a contribution if the funds are not spent within a certain timeframe on the project(s) for which it was specified. Whilst the Council does not as a matter of routine include a timeframe clause within an agreement, in the instances where this is applicable, it will typically be 10 years from the date of payment. In the absence of such a clause, the developer may be eligible for making a repayment claim after 5 years.

**How do I find out more?**

Enquiries as to the status and content of a legal agreement, progress of a development and whether funds have been received by the Council should be made to Linda Arlidge, S106 Special Projects Officer on 01628 796363, email linda.arlidge@rbwm.gov.uk or John Maniscalco, S106 Compliance Officer on 01628 796554, email john.maniscalco@rbwm.gov.uk

Or in writing, to the following address:

S106 Team
Planning Policy and Implementation
Planning and Development
RBWM
C/o Town Hall
St Ives Road
Enquiries as to specific projects and their progress should be addressed to the following relevant service areas within the Council:

Affordable housing: Housing Enabling Manager – 01628 685705

Highways and public transport:
- Workplace Travel Plan – 01628 796067
- Rights of way team – 01628 796180
- Public transport – 01628 796147
- Verge parking – 01628 796287
- Environmental improvements – 01628 796148
- Cycle network schemes – 01628 796097
- Streetcare – 01628 796814
- Car parks – 01628 796513
- Road safety – 01628 796405
- Bridge strengthening – 01628 796283
- Street lighting – 01628 796798
- Crime prevention and security – 01628 796861

Education: School Accommodation Service – 01628 796364

Community facilities: Community and Youth Services Team - 01628 796983

Library services: Service Development Manager - 01628 796742

Public open space: Environment Officer (Section Manager) – 01628 796093

Biodiversity: Environment Officer (Section Manager) – 01628 796093

Indoor sports facilities: Environment Officer (Section Manager) – 01628 796093

Allotments: Environment Officer (Section Manager) – 01628 796093

Public art and heritage: Community and Development Manager - 01628 685811

Town management and improvement:
- Windsor and Eton Town Manager – 01753 743921
- Maidenhead Town Manager – 01628 796128

Economic development: Grow Our Own Project Manager – 01628 685661

Landscaping: Landscape Officer – 01628 796048

Thames Basin Heaths: Strategy and Plans Team – 01628 796172

Air quality: Environmental Protection Officer – 01628 683544
Waste disposal:
  – Waste Manager - 01628 796193
  – Recycling Officer – 01628 796272

Archaeology: Reading Museum, Archives and Library Service – 0118 901 5976

Flood risk management and drainage: Environmental Protection Team - 01628 683645