



Infrastructure and Planning

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This paper describes how Lancashire County Council will engage with and inform the outcomes of the planning process, as an infrastructure provider potentially impacted on by proposed new developments.

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1. Introduction

- 1.1 It is important that, as developments are brought forward, the developments are designed in such a way, and sufficient services and infrastructure are in place, to meet the demands they create. It is essential that the public and private sectors work together to achieve this.
- 1.2 The main purpose of the planning system is to promote sustainable development. Developer contributions are a way of helping to deliver sustainable development by facilitating the provision of infrastructure through agreements or payments to the infrastructure provider. To this end, Lancashire County Council will ask that developers contribute towards the cost of the additional infrastructure and services that their developments create a need for.
- 1.3 There are 12 District, Borough and City Councils (hereafter referred to as District Councils) in the administrative County of Lancashire; these determine the majority of planning applications and also decide what developer contributions may be required to mitigate the impacts of a development (the remainder are determined by Lancashire County Council, such as schools or quarries, though some will fall within the category of Nationally Significant Infrastructure projects and will be determined by the Secretary of State).
- 1.4 The main purpose of this document is to describe how Lancashire County Council, as a service and infrastructure provider to the residents and businesses of Lancashire, will engage with the planning process to ensure the impacts of proposed developments on the infrastructure and services that it provides are recognised, and where possible mitigated, through the District council's planning application decision making process; thus ensuring that any necessary infrastructure and services are in place at the right time to serve the development that requires them. This is a key part of the National Planning Policy Framework's (NPPF) aim of facilitating sustainable development in suitable locations.
- 1.5 It should be read by local authorities, developers, community groups and others involved in any development proposal which may result in impacts on Lancashire County Council's infrastructure or services. It should be read in conjunction with the Development Plan for the area, and the National Planning Policy Framework.

Requests for information should be directed to
planning.contributions@lancashire.gov.uk

2. Types of Developer Contributions

- 2.1 Developer contributions are sums of money (or land transfers, or commitments for in-kind provision) provided by a land owner for the provision of infrastructure or services. They are enforceable against the land owner. They can be facilitated through planning obligations, transport agreements or the community infrastructure levy.
- *On-site provision via planning obligations and conditions*
 - *Off-site provision via planning obligations/transport agreements*
 - *Community Infrastructure Levy (CIL) for named types of infrastructure or specific infrastructure projects*
- 2.2 Lancashire County Council will work with the District councils, the Lancashire Enterprise Partnership and other parties to facilitate quality sustainable development through other sources of funding to complement developer contributions; these could include other monies linked to the development such as New Homes Bonus and business rates retention, central government grants, or prudential borrowing.

Planning Obligations

- 2.3 Planning obligations are legal agreements entered into by any party with a legal interest in the development site. They contain contracts covering the things the land owner agrees to do, and not to do, and the circumstances and timescales within which these will occur. They are negotiated through Section 106 of the Town and Country Planning Act 1990.
- 2.4 They can be secured through either a Section 106 agreement made between parties or a unilateral undertaking.
- Section 106 agreements contain contracts from one or more parties to another party e.g. the developer to the County or District Council.
 - Unilateral undertakings are executed solely by the party or parties giving the contracts e.g. the developer.
- 2.5 If planning obligations are used to constitute a reason for granting planning permission they must accord with Regulation 122 of the Community Infrastructure Regulations 2010 which states that planning obligations should 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.
- 2.6 Lancashire County Council will request the use of planning obligations where they are necessary to mitigate an impact associated with a proposed development. This may include the need for 'specific mitigation' – for example,

to provide extra services for the development such as new school facilities. They can also include a commitment to manage a site in a defined way.

- 2.7 Developer contributions through planning obligations can involve the payment of a financial contribution to Lancashire County Council, for the provision of infrastructure or services, or, where appropriate, the provision of initial support (“pump priming”) of new facilities or services, reflecting the time lag between the provision of the new facility and its inclusion in public sector funding streams, or its ability to recover its own costs in the case of privately run bus services. Examples of such could include contributions for school extensions, new school buildings, sustainable travel initiatives, funding for bus route diversions or extensions. Alternatively, they can include ‘in-kind’ contributions, such as where a developer builds or provides a facility such as a school on behalf of the infrastructure provider (subject to Lancashire County Council's approval). They could also be used to bring forward the delivery of an already programmed and budgeted piece of infrastructure or a service in advance of its delivery schedule, should it be necessary to enable the proposed development.
- 2.8 Regulation 123 of the Community Infrastructure Regulations 2010 introduces a limit on the pooling of s106 contributions from different developments towards the delivery of a piece of infrastructure, after 6 April 2015 or after the adoption of a charging schedule, whichever is sooner, so that no more than five s106 agreements will be able to be pooled for the delivery of a specific service or piece of infrastructure. Where there are a number of developments within an area resulting in impacts that could be mitigated by - or where the development could be facilitated through - the provision of a piece of infrastructure or service, the scale of the impact will be a key determinant when considering which developments should or should not be included in any pooling arrangements.
- 2.9 Developer contributions can be phased for larger developments, and will be indexed, as appropriate, in any agreement, and the developer will be required to pay any legal costs Lancashire County Council incurs entering into the agreement.

Transport Agreements

- 2.10 Transport agreements are legal agreements between the developer and Lancashire County Council, under section 278 of the Highways Act 1980, they are entered into where a development requires works to be carried out on or to the highway. This agreement can be for Lancashire County Council to carry out the works at the developer's expense. This is so any unforeseen costs would be passed on to the developer rather than be borne by Lancashire County Council had the developer contribution been delivered through a planning obligation. Alternatively, it may allow the developer to provide the works directly, subject to an approval and inspection process by Lancashire County Council.
- 2.11 Works associated with any planning proposal are not permitted within the limits of the publicly maintained highway until the agreement is completed and the bond (if applicable) is secured.

- 2.12 Examples of such works could be: the construction of new access/junction, improvement of the highway/junctions, or safety related works such as traffic calming or improved facilities for pedestrians and cyclists.

Community Infrastructure Levy

- 2.13 The community infrastructure levy (CIL) is a charge, payable on the grant of planning permission, for the provision of infrastructure. It is produced and administered by the District council; Lancashire County Council is a statutory consultee to this process. The charge payable is set out in the charging schedule, and may vary by location and the proposed end land use. It is non-negotiable.
- 2.14 The infrastructure to be provided for by the levy is set out in the list of relevant infrastructure (regulation 123 list). Depending on how the list is drafted this could include infrastructure to be delivered by Lancashire County Council. The regulations require that a meaningful proportion of the charge will be made available to deliver infrastructure that meets the local community's needs. The developer can provide land to the value of the charge as payment in kind, if the District council agrees.
- 2.15 It is unlawful for a planning obligation to constitute a reason for granting planning permission if it provides for the funding or provision of infrastructure listed on the regulation 123 list.
- 2.16 Governance arrangements are essential to ensure that cross authority issues such as delivering the necessary infrastructure through CIL funds can be dealt with together. Procedures for delivering infrastructure through CIL monies will need to be established to ensure the appropriate infrastructure is delivered at the appropriate time.
- 2.17 Key to this will be liaison with relevant parish councils, and neighbourhood forums in areas with an adopted or emerging neighbourhood plan, to coordinate the delivery of CIL funded infrastructure where both Lancashire County Council and the parish council are potentially infrastructure providers¹.

¹ Under the CIL regulations parish and neighbourhood forums may be eligible to receive a meaningful proportion of CIL monies collected in their area.

3. Decision Making

- 3.1 Planning applications must be determined in accordance with the Development Plan for the area, unless material considerations indicate otherwise. Policies of the development plan, and the National Planning Policy Framework, describe a desire to secure certain things as part of sustainable development, including the desire to ensure that impacts are mitigated. Developer contributions are one means of achieving this.
- 3.2 As a general principle, the District council will expect each development proposal to consider all of the negative impacts it may have on the local area and the environment and ensure that these are mitigated.
- 3.3 Lancashire County Council will provide a reasoned and consistent response to the District Councils based on the impacts of the development proposal on the infrastructure and services it provides. Lancashire County Council responses will consider the significance of the impact and the value associated with any infrastructure proposed when commenting on planning applications; it is likely they will include:
- Highway safety
 - Flood prevention and water management
 - Access to education
 - Capacity management and the smooth flow of traffic
 - Access to sustainable forms of transport
- 3.4 The National Planning Policy Framework requires that planning authorities pay "careful attention to viability", and in some circumstances developer contributions could be considered to pose a threat to the viability of a development. Lancashire County Council is unable to insist upon, or enforce requests for developer contributions to its services other than where it is the determining authority.
- 3.5 It is likely that the District council will, when considering the overall level of contribution necessary, take into account the effect of the total developer contribution liability incurred by the proposed development arising from all policy requirements on the proposed development's viability. In parts of Lancashire the property market is weak and highly sensitive to land costs. This can undermine attempts to regenerate the area and to attract specific types of development.
- 3.6 Lancashire County Council will provide the District Council with a full response relating to the impact of the development and with any consequential requirement for developer contributions, and it will be for the District Council to consider the site viability and the overall benefits brought by the proposed development.
- 3.7 In these cases the District Council may choose to allow the development despite the impact on infrastructure or services identified, or it may reduce the

scope and amount of developer contributions. This is likely to be the case where a development proposal would stimulate regeneration but is financially marginal, or where a scheme is fundamental to the District Council's overall development strategy.

- 3.8 However, Lancashire County Council would maintain that, subject to the specific circumstances of the development, where development is allowed to go forward without provision being made for the necessary infrastructure through developer contributions, the development would not constitute sustainable development and the planning application should be refused. As such Lancashire County Council would object to proposed developments which did not adequately mitigate these impacts.
- 3.9 This is a key part of the National Planning Policy Framework aim of facilitating sustainable development in suitable locations. Moreover, if unsustainable development is allowed to take place, Lancashire County Council will not be in a position in the future to mitigate these impacts.
- 3.10 There may be scope for "special cases" but these must be individually justified as they are likely to represent, at some level, a policy deviation and are likely to impact on the residents of the district, whether it is through a shortage of school places, added congestion, flooding or issues of highway safety.
- 3.11 Further details on identified areas of service pressure, and future spending priorities, can be found in the following documents:
- Local Transport Plan Strategy 2011-2012, Implementation Plan, and the Highways and Transport Master Plans
 - Strategy for the Provision of School Places and School's Capital Investment²
 - Lancashire and Blackpool Local Flood Risk Management Strategy
 - The relevant District Councils Local Plan Infrastructure Delivery Schedule
- 3.12 These documents indicate to developers those areas where further development may give rise to particular infrastructure problems. They should be used to provide an indication of the areas in which the proposed development could create or aggravate a local stress.

² This does not relate to the planning of special needs school provision, nor independent school provision.

4. Ways of Working

What we will do:

- Respond to planning applications and local plan consultations promptly and provide evidence clearly identifying the impacts associated with a proposed development and any mitigation necessary through developer contributions, and clearly identify triggers for the necessary mitigation.
- Be available for negotiation if required by the District Council.
- Promptly process the signing of s106 and s278 agreements to avoid unnecessary delays to the delivery of developments.
- Ensure that s106 and s278 agreements are drafted with regards to the timing of payments so as to ensure that the necessary infrastructure can be delivered in a timely way relative to the impacts that they seek to mitigate.
- Ensure that any contribution relating to education infrastructure includes appropriate indexation and reference to where the infrastructure will be provided, in line with the education methodology.
- If a proposed development is refused as a result of an infrastructure requirement made by Lancashire County Council, support the District council with any appeal hearing.
- Engage constructively with District Councils on Local Plan and CIL consultations.
- Engage constructively with parish councils and neighbourhood forums on CIL funded projects in their local area.
- Maintain an ongoing relationship with District Councils for evidence preparation and sharing to ensure Local Plans are based on up to date information and reflect Lancashire County Council's infrastructure and services.
- Report the receipt of developer contributions and the delivery of related infrastructure and services to the District Council.
- Work with the District Councils and Lancashire Enterprise Partnership to access other sources of funding to complement developer contributions.
- Promptly return any developer contribution should the anticipated requirement for infrastructure not come forwards.

What we would like the District Council to do:

- Provide adequate notice of consultations or requests for evidence, and provide adequate time for the preparation of consultation responses.
- Report consultation responses and any proposed developer contributions to decision makers, and justify any prioritisation, or renegotiation that has taken place on viability and environmental/social grounds.
- Produce a robust and deliverable Infrastructure Delivery Schedule in support of the Local Plan, with infrastructure included only if it will demonstrably assist in the delivery of growth and the Local Plan's objectives.
- Consult Lancashire County Council on the production of, and any revisions to, the list of relevant infrastructure (Regulation 123 list).

- Include Lancashire County Council in any negotiations with developers concerning planning obligations relating to Lancashire County Council's infrastructure or services, and ensure Lancashire County Council are a signatory to relevant planning obligations.
- Include policies in the Local Plan recognising the impacts development can have on service provision (including those listed in this document), and recognising that these impacts could be mitigated through developer contributions.
- Send Lancashire County Council any s106 agreements that the District Council has signed where Lancashire County Council will be delivering the infrastructure or services agreed.
- Assist Lancashire County Council in monitoring the implementation of planning permissions where s106 agreements specify the payment of developer contributions and the delivery of infrastructure or services at particular 'trigger points' in the development's delivery.

5. Infrastructure

- 5.1 The issues relevant to a proposed development will be dictated by local and national planning policies, and local circumstances. These issues, and the proposed mitigation measures, will likely be apparent to the applicant from the outset. However, pre-application discussion with Lancashire County Council service providers are encouraged as early as possible to ensure that impacts are clear and it is possible to find cost effective ways of mitigating them.
- 5.2 Separate annexes have been prepared to provide some information on these.
- 5.3 Where possible the cost of impact mitigation, which forms the basis for negotiating the developer contribution, is described. This will provide several benefits:
- The Section 106 process can be both quick and consistent;
 - Developers can be informed at an early stage what their contribution is likely to be; and
 - The costs of development can be established accurately in advance, which will influence the market price of land.
- 5.4 However, all development proposals will need to be assessed against the policies in the development plan on a case-by-case basis, in order to identify impacts on local infrastructure and services and explore any necessary mitigation through, amongst other means, developer contributions. The type and scale of developer contribution will be directly related to the level of impact on the provision of the relevant service or infrastructure.
- 5.5 Lancashire County Council provides significant levels of service and infrastructure that are not described below, such as libraries, children's' centres, community services for young people, adult care, health etc. It is unlikely that most developments will impact significantly on these services, but in the event that it does, or that the development proposal offers the opportunity to enhance an existing piece of infrastructure, for example through the relocation of a library to facilitate the development of a wider site, Lancashire County Council will engage with the developer and District Council to ensure any impacts are recognised and where necessary mitigated, and that the benefits of any relocation or enhanced service that are offered can be realised.