

Planning Obligations Guide to Developer Infrastructure Contributions

Summary

The purpose of this guidance and technical appendices are:

- To set out the County Council's approach as to how development will mitigate its impact regarding the infrastructure and services delivered by the Council.
- Details are included of the type and level of contributions which may be sought by the Council when consulted on planning applications, and the methodology behind those calculations.
- To support the District and Boroughs to incorporate contributions towards infrastructure requirements into Local Plans, in line with current legislation. It sets out the legal, policy and planning context in which the County Council may seek planning obligations and the mechanisms by which it may do so.

The County Council has responsibility for delivering:

- Sustainable travel, highways & transport;
- Countryside and Public Rights of Way;
- Education & Schools;
- Waste Management (e.g., household waste recycling centres);
- Flood & Water Management and Sustainable Drainage Systems;
- Public health initiatives to improve the health of the population;
- Specialist housing (adult social care, extra care & supported housing); and
- Library services.

1) Introduction

Purpose of the Guidance

- 1.1 The purpose of this Guidance is to clearly set out the planning obligations requirements that West Sussex County Council (the County Council) may seek in association with new developments.
- 1.2 The planning process seeks to ensure sustainable developments, balancing the social, economic, and environmental effects to shape the way new communities grow with the necessary infrastructure. A fundamental aspect of achieving sustainable development is providing infrastructure in the right place and at the right time.
- 1.3 The County Council is responsible for delivering and maintaining much of the large-scale infrastructure that its residents and businesses require, such as roads, schools, waste disposal services, and libraries. To promote sustainable development, this Guide sets out the developer contributions which may be required by the County Council to support growth and mitigate any adverse impacts on community infrastructure. While local planning authorities (LPAs) deal with most planning applications, the County Council is responsible to ensure delivering of key strategic community infrastructure to support growth.
- 1.4 This guidance and technical appendices provide information to local planning authorities, developers, and all stakeholders on the types of infrastructure the County Council will seek delivery of or funding towards through developer contributions. Legal agreements in the form of S106 and/or Community Infrastructure Levy (CIL) payments may be necessary to mitigate the impacts of development and help make it acceptable in planning terms.
- 1.5 This main guidance document provides an overview of obligations which may be sought as part of the planning process followed by Technical Appendices which provide more detail on where obligations may be sought by the service areas of the County Council. As part of calculating mitigation required for infrastructure, we need to identify the additional population arising from new development, this is included within the document [Planning Obligations: Explaining Contributions Calculations](#).
- 1.6 While this guidance and technical appendices are not a statutory planning document, it enables developers to fulfil policy and legislative requirements for mitigation of development impacts. These documents provide up to date prices, requirements, and expectations to enable both developers and local authority officers to understand the infrastructure cost and requirements to mitigate development and provide for infrastructure needs. This Guidance should be read alongside Development Plan Policies (Local Plans and Neighbourhood Plans) and relevant Supplementary Planning Documents adopted by West Sussex Local Planning Authorities (LPAs). The Guide will also be used as the basis of the County Council's responses to proposed growth strategies in LPA development plans, providing evidence for the infrastructure delivery planning and viability assessments that underpin the relevant Local Plan.
- 1.7 The Guidance reflects the CIL Regulations 2010 (as amended). It is designed to identify the County Council's approach to the negotiation,

- preparation, and completion of planning obligation agreements with developers; the District/Borough Councils; and other interested parties.
- 1.8 The Guidance aligns with the overall aims of the National Planning Policy Framework (NPPF) by supporting sustainable development. By promoting a consistent and transparent approach, developers can be assured that they are making a fair contribution to the infrastructure needed to support growth, and local residents can understand how development in their area makes a positive contribution to their community.
- 1.9 The guidance and technical appendices is not prescriptive, as each development proposal will be considered on its merits, and any obligations sought will need to meet the relevant tests. Our aim is to ensure that infrastructure is delivered in a timely manner thereby ensuring that new development does not have an adverse impact on existing communities, by ensuring the new developments proposed properly and fairly address their own infrastructure needs.
- 1.10 For groups involved in neighbourhood planning, the guidance and technical appendices should enhance an understanding of the relationship between infrastructure and growth. The Council will support all groups involved in plan preparation to integrate infrastructure priorities into emerging proposals. We will also positively support the LPAs in identifying future infrastructure requirements through their Infrastructure Delivery Plans (IDPs); and funding mechanisms as set out in their Infrastructure Funding Statements (IFS).
- 1.11 The guidance and technical appendices should inform the preparation of development plan documents, Infrastructure Delivery Plans (IDPs), Infrastructure Funding Statements (IFSs), and supplementary planning documents, as well as being a material consideration in the determination of planning applications.
- 1.12 It should be noted that each development is different and therefore not all contributions identified in this guidance and technical appendices will apply. The level and range of developer contributions will be the subject of negotiation between the local planning authority and developer. The County Council as infrastructure provider should be consulted at an early stage regarding infrastructure requirements, as infrastructure needs may be clarified as a site moves from policy to application stage. On larger development sites that may require new or expanded infrastructure in order to mitigate the planned development. Some services also offer pre application advice to developer to inform the master planning of development proposals.
- 1.13 In addition, District and Borough Councils may also seek other infrastructure and service requirements for example affordable housing and open space. A list of District/Borough Councils in West Sussex is set out in Appendix A to this document. Other service providers such as the police, and various health bodies may also seek developer contributions towards improvements to their services.

What are Developer Contributions?

- 1.14 These are financial or other contributions made by developers to mitigate the effects of their development on local infrastructure. The scale and

nature of the contribution will vary according to the size, impact, and nature of the proposed development.

- 1.15 While contributions are usually financial some contributions may be 'in kind', for example, the provision of land, which may be acceptable for some infrastructure requirements associated with specific sites.
- 1.16 Planning legislation includes the essential principle that developers should pay for the social and physical infrastructure to support and facilitate a development. Although it is fair to expect developers to contribute to limiting the impact of their own development on the local area, they cannot be asked to address existing service deficiencies within that area unless those deficiencies will be made more severe by new development.

2) The Legislative Framework

National Planning Policy Framework

- 2.1 [The National Planning Policy Framework](#) (NPPF), sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. The NPPF cross references the specific legislative framework outlined in the Community Infrastructure Levy Regulations 2010 (as amended).
- 2.2 At paragraph 20 it states that:
- “Strategic policies should set out an overall strategy for the pattern, scale and design quality of places make sufficient provision for:
- a) homes (including affordable housing), employment, retail, leisure, and other commercial development;
 - b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);**
 - c) community facilities (such as health, education, and cultural infrastructure);** and
 - d) conservation and enhancement of the natural, built, and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.”
- 2.3 It continues at paragraph 35 that:
- “Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.”
- 2.4 Planning conditions and obligations are covered in paragraphs 56-59 of the NPPF.

National Planning Practice Guidance

- 2.5 [National Planning Practice Guidance](#) (NPPG) adds further context to the NPPF, it is intended that the documents should be read together. As set out in the NPPF, it is critical that contributions do not harm the viability of a proposal or the deliverability of the plan. Further advice on viability can be found in the NPPG. Ultimately, it is the LPA’s responsibility to assess the necessity of requested contributions, and their combined impact on viability.
- 2.6 It includes a guidance document on planning obligations which helps interpretation of the NPPF. There is also reference in other guidance such as that for health and wellbeing which makes clear for example that “Plans should seek to meet the development needs of their area, including community facilities such as schools’ and ‘allocate sufficient suitable land

for schools to meet the need anticipated over the plan period” ([Healthy and safe communities NPPG para 008](#)).

Community Infrastructure Levy Regulations

- 2.7 The [Community Infrastructure Levy Regulations](#) (2010 as amended) were introduced as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. The CIL Regulations came into force on 6 April 2010 and a development may be liable for a charge under CIL, if an LPA has chosen to set a charge in its area. CIL is not mandatory and under the current legislative context, county councils are unable to adopt a CIL.
- 2.8 All infrastructure requirements must be compliant with the legal tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and 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.
- 2.9 The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019, came into force on 1 September 2019. The key amendments were:
- Lifting of the pooling restrictions on Section 106 (S106);
 - The introduction of monitoring fees;
 - Allowing the use of both S106 agreements and the CIL to fund the same infrastructure;
 - Introducing the requirement to produce an Infrastructure Funding Statement.
- 2.10 The County Council is not a charging authority for CIL. Charging authorities may pass money to other bodies to deliver infrastructure which will benefit the development of their area. Further information on CIL and CIL charges in those areas adopting a charge are available on the District and Borough websites. Links to those websites can be found in Appendix B of this document.
- 2.11 In line with the current legislative context, the County Council will ensure its obligations are handled in a fair, open and reasonable way and that they enable development to go ahead which would otherwise be refused. Planning obligations can relate to matters other than those covered by the planning permission provided there is a relationship between the planning obligation and the planning permission. Unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by applicants.

English Devolution White Paper

- 2.12 As part of the English Devolution White Paper which seeks to simplify and streamline council structures, West Sussex was selected for the devolution priority programme, and a consultation was commenced on the proposal to create a Mayoral Combined County Authority across West Sussex, East

Sussex, Brighton and Hove. The Mayor would receive the ability to charge new developments in their area. This will be known as the 'Mayoral Community Infrastructure Levy' and the revenue collected is used to help deliver local infrastructure. In areas where both Mayoral and local Community Infrastructure Levy (CIL) exist, the local authority collects both, with the Mayoral CIL being collected on behalf of the Mayor alongside any local CIL. Any changes as a result of this process will be reflected in future updates to this guide. The Mayoral Combined Authority will also plan for development strategically, but local plans will plan for site allocations, and these will be produced by the local authorities. At the same time the Government has asked authorities to consider local government reorganisation, and bids are being considered for the future shape of local authorities in West Sussex.

3) Types of Developer Contributions

- 3.1 Planning obligations can be in the form of financial contributions (which generally include s106 planning obligations or funding through the CIL), and/or works, on site provision, or land. This section sets out the types of developer contributions that can be secured.

Planning Conditions

- 3.2 Planning Conditions: While planning conditions are the preferred way for making development acceptable in planning terms, they are not usually appropriate to secure financial contributions. They may, however, cover minor infrastructure requirements, such as local site-related transport improvements, waste or water supply infrastructure or flood risk mitigation works. A Planning Condition will usually require the detailed design of the infrastructure in question to be submitted and approved at a later date. In order to undertake works in the highway, however, WSCC as the Local Highway Authority must give permission, and this may require the developer to enter into a legal agreement e.g. highway works carried out pursuant to agreements under section 38 or section 278 of the Highways Act 1980. The appropriateness of each approach and their interrelationship as a means of delivering infrastructure requirements will be considered on a case by case basis.

- 3.3 Conditions should only be used to make otherwise unacceptable development acceptable. At paragraph 57 the NPPF sets out that they should be:

- necessary;
- relevant to planning and to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

Community Infrastructure Levy (CIL)

- 3.4 Where an LPA has chosen to become a CIL Charging Authority and set a charge in its area, they secure generic financial contributions towards infrastructure across their area through the CIL.
- 3.5 Currently, five of the West Sussex seven local planning authorities, as well as the South Downs National Park Authority have introduced a CIL charging schedule. They are:
- Arun District Council;
 - Crawley Borough Council;
 - Chichester District Council;
 - Horsham District Council;
 - Worthing Borough Council; and
 - South Downs National Park Authority.

- 3.6 The County Council will provide comments on the Local Planning Authority (LPA) CIL Charging Schedules and rates as required. Even when CIL is implemented there may still be a need for the County Council to use S106 agreements:
- To secure site specific mitigation;
 - Where sites are excluded from CIL, such as strategic development allocations;
 - To secure infrastructure which is not identified as being entirely funded through CIL; and/or
 - To deal with the transfer of land (e.g. land may be required for a new school).
- 3.7 NPPF guidance (NPPG) is clear that “There is still a legitimate role for development specific planning obligations, even where the levy is charged, to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated” (Community Infrastructure Levy NPPG Para 167).
- 3.8 The collection, distribution and prioritisation of CIL funding is the responsibility of each charging authority. In coordination with our local authority stakeholders, the information within this guidance and technical appendices may be referred to by the County Council when seeking the allocation of CIL funding from a CIL charging authority. This may assist in the justification of appropriate levels of CIL towards projects which reflect the impact of growth.
- 3.9 Since 2019, any LPA that has received developer contributions (s106 planning obligations and/or CIL) must annually publish an IFS detailing the sum, modification, and discharges of planning obligations by 31 December. Implementing an IFS provides an accounting mechanism to assign contributions from developments to infrastructure needs over wider areas.

Section 106 Agreements (S106)

- 3.10 Legally binding agreements can be made between developers, landowners, local authorities, and other interested parties. These agreements are used to secure planning obligations and are known as Section 106 Agreements (S106) as they are covered by Section 106 of the Town and Country Planning Act 1990.
- 3.11 A planning obligation may also be secured by a Unilateral Undertaking (UU). This does not require the agreement of the LPA, nor any other third parties. UUs are often seen as a simpler way for developers to commit to infrastructure and other matters, needed to make new development acceptable. They are usually suited to smaller schemes or where there are no land transfer requirements.
- 3.12 Under S106 of the Town and Country Planning Act, a planning obligation may be used to:
- restrict the development or use of the land in any specified way;

- require specified operations or activities to be carried out in, on, under or over the land;
 - require the land to be used in any specified way; and/or
 - require a sum or sums to be paid to the authority on a specified date or dates or periodically.
- 3.13 The CIL Regs originally placed legal restrictions on the use of S106 agreements, particularly for infrastructure that might be eligible for funding through CIL. However, following amendments in 2019, planning obligations may be used for the provision of infrastructure, which is to be funded, wholly or partly, by CIL; and more than five S106 agreements can be used to support a particular item of infrastructure. Charging authorities can therefore use both CIL and S106 contributions to fund the same piece of infrastructure, so long as there is no 'double-dipping' where a developer is, in effect, being asked to pay twice.
- 3.14 The County Council will work with LPAs to prepare S106 agreements to cover the necessary infrastructure requirements for a development. Except where charging authorities expect specific projects or types of projects to be wholly or partly funded by a CIL, the County Council will use this guidance to outline the process for seeking planning obligations on behalf of service areas.

4) Developer Contributions

- 4.1 Developer contributions, whether through CIL or S106, passed to the Council will be spent in accordance with the agreed priorities and with details of the expenditure recorded and reported to the Charging Authority as well as reported in the County Council's IFS.
- 4.2 Where contributions are sought through S106 planning obligations, the decision on the type and scale of infrastructure and services deemed necessary for developer contributions will always be made on a case-by-case basis, in accordance with the CIL Regulations. This will occur following the careful consideration of demonstrable need, the policy aspirations of the development plan and other reasonable material factors that may inform decision makers as to the appropriate provision of infrastructure.
- 4.3 Assessments should measure the degree of adverse impacts that might result from new development balanced against potential benefits or opportunities. In all cases the reasonableness and proportionate nature of any subsequent contributions must be in accordance with the legal tests and guidance that govern their use.
- 4.4 The following section of the Guidance outlines the type of infrastructure and services that the Council is likely to seek to secure with new development. These will be funded through CIL, and/or secured through S106 planning obligations or condition. Applicants should check with the relevant LPA regarding their planning policy requirements for infrastructure and services provision which are not County Council functions.
- 4.5 Further detailed explanation of the collection, monitoring, and spending of S106 and CIL monies is outlined in the Technical Appendices.

5) How Infrastructure Projects Are Identified

5.1 The County Council is responsible for delivering and maintaining much of the large-scale infrastructure that West Sussex's residents and businesses require. Much of this provision is nearing or is already at capacity and therefore, the impact of growth is a key consideration. The County Council may seek land/contributions and/or facilities from developments to mitigate the impact of growth on infrastructure and services including, but not limited to:

- **Education including Early Years, Special Education Needs and Disabilities (including Alternative Provision), Primary, Secondary and Post 16** – As the Local Education Authority (LEA) the County Council has the statutory duty to make or secure education provision available for each child in its area, and to provide or secure the provision of a school place for each child, within the local catchment area (being as close to the place of residence as is reasonably practicable) where possible. Developer contributions are sought to ensure the required educational places from new development are provided, in line with the 'Securing Developer Contributions for Education' (DfE 2023).
- **Highways and Transportation, including Highways, Sustainable Transport and Travel Plans** – The County Council in its role as the Local Highway Authority has a duty to manage and maintain the safe and efficient operation of the highway network, which is government by a number of acts including the Highways Act 1980, which bestows various powers on the authority to enable them to undertake their duties. Most new development has some impact on the highway and transport networks. In order to mitigate the impact and to facilitate a move towards more sustainable transport, improvements to infrastructure, public transport, public rights of way (PROW) and sustainable travel may be required to be provided through developer contributions.
- **Library and Archive Services** – Local authorities have a statutory duty to under the Public Libraries and Museums Act 1964 to provide libraries. New developments which might place demand on library services may require developer contributions to mitigate the impacts of development on the library and archive services.
- **Fire and Rescue Services** – West Sussex Fire and Rescue Services is guided and governed by acts including the Fire and Rescue Services Act 2004 and expectations on its priorities through the Fire and Rescue National Framework for England 2018. Fire safety of developments should be considered at an early stage to ensure the safety of the users of the development. Fire hydrants are required by conditions on new development and developer contributions towards new and upgraded fire stations, training facilities and equipment are required in order to deliver vital prevention and protection work for the community of West Sussex.
- **Waste Services** – As Waste Disposal Authority, the County Council has a duty under the Environmental Act 1990 to offer facilities to residents to dispose of their household waste. New development may

be required to contribute towards Household Waste Recycling Centres (HWRC) which offer facilities to re-use, recycle and dispose of waste.

- **Adult Social Care** – The Care Act 2014 places a series of duties and responsibilities on local authorities regarding care and support for adults. The link between planning and health has long been established and developer contributions may be sought to facilitate health and wellbeing for example through provision of extra care housing.
- **Flood Risk and Sustainable Drainage** –The [Flood and Water Management Act 2010](#) required county and unitary councils to lead the coordination of flood risk, West Sussex County Council is the Lead Local Flood Authority (LLFA) in West Sussex. The LLFA leads in managing local flood risks from surface water, ground water, and ordinary watercourses. Some developments may require mitigation to be provided in the form of developer contributions to mitigate the impact of development.
- **Broadband** – contributions are not required; however, all developers should look to provide Full Fibre Connection as an integral part of development from an early stage of development.
- **Other potential infrastructure** – some development may require mitigation which will be assessed on a case-by-case basis. Requirements might relate to, but not limited to, Biodiversity, Archaeology, Green Infrastructure.

- 5.2 Further information on these requirements can be found in the Technical Appendices to this document.
- 5.3 The County Council would expect infrastructure to be planned and tested through the development of a Local Plan and policy making. The County Council therefore coordinates with West Sussex local planning authorities throughout plan production, and engagement to ensure infrastructure is forward planned within Local Plan Policies (as required by the NPPF). The detailed approach to setting out the County Council services contributions is set out in the technical appendices to this document.
- 5.4 This guidance outlines the approach of the County Council at the decision-making stage, although infrastructure requirements, particularly from strategic development sites, should be outlined within Local Plan policies and supporting evidence such as Infrastructure Delivery Plans.
- 5.5 When determining the impact of strategic sites, the County Council would generally expect such sites to generate the need for a new infrastructure setting, for example a new school. However, to mitigate the impact of a selection of smaller sites, the County Council will combine developer contributions, subject to legislation, in order to fairly and efficiently mitigate their combined or cumulative effects.
- 5.6 In order to forward plan for infrastructure provision, the County Council monitors the progression of allocated and potential windfall sites by coordinating with the West Sussex LPAs, and neighbouring planning authorities where appropriate. Local Plans form the basis for service-related infrastructure planning.

- 5.7 Strategic sites are usually supported by specific planning policy which dictates the key infrastructure required to mitigate a development's impact. Further supporting infrastructure may also be required and each service provider is expected to provide robust evidence to support the lawfulness of any request by illustrating how the project meets the three tests of CIL Regulation 122.

Assessing the Impact of Each Development

- 5.8 The Technical Appendices provide information on the approach and justification for seeking planning obligations from new development on a service-by-service basis. They set out thresholds, base charges, and comment on the potential use of contributions.
- 5.9 To establish an indication of contributions requested by the County Council, the dwelling number and housing mix can be entered in Technical Appendix – Development Contributions Calculator. This provides an indicative calculation for local plan allocations and developer negotiations. It will not be until the specifics of an application are known to the County Council that appropriate contribution requirements can be provided. For example, whether a primary school can be expanded to provide places, or a new school (including land) is required will dictate the level of contribution needed.
- 5.10 The County Council recognises that there will be occasions when not all the infrastructure and services required by the development will be able to be provided by the developer. In such circumstances it may be appropriate for the local authority and other public sector agencies to assist and facilitate in the development coming forward. This may involve a reduction in the level of contributions normally sought and would in practice mean the County Council or other service providers being required to fund in part the infrastructure and services needed. However, the County Council would need clear evidence and viability assessment to demonstrate why all contributions cannot be met.
- 5.11 Circumstances may change if there are delays to developments coming forward as part of the planning process. Service needs can also fluctuate depending on a number of variables which may be beyond the control of a service provider, for example change in national policy, a sudden rise in birth rates or parental choice for a particular school. Applicants are therefore strongly advised to contact their local planning authority at the earliest opportunity to discuss potential infrastructure impacts.
- 5.12 Information setting out how the County Council's requests comply with the tests will be provided within the county council's responses to specific planning applications. The planning obligations the County Council may consider necessary for a scheme will depend on:
- The current level of infrastructure provision;
 - The nature and impact of the development on existing infrastructure;
 - Whether CIL or alternative funding will be available.
- 5.13 West Sussex County Council welcomes engagement at the earliest opportunity and would expect the local planning authority to be included in discussions relevant to a planning application.

How Infrastructure Projects Are Identified – Plan Making

- 5.14 Local Plans form the basis for service-related infrastructure planning. As set out in the legislation section the NPPF (para 35) recognises that:
- “Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.”
- 5.15 In accordance with the NPPF, the County Council expects infrastructure to be planned and tested throughout the development of a Local Plan and Policy making. It encourages LPAs to engage early on potential development scenarios and will provide evidence in relation to the impact of proposed growth scenarios based on the approach set out in this Guide. The County Council will seek to coordinate with LPAs throughout plan production, to ensure that appropriate levels of infrastructure are planned, as well as working together to create maximum impact for communities through efficient delivery of necessary infrastructure.
- 5.16 Strategic sites will often require new infrastructure provision, such as a new transport infrastructure, schools, and libraries to mitigate their impact. Consequently, the County Council will be seeking the inclusion of key infrastructure in local plan policies.
- 5.17 Contact details for correspondence is set out in Appendix A to this document.

How Infrastructure Projects Are Identified – Planning Applications

- 5.18 At the earliest opportunity, LPAs should notify the County Council of any major residential development (10+ homes, or the site has an area of 0.5+ hectares). The County Council should be provided with sufficient information to identify the location, and the type and nature of the proposed development (i.e. total gross number of dwellings, dwelling mix, and any age-related policy restrictions).
- 5.19 As a statutory consultee, the County Council (as Lead Local Flood Authority and Local Highway Authority) should be consulted by LPAs separately on all planning applications which have a potential flood impact or potential impact on the County’s highway network and transportation infrastructure. Contact details for correspondence are set out in Appendix A to this document.
- 5.20 Although not a statutory consultee the County Council as Local Education Authority should be consulted on any large applications, particularly in areas where the LPA may be aware of capacity issues. Other relevant services should also be consulted where appropriate in order to mitigate planned development and ensure development is in accordance with policy requirements.
- 5.21 The County Council will only seek planning obligations where they accord with the CIL Regulations and relevant planning policies. The County Council’s response will advise the Local Planning Authority:

- how the development would impact on strategic infrastructure and services;
 - how planning obligations will assist in mitigating the impact of unacceptable development to make it acceptable in planning terms; and
 - any opportunities to enhance existing or provide new infrastructure and services.
- 5.22 It may also be possible to resolve identified impacts by using planning conditions.
- 5.23 Where S106 contributions are sought, the County Council will provide the necessary evidence to demonstrate that the need identified is due to the impact of the development concerned and the projects identified meet the requirements of the CIL Regulations. Planning obligations may seek to secure financial contributions towards improving or expanding existing infrastructure or providing new infrastructure, the direct provision of services, land and buildings, or payments towards ongoing maintenance and service delivery costs.
- 5.24 It remains the responsibility of the LPA to consider the County Council's advice and determine the application, including any decision to seek developer contributions via S106 planning obligations. The LPA has the responsibility in determining whether the infrastructure contributions sought are reasonable and accord with the requirements of the CIL Regulations, in addition to balancing the viability of the development against the infrastructure requirements.

County Advice – Dealing with Development with Abnormal Costs – Viability Concerns

- 5.25 The County Council recognises that there will be rare occasions when not all the infrastructure and services required by the development will be able to be provided by the developer. This may be the case on major regeneration sites where there may be exceptional costs associated with site clearance and possibly decontamination. The NPPF (paragraph 59) and NPPG make it clear that, once assessed through the local plan process, contributions from development should be assumed to be viable. It is the responsibility of developers to engage in that process to ensure they accurately reflect real world considerations. The price paid for land is not a justification for failing to accord with policies in the local plan.
- 5.26 In these situations it may be appropriate for the local authority and other public sector agencies to assist and facilitate in the development coming forward. This may involve a reduction in the level of contributions normally sought. This would in practice mean the County Council or other service providers being required to fund in part the infrastructure and services needed.
- 5.27 To justify this approach, the County Council would need clear evidence that:
- The economics of the site do not allow for all contributions to be met. The County Council would want to see the viability assessment (VA)

produced and would need to be satisfied with the VA before waiving any contribution sought; and

- The development is in the wider public interest i.e., will provide a wide range of community benefits such as the removal of derelict land and will provide local services (e.g., schools and healthcare provision) accessible to the community as a whole.

5.28 In the event contributions are waived or reduced on viability grounds the County Council will work closely with the District/Borough Council and developer to ensure any future increase in funding available is directed towards these contributions originally sought.

6) Monitoring Fees, Indexation, Receipt and Spending Developer Contributions

Monitoring

- 6.1 An Infrastructure Funding Statements (IFS) is published by the County Council, as a receiving authority annually. This is required by Regulation 121A of the CIL Regulations. The statements indicate the infrastructure projects or types the authority intends will be, or may be, wholly or partly funded by CIL and a report about planning obligations in relation to the reported year.
- 6.2 The [West Sussex County Council IFS](#) outlines spending of developer contributions including s106, CIL and s278 agreements.

Monitoring Fees

- 6.3 Monitoring fees: Once the S106 is agreed, and building the development commences, the County Council incurs costs associated with managing and monitoring the agreement. The County Council considers that it should reasonably be able to recover a degree of the costs incurred as part of this process. It is the aim of the County Council to provide as transparent, efficient, and cost-effective service as possible within the resources available. Costs may include:
- The maintenance and development of its planning obligations monitoring system (via an integrated database), to help co-ordinate obligation preparation, completion, monitoring, and review;
 - Monitoring of trigger points and development progress;
 - Pre-emptive alerts for obligations that are or are to become overdue;
 - Recovery of obligation payments not made, including any necessary formal or legal action.

Indexation

- 6.4 Once a contribution has been established it is future proofed against inflation, through Indexation. This ensures that we are protected against the cost of delivering infrastructure rising from the time the agreement is signed. In most cases the indexation would run from the date of the consultation response from the relevant County service, where contributions have been sought.
- 6.5 To ensure the real value of a Section 106 financial contribution is maintained up to the date of payment, the 'principal' sum stated in the Section 106 agreement will need to be index linked. The principal sum will be index linked from this base date until the date of payment. The appropriate index for each type of contribution is given below. The principal amount in the agreement will remain the same but the additional inflation will be affected by the index fluctuation and contribution amounts paid may vary depending on the value of the index at point of invoicing.
- 6.6 The County Council prefers to index financial contributions to the 'All in Tender Price Index of Building Cost Information Services' (BCIS) published by the Royal Institute of Chartered Surveyors (RICS). This index tracks

construction material costs much more accurately than the Retail Price Index (RPI). Where a District or Borough does not subscribe to BCIS, the County Council will provide the information about the level of the uplift of the contribution so the amount payable by the developer can be claimed.

Triggers

- 6.7 Standard trigger points include 'prior to commencement', 'upon occupation', or 'upon completion'. Developers may wish to delay paying financial contributions until income from the sale of a proportion of the dwellings has been received in order to help with cash flow. However, this can mean that the impact on infrastructure and services of households occupying new dwellings is felt before funding is received to mitigate that impact. Payments therefore should be phased for early in the occupation of developments and in fewer larger tranches rather than several smaller ones. However, the County Council is willing to enter into negotiations regarding triggers where viability issues can be demonstrated.

Receipts and Spend

- 6.8 Once received, contributions are held and spent in accordance with the relevant S106. Financial contributions are monitored and tracked to expenditure on specified projects to ensure that it occurs within relevant timeframes as set out in the legal documents.
- 6.9 If a contribution is not spent within the timeframes identified within the S106 it will be refunded to the relevant party as prescribed within the deed. Information on expenditure can be made available on request.
- 6.10 The County Council maintains a register of all planning obligations and follows a clear internal process to approve spend. Its planning obligation processes are regularly audited.

Appendix A – Contacts

Authority	Email Address and Further Information
Adur District Council	planning@adur-worthing.gov.uk Adur Planning Policy
Arun District Council	planning@arun.gov.uk Arun Planning Policy
Chichester District Council	dcplanning@chichester.gov.uk Chichester Planning Policy
Crawley Borough Council	development.control@crawley.gov.uk Crawley Planning Policy
Horsham District Council	planning@horsham.gov.uk Horsham Planning Policy
Mid Sussex District Council	planningpolicy@midsussex.gov.uk Mid Sussex Planning Policy
South Downs National Park Authority	planning@southdowns.gov.uk Community Infrastructure Levy and Section 106 (South Downs National Park)
West Sussex County Council	Planning Policy and Infrastructure: Planningpolicy@westsussex.gov.uk Highway Authority: wscchighways@westsussex.gov.uk
Worthing Borough Council	planning@adur-worthing.gov.uk Worthing Planning Policy

Appendix B – West Sussex Local Authorities Charging Schedules

Some LPAs have adopted a CIL Charging Schedule. Please refer to the LPA websites for the most up to date information, the links to these at the time of writing, are set out below.

Authority	Charging Schedule can be found at ...
Arun District Council	CIL, Infrastructure Funding Statement, and Monitoring
Chichester District Council	Community Infrastructure Levy (CIL)
Crawley Borough Council	Community Infrastructure Levy
Horsham District Council	Community Infrastructure Levy (CIL)
South Downs National Park Authority	CIL and S106 Rates
Worthing Borough Council	About the Community Infrastructure Levy (CIL)