

Section 76 Agreements & Developer Contributions

Interim Paper - February 2016

1. INTRODUCTION

In line with the Regional Development Strategy 2035, the Belfast Metropolitan Area Plan (BMAP) seeks to promote the City of Belfast as the regional capital and the major focus for regional administration, commerce, specialist services, cultural amenities and as a major employment location.

In April 2015 Belfast City Council ('the Council') became the local planning authority responsible for the exercise of the majority of planning powers. This has significantly enhanced local democratic accountability and is more responsive to the priorities and needs of local people and the city.

The Council believes that planning agreements are a key tool in delivering future sustainable development for the City. They are widely used elsewhere as effective and valuable tools but were sparingly used by the previous single, region-wide planning authority. The authority to make use of planning agreements is found in Section 76 of the Planning Act (NI) 2011 ('the Act').

The Council will shortly commence making its own Local Development Plan (LDP) to replace BMAP. This LDP will shape and refine the planning agreement regime further but with the pace of change and challenges quickening, the Council intends making greater and more widespread use of planning agreements.

A detailed framework in relation to planning agreements is under preparation but in light of the volume of applications which are being processed in relation to the city centre, it was felt prudent to produce initial guidance in relation to the processing of planning agreements and developer's contributions for the city centre, highlighting the types of issues the Council would consider appropriate to such agreements.

2. THE NATURE OF PLANNING AGREEMENTS

Planning agreements are agreements between local authorities and applicants/developers and can be used to make unacceptable development, in planning terms, acceptable.

Broadly they can be used to:

- prescribe the nature of development (e.g., requiring a proportion of housing is affordable);
- compensate for loss such as open space or employment land/buildings;
- mitigate the impact of a proposal (e.g., through increased public transport provision)

Agreements must be directly relevant to the proposed development and should be used where a conditional approval could not deliver the necessary planning results. Failure to reach a satisfactory agreement will normally lead to a refusal of planning permission.

4. POLICY AND PLAN CONTEXT

The Strategic Planning Policy Statement for NI (SPPS)

The SPPS was introduced in September 2015 and applies throughout Northern Ireland. It must be taken into account in preparing the LDP and is material to all planning decisions.

Paragraph 5.67 of the SPPS states that that a planning agreement may be considered appropriate where what is required cannot be adequately addressed by the imposition of conditions and:

- is required to enable the development to go ahead;
- will contribute to meeting the costs of providing necessary facilities in the near future;
- is otherwise so directly related to the proposed development and to the use of the land after its completion, that the development ought not to be permitted without it;
- is designed to secure an acceptable balance of uses;
- is designed to secure the implementation of development plan policies in respect of a particular area or type of development; or
- is intended to offset the loss of, or impact on, any amenity or resource present on the site prior to development.

Paragraph 5.71 goes on to say that planning agreements cannot usually be used to deliver community benefits as they cannot be considered material considerations in decision-taking. They may however be applicable in some circumstances if there is a loss

of open space in the context of Planning Policy 8: Open Space, Sport and Outdoor Recreation. In addition they may be offered voluntarily by developers to communities likely to be affected by a development.

Local Development Plan

The use of planning agreements is also referred to in BMAP and the Houses in Multiple Occupancy Subject Plan 2015.

Other documents

The Council will have regard to both 'Creating Places' and 'Living Places', which are documents published by the Department of the Environment. It will also have regard to its recently published guidance on Purpose Built Managed Student Accommodation and its 'City Centre Regeneration and Investment Strategy', which was published in September 2015. Whilst it is accepted that these documents do not carry the same weight as planning policy, the Council considers them to be material considerations. As such they will help to inform discussions on planning agreements.

5. THE SCOPE OF AGREEMENTS

All planning applications are determined on their merits and all development proposals may carry the potential for a development agreement which if applicable must then fairly and reasonably relate to the proposal.

Whilst this document primarily relates to development in the city centre, it is indicative of the types of issues that may arise in relation to other developments throughout the city.

Planning agreements may deliver on-site outcomes (often provided in-kind), but where this is neither practicable nor appropriate off-site delivery will be required (often by financial contribution).

It is likely that planning agreements will be most applicable to major and significant applications; and unlikely for minor, householder and small scale development proposals.

Typically, the types of issues in respect of which planning agreements may make an application acceptable include:

- public realm/environmental improvement works;
- Sustainable transport;
- The provision and maintenance of open space/landscaping;
- Management arrangements for student accommodation;
- Arrangements for minimising noise or other public health issues;
- A waste management plan;
- Servicing arrangements (e.g., for deliveries or waste collection);

This list is not exhaustive and developers are encouraged to consider other commitments which may make their application acceptable in planning terms.

6. FINANCIAL CONTRIBUTIONS

Whilst some of the issues listed in Part 5 are on-site outcomes that do not require a financial contribution, the Council considers that developers should reasonably be expected to pay for, or contribute to, the mitigation of impact and the cost of infrastructure necessitated by their development.

Negotiation over the level of contributions will take account of the economics of the development, including any abnormal costs and other planning objectives that may affect the viability of the proposal. However, the Council also considers that costs incurred in delivering a sustainable, high quality development are to be expected, and should not reduce the ability of the developer to contribute towards relevant planning objectives.

Financial contributions will be payable at specific stages in the development process, usually on commencement of the development. However, there may also be cases in large-scale development where contributions can be phased, in order to match the proportional impact of each phase of the development.

Financial contributions will be held in interest bearing accounts and will be individually identifiable (each contribution being allocated a unique finance code). Contributions remaining unspent at the end of a time period specified in the planning agreement will be returned to the payee in accordance with the terms of the agreement.

Viability

Should the applicant consider that a planning obligation cannot be supported by the proposed development due to financial reasons, the applicant should submit a full 'open book' financial viability assessment to Council. All information given will be treated on a confidential basis. The applicant will be required to meet the cost of reviewing the assessment which may include the appointment of qualified independent assessors.

The starting point for a viability assessment is to be the existing use value (i.e., what the site is worth in its current condition for the use that it has currently has planning consent for). Viability claims based on an over-inflated price that has been paid for a site will not be accepted.

9. DRAFTING AGREEMENTS

The agreement will set out the detail of the planning obligations, including whether there are specific points in the development phasing for payment of commitments to be made by the developer, as well as obligations upon Council. On the completion of a Section 76 planning agreement, planning permission will be formally issued.

Agreements will be prepared by the Council's Town Solicitor and applicants will be required to pay the Council's reasonable costs in drafting and completion of those agreements.

Trigger dates for the payment of financial contributions will be included in the planning agreement, as will any time periods by which the contribution is to be spent.

Planning agreements will be placed in the Planning Register and the Statutory Charges Register.

10. MONITORING AND ENFORCEMENT OF AGREEMENTS

Monitoring will be undertaken by the Council to ensure all obligations entered into are complied with on the part of both the developer and the Council. Developers will be required to pay a Monitoring Fee in order to cover the Council's costs incurred in the monitoring of the obligations.

The Council will work with developers to find solutions in cases where they have difficulty in making payments as specified in the agreement. This could be through agreeing payment of obligations at a later stage of the development process, or agreeing payments by instalments.

However, where it is imperative that the relevant measure is in place prior to a development being occupied, the funding will always become payable on commencement of the development.

If necessary the Council will enforce agreements through the use of injunctions once all other reasonable approaches to remedying a failure to comply have been exhausted. In such cases, the Council will seek to retrieve its legal costs.