

The Oxfordshire County Council Guide to Developer Contributions

Post public consultation redraft

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Created by: Infrastructure Funding Team

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*All contents & page Nos to be updated once document in final form – **Yellow highlighted areas require further input.***

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Foreword

Oxfordshire County Council has prepared this Guide to Developer Contributions (the Guide) to make clear to all stakeholders the requirements towards infrastructure and services that will be expected alongside new development, providing clarity particularly for landowners and developers but also others, including the District Councils and Town and Parish Councils across the county.

This Guide contributes towards meeting our intentions to deliver a strong and thriving zero-carbon economy, delivering future proofed infrastructure that enables and supports good growth across Oxfordshire.

When developments take place, they frequently bring with them impacts on the local physical and social infrastructure which must be addressed to make the development acceptable in planning terms.

Where the County Council is responsible for delivering specific infrastructure and services, we need to make sure that new developments do not adversely impact upon the capacity of those services, or our ability to deliver them.

The level of infrastructure and services addressed in this Guide are those appropriate to the County Council. It is published to supplement the various infrastructure guidance provided at District level.

Councillor Yvonne Constance OBE
Cabinet Member for Environment (including Transport)

DD MM 2021

Introduction

1. The purpose of this Guide is to:
 - a. set out the County Council's expectations as to how development should contribute towards the mitigation of its impacts upon Oxfordshire County Council's infrastructure and services; and,
 - b. provide guidance on the County Council's approach to ensuring that appropriate contributions are secured to help make development proposals acceptable in planning terms;
 - c. assist Local Planning Authorities (LPAs) in producing their Local Plans and other associated information.
2. This document is a guide to help inform developers and other interested parties as to the likely infrastructure requirements in association with new development. The Guide is not a statutory planning document. The Guide should be read in conjunction with the National Planning Policy Framework (NPPF), relevant Local Plans and their policies, Community Infrastructure Levy (CIL) Documents and Supplementary Planning Documents produced by the City and District Councils (referred to hereafter as 'the District Councils').
3. While three of Oxfordshire's five District Councils currently charge CIL, S106 agreements¹ will continue to be needed in relation to development in all Districts to ensure impacts are properly mitigated and proposals can become acceptable in planning terms. This document focuses primarily on planning obligations (developer contributions) both financial and non-financial, and not on CIL charging rates which is principally a matter in Oxfordshire for the District Councils as CIL Charging Authorities.
4. The Guide does not specify every form of county service-related contribution which may be required to make a development acceptable in planning terms, but provides information covering most cases. The County Council will provide appropriate justification in line with legal tests for any planning obligation it seeks. Contributions, or the provision of infrastructure, will only be sought where, following an assessment of an individual proposal, they are required to mitigate the impacts of the proposal in accordance with the relevant regulatory tests. Developers (also covered by the term 'applicant' in this Guide) will normally be expected to enter into a legal agreement with the County Council regarding the planning obligations required.
5. Potential applicants are therefore requested to engage early with the District Councils and the County Council to ascertain the extent of any mitigation required arising from their proposed development.
6. A number of more detailed supporting documents have been produced alongside this Guide. These are available on the County Council website and are signposted in this document. Additional supporting documents may also be produced, and existing information updated over time.

¹ In this Guide, unless stated otherwise, the term "S106 agreements" includes both S106 agreements and S106 unilateral undertakings

7. The document comprises two parts – Part One – concerning contextual and general matters and Part Two dealing with specific information about the County Council’s service areas where appropriate contributions may need to be secured.
8. There are eleven annexes (Two for Part One and a further 10 for the ten service areas in Part Two) and a Glossary of terms used in this Guide.
9. The Guide does not address S106 agreements and their components specifically associated with minerals and waste planning applications. For information regarding minerals and waste proposals please contact xxxxxx

Infrastructure and Services outlined in this guide

10. This Guide applies to the following infrastructure and services related to Oxfordshire County Council responsibilities:

- Transport
 - Highways infrastructure
 - Travel planning
 - Healthy and Active travel
 - Public Transport and infrastructure
 - Public Rights of Way
- Education
 - Early Years and Childcare
 - Primary Schools provision
 - Secondary Schools provision including sixth form
 - Special Educational Needs Schools provision
- Flood and Water Management and Sustainable Drainage Systems
- Extra Care Housing provision
- Archaeology
- Fire and rescue infrastructure including hydrants, fire stations
- Natural Environment
- Energy efficiency and use of Natural resources
- Strategic Waste Management (treatment, disposal, & reuse)
- Community Services (Libraries, Adult Day Care, etc.)

11. The Guide does not deal with funding and infrastructure sought by District Councils². Advice and guidance can be found in the District Councils’ individual websites and infrastructure documentation.

12. When consulted by an LPA on a planning application, for major development proposals the County Council will provide a response through its “Single Response” process. A Single Response provides the LPA and the applicant with the County Council’s conclusions as to the likely impacts of the proposal upon County-level service infrastructure and services as well as any

² Where the County Council requires the provision of Extra Care Housing &/or Specialist Housing these requirements are for affordable housing provision.

developer contributions or other measures which may be required to appropriately mitigate the development's impact.

Review and Monitoring

13. This Guide will be subject to subsequent reviews to ensure that the information presented remains accurate.

Further Information

14. For further information on the Guide, please contact the County Council's Infrastructure Funding team through its email address:
developer.funding4@oxfordshire.gov.uk
or visit our website at:
<https://www.oxfordshire.gov.uk> – search developer contributions guide

The Planning and Legal Context

15. The Government's Planning Practice Guidance explains that Planning Obligations are legal obligations entered into to mitigate the impacts of a development proposal. They can be entered into under S106 of the Town and County Planning Act 1990 (hence the common reference to them as S106 / Section 106 agreements / S106 obligations). They are also referred to as Developer Contribution agreements.
16. S106 agreements are attached to some planning permissions to make acceptable development which would otherwise be unacceptable in planning terms.
17. The NPPF (Para 56) makes it clear that planning obligations should only be sought where they meet all the following tests:
 - 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.

These tests are set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 as amended.

Oxfordshire County Council Context

18. Within Oxfordshire, a two-tier system of local government applies. The County Council is responsible for various services including those set out above. Other infrastructure and services, such as the affordable housing, public open space and, waste collection, fall to the District Councils.
19. In a planning context, the District Councils are the relevant Local Planning Authority for determining the vast majority of planning applications and are responsible where appropriate for issuing planning permission. As part of that determination process the District Councils decide (apart from through the appeals process) what requirements should be placed upon a developer through planning conditions and S106 planning obligations. For the purposes of S106 agreements the County Council qualifies as a local planning authority

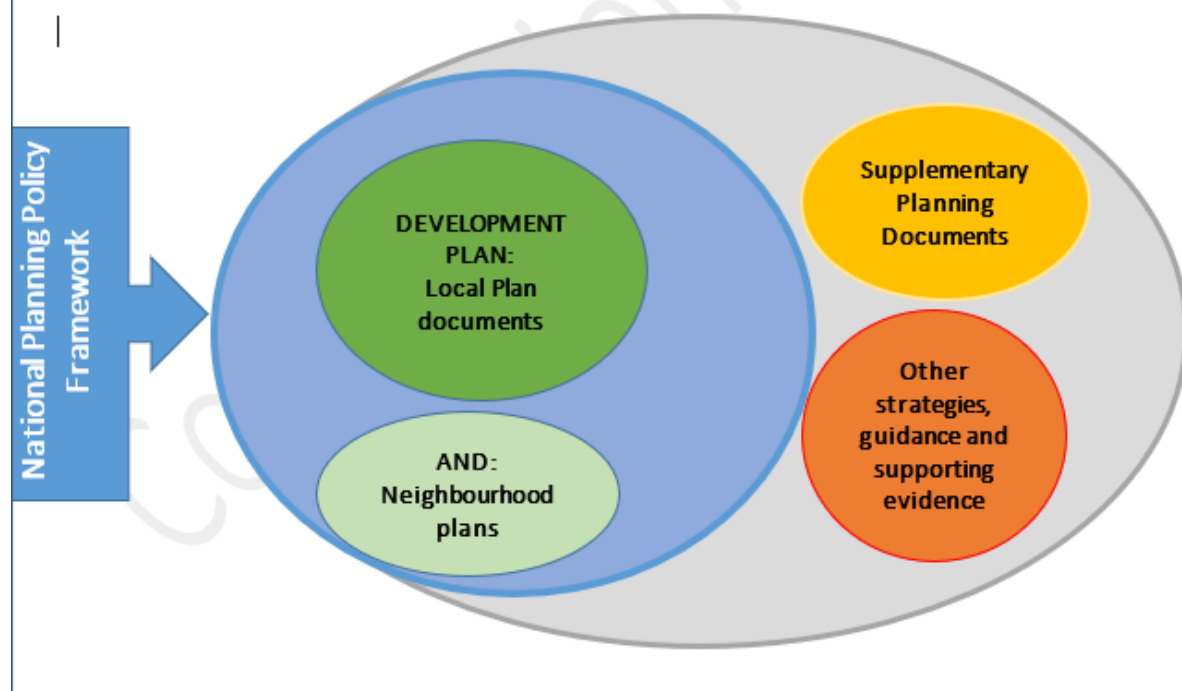
for all applications and therefore planning obligations within a S106 agreement can be made to the County Council for matters which fall within its purview.

20. The County Council has a statutory duty to prepare Minerals and Waste Local Plans. It is the LPA responsible for determining minerals and waste planning applications and is also responsible for determining planning applications for all development proposals related to its functions as a County Council.

District Council Context

21. Development Plans (comprising Local Plans, including site specific Area Action Plans and 'made' Neighbourhood Plans) provide the local policy framework for planning decision making. Local Plans in Oxfordshire are at varying stages of preparation. Where it is intended to allocate sites for development in a Local Plan, an assessment will be required of the impacts of the proposals on infrastructure and services and include any mitigation measures including how they are likely to be funded and delivered. The County Council welcomes early involvement in the site allocation process in Local Plan development.
22. Local Plans may contain policies on infrastructure requirements and planning obligations. In addition, several LPAs have Supplementary Planning Documents (SPDs) covering planning obligations specifically, across a range of issues which relate to District matters such as affordable housing or open space provision, as well as County Council responsibilities. Local Plans are also supported by Infrastructure Delivery Plans indicating the range of infrastructure requirements expected.
23. District Councils are also responsible for preparing a Community Infrastructure Levy (CIL) Charging Schedule where they choose to do so. Further comment on CIL can be found below.
24. Links to each of the Districts' Local Plans can be found through their websites, see Annex 1 – Item A.
25. The County Council is committed to working with Oxfordshire Local Enterprise Partnership (OxLEP) and the District Councils to provide opportunities for local people in terms of skills, training and employment and to develop the economy of Oxfordshire. OxLEP may seek Community Employment Plans (CEP) on new development sites above a defined threshold (1,000 dwellings or 4,000 sqm commercial floorspace) The decision as to whether a CEP is necessary will be made by the corresponding District Council.

Figure 1: The Relationship between National Planning Policy, the Development Plan and supporting guidance



Neighbourhood Plans

26. Many communities across Oxfordshire have taken the opportunity to influence the future development of their local areas through the preparation of neighbourhood plans. Depending on the content of these, but particularly where sites are being allocated for development, there may be an impact upon County Council related infrastructure.

27. Where it is intended to allocate development sites in neighbourhood plans an assessment will be required of the impacts of the proposals on infrastructure and services and include any necessary mitigation measures and how they are likely to be funded and delivered. The County Council has prepared a guide for communities preparing neighbourhood plans which can help to identify the support and advice that can be provided (see Annex 1 – Item B).

The Legal Framework

28. Planning law recognises that it is reasonable to expect developers to pay for, or contribute towards, the costs of services, infrastructure or resources that would not have been necessary if it was not for their development.

29. Developers may be asked to provide infrastructure, or contributions for infrastructure, or services in several ways. This may be by way of the CIL and /or planning obligations in the form of S106 agreements along also with highway provision via S278 highway agreements and S38 agreements (the latter being primarily for internal estate roads). Developers will also have to comply with planning conditions attached to their planning permission set by the LPAs.

Funding Delivery Mechanisms

30. There are a number of mechanisms by which infrastructure funding may be sought. These include through S106 agreement, as well as (where it is in operation) through the requirement for CIL payments. These are discussed below.

Types of Agreements, Obligations and Planning Conditions

31. Section 106 of the Town and Country Planning Act 1990 (as amended) provides a mechanism whereby developers can address (through legally binding documents) the impact of their development on the local community through contributions towards, or the provision of infrastructure and services. The mitigation measures may be both offered by a developer and/or required by the LPA (and other parties). The LPA takes into account all such mitigation offered and/or required when deciding whether or not to approve a planning application.
32. S106 legal Agreements³ are used to secure planning obligations. A S106 Agreement is entered into between a LPA and parties (such as landowners and developers) which have an interest in the land (i.e. the development site). Legal Agreements are used to secure obligations to deliver contributions and works etc. where both the LPA(s) and the development parties (entering the S106) are agreed as to the extent and detail of such obligations. An Agreement is a bi-lateral or tri-lateral arrangement between the LPA(s) and the parties with an interest in the land; as such it may contain obligations on the part of the LPA(s).
33. A S106 Unilateral Undertaking (UU) is a specific type of S106 legal deed in which planning obligations are given by parties with an interest in the land (e.g. landowner/applicant) to the LPA(s) either the County Council or District Council (or to both) to make a development acceptable in planning terms. They can be offered by the developer/landowner where there is no agreement with the LPA as to whether the obligations contained within the UU are sufficient and/or necessary to make the development acceptable in planning terms. They are frequently but not exclusively used at planning appeals. A LPA in considering a planning application with an associated UU may determine that the planning obligations in the UU are not sufficient to make the development acceptable in planning terms and in such cases may not grant planning permission.
34. A S106 UU may also be used where there is agreement between the LPA(s) and the developer over the extent of any necessary obligations, In Oxfordshire, the County Council has developed (with the support of the Districts) a specially formatted UU called a "SPUR" (standard pre-prepared unilateral route) UU". A SPUR UU is a concise standard templated undertaking which can be used where the developer contribution is to be paid in full to the County Council contemporaneously with the completion of the deed and where there are no other non-financial S106 obligations to be made

³ "Agreements" (with an upper case "A") meaning specifically S106 agreements as opposed to S106 unilateral undertakings

to the County Council. Because the financial payment is to be made upfront the SPUR is typically used where the developer contributions are relatively small. As all of the documentation has been pre-prepared in a standard format by the County Council, when using a SPUR with the prior agreement of the County Council, a developer will not incur a requirement to pay the County Council's legal fees which need to be paid in respect of all other forms of S106. There is a standard administration fee for a SPUR UU (see Annex 1 – Item K).

35. Planning conditions are requirements made by the LPA for measures that are needed in order to make a development acceptable in planning terms. They cannot be used to secure financial contributions or to direct the transfer or dedication of land but can be used to ensure that certain elements related to the development proposal, and which may benefit the wider community, are carried out at a certain time.
36. Where a development requires works to be carried out on the existing adopted highway, the County Council must approve and give permission for the works to be undertaken. An agreement will need to be completed between the developer and the County Council under Section s278 of the Highways Act 1980. Examples of such works could be the construction of a new access/junction improvement of the highway/junctions, or safety related works such as traffic calming or improved facilities for pedestrians and cyclists. Whilst for minor highway works the County Council may be content with the delivery of work (and the consequent entering into a S278 agreement) being secured by planning conditions, the County Council will frequently require a landowner to enter into a S106 planning obligation imposing a restriction on development such that development cannot progress beyond a certain point (usually commencement) until such time as a S278 agreement had been entered into. The S278 agreement would, amongst other things, include a timescale for the delivery and completion of the highway works.
37. Under S38 of the Highway Act 1980, the County Council can enter into a legal agreement with a developer to adopt a highway built by the developer, this may relate to main spine roads, estate roads and related highway infrastructure. For the highway to be adopted it must be constructed to a satisfactory specified standard and agreed by the County Council.
38. The Highways Act 1980 provides the statutory basis for the County Council to seek a commuted sum as a contribution towards the maintenance of assets which are to be adopted by the Council as maintainable at public expense. Where a commuted sum for highway works is required it will be payable by the developer to the council in accordance with the provisions of a S278 agreement, S38 agreement, or a combination Highway agreement. (Please refer to Part Two -Transport of this Guide for more information). It includes information about the County Council's Road Agreements Team (RAT) which is responsible for S278, S38, and private street agreements on behalf of the authority.

The Community Infrastructure Levy

39. The Community Infrastructure Levy (CIL) is a local charge on certain new development that local authorities in England and Wales can choose to charge in their area to help fund infrastructure provision to support new development. In order to justify charging CIL the local authority (in Oxfordshire the District Councils can charge CIL but the County Council cannot) must demonstrate that there is an aggregate funding gap in the provision of infrastructure required to support new development in its administrative area. To do this the District Council (as the CIL Charging Authority) must consider what infrastructure is needed in the area to support development and what other funding sources (e.g. S106 contributions etc.) are available to fund the infrastructure. For a CIL charge to be set the LPA has to submit its proposals for public examination where (as well as other issues) the impact of the CIL upon the viability of housing and other development is considered. The CIL is and was not intended to address the entirety of the infrastructure. The rates at which the charge is levied are shown on a CIL “Charging Schedule”.
40. The CIL if implemented is set and operated by the appropriate LPA; in Oxfordshire this means the five District Councils, The County Council is not a CIL ‘charging authority’ and does not have a CIL charging schedule. By January 2021 three of the five district councils had implemented CIL – Oxford City Council (in 2013), South Oxfordshire District Council (in 2016) and Vale of White Horse District Council (in 2017). Each District Council establishes a spending strategy for CIL.
41. How CIL is set and collected is identified within the CIL Regulations. In September 2019 CIL Regulation amendments came into force removing a previous S106 “pooling limit”; a change which means that local authorities are now able (should they so wish) to use more than five (the previous ceiling) S106 contributions to fund an infrastructure scheme or type of infrastructure. It also enables an LPA to secure S106 contributions towards infrastructure that may also be funded by CIL.
42. Where a District Council LPA charges CIL it may introduce different rates of CIL or a zero rate for certain types of development or parts of the district as well as specific development sites.

Guidance relating to all developments – Pre-application and Application stage

43. The County Council will normally be consulted by the relevant District Council on pre-applications and planning applications. The County Council uses a further sub-division of the major planning applications into three categories (minor, large & strategic) to guide the appropriate type of advice, processes (e.g. Planning Performance Agreements) and consideration in the assessment and negotiation of a S106. The three major application sub-categories are set out below:

Planning application classifications	County Council Single Response classifications for applications	Residential Development (No of dwellings)	Non-Residential Development (Site area)
Minor applications		Fewer than 10	
Major applications	Small Major	10-199	>1 ha, depending on the nature and the location of the proposal
	Large Major	200-399	
	Strategic	400 and larger	

44. A County Council Transport Area Liaison Officer will examine the transport impacts/requirements of minor (e.g. fewer than 10 dwellings) planning applications on behalf of the Highway Authority. In addition, the County Council may assess other infrastructure and service impacts of minor development proposals, if there is other development in the vicinity and where it is appropriate to assess the cumulative impact of the proposals on the infrastructure.

Population Assessment

45. For residential development proposals the impact assessments (other than transport impacts) are centred on the population likely to be generated by the development, and the likely demands arising from that population on infrastructure and services. Such assessment is made using the County Council's population forecasting tool (PopCal), which uses the results of the surveys by the County Council across new housing throughout Oxfordshire. The most recent survey was undertaken in 2017/18. The PopCal is used to generate a population profile for new development taking into account such as:

- The scale of the development and its dwelling mix (1-bed units, 2-bed units etc.); as well as
- The likely build-out duration and the market/affordable mix.

46. The PopCal is also used to identify the likely school pupil generation, an assessment which includes an allowance for the fact that a proportion of children would attend non-state-funded schools. This helps with identifying the necessary planning obligations for education infrastructure.

47. For development below 400 dwellings a standardised PopCal is employed across the county. Table 1 in Annex 1 – Item C provides the latest population yield data. These person yield data will be used in the County Council's assessment of impacts which informs its Single Response advice to the LPA.

48. For developments proposing more than 400 dwellings bespoke PopCal assessments are undertaken by the County Council, the results of which are provided to the LPA in the Single Response.
49. The housing mix used for calculating impact and possible contributions will either be: as set out in the application (or subsequent amendment) or based on the Oxfordshire Strategic Housing Market Assessment (SHMA) – see Annex 1 – Item D.
50. In the case of outline planning applications where the number and mix of dwellings is unknown/not settled, and there is a requirement for S106 planning obligations, the assessment will be undertaken using a policy compliant mix based on the SHMA, to identify the impact and any corresponding level of financial contributions towards infrastructure provision [and services] where they are warranted. In such cases, the S106 Agreement will include a 'matrix' to enable the financial contributions to be re-calculated as and when the details are available (see Annex 1 Item E).

Pre-application advice

51. The County Council recommends that applicants, particularly for large major/strategic proposals should seek pre-application advice. The pre-application services provided by the District Councils and the County Council are intended to provide an early indication to potential applicants of planning issues that will need to be considered and addressed, including the level and range of likely planning obligation requirements. For strategic sites, the County Council encourages the use of Planning Performance Agreements (PPAs) and can provide further information on these on request (Annex 1 – Item F)
52. Discussions over Planning Performance Agreements (PPAs) will normally be coordinated by the relevant District LPA (or the County Council where it is the determining Authority), which will then seek appropriate input from the County or District Councils as the case may be as well as other service providers and/or stakeholders.
53. Any queries about how to seek pre-application advice can be directed through the County Council's Major Planning Application Team (Annex 1 Item F) at planningconsultations@oxfordshire.gov.uk.
54. Any pre-application advice/ information provided to developers and District Councils by the County Council is based on the information and data that is current and available to the council at the time the advice is given.

S106 Agreement process

Starting the S106 process and Heads of Terms

55. For strategic applications, the S106 agreement process should start with the recommended pre-application discussions on the assessment and potential infrastructure / services required to mitigate a development's impacts.

56. S106 agreement agreed “Heads of Terms” will be sought in relation to strategic applications to outline the infrastructure to which the development may/will contribute, the calculation of any financial contributions, along with any obligations or planning conditions recommended by the County Council. The Heads of Terms document could accompany the planning application to the LPA’s planning committee as part of its consideration of the proposals and potential corresponding mitigation measures. If the planning committee is then minded to recommend approval of the application the “agreed Heads of Terms” will be used to progress any proposed S106. However, the Heads of Terms would be caveated that they may be subject to some change through the detailed work on the S106 agreement. For strategic scale development it is usual for the County Council to seek a tri-partite agreement (i.e. one where both the District Council and the County Council are a party along with the developer).
57. Once sufficient progress has been made on Heads of Terms, (this may be before an application has been considered by the LPA’s planning committee) the County Council’s lead infrastructure/negotiation officer(s) will instruct the County Council legal team to proceed with the drafting of the agreement and commence liaison with the developer’s appointed agent/solicitor. The County Council’s solicitor (or those acting on its behalf) will expect to prepare the first draft of any documentation. It is generally the case that it is more efficient and cost effective for the County Council’s solicitor to prepare the first draft rather than have to spend time carrying out a detailed review of another party’s draft. However, for strategic sites, the first draft will often be prepared by the solicitor for the District Council as lead LPA, with the County Council’s solicitor drafting those Schedules & provisions relating to County Council matters. Template documents (precedents) are in use with most of the District Councils. Annex 1a provides a list of S106 agreement precedents used by the County Council
58. For smaller applications and those that do not have pre-application work undertaken with the County Council, the contributions to be secured through the S106 Agreement will be outlined in the County Council’s planning application consultation response (the Single Response) to the LPA.
59. The County Council’s Legal Service team will require satisfactory title/legal interest documentation. The developer will be responsible for the County Council’s legal costs and satisfactory security (solicitor’s undertaking to be responsible for the legal costs or payment on account of costs) will be required at the outset.

Phasing of Infrastructure and Timing of Payments

60. Phased payments of financial contributions are acceptable in principle. However, the details will be dependent upon:
- The type of infrastructure being funded and the quantum of the contribution;
 - The anticipated speed of development delivery;
 - Size of development; and
 - The potential timing of the delivery of the infrastructure.

61. The appropriate trigger(s) for the payment of financial contributions and land to be included in the S106 Agreement will be advised by the County Council. As a guide the standard requirements for payments to the County Council are:
- a. For non-strategic⁴ development proposals:
50% of financial contributions to be paid prior to/on implementation of the development;
Payment in full of all contributions to be received by the County Council prior to the first occupation/use at the development.
 - b. For strategic⁵ development proposals:
A minimum of 10% of the financial contributions to be paid prior to/on implementation of the development;
Payment in full of all contributions to be received by the County Council prior to 2/3rds of the development being built out (or occupied).

For all scales of development, the triggers within the S106 agreement for payments to be made to the County Council should not run in arrears of occupation/completion of the corresponding development.

Land, buildings and contributions in kind

62. There are a number of circumstances where the County Council may need land to be transferred to its ownership in order to accommodate/procure infrastructure to mitigate the impact of a development. Provisions for land transfer will (where appropriate) be incorporated in the S106 agreement for the development applying additional local authority powers. Cases where such transfers are appropriate include, but are not limited to:
- new or expanding schools;
 - land to be dedicated as highway;
 - shared community buildings.
63. Land may be required to establish a new infrastructure facility on the development itself or in some circumstances it may be needed to provide a new facility, or expand an existing one, off-site. When off-site, if the land is not already within the control of the developer, it may be appropriate to require the developer to acquire the land on the County Council's behalf rather than make a financial contribution towards the purchase of the land by the County Council.
64. The County Council will work closely with the respective District Council to provide the optimum location for the infrastructure under consideration. Any land that is intended for public use (e.g. a school site) must be safe and fit for purpose, including accessibility and various land factors would need to be investigated, including ground conditions and flood risks (see Annex 1 Item G)

⁴ See paragraph 43

⁵ See paragraph 43

65. In the case of facilities for community use, the land will need to be central to the population it is intended to serve and well connected to walking and cycling routes.
66. Once a potential location for new provision has been identified, the suitability of the land itself will be considered in detail.

Legal Agreements to transfer land

67. Legal agreements usually provide for serviced and remediated land (with warranties) to be offered at nominal consideration (£1) by a specified trigger point, with then a three-month window within which the County Council undertakes the processes to accept (or reject) the offer.
68. It is the County Council's policy to require the unencumbered freehold of any new land for infrastructure.
69. Services (utilities) sufficient to enable construction of infrastructure are required on transfer of land and full-service provision and safe and convenient access including, as appropriate, pedestrian and cycleway provision need to be provided prior to completion of construction.

Direct delivery of infrastructure

70. Infrastructure can be delivered by the County Council, by developers or an appropriate third party. Whatever the route of delivery the County Council has a duty to ensure appropriate delivery and quality of infrastructure relating to the needs of the services, and also to ensure that it complies with Government's and Oxfordshire County Council's design guidance and is safe to use for the public.
71. Developers may have a strong preference to 'directly deliver' on-site and off-site works (e.g. the construction of a building, usually a school or off-site highway works delivered through S278 works) instead of providing financial contributions. Works carried out by the developer are subject to compliance with a corresponding standard (construction) conditions and technical standards or as applicable with an outline specification and appropriate surety being provided.
72. For the delivery of new schools, the County Council's usual approach is that the host development is to provide "land and funding" through the S106 agreement. Direct delivery is available but if the County Council is to take on the facility, the developer will be required to work closely with the County's Education and Property teams to ensure that designs comply with the stringent school delivery standard process, procedures and conditions if this route is taken. Further details are outlined in Part Two (Education) of this Guide.
73. Where a developer prefers to direct deliver the education infrastructure, the developer should be aware that the S106 agreement will be more complex to ensure the appropriate timing, checks and governance are outlined clearly and can be monitored and enforced.

74. The County Council considers that such an arrangement in a S106 agreement or S278 agreement, conditional on implementation of the development does not constitute a public works contract but the County Council requires that a competitive and transparent procurement process should be undertaken for all construction works for mitigating a development. Further, where the works exceed a certain value set by the Government's procurement regulations the County Council will require additional procedures and commitments to minimise any potential claim of a breach of those regulations and to indemnify the County Council.

Viability

75. The NPPF and associated Planning Practice Guidance requires Local Plans to set out the contributions expected from development with it then being the responsibility of the applicant to demonstrate the need for a viability assessment at the application stage. The County Council recognises it is the responsibility of the LPA to assess the legality of contributions sought.

76. In line with national guidance, any viability assessment must be provided in a way that provides clear interpretation and interrogation by the District and County Councils with any assumptions clearly set out. The developer will be required to pay the associated costs of the District Council and the County Council in reviewing the viability assessment. Where a local planning authority has supplementary guidance on viability assessments, the County Council will play a positive role in the assessment and any associated discussions and negotiations in line with that guidance.

77. For further advice see the national planning practice guidance (Annex 1 – Item H) on viability.

Indexation

78. To ensure the real value of a S106 financial contribution is maintained against cost inflation up to the date of payment the contribution will need to be index linked. The S106 agreement will state the index type and base date/index value.

79. The contribution (or "principal sum") will be index inked from this base date/value until the date of payment. The appropriate index for each type of contribution is set out in the Annex 1 – Item I. The principal sum in the agreement will remain the same (subject to any adjustment in accordance with any relevant matrix provisions in the S106) but the additional inflation will be affected by the index fluctuation and contribution amounts paid may vary depending of the value of the index at point of invoicing.

80. Most indices are available on a subscription basis, consequently the County Council cannot provide the comprehensive index data to developers as that would be in breach of copyright. The County Council will, however, provide upon request the calculation of any indexed sums proposed in S106 negotiations or invoiced.

Securing payment of deferred contributions

81. In S106 planning obligations there may be provisions for payment of substantial financial contributions to be triggered after the implementation of the development. With such “deferred contributions” comes a risk of subsequent under or non-compliance with the agreement’s payment obligations and thus there may be a need for appropriate security, in the form of a bond, to be provided and this requirement will be incorporated in the S106 agreement.
82. The County Council will aim to identify the need for a bond to secure deferred contributions in the Single Response advice from the County Council following the submission of a planning application. The council’s current bond policy is set out in Annex 1 Item J.
83. Any requirement for a “deferred contribution” bond would be quite separate from bond requirements associated with any highway agreement (S278/S38) or in relation to the direct delivery of any infrastructure such as a new school.

Fees

84. Fees that the applicant may be required to pay (distinct from Planning Application fees) include:
- Highways Pre-application advice
Fees for pre-application highways advice (See Part Two of the Guide – (Transport))
 - Planning Performance Agreements (PPAs) and other Pre-Application advice including Waste and Minerals – See Annex 1 - Item F
 - S106 Administration/Monitoring fees. The 2019 amendment to the CIL Regulations confirms that local authorities may seek a fee in relation to the monitoring of S106 planning obligations and provisions in relation to such can be included in the S106 agreement. Completion of a planning obligation involves the County Council in various monitoring work which places a cost burden on the County Council and the Council therefore charges proportionate and reasonable fees to cover this cost. The current S106 agreement fee structure is provided in Annex 1 – Item K. This may be updated and replaced from time to time.
85. The County Council will require a fee for the monitoring of Travel Plans. Information on these fees can be found in Part Two – (Transport)

Legal Fees

86. Applicants will be required to pay the County Council’s legal costs incurred in drafting and completing any legal agreement. To this end, the solicitor acting for the County Council will require an undertaking from the solicitor acting on behalf of the applicant to pay the County Council’s legal costs, whether or not the agreement is completed. Payment on account of legal costs is also accepted. Any maximum ceiling on a solicitors’ costs undertaking/payment on account does not constitute a cost estimate and the County Council will require payment of legal costs in full.

87. The council's legal costs will be charged at an hourly rate and will become payable upon completion of the planning obligation (or earlier in the case of a developer's significant delay on a S106). For large scale agreements periodic payment of legal costs may be required. The amount will inevitably vary depending on the nature and complexity of the agreement the degree of negotiation required, and the time taken to settle the draft and proceed to completion.
88. In those cases where work on a S106 agreement is terminated prior to completion of the agreement, fees will still be payable for work done.
89. Legal fees are not required for County Council pre-approved Standard Unilateral Undertakings (SPUR).
90. Once an agreement is completed and planning permission issued it is important to note that there may be requirements in the S106 agreement to keep the County Council informed of progress of the development. We ask that such a requirement is noted, and notices are provided.
91. Financial payments can be made by BACs (or cheque). Information can be supplied by the County Council's Planning Obligations team by contacting through its email address: developer.funding@oxfordshire.gov.uk.

Enforcement

92. If any contribution due under the S106 agreement, or any part thereof is paid late, interest at the default rate will be payable from the due date set out in the S106 agreement to the date of actual payment.
93. Any missed payment and breaches are enforceable against the landowner (who may also be a developer) who originally entered into the agreement and any subsequent person acquiring an interest in that land, although it is standard practice to release the original landowner once his/her land interest is disposed of. The S106 agreements will be registered by/with the District Council as a local land charge and will be noted on the planning register and thus available for public inspection.
94. There may be an initial one-off payment should the County Council need to investigate any breach of the agreement. The County Council may enforce obligations through the relevant legal channels although other reasonable approaches to remedying a failure to comply with the obligations will be pursued first. Where legal enforcement is employed the County Council will seek to retrieve its legal costs in taking action against the party that is in breach of its obligations.
95. For queries regarding the implementation of a S106 agreement please contact the County Council's Planning Obligations team via: developer.funding@oxfordshire.gov.uk

Infrastructure Requirements

96. Part Two of this Guide sets out the County Council's infrastructure requirements by service area. For each, it sets out any key policy documents. It also provides links to supporting documents which supplement the requirements set out in this Guide.
97. Developers should read this Guide in conjunction with Local Plans, CIL documents, Infrastructure Delivery Plans and Supplementary Planning Documents prepared by the District Councils which will set out the infrastructure requirements that might be required in addition to those set out in this document such as for affordable housing or open space.

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Item A

District Council's websites

Cherwell District Council
<https://www.cherwell.gov.uk/>

Oxford City Council
<https://www.oxford.gov.uk/>

South Oxfordshire District Council
<https://www.southoxon.gov.uk/>

Vale of White Horse District Council
<https://www.whitehorsedc.gov.uk/>

West Oxfordshire District Council
<https://www.westoxon.gov.uk/>

Item B

Link to the County Council's Neighbourhood Planning Guide

<https://www.oxfordshire.gov.uk/cms/sites/default/files/folders/documents/environmentandplanning/planning/planningpolicy/neighbourhoodplanning/NeighbourhoodPlanningToolkit.pdf>

THIS LINK TO BE REPLACED ONCE THE 2020 GUIDE IS ON THE WEBSITE

Item C

Person yield per dwelling – for developments below 400 dwellings.

Table 1: Population yields for developments of fewer than 400 dwellings

Size of dwelling (by No. of Bedrooms)	Total Population	Population aged 20(+) years
	Persons per dwelling	
1 Bed	1.39	1.32
2 Bed	2.11	1.49
3 Bed	2.77	1.78
4+ Bed	3.15	2.06

These person yield rates apply to residential development proposals across Oxfordshire. For further information about the above data and/or use of PopCal please contact the County Council's Infrastructure Funding team through its email address:

developer.funding4@oxfordshire.gov.uk

Item D

SHMA housing data: available through

<https://www.oxfordshiregrowthboard.org/projects/oxfordshire-strategic-housing-market-assessment-shma/>

Item E

Re-assessment of Population (within the provisions of a S106 agreement)

When the details of the development (number and mix of dwellings) are confirmed prior to commencement of the development via approval of 'reserved matters' the contributions will be re-assessed at that juncture applying the matrix and if a different sum is assessed, then this amount will then become payable. If there is a change to the number and/or mix of dwellings through a subsequent reserved matter application/permission there will be a further assessment of contributions and if the amount applying the matrix is higher, the higher amount will become due. The S106 agreement will include a 'matrix' to enable the financial contributions to be re-calculated. For larger phased developments, minimum contributions may be inserted in the agreement and top up payments will be required if warranted by the number and mix of dwellings being delivered.

Item F

Pre-application advice & Planning Performance Agreements

General pre-application advice and guidance as to how PPA processes operate within the county is available through the County Council's Major Planning Application Team at:

- planningconsultations@oxfordshire.gov.uk

For pre-application advice on specific service areas:

Regarding Minerals and Waste applications: via

<https://www2.oxfordshire.gov.uk/cms/content/planning-application-advice>

Regarding transport & highways matters advice (including fees for such advice)

<https://www.oxfordshire.gov.uk/cms/content/pre-application-highways-advice-major-planning-applications>

Item G

When considering land transfers to the County Council issues needing to be investigated include, but are not limited to:

- Ground conditions;
- Features that may constrain development such as trees, hedges, ditches etc;
- Sources of contamination;
- Flood risks;
- Topography of the land and the proximity of incompatible land uses;
- Noise levels;
- Proximity to high voltage cables, sewage works, substations and the like;
- Proximity to other land uses.

For further information see Part Two of this Guide and references to the “Property Manual”

Item H

Viability

See PPG viability at:

<https://www.gov.uk/guidance/>

Item I

Indexation – Indices Used and an example of an indexation calculation

The table below sets out the various indices that will apply:

Contribution towards	Index (common name)	Index (Detailed name)	Source of the Index	Frequency of revision / publication
Education and other non-Transport infrastructure	All-In Tender Price Index or TPI	BCIS All-In Tender Price Index	RICS	Quarterly
Transport infrastructure	BAXTER	Price Adjustment formulae indices used on Civil Engineering (infrastructure) projects.	RICS	Monthly
Public transport (& land)	RPIX	ONS Retail Price index: Includes all the components included in the RPI but excludes mortgage interest payments.	Office for National statistics	Monthly

Example Calculation: To work out the amount to be paid after applying an index:

Step 1:

Calculate the indexation change, i.e.;

$$\frac{\text{Indexation value at date due}}{\text{Indexation value base}}$$

Step 2:

Then apply this indexation factor to the Principal sum (the established contribution).

Payment due = Principal x (Index Value at Payment Date / Index Value at Base Date)

e.g.

- Assume Principal = £10,000
- Index Value at Base Date = 178
- Index Value at Payment Date (Due date) = 183

- Payment due
= £10,000 x (183/178)
= £10,281

Note: This calculation is predominantly used for All-In TPI and RPIX (see Glossary). For complex indices such as “Baxter” the calculation of the index fluctuation should be carried out before applying to the Principal – this will be done by the County Council and details of the calculation made available.

Item J

Bond policy for S106 agreement deferred contributions.

The County Council’s policy regarding the necessary security to safeguard the future payment of S106 agreement deferred contributions is set out below.

Please note: The policy is specific to S106 agreement financial contributions and does not reflect the County Council’s position vis a vis either bonds required in association with S278 and/or S38 agreements

For information about these two procedures see Part Two (Transport) and Part Two (Education) respectively.

Bonds will be required where:

- Where a piece of infrastructure to which a developer is required to contribute is expected to cost at least £7.5m (including indexation) and
 - the developer is the required to contribute 25% or more of that cost, and

- the triggers for the payment of the contributions to the County Council are or are likely to be after the letting of the contract for the infrastructure works.
- Where the developer is direct delivering a school or other works (non-S278 & non-S38) in kind of a value in excess of £7.5m on behalf of OCC
- Where the developer is providing or contributing to a new or enhanced bus service supporting the development, and the aggregate value of the bus service contribution payable post implementation of the development exceeds £1m (including indexation)

A bond may also be required where:

- Where, contrary to the County Council's standard requirements vis a vis phased deferred contributions the triggers for payments are significantly in arrears of occupations at a development
- There is a concern about the financial position of the developer
- There is a history of late or non-payment by the developer (or associated companies) to the County Council
- Any other reason that in the opinion of the Assistant Director of Finance and Assistant Director of Growth and Place that a bond is required to protect the County Council's position.

Calculation of the value of the bond takes place once contributions and timings are further clarified.

The bond sum shall be calculated considering the due timing of the relevant contribution payments to be bonded together with the likely indexation on those contributions up to the expected due date of payment; to ensure that the real value of the contribution at the time of payment is secured.

The bond must be provided by a third party who is approved by the Council's Finance Team as a reputable financial institution which is invariably a bank or an insurance company whose business includes the provision of bonds, and they will underwrite the contributions required to be paid to the County Council.

There are various S106 agreement bond models which the County Council can apply to assist the developers to keep costs low such as:

- Reducing bonds
these are the County Council's standard approach (vis a vis S106 agreement bonds) i.e. the bonded sum is reduced as and when payments are made but taking account of the need to retain sufficient bond to cover the real value of the outstanding payments or in the case of primary schools – delivering the works (i.e. the payments including indexation).

- Rolling bonds
These are fixed term bonds (say over 3/5 years) which need to be replaced before the end of the term (if they are not replaced by the deadline, the bonded sum will be called in). The replacement bond will take account of potentially lower liabilities at the time of replacement.

Item K

Monitoring fees for S106 agreements

At the time of this Guide the charges for monitoring the S106 agreements are as set out below. The increasing scale of charges reflects the likely longevity and complexity of the monitoring all the financial and non-financial obligations as the value of the agreement increases. However, fees will be reviewed at the time a S106 agreement is drafted to ensure the fee reflects the complexity of the S106 agreement and the level monitoring it will require. Where an applicant submits a unilateral undertaking in the County Council standard form (SPUR), there is a monitoring fee of £150.

The S106 agreement monitoring fee is normally payable on the signing of the S106 agreement however, for larger developments the fee may be phased across completion of the planning obligation and implementation of development.

S106 agreement Monitoring fees	
Scale of secured contributions in the S106 agreement	Fee
Up to £10,000	£ 120
>£ 10,000 to £ 25,000	£ 300
>£ 25,000 to £ 50,000	£ 600
>£ 50,000 to £ 150,000	£1,800
>£ 150,000 to £ 500,000	£4,500
>£ 500,000 to £1,000,000	£6,000
>£1,000,000 to £2,000,000	0.6% of the aggregate contributions <i>For example: Where the aggregate contributions secured towards County Council infrastructure and services = £1.4m The corresponding S106 monitoring fee = £8,400 (i.e. 1,400,000 x 0.006)</i>
Over £2,000,000	£12,000 plus 0.06% of the aggregate of contributions secured in excess of £2m; <i>For example: Where the aggregate contributions secured towards County Council infrastructure and services = £5m The corresponding S106 monitoring fee = £13,800 (i.e. £12,000 + (3,000,000 x 0.0006))</i>

The above fees are subject to review.

Annex 1a S106 agreement legal precedents

(Annex in preparation – expected end March 2021)

The following precedents are to be published along with explanatory notes:

1. Boilerplate –
this will need to have an explanation as to the circumstances in which this boiler plate is used, so not in circumstances where the District Council is producing the first draft, which is the normal situation for housing developments. However, as the County Council's boiler plate is drawn from the same sources as the District Council's boiler plate, it is not anticipated that there will be major differences.
2. Highways Works.
3. Financial Contributions –
It will include matrix provisions covering outline planning applications, full planning applications and sites in excess of [500?] dwellings, as different approaches are needed.
Several different financial contribution schedules to deal with different sizes of development may be necessary
4. School Sites –
land and funding plus annexes.
5. School Sites –
direct delivery plus annexes.
(Corporate Landlord is currently reviewing the extant precedents)
6. Provision of the S106 agreement bond
Bond examples required for both contribution and/or works
(i.e. school direct delivery).
7. Repayment Obligations.
8. Extra Care Housing drafting.
9. Transfers on Leases Schedule.