

Dumfries and Galloway Council
LOCAL DEVELOPMENT PLAN 2

Developer Contributions

Supplementary Guidance - February 2020



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1 Introduction

1.1 Every development has an impact, and if necessary, developer contributions will be sought from the developer to offset that impact. This guidance outlines the guiding principles, the mechanisms the Council will use to secure contributions and sets out the method of calculation for developer contributions within Dumfries and Galloway.

1.2 Developer Contributions are assessed based upon the impact of the development on the services, facilities and infrastructure of the local community in which the development is proposed. The settlement statements, where appropriate, identify the key infrastructure likely to be required in that settlement and where possible for proposed sites. However, it is unrealistic for the Council to have anticipated every situation where the need for a contribution will arise.

1.3 This guidance may need to be used in conjunction with the following other pieces of supplementary guidance;

- Affordable Housing;
- Open Space;
- Developer Contributions to Upgrade the Water Supply at Gretna Border.

Policy OP3: Developer Contributions

Developer contributions will be sought where a development proposal (or a combination of developments) creates an identified need: to secure the mitigation required to address an adverse environmental impact; or to provide for new, extended or upgraded public infrastructure facilities or services.

Contributions secured through a planning obligation or other suitable legal agreement as necessary will be consistent with the tests set out in Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Developers will be required to make a fair and reasonable contribution (financial or “in kind”), proportionate to the scale and nature of the development, towards these additional costs or requirements, relative to:

- Affordable housing;
- Open space and green networks;
- Leisure, recreation and tourism infrastructure;
- Education;
- Biodiversity;
- Community facilities, including health facilities;
- Waste management infrastructure;
- Offsite infrastructure works including transport infrastructure.

The proposals listed in the settlement statements and shown on the Inset Maps will be subject to a planning obligation or other suitable legal agreement to secure the required contributions towards the relevant actions specified in the Council’s Action Programme. For other proposals, individual assessments may be necessary to identify the impacts arising from the development and the mitigation required.

Supplementary guidance provides further details on the scale and nature of developer contributions; any exceptions that may apply; and the submission of development appraisal information where development viability issues arise.

Guidance on measures to conserve and enhance biodiversity is provided in the Local Biodiversity Action Plan.

2 Legislative Context

2.1 Local authorities have powers to enter into agreements to regulate planning matters under statutes which include the Local Government (Scotland) Act 1973, the Countryside (Scotland) Act 1967, the Sewerage (Scotland) Act 1986 and the Roads (Scotland) Act 1984.

2.2 If it is necessary to secure that future owners and occupiers of the land are bound by a planning obligation (for example where phased contributions to infrastructure are required) it is necessary to do this by agreement or unilateral undertaking under Section 75 of the Town and Country Planning (Scotland) Act 1997. Where a unilateral undertaking is required a copy should be submitted to the Council prior to the submission of an application in order to allow an opportunity to discuss the proposed obligation prior to consideration of it as part of the application. All planning obligations involve developers entering into legally binding contracts with the local authority. Planning permission will not be issued by the Council until the relevant agreement has been concluded.

2.3 Obligations will be used to create an agreement which both the developer and Council are satisfied with. Planning obligations will need to meet the following criteria set out in the Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. It should:

- Be necessary to make a proposed development acceptable in planning terms;
- Serve a planning purpose and, where it is possible to identify infrastructure provision requirements in advance, should be relevant to development plans;
- Relate to the proposed development either as a direct consequence of the development or

arising from the cumulative impact of the development in the area;

- Fairly and reasonably relate in scale and kind to the proposed development, and be;
- Reasonable in all other respects.

2.4 This supplementary guidance is framed within the context of the following national and local planning policies:

- Scottish Planning Policy (2014);
- Circular 3 / 2012: Planning Obligations and Good Neighbour Agreements;
- Dumfries and Galloway Council Local Development Plan.

3 Guiding Principles

3.1 New development can place existing pressures on public services, facilities and infrastructure. The Council's developer contributions policy is intended to address matters resulting from new proposals and not address existing deficiencies. New development proposal that would exacerbate an existing problem would likely be refused.

3.2 The Council will seek to enter into a planning obligation whenever a development, which is otherwise acceptable in planning terms, requires mitigation which cannot be secured through planning conditions.

3.3 As a matter of principle, the Council will seek to secure the necessary mitigation on site through planning conditions. Where this is not possible, a planning obligation may be required.

3.4 Any obligation, to which the owner of the land is a party which may be recorded in the Register of Sasines or registered in the Land Register of Scotland and, once recorded, becomes binding on both the owner and all future owners of the land affected by the obligation. Any breach of the obligation is enforceable by the Planning Authority.

4 Community Benefit from Wind Energy Developments

4.1 Where a wind energy development proposal is acceptable in land use terms, and consent is being granted, Dumfries and Galloway Council will engage in negotiations to secure community benefit in line with its revised approach.

4.2 The provision of appropriate levels of community benefit, in line with national guidelines, will be negotiated separately from the planning process.

4.3 For further information about the operation of the national guidelines please contact the Council's Developer Contributions Officer on 030 33 33 3000.

4.4 Where a community is impacted by a wind energy development, developer contributions can be sought if the proposed development would have an impact on public infrastructure, for example the road infrastructure which was serving the development. Community benefits can extend out with the directly impacted area at the developer's discretion.

5 Contribution Requirements

5.1 All new developments require certain types of infrastructure to be provided on site at the outset to enable the development to comply with planning policies. These include water and sewerage supply, on site road and transport infrastructure and the provision of other utilities such as electricity and gas. There are other types of infrastructure that may also be needed on site, but their provision can be phased through the course of the development. These include open space and on-site waste management / recycling facilities.

5.2 The development may also have an adverse impact on the capacity of schools and off-site road and transportation infrastructure. Where this is the case, developers may be required to contribute directly to or through the use of pooled contributions towards the provision of this offsite infrastructure.

5.3 In cases where the Council may be able to fund the provision of infrastructure developers will be required to make a pro-rata contribution back to the Council. Where this is a known requirement further detail is contained in the settlement statements.

5.4 Other Council priorities include the provision of affordable housing and community facilities which also includes health facilities. In some cases, developers may be required to contribute directly to or through the use of pooled contributions towards the provision of this offsite infrastructure. In cases where the Council has funded the provision of the infrastructure developers will be required to make a pro-rata contribution back to the Council. Where this is a known requirement further detail is contained in the settlement statement.

See Table 1 for more details.

Table 1

Developer Contribution	Basis for Method of Calculation	Further Information	Relevant Development Types
Affordable housing	<p>All new residential developments, including conversions which will either individually or through phasing, result in the development of 5 or more units, will be required to make a contribution.</p> <p>A maximum of 20% of those units will need to be affordable.</p> <p>Each application will be assessed on a case by case basis.</p> <p>Exclusions - 1 bedroom units, sheltered housing and affordable housing developments where the developer can demonstrate that the housing is supported by a public subsidy or forms part of a local or national affordable housing policy initiative such as the Councils Strategic Housing Investment Plan or is part of a national affordable housing scheme.</p>	Affordable Housing Supplementary Guidance	Housing
Open space and green networks	<p>All new residential developments including conversions which will, either individually or through phasing, result in the development of 5 or more units, will be required to provide or make a contribution towards the provision of open space and/or green networks. The level and type of contribution will vary from site to site depending on the type and scale of provision and/or enhancement required. In some circumstances offsite provision may be required.</p> <p>Other developments may be required to provide an area of open space for their employees. Each application will be assessed on a case by case basis.</p> <p>Exclusions - alterations and extensions.</p>	Open Space and New Development Supplementary Guidance	Housing, Business and Industry

Education	<p>All residential development which would either individually or through phasing result in 3 or more units and which is located within the catchment area of a school listed on the Likelihood Table will be subject to a consultation with the Council's Education Services in order to determine if a contribution is required. The Likelihood Table can be found on the Council's website.</p> <p>Exclusions – 1 bedroom units, flats above shops, development that brings derelict property back into residential use, conversion of buildings to residential, replacement of a house which is habitable, sheltered housing and affordable housing developments where the developer can demonstrate that the housing is supported by a public subsidy or forms part of a local or national affordable housing policy initiative such as the Council's Strategic Housing Investment Plan or is part of a national affordable housing scheme.</p>	See Education section	Housing
Biodiversity	<p>All new development may be required to make a contribution to the protection and/or enhancement of sites identified for their distinct biodiversity to mitigate the impact (if any) of a proposed development. This may include sites identified for their contribution to the natural environment, including ancient and semi-natural woodland. The guidance contained within the Local Biodiversity Action Plan, and any subsequent revised or amended document, will be a material consideration in the assessment of proposals.</p> <p>Each application will be assessed on a case by case basis.</p>	N/A	Housing, Retail, Business and Industry
Community Facilities	<p>All new residential development may be required to make a contribution to the provision, improvement or maintenance of community facilities to mitigate the impact (if any) of a proposed development. The level and type of contribution will vary from site to site depending on the type and scale of provision required. Each application will be assessed on a case by case basis.</p> <p>Exclusions – 1 bedroom units, sheltered housing and affordable housing developments where the developer can demonstrate that the housing is supported by a public subsidy or forms part of a local or national affordable housing policy initiative such as the Council's Strategic Housing Investment Plan or is part of a national affordable housing scheme.</p>	See Community Facilities section	Housing,

New Waste Management Infrastructure	All new residential developments will be required to provide necessary waste containers. All new housing developments creating 50 units or more, retail and business and industry developments will be required to make a fixed sum towards upgrading Waste Management Facility Centre. The level and type of contribution will vary from site to site pending on the type and scale of provision and/or enhancement required. Each application will be assessed on a case by case basis.	N/A	Housing, Retail, Business and Industry
Offsite infrastructure works including offsite roads and transport infrastructure	Contributions will be required to meet any offsite infrastructure requirements. Settlement statements and site guidance provide more detail.	Settlement statements and site guidance	Housing, Retail, Business and Industry
	Contributions may be required to upgrade the water supply at Gretna Border. Further details are provided in supplementary guidance.	Developer Contributions to upgrade the water supply at Gretna Border Transport Assessments	Housing, Retail, Business and Industry
	Contributions to infrastructure improvements may be required where deemed necessary by local conditions or as a result of a Transport Agreement.	N/A	Housing, Retail, Business and Industry
	The Council supports business and people working from home and aims to support initiatives which introduce Broadband to new developments. Contributions towards improved Broadband connectivity may be required to provide coverage across the region.	See the Broadband section	Housing, Retail, Business and Industry

5.5 Education

5.5.1 Dumfries and Galloway deliver high quality education services and facilities that promote a safe, healthy, nurturing, supportive and stimulating environment. The Education Services within the region is a positive factor contributing to the Council's vision of making Dumfries and Galloway the best place in Scotland to live, learn, work, visit and grow. The Council currently provides for 5 primary and 1 secondary denominational and 93 primary and 16 secondary non-denominational schools.

5.5.2 Proposals for residential development can impact on the school's ability to function effectively. In order to determine this impact an assessment must be made on the number of pupils a proposed development is likely to generate. The Council may therefore seek to secure developer contributions for capacity improvements or additional classrooms for primary and secondary schools

arising from residential developments. All residential developments will be assessed with regards to their impact on the education estate except for the following which will be exempt from developer contribution requirements:

- 1 bedroom units,
- 1 or 2 unit developments which do not form part of an allocated or unallocated site which, individually or through phasing, would result in development of 3 or more units,
- flats above shops,
- development that brings derelict property back into residential use,
- conversion of buildings to residential,
- replacement of a house which is habitable,
- Sheltered housing; and
- Affordable housing developments where the developer can demonstrate that the housing is supported by a public subsidy or

forms part of a local or national affordable housing policy initiative such as the Council's Strategic Housing Investment Plan or is part of a national affordable housing scheme.

5.5.3 To ensure that this is achieved in a fair and equitable manner the anticipated cumulative impact arising from the allocated housing sites in each school catchment area has been assessed and is set out in the Housing Land Audits.

5.5.4 The Authority's threshold for notional maximum occupancy for both primary and secondary schools is a capacity level of 90% and above. This figure has been determined due to the rural nature of the region and the large number of schools with composite classes from a school estate which includes a number of older buildings which can restrict the number of pupils a school can accommodate.

5.5.5 A Likelihood Table has been prepared alongside this Supplementary Guidance providing a list of the school catchment areas where the capacity level reaches or is projected to be above 90% and the developer contributions which may be sought. Due to the nature of the development industry and the impact it can have on school capacities projections this information will be regularly updated, though it is strictly for indicative purposes only.

5.5.6 If an application is received for a housing development where the school capacity has reached or is projected to be above 90%, and thus considered likely to require a contribution, the Council's Education Service will be consulted to determine if a contribution towards education is required. Where the provision of developer contributions is considered to make a scheme financially unviable, the developer can provide a full development appraisal demonstrating the negative impact the contribution has upon the proposal. Further information is provided in the section titled Development Viability on page 9.

5.5.7 A single development that might trigger the need for an extension may not in itself generate sufficient funds to meet the full cost of any required extension. As it is impossible to build half or part of a classroom, the Council may be able to fund part of the extension work. If this happens it would be appropriate for the Council to request contributions from subsequent developments benefitting from that investment until its costs have been recovered.

Calculation

5.5.8 Contributions are based on the number of pupils which have resulted from recent developments throughout the region and this information is used to anticipate a Pupil Product Ratio (PPR) per property. By dividing the number of pupils resulting from new developments a PPR has been determined as follows:

- 0.08 PPR Nursery Schools:
- 0.32 PPR Primary Schools:
- 0.14 PPR Secondary Schools

5.5.9 Scottish Futures Trust (SFT) figures are based on Quarter 1 2017 matrixes so inflating upwards from Building Cost Information Service regional index figures are required. The SFT Total Build Cost per Pupil includes a square metre figure which is different for each school and is incorporated into the Likelihood Table calculations. By multiplying the Total Build Cost per Pupil figure by the PPR results in the contribution requirement per dwelling. The Likelihood Table contains the full list of schools and what contributions are required for those developments located in the catchment areas where capacity is likely to be exceeded.

5.5.10 Below are two examples of how costs per dwelling are calculated using example metre squared figures to form the Total Build Cost per Pupil:

Primary School contribution example:
SFT Total Build Cost per Pupil: 7.5m² x £
2,435.81= £18,268.58
£18,268.58 x 0.32 = £5,845.94

Secondary School contributions example:
SFT Total Build Cost per Pupil: 12.5m² x
£2,435.81= £30,447.63

£30,447.63 x 0.14 = £4,262.67

5.5.11 Therefore, proposed housing developments within a catchment area where the 90% capacity is likely to be exceeded will result in a consultation with Education Services to determine if a contribution is required. Using the example above, if a contribution is required for only the primary school, the developer will be required to contribute £5,845.94 per dwelling.

5.5.12 However, if a contribution is required for both the primary and secondary schools, then a combined contribution of £10,107.94 would be required per dwelling. Please note the above prices are examples and the final costs for each school are provided in the Likelihood Table.

5.5.13 The list in the Likelihood Table can contain

Nursery, Primary and Secondary Schools. It is proposed that the list is updated on an annual basis to reflect the changes in school rolls. If the number of housing units developed in a catchment area is materially higher or lower than anticipated or through other changes to a school's occupancy level then this will be considered by Education Services in determining if a contribution is required.

5.6 Community Facilities

5.6.1 Where new development is proposed which creates an identified need for community facilities the Council may seek contributions to provide the facility. The contribution may be in the form of creating a new facility to cope with increased demand resulting from the development or providing an extension to create additional capacity, or upgrade / improve the existing facility to make it more usable.

5.6.2 Further information on the level and type of contribution for facilities such as community halls, medical centres and libraries will be determined throughout the lifetime of the plan and will be provided on the Council website. Applications received prior to the publication of this information will be assessed on a case by case basis in consultation with the relevant provider such as the Council, Community or NHS.

5.7 Broadband

5.7.1 The number one priority of the Council is to build the local economy. Investment in key infrastructure such as improved connectivity and developing superfast broadband in the rural areas will help meet that priority. The Council aims to support initiatives with a number of companies such as British Telecom (BT) who is a partner agency with the Council, to improve digital connectivity throughout the region. Developers will be encouraged to include provision for broadband in developments; this could include ducting, cabled and fibre technology data service delivery as well as potential wireless technology alternatives.

6 Development Viability

6.1 The Scottish Government's definition of viability is where the value (revenue) generated from a development must exceed the costs of undertaking the development ("costs" include the developer's profit). If however, the costs exceed the revenues, then the development would be considered unviable and unlikely to progress on this basis. Viability is the key factor which determines whether development proceeds or not and given the current economic climate it is crucial for public and private sectors to work together.

6.2 The Council recognises the implications developer contribution may have on the financial viability of a proposal and is therefore acknowledged that this expense is levied on the land value rather than the end user of the development. By outlining the type of infrastructure and facilities the Council expect developers to provide there should be no hidden surprises when the developer submits their planning application.

6.3 If the provision of developer contributions makes a scheme financially unviable the developer will be required to provide a full development appraisal demonstrating the negative impact the contribution has upon the proposal. Where it is considered that the burden imposed by the contribution is so great that the proposal would not otherwise take place the Council will negotiate with the developer. Negotiations will assess the benefits the development brings to the community and determine if mitigation can be met through other means.

6.4 To assist in providing a development appraisal, a template setting out how to structure a development appraisal has been prepared and is provided on the Council website alongside the Developer Contributions Supplementary Guidance. Submitted development viability appraisals will be kept confidential and will only be used to assess the viability of the development being proposed. Planning permission for all developments will be assessed individually.

7 Phasing of Development

7.1 It is likely that the development or provision of larger sites will need to be phased. Developers will be able to phase the payment of their contributions through the development.

8 Management of Contributions

8.1 The management of contributions will be carried out by the Council. Developer contributions will be secured within the relevant accounts within the Council and will be clearly ring fenced for the purpose specified in the planning obligation. A planning obligation through a Section 75 Agreement or other appropriate legal agreement will provide developers the opportunity to have their contribution returned, should work the Council is responsible for not being allocated or commenced within the timeframe outlined in the agreement. Timescales may vary pending on the circumstances of a development and the requirement of the contribution.

9 Implementation

9.1 Upon receipt of a planning application the

Council will assess the impact which may occur as a result of the development. Any impacts identified from the assessment will be outlined to the developer. If the Council determines that a contribution is required, then they will begin negotiations with the developer.

9.2 Developer contributions are to be index linked by the appropriate reference within the regional cost index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors. The contributions will be index linked from the date an agreement is made which can be made through a Section 75 Agreement or an alternative legal agreement.

9.3 All agreed heads of terms will be determined by the Council to create a legal agreement. Depending on the type of contribution, payment of contributions will be expected as a lump sum at the outset or through phased payments which are detailed in the agreement. On completion of the agreement or when a financial contribution has been made, planning permission may then be granted to the development.

9.4 An application will not be granted until the Council receives confirmation from its solicitors of the successful completion of an agreement. Details of such an agreement shall only be made available to the public once an agreement has been concluded and planning permission has been granted.

9.5 Negotiation of a planning obligation through a Section 75 Agreement or other relevant legal agreement will provide the developer with the opportunity to seek repayment of all/part of the contribution that have not been allocated within a certain timeframe for the use of which the contribution was intended.

9.6 All relevant additional supplementary guidance documents should be read in conjunction with this Supplementary Guidance.

10 Monitoring

10.1 Regular monitoring of all contributions resulting from new development will be undertaken by the Council. Account should be taken of the provision in the process of revising Local Development Plans policies, standard charges and formulae should be similarly reviewed.

- Details of development contribution activity may include:
- New developments with permission and attached planning agreements;
- Detail of the contributions attached to those

developments;

- Account of funds committed for infrastructure projects;
- Number of agreements entered into and executed;
- Any contributions returned to developers;
- Status of individual projects.

10.2 The updating of this Supplementary Guidance will be based on the operation of Development Contribution activity throughout the plan period. Any adjustments to the level of contribution requirements will be made where necessary. This will be made to reflect changes to development pressures, policy or development cost.

Glossary

Planning Obligations: Planning obligations (Section 75 agreements) are agreements made between local authorities and developers. They can be attached to planning permission to make acceptable development which would otherwise be unacceptable in planning terms.

Unilateral undertaking: A unilateral undertaking is a version of a planning obligation which is only entered into by the landowner.

Heads of Terms: Proposed terms for a contract that is signed before the due diligence phase, but not legally binding for the parties to actually go through with the transition.

Mitigation: Measures, including any process, activity or design to avoid, reduce or remedy adverse effects of a development proposal.

Development Appraisal: A development appraisal sets out the impact a development may have on the land and / or surrounding environment.

Pupil Product Ratio: The pupil product ratio is the average number of children per household within the region.

Settlement Statements: Settlement statements are textual overviews which describe the location and character of a settlement and also provide objectives for that settlement. These are used to describe the settlements in the plan which have inset maps and indicate where development can take place.

Useful documents

Local Government (Scotland) Act 1973
The Countryside (Scotland) Act 1967

The Sewerage (Scotland) Act 1986 and the Roads (Scotland) Act 1984

The Town and Country Planning (Scotland) Act 1997

Circular 3 / 2012: Planning Obligations and Good Neighbour Agreements

Local Development Plan 2 Supplementary Guidance documents

Local Development Plan 2