

Developer Obligations

Frequently Asked Questions

What are developer obligations?

Developer obligations cover both developer contributions and affordable housing.

When a development takes place there is a need for infrastructure and services to accompany it. This can include roads, schools or a wide range of facilities depending on the scale and location of development.

Developer contributions are intended to ensure that developers make appropriate provision for any losses or supply additional facilities that are required to mitigate the impact of a development in the local community.

Does Aberdeenshire Council have a policy on developer contributions and affordable housing?

Yes, policies are contained within the Aberdeenshire Local Development Plan and Supplementary Guidance. Policy H2: Affordable Housing and Policy RD2: Developer Contributions set out the Council's approach on both these areas. These policies are supported by related supplementary guidance policies SG: Affordable Housing 1, and SG Developer Obligations 7. These provide detailed policy guidance as well as setting out the methodology for how contributions should be calculated.

Copies of these can be found online at:
<https://www.aberdeenshire.gov.uk/media/20619/local-development-plan-2017-part-2.pdf>

Who signs up to developer obligations?

When a developer submits a planning application the Council will assess the actions required to mitigate the impact of the proposed development in line with the policies and the supplementary guidance. An assessment report is issued to the developer which sets out the obligations, the methodology as to how these obligations have been calculated and the justification for securing these.

Obligations must be agreed before a planning application can be determined.

The majority of obligations are met through upfront payments prior to the release of the planning decision notice for smaller developments and this would be a personal agreement between the developer and Council in line with the assessment report. Where larger obligations are required and for those requiring on-site affordable housing, then a legally binding Section 75 agreement would be required which will secure contributions as phased payments and runs with the land. If the developer should subsequently sell the site then the new owner takes on the responsibility of meeting the obligations.

What can you seek developer obligations for?

When the council is considering what obligations there may be for a particular development, they must refer to the Development Plan and also apply all five 'tests' which are set out in national government legislation Circular 3/2012: Planning Obligations and Good Neighbour Agreements

THE 5 POLICY TESTS

Necessary to make the proposed development acceptable in planning terms

Obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider objectives which are not strictly necessary to allow planning permission to be granted for the particular development. Where the need to improve, upgrade or replace that infrastructure does not arise directly from the proposed development then planning authorities should not seek to address this through a developer obligation.



Serve a planning purpose and where it is possible to identify infrastructure provision requirements in advance, should relate to development plans

An obligation must be related to the use and development of land and be set out in the Development Plan. Information on the items for which contributions will be sought and the occasions when they will be sought require to be set out in the Development Plan. The methods and exact level of contributions required are set out in statutory supplementary guidance and this is to provide as much certainty as possible to the developer early in the process.

It is therefore important to ensure that information on infrastructure and community requirements to support a development are included at the development plan stage.

For example, the replacement of a roof at the local village hall is not relevant to the planning process therefore could not be funded through developer obligations.

Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area

Any obligations must be directly related to the development. We are therefore obliged to clearly set out the purpose for which any contribution is required and the infrastructure to be provided. It is not sufficient to simply advise that an obligation is required for community facilities as we require to evidence that there is a clear link between the mitigation level sought and the development proposed.

Fairly and reasonably relate in scale and kind to the proposed development

Contributions should always be proportionate to the scale of the proposed development. Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development. Link to document:
(<http://www.gov.scot/Resource/0041/00410382.pdf>)

For example, where there is an existing shortfall concerning sports facilities within a local community, the developer cannot be expected to fully meet this shortfall through obligations but could potentially make a proportionate contribution towards additional infrastructure required as a result of their development.

Be reasonable in all other respects

For example obligations could not be used to fund a private facility such as a golf club where only selected members would benefit.

What gets funded through developer obligations?

Each Council has policies and guidance relating to developer contributions and affordable housing which determine what contributions are sought. There is no definitive list of what can be secured through developer obligations as each development and community is different.

The most common obligations within Aberdeenshire are:

- Affordable Housing;
- Education;
- Transportation;
- Community Halls;
- Sports and Recreation Facilities;
- Waste;
- Health Facilities

The use of funds received from developer contributions must be in line with the original agreement under which they were secured. Contributions are directed towards capital costs.

Affordable Housing

The Section 75 Legal Agreement will set out the level of affordable housing to be provided on-site (if this is a requirement of the development at hand) and the mix and tenure, in conjunction with the Planning Service.

Councils' often require a percentage of homes on developments over a certain size to be affordable. For Aberdeenshire, the policy is applicable for residential proposals of 4 or more houses. There are different options for the delivery of these homes. The obligation could be met through the



provision of units for social rent, mid-market rent, shared ownership or commuted sums.

Units for social rent can also be delivered by means of serviced land being provided by the developer to the council who can then develop as part of their new house build programme. Alternatively, the developer may build the houses in partnership with the Council or a Housing Association that will manage them in the long term. These methods of delivery are very much tied in with the availability of grant funding.

Properties for shared ownership are provided by the developer at discounted prices and are aimed at first time buyers. Prospective applicants should have a local connection and this may be place of employment or other local connection such as family.

In some limited circumstances and for smaller developments that may not have good access to public transport and amenities, the affordable housing obligation may be met through the provision of a commuted sum.

Education

Where a development will bring more children to an area and the school is projected to exceed capacity, then a contribution may be sought to create additional space within the school. This may take the form of either new build, extension or reconfiguration of existing space.

Community Facilities and Halls

Contributions are utilised for the provision of additional capacity in the same way as education contributions. Again, this will be either through new build, extension or reconfiguration of existing space so allow more activities to take place. Running and maintenance costs cannot be funded through developer obligations.

Sports & Recreation and Playing Fields

Sports contributions are used to provide or extend sporting and recreation facilities such as changing rooms or new playing fields. Contributions may be utilised towards improving drainage on a pitch or providing floodlighting in order to extend the playability of a pitch.

Health Facilities

These include health centres, dental and GP practices. Contributions are calculated using nationally recognised space standards and build costs, based upon the population requirements. Contributions are directed towards the provision of new facilities or extensions to existing facilities.

When is money from developer obligations available?

A planning application has to be implemented for planning obligations to be triggered. Just because a developer has signed a Section 75 agreement which provides £500,000 for primary education this does not mean that the Council receives that money as soon as permission is granted.

Payments within Section 75 agreements are generally made quarterly based on the number of building control completions in that quarter. If the rate of building on that site is particularly slow then it may take some time for contributions to be made. Also, if the development is not completed, the full anticipated contribution may not be received.

Can developers discharge obligations?

A developer can apply to the Council to modify or discharge an obligation within a Section 75 legal agreement and has a subsequent right of appeal to the Directorate of Planning and Environmental Appeals if the Authority refuses the application. These applications are assessed against the relevant development plan policies and five tests.

If a new planning application on a site under development is submitted this has no impact on the existing Section 75 agreement unless a new planning permission is granted with an associated Section 75 that replaces the original agreement.

Development appraisals and developer obligations?

In order to assess the financial viability of a development a developer will undertake a development appraisal. This takes into account the cost of the land, the cost of construction, financing costs, value of the completed development and the anticipated profit. The appraisal will naturally have to account for developer obligations and affordable housing requirements.



There are lots of factors that can impact on a development appraisal and developers will allow for a certain level of obligations in their development appraisal based on the requirements of the Development Plan which assists in providing certainty early in the process. For a developer, uncertainty equals risk so they are keen to determine costs as early as possible.

Further Information

For further information please contact a member of the Developer Obligations Team on 01467 536928 or email:

developerobligations@aberdeenshire.gov.uk

