

# Supplementary Planning Guidance Note

## Planning Obligations



Denbighshire County Council  
Strategic Planning and Housing  
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Cyngor  
**sir ddinbych**  
**denbighshire**  
County Council

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## **1. Purpose**

- 1.1 This note is one of a series of Supplementary Planning Guidance notes (SPGs) amplifying the Denbighshire Local Development Plan 2006 – 2021 (LDP) policies in a format which aims to guide the process, design and quality of new development. The Council's SPG notes are not part of the adopted LDP.
- 1.2 The Welsh Government (WG) has confirmed that following public consultation and subsequent Local Planning Authority (LPA) document adoption, SPGs can be treated as a material planning consideration when LPAs, Planning Inspectors and the WG determine planning applications and appeals.
- 1.3 The purpose of this document is to provide detailed guidance and advice to assist members of the public and the Council, prospective applicants and Officers in discussions prior to the submission of and, consequently, in determination of future planning applications. It was formally adopted by Denbighshire County Council's Planning Committee on 16th November 2016.

## **2. Background**

- 2.1 The adopted Local Development Plan (LDP) includes proposals for new development allocations including housing and employment across Denbighshire. The LDP as well as allocating land for development also seeks to ensure that development makes an appropriate contribution to the provision of infrastructure to meet the additional social, economic, physical and/or environmental infrastructure requirements arising from the development. This guidance has been produced to provide clarity, reasoning and justification for the provision of new infrastructure in association with new development.
- 2.2 Development often creates a need for specific measures to mitigate impact, without which there could be a detrimental impact on local amenity and the quality of the environment. This Supplementary Planning Guidance (SPG) will help to ensure that development contributes towards the provision of the necessary measures required to mitigate its impact, resulting in a high quality sustainable environment, where people choose to live, work and play.
- 2.3 Planning Obligations are legally binding agreements entered into between a Local Authority and a developer and/or landowner. There are two types of planning obligations:
  - Section 106 Agreement entered into by the Local Authority & the developer
  - Unilateral undertaking – commitment by the developer only

2.4 Planning obligations usually run with the land rather than the person entering into the agreement and are therefore enforceable against subsequent owners of the land. They provide a mechanism by which measures are secured to mitigate the impact of development on local facilities that are geographically or functionally related to it. Planning conditions are also increasingly used as a way of securing mitigation measures. The use of planning obligations is an effective tool through which the Council will seek to ensure that development mitigates its impacts and meets the policy objectives of the Local Development Plan. Planning obligations can take the form of:

- In Kind Contributions – The developer carries out required works directly.
- On Site / Off Site Contributions – The developer contributes financially towards the provision of measures that would mitigate the detrimental impacts of development.
- Maintenance Contributions – The developer contributes financially towards the physical upkeep of facilities that they have funded or provided.

2.5 This SPG is essentially in 2 parts. The first part of the SPG sets out the Council's overall approach to planning obligations. It shows how the SPG complies with national and local policy, how planning obligations are prioritised, and provides details on procedural matters relating to the drafting, monitoring and enforcement of Section 106 Agreements. The second part of this SPG sets out the types of mitigation measures that the Council may seek to secure from development. It identifies the relevant policy basis, types of development to which the obligation will apply, thresholds over which the obligation may be sought and it sets out, where possible, the basis on which the level of obligation will be calculated.

### **3. Community Infrastructure Levy**

3.1 At the present time no decision has been taken to charge a Community Infrastructure Levy (CIL) in Denbighshire. If the Council does decide to develop a CIL it would be necessary to review this SPG to ensure that those matters which would be the subject of a CIL are not also the subject of future Section 106 agreements thereby double charging developers and adversely impacting development viability in the County.

### **4. National Policy Context**

4.1 The legislative framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act. Further legislation is set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL)

Regulations 2010, and subsequent CIL Amendment Regulations. The use of planning conditions in planning consents is controlled by Welsh Government Planning Circular 16/2014.

- 4.2 Regulation 122 sets out the following tests that must be satisfied in order for planning obligations to be required in respect of development proposals:
- The obligation must be necessary to make the proposed development acceptable in planning terms;
  - The obligation must be directly related to the proposed development;
  - The obligation must be fairly and reasonably related in scale and kind to the proposed development.
- 4.3 Local authorities are advised that planning obligations should not duplicate planning conditions. If there is a choice between the use of a condition and an obligation, preference should be given to a planning condition as this provides the applicant with the right of appeal and a simple basis for amendment or removal. A planning obligation may be modified or discharged by agreement between the planning authority and the person against whom the obligation is enforceable or by application to the authority after the expiration of a prescribed period of time, or if no period is prescribed, after 5 years from the date when the obligation is entered into.
- 4.4 Current land use planning policy is contained in Planning Policy Wales (PPW) which provides the strategic policy framework for the effective preparation of Local Development Plans. PPW is supplemented by a number of topic based Technical Advice Notes (TANs). PPW refers to planning obligations, and reflects the legislative framework set out in Circular 13/97 and the CIL Regulations 2010.

## 5. Local Policy Context

- 5.1 The Denbighshire Local Development Plan sets out the Council's policies and proposals for the development and use of land until 2021. It provides the local planning context and the principle justification for seeking planning obligations with new development. Local Development Plan (LDP) Policy BSC3 "Securing Infrastructure Contributions from Developments" makes it clear that where relevant and necessary the Council will seek contributions for the following priorities:
1. Affordable Housing (LDP Policy BSC4) – Also see separate SPG "Affordable Housing"
  2. Recreation and Open Space (LDP Policy BSC11) – Also see separate SPG "Open Space"

3. Sustainable Transport Facilities (LDP Policy ASA2)
4. Regeneration (LDP Policy PSE1) – Also see separate SPG “West Rhyl”
5. Council Priorities current at the time of the application in line with other issues identified in the LDP or by the local community (for example, education, Welsh Language & Culture, natural and built environment).

- 5.2 Policy BSC3 is the starting point for considering the approach of the Council to securing planning obligations. Supplementing the Council’s approach are plans, strategies and supplementary planning guidance, including specific site development briefs which will collectively identify Council priorities. For example the Affordable Housing SPG provides guidance for onsite and offsite provision and contributions.
- 5.3 Policy BSC3 is therefore a key policy for seeking infrastructure provision and contributions for a wide range of matters but it is clear that in justifying the need for these planning requirements there should be an evidence based approach to demonstrate relevance and need for the planning requirements identified. In this manner Policy BSC3 is applied on a case by case basis. The contents of this SPG provide further guidance for planning obligations in general and details of how contributions will be calculated for a range of infrastructure items where the evidence demonstrates need. Developers seeking clarification of the expected infrastructure needs of a development should contact the Council early prior to the submission of a planning application to discuss the need for infrastructure provision and contributions.

## **6. Denbighshire’s Approach to Identifying, Negotiating and Securing Planning Obligations**

- 6.1 Historically, planning obligations have in the main been sought to support Affordable Housing and Open Space. Affordable Housing is dealt with in detail by separate SPG, but for ease of reference the principle requirements and calculations are repeated in this SPG.
- 6.2 There will be instances following the assessment of specific development proposals where other types of infrastructure provision are required. The justification for these other types of infrastructure is provided by Policy BSC3 and this justification will be supported by further appropriate evidence as and when required. In such instances we will consider first whether such infrastructure can be delivered through planning conditions, this will always be the preferred option. Alternatively where it is necessary to the fulfilment of the infrastructure requirement, the Council will seek to secure planning obligations in accordance with the Regulation 122 and Circular 13/97 tests (see paragraph 4.2) for onsite or offsite works and infrastructure provision and/or financial contributions.

- 6.3 Evidence of title and details of the solicitor acting for the applicant must be supplied to the Council as early as possible in the process. As all parties with an interest in the land will need to be signatories to any S106 agreement relating to it, applicants must also inform and involve landlords and anyone with an interest in the land, such as a bank with a charge/interest or mortgage, who must consent to and be a party to any agreement. The Council will require full details of all parties who are to be subject to the agreement.

### **Transfer of Land**

- 6.4 In some cases there will be a need for obligations requiring the transfer of land to the Council. In such cases developers will be required to pay the Council's legal costs in respect of land transfer.

### **Financial Contributions**

- 6.5 Financial contributions may be payable at specific stages in the development process, usually on commencement or on first occupation of the development. For larger scale development it may be more appropriate for contributions to be phased in order to match the proportional impact of each phase of the development.
- 6.6 Trigger dates for the payment of financial contributions will be included in the planning agreement, as will any time periods by which the contribution is to be spent.
- 6.7 The Council will require security provisions, where appropriate, to act as a guarantee where large contributions or in-kind infrastructure have been negotiated through the S106 process. Any costs associated with this provision must be covered in full by the development and not deducted from any S106 monies.
- 6.8 Security will be used to protect the Council where it forward funds infrastructure in advance of a scheduled S106 payment, or in the event that the land owner defaults against a payment or fails to deliver infrastructure. **Bonds are the Council's preferred form of security.** Other measures, such as occupational restrictions or charges against land, may be considered when the Council is satisfied that Bonds are demonstrated not to be a reasonable option. It will be for the applicant to justify, in each case, why security in the form of a bond is not reasonable and the Council will need to consider the risks to the provision of infrastructure in each case.

- 6.9 All financial contributions are to be index linked from the date of the agreement using the All in Tender Price Index published by BCIS, or the Retail Price Index. Following receipt by the Council, financial contributions will be held in interest bearing accounts and will be individually identifiable. Any contributions remaining unspent at the end of the time period specified within the legal agreement will be returned to the payee on written request in accordance with the terms of the agreement, unless otherwise agreed in writing.
- 6.10 In accordance with national planning guidance, planning obligations will be sought to mitigate the impacts of development (ie to make the proposed development acceptable in planning terms). Requirements will be fairly and reasonably related in scale to the development and its resulting impact.
- 6.11 However it is anticipated that there will be challenges to identified planning requirements and there may be exceptional circumstances where the fulfilment of all the reasonable development requirements may affect the viability of the scheme. In such instances it will be necessary for the applicant to demonstrate in writing why the requirements are inappropriate. The Council will require the applicant to submit a viability assessment as part of their evidence and it is important that the applicant provides the information identified in Appendix 1 to allow the Council to assess the value and associated costs of the scheme.
- 6.12 It is assumed that land purchase costs are negotiated on the basis of taking on board known planning obligations and known planning constraints. The Council considers that developers may reasonably be expected to pay for, or contribute to, the cost of infrastructure that would not have been necessary but for their development.
- 6.13 All applicants and their agents are encouraged to discuss their development proposal with the planning authority before they submit a formal planning application, so that the likely impact of the development, potential mitigation measures and planning obligations can be discussed at an early stage.

## 7. Drafting of Legal Agreements

- 7.1 Applicants are encouraged to discuss and agree draft S106 Heads of Terms at the pre-application stage whenever possible, so that the obligations can be drafted at an appropriate stage after submission of a planning applications. Any discussions or draft agreements will be without prejudice to the final decision of the Council on any application proposal. Alternatively, infrastructure requirements will be identified when applications are submitted and where possible draft Heads of Terms for planning obligations should be submitted alongside the planning application. Where Section 106 Agreements are drafted and checked by the Council's Legal Services Team or by solicitors acting on the Council's behalf, applicants will be required to pay the Council's reasonable costs incurred in drafting and completing the

agreement. The Council's Legal Team currently operates two charging approaches depending upon the complexity and scale of the development proposals.

- a. One off standard charge
- b. Standard charge plus officer time

- 7.2 The County Council will look to the landowner/developer to meet its reasonable costs incurred in negotiating and completing any required Section 106 agreement(s) and will require a solicitor's undertaking before any work is carried out in this respect.
- 7.3 Reasonable costs will include, but will not be limited to, the County Council's reasonable professional adviser costs, such as legal and surveyors' costs.
- 7.4 The County Council reserves the right to charge landowners/developers for its reasonable costs in respect of the monitoring and administration of completed Section 106 Agreements/planning obligations.
- 7.5 For straightforward obligations that contain only financial obligations, the Council encourage the use of Unilateral Undertakings, which are a simplified form of S106 agreement. It is advised that contact is made with the Council and written advice secured to identify the suitability of a Unilateral Undertaking as opposed to a S106 Agreement. Where Unilateral Undertakings are submitted with development proposals a charge will still be applied at a rate commensurate with the time required for the Legal Officer to check and if necessary amend the Unilateral Undertaking. We recommend that legal advice is taken before entering into a planning obligation.

### **Monitoring and Enforcement of Obligations**

- 7.6 Monitoring of obligations and planning conditions will be undertaken by the Council's Planning Service to ensure all obligations entered into are complied with by both the developer and the Council.
- 7.7 The Council will work with developers to find solutions in cases where they have difficulty in making payments at the trigger set out in the Agreement. This could be through agreeing payment of obligations at a later stage of the development process, or agreeing payments by instalments. However where it is imperative that the relevant measure is in place prior to a development being occupied, the obligations to fund it will always become payable on commencement of the development.
- 7.8 The Council will enforce obligations through the relevant legal channels once all other reasonable approaches to remedying a failure to comply with the obligations have been exhausted. In such cases, the Council will seek to recover its legal costs in taking action against the party that is in breach of its obligations. Breaches may result in a legal injunction and/or debt recovery proceedings.

## **8. Modifying a S106 Planning Agreement**

- 8.1 A legal agreement may be modified or discharged by agreement between the Local Planning Authority and the person(s) against whom the obligation is enforceable. However timing is key. Prior to the implementation of a planning permission the LPA will consider applications to modify or discharge an agreement. Otherwise modification or discharging of an agreement will only be considered after the expiration of a set period as set out in the agreement, or if no period is prescribed then after five years beginning from the date on which the obligation was signed. Applicants seeking to modify / discharge agreements should submit Planning Statements to explain the change in circumstances since signing the agreement. In these circumstances early discussion with the Council is advised.

## **9. Infrastructure Provision and Contributions**

- 9.1 The subsequent sections consider in turn the various infrastructure needs that could potentially arise as a result of future development. It should be noted that the guidance within this SPG is not intended to be comprehensive and there will be a need to consider the policies of the adopted Denbighshire LDP and associated plans, strategies and guidance (including SPGs and site development briefs) when considering infrastructure needs arising from development proposals. With regard to potential infrastructure requirements not included in this SPG which could arise, it will be a matter of negotiation between the applicant, the Council and infrastructure providers to establish the relevance of the required infrastructure and the appropriate scale of the requirement with regards the scale of the proposed development.
- 9.2 An up to date list of the Council's adopted SPGs and site development briefs is available on our website.

## **SPG Part Two**

# **Detailed Planning Obligations Guidance**

## **10. Affordable Housing**

10.1 Affordable housing is housing provided to meet the needs of those who cannot afford general market housing and is retained as affordable for the first and any subsequent occupiers. Further information on the different types of affordable housing is set out in the Council's SPG: Affordable Housing. There is a significant need to provide additional affordable housing in the County and as highlighted in the Council's Housing Strategy, delivery of affordable homes is a key priority for the Council. The LDP identifies a need to ensure that 2250 - 3000 new homes are provided to meet local needs between 2006 & 2021. The unmet and demonstrable need for affordable housing is a material planning consideration to be taken into account when planning applications are determined.

### **Justification**

10.2 The detailed policy basis and justification for seeking developer provision or contributions in respect of affordable housing is set out in:

- National planning policy guidance –
  - a) Planning Policy Wales
  - b) TAN 2 – Planning and Affordable Housing
- Denbighshire LDP, notably Policies BSC4 – Affordable Housing; BSC6 – Local connections affordable housing in hamlets; BSC8 – Rural exceptions; BSC9 – Local connections affordable housing within small groups or clusters; PSE4 – Re-use and adaptation of rural buildings in open countryside
- Denbighshire County Council - SPG: Affordable Housing
- Denbighshire County Council - Housing Strategy 2015
- Denbighshire Local Housing Market Assessment 2015

### **Threshold for provision**

10.3 All residential developments of 3 or more dwellings will be expected to make a contribution to affordable housing. On sites of 10 dwellings or more, this will be a minimum of 10% of the development. Our priority is that these should be provided on site as part of the development. For developments of 3 – 9 dwellings, a financial contribution towards the provision of affordable housing will be required. Developments of 1 or 2 dwellings will not be expected to make a contribution towards affordable housing. Policy BSC4 includes provision to increase the amount of affordable housing required as house prices increase. House sale prices will be monitored through the

Annual Monitoring Report, and this guidance will be updated and amended if required. In order to support and create sustainable and balanced communities, we would expect affordable housing to be fully integrated into the new development, be of at least an equal or similar quality of design and external appearance, meet necessary design and space standards, remain affordable and remain occupied by eligible households. All permitted development rights for extensions to new affordable properties will be withdrawn in order to prevent the affordable properties becoming unaffordable.

- 10.4 The Council will consider in each case whether the proposal forms part of a larger parcel of land that is being subdivided into smaller areas or piecemeal proposals, which would cumulatively meet or exceed the policy thresholds. Should the Council be satisfied that there is an attempt to circumvent the policy requirements, planning permission will be withheld until the larger and complete scheme has been determined.
- 10.5 LDP Policies BSC6 (Local connections affordable housing in hamlets), BSC9 (Local connections affordable housing within small groups or clusters), BSC8 (Rural exceptions) and BSC4 (Re-use and adaptation of rural buildings in the open countryside) also provide policy framework for the requirement for affordable homes and further guidance is set out in the Councils SPG: Affordable Housing and SPG: Re-use and adaptation of rural buildings.
- 10.6 The mechanism for securing affordable housing will normally be a legal agreement between the Council and developer, or through an appropriate planning condition

## Mitigation of development

- 10.7 On-site provision will always be the priority option for providing affordable housing. Financial contributions will be required from developments of 3-9 dwellings, using the formula set out below. Financial contributions will also be required in lieu of whole dwellings on developments of 11-19, 21-29, 31-39 etc. dwellings, unless the developer prefers to provide an additional whole unit on site instead. For example, on a development of 18 dwellings, one dwelling would be provided on site and a financial contribution would be required in lieu of the remaining 8. The contribution will be calculated using the formula set out below.

### Calculation of financial contribution (developments of 3-9 units):

The commuted sum payable is based on the average gross internal floorspace of the proposed market housing units multiplied by median build cost per square metre as published by the Royal Institute of Chartered Surveyors (RICS), multiplied by the number of units proposed:

The build cost figure to be applied will be as published through the RICS Build Cost Information Service (BCIS) Online service, and can be provided by the Council. This figure will be updated on a regular basis.

For example, a development of 9 units, with an average gross internal floorspace of 90 square metres. Assuming the median RICS build cost (available on request from the Council) is £1000/sqm, the financial contribution required would be:

$$((90 \times £1000) \times 10\%) \times 9 = £81,000$$

**Calculation of financial contribution (developments of 11-19, 21-29 etc. units):**

This calculation is similar to that above but applies to the number of units falling between the thresholds for on-site provision of whole units:

For example, a development of 18 units, with an average gross internal floorspace of 90 square metres – the affordable housing requirement would be one unit on-site and a financial contribution from the remaining 8 units. Assuming the median RICS build cost (available on request from the Council) is £1000/sqm, the contribution required would be:

$$((90 \times £1000) \times 10\%) \times 8 = £72,000 \text{ plus one unit on-site}$$

- 10.8 With regard to the tenure of affordable homes, there is a clear Council preference for social rented accommodation, as meeting the most acute need in the County. However, given the range of local needs and circumstances, we would recommend early discussion to clarify requirements.
- 10.9 Occupants of affordable homes should meet the Council's Local Connections policy and this is set out in the Council's SPG: Affordable Housing. The calculation for the value of affordable units is also set out in Appendix 2 of the SPG: Affordable Housing.
- 10.10 There may be circumstances when off-site provision (either through an alternative site or financial contribution) can be justified. Such circumstances include:
  - When it can be shown that on-site provision is unsuitable or inappropriate
  - When alternative provision would better meet the overall local housing needs
  - When planning, housing and/or regeneration objectives would be better served by having alternative provision
- 10.11 Off-site provision on an alternative site will only be allowed where the principle of residential development has already been agreed on both the application site and the alternative site(s).
- 10.12 The payment of a financial contribution in lieu of affordable dwellings provided on-site will only be acceptable in exceptional circumstances and with the agreement of the Council. In such instances, the calculation of the financial contribution will be based on the full cost of provision of affordable housing elsewhere, including land acquisition. The contribution will be calculated using the formula set out below:

#### **Calculation of commuted sum in lieu of an on-site affordable unit (developments of 10+):**

The commuted sum payable is based on the number of affordable units which would have been required, multiplied by the per-dwelling maximum Acceptable Cost Guidance (ACG) figure for that area: ACG figures are published by Welsh Government and reflect different houses sizes and locations in the County. The appropriate figure can be provided by the Council.

For example, a development of 20 houses in St Asaph - the affordable contribution would have been for 2 units. Assuming the need (following discussion with the Council) is for 2 bedroom houses, the commuted sum required would be:

$$\text{£134,500} \times 2 = \text{£269,000}$$

10.13 The Council will only consider no affordable housing provision in exceptional circumstances, and only once all other options have been exhausted, where:

- The planning history of the site makes it unreasonable to require affordable housing e.g. previous planning commitments.
- The proposal meets an identified, acknowledged and over-riding approved regeneration aim or project in accordance with an approved Council regeneration strategy, and where the provision of affordable housing would seriously prejudice this.
- The applicant is able to demonstrate to the Council that there is no affordable housing need in the locality currently or within 5 years.

### **Delivery Trigger**

10.14 The timescales for delivery of affordable units or payment of commuted sums will be agreed with the Council and will form part of the legal agreement. We would normally require delivery of affordable housing alongside market housing. In cases where this is not considered possible, sufficient justification must be provided by the developer. Provision must normally be made in a phased manner and always before the completion of the last market unit.

## **11. Recreation and public open space**

- 11.1 Public open space and recreation facilities are important to the overall quality of life. They contribute to the general well-being of the community in respect of providing for sport and recreation and in contributing to biodiversity, the conservation of nature and landscape, air quality and the protection of groundwater. They also provide the opportunity to exercise, with potential positive health and well-being impacts. Open space can include formal sports pitches, parks, allotments, play areas, and informal natural green and amenity space.
- 11.2 Developers will be required to provide appropriate landscaping within new developments in addition to recreational open space, with the aim of contributing to the delivery of high quality, well-designed developments. Further guidance is set out in the Council's SPG: Residential Development. The cumulative effect of even small scale residential developments can create a significant additional demand for recreational open space.
- 11.3 The Council will, where appropriate, seek planning obligations or impose planning conditions to ensure provision or improvement of public open space and recreation facilities in association with new developments.

### **Justification**

- 11.4 The detailed policy basis and justification for seeking developer provision or contributions in respect of public open space and recreation facilities provision and is set out in:
  - Planning Policy Wales
  - TAN 16 – Sport, Recreation and Open Space
  - Denbighshire Local Development Plan Policies RD1 “Sustainable Development & Good Design”; BSC3 “Securing Infrastructure Contributions from Development”; & BSC11 “Recreation and Open Space”
  - Fields in Trust (FIT) – “Planning and Design for Outdoor Sport and Play”

### **Threshold for Provision**

- 11.5 LDP Policy BSC11 requires developments to contribute to open space provision. New residential development can place additional demands on existing open space and we will therefore require open space to be provided on site or contributions made to improve existing local facilities. Policy BSC11 sets out the Council's standard for open space provision, which

reflects the Fields in Trust ‘benchmark’ standards. The Council is currently undertaking a comprehensive open space assessment for the County and the County Standard will be reviewed following completion of the assessment.

<b>Standards for open space provision</b>	
<b>Type of open space</b>	<b>Standard</b>
Outdoor sport, including playing pitches	1.6 hectares per 1000 population
Children’s equipped playspace	0.25 hectares per 1000 population
Children’s informal space	0.55 hectares per 1000 population
<b>Overall total</b>	<b>2.4 hectares per 1000 population</b>

- 11.6 The minimum standard for open space provision is therefore 24m<sup>2</sup> per person. The expected occupancy of dwellings is estimated based on the current average household size of 2.3 persons in Denbighshire to provide the requirement per dwelling set out below.

<b>Requirements for open space provision</b>	
<b>Type of open space</b>	<b>Requirement per dwelling</b>
Outdoor sport, including playing pitches	36.8 m <sup>2</sup>
Children’s equipped playspace	5.75 m <sup>2</sup>
Children’s informal space	12.65m <sup>2</sup>

- 11.7 Where the number and type of dwellings are unknown (for example, outline applications), the requirement for open space will be reserved through a planning condition or legal agreement to enable the matter to be resolved when a detailed application is made.
- 11.8 In order to ensure usable recreation space is provided, for residential developments of 30 or more dwellings the Council will require children’s playing space to be provided on-site and a contribution to sports facilities. Areas of open space should be sufficiently large to be usable for recreation. Financial contributions will be required for developments of less than 30 dwellings and we will not expect on-site provision to be made. On-site provision for outdoor sport would only be required for developments of 200 or more dwellings.

Requirements for open space provision		
Type of open space	Threshold for on-site provision	Threshold for financial contributions
Outdoor sport, including playing pitches	200 or more dwellings	1- 200 dwellings
Children's equipped playspace	30 or more dwellings	1 – 30 dwellings
Children's informal space	30 or more dwellings	1 – 30 dwellings

- 11.9 Developments comprising sheltered, extra care, elderly housing and other specialist forms of development where children will not be resident will not be expected to provide children's playspace, however, alternative open space should be provided on site for residents. This could include gardens, sitting areas, etc.
- 11.10 There is on-going demand for allotment plots within the County, particularly in St Asaph, Ruthin, Denbigh, Llangollen, Rhyl and Prestatyn and provision of allotments, community orchards, community growing areas etc on site or contributions towards providing off site facilities could be considered as part of the contribution to open space requirements.
- 11.11 Where appropriate, non-residential development should also incorporate open space and landscaping to ensure that high quality development is achieved, which contributes to the environment.

## Mitigation of development

- 11.12 Wherever practicable and where residential developments exceed the threshold outlined above, open space should be provided on site. In certain circumstances provision could be made off-site where it can be demonstrated that this would improve the quality of both the development and the open space provided can better meet the needs of the local area.
- 11.13 It is vitally important that all play areas are well designed and laid out in appropriate locations to ensure that they are well used. Poorly designed and located play areas, often small left over areas on the edges of the development, can create amenity problems for residents or be under used and fall into disrepair and neglect. Sites should make full use of existing features such as public footpaths and trees and ensure wherever possible these are retained on site. Developers are encouraged to provide safe to use open space on site that caters for the needs of different users and age

groups. Layout and design features should be drawn up to be as inclusive and accessible for all, providing a pleasant environment for relaxation as well as a safe environment for children's play. Siting to allow for natural surveillance and road safety must be considered as part of the design process. There may be scope to combine open space and landscaping provision with sustainable drainage schemes and habitat creation to enhance biodiversity.

11.14 Financial contributions are calculated using the estimated number of residents and current costs of providing recreation space. Please use the Council's on-line open space calculator at:

[http://www.denbighldp.co.uk/english/spg\\_new.htm](http://www.denbighldp.co.uk/english/spg_new.htm)

11.15 Contributions collected will be used to improve existing recreation facilities, improve access to existing facilities or to provide new facilities within the local area affected by the development. Only those areas affected by the development will receive the benefit of the financial contribution. Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional facilities, Denbighshire may combine contributions as necessary to negate the cumulative effect.

11.16 Contributions received by Denbighshire will be held in interest bearing accounts with a unique finance code which is to be used only for the purpose specified in the legal agreement or planning condition. If this contribution is not spent within an agreed timescale the contribution will be reimbursed with interest.

## **Management of Development**

11.17 Where open space is to be provided on site, the Council will require developers to make appropriate arrangements for the future maintenance of the open space. Proposals should be discussed with the Council at an early stage. We will need to be satisfied that appropriate arrangements have been made for long term maintenance; for example by the establishment of a sufficiently resourced management company, residents association or Community, City or Town Council responsible for their upkeep, prior to approval of the planning application. If the space is to be adopted by a City , Town or Community Council, a commuted sum should also be provided for the maintenance of the facility for an agreed period. In most circumstances this will be for a period of 25 years, however there may be situations where a different maintenance period is required. The Council may require applicants to enter into a financial bond in order to secure financial contributions required. Please use the Council's on-line open space calculator at [http://www.denbighldp.co.uk/english/spg\\_new.htm](http://www.denbighldp.co.uk/english/spg_new.htm) to calculate the maintenance requirement.

## **Delivery Trigger**

11.18 The timescales for delivery of the required works will be agreed with the Council and form part of the Legal Agreement or planning conditions. Proposals should be discussed at an early stage to ensure that where necessary, appropriate provision is provided in a planned way and forms an integral part of the design of the development. The timing of contributions will depend on both the nature of the development and type of contribution required. On site open space should normally be provided in a phased manner and always before the completion of the development.

## **12. Sustainable transport**

- 12.1 New developments often change and/or increase the pattern of trip making from a site. This can include trips by pedestrians and cyclists, as well as by public transport, car and service delivery vehicles. To accommodate this increase in demand and to facilitate a change to more sustainable modes of transport, additional infrastructure may need to be provided. In these circumstances, the developer may need to undertake highway works to secure access and address the short term impacts and/or provide financial contributions to mitigate the longer term cumulative impact of the development.
- 12.2 For major developments, the extent of any facilities required to ensure the safe and efficient operation of the development and the local highway network will be determined by the agreed Transport Assessment (TA), which should accompany the application.
- 12.3 For smaller developments and those not situated within locally sensitive areas, where a Transport Assessment will not be required, the Council will determine the extent of the works or contribution required based on the level of impact of the new development. Highway improvements will only be required where they are essential for the operation of the development and in the vicinity of the highway network.
- 12.4 Local authorities are required to have regard to the Active Travel (Wales) Act 2013 design guidance when creating or improving active travel routes. The Act requires the creation of an integrated network map (INM), which will set out the local authority's plans for active travel infrastructure for the next 15 years. Denbighshire County Council's INM is currently being developed and will be finalised in September 2017. Denbighshire County Council will utilise the INM, where appropriate, as a means to ensure that new developments incorporate the appropriate active travel routes/facilities into their design. However this guidance will also be used for planning active travel more widely and as such the Active Travel (Wales) design guidance will be applied to all new developments where appropriate. The principles of the guidance will help provide safe and suitable infrastructure that is appropriate, thus avoiding over-engineering or wasting resources on facilities of little value.

### **Justification**

- 12.5 The detailed policy basis and justification for seeking developer provision or contributions in respect of traffic, transport and highway initiatives is set out in:-
  - Planning Policy Wales
  - TAN 18 – Transport

- North Wales Regional Transport Plan (2009)
- Denbighshire LDP, notably Policies RD1 “Sustainable Development & Good Design”; BSC3 “Securing Infrastructure Contributions from Development”; & ASA2 “Provision of Sustainable Transport Facilities”

## Threshold for Provision

12.6 No set threshold is required as contributions will be required to mitigate the identified development impacts regardless of the type or size of development.

## Mitigation of Development

12.7 Planning applications for major developments will usually need to be accompanied by a Transport Assessment (TA) which should identify the potential impacts of the proposed development on traffic and travel movements on the existing highway network. In line with PPW and TAN 18 – Transport, the output of the TA should be a Transport Implementation Strategy (TIS) that addresses relevant transport objectives for the site, guided by the development plan and the issues identified in the analysis of people movements.

12.8 Planning Policy Wales (PPW) sets thresholds for developments which will require the submission of a TA. This includes:-

Transport Assessment Thresholds for Development	
Use	Threshold
Housing	> 100 dwellings
Retail and Leisure Facilities	> 1,000m <sup>2</sup> gross floor area
Business	> 2,500m <sup>2</sup> gross floor area
Industry	> 5,000m <sup>2</sup> gross floor area
Distribution and warehousing	> 10,000m <sup>2</sup> gross floor area

12.9 The TA will therefore form the basis of any required contributions with regards to traffic, transport and highway initiatives. The types of works to mitigate impacts from the proposed development may include:-

- Traffic management/calming;
- Traffic engineering/highway works, temporary or permanent;

- Cycle routes, management, safety;
- Pedestrianisation, pedestrian crossings; and,
- Provision/improvement of footpaths or pathways
- Public transport initiative or improvements

12.10 Developers will be normally be required to fund the design and construction of both on site and off site infrastructure works, such as junction improvements and the provision of links to a local pedestrian/cycle system and other sustainable transport forms.

12.11 Pooled contributions may be required for larger highway schemes and contributions to these will be based on the proportionate increase in vehicular movements generated by the new development.

## **Management of Development**

12.12 Technical Advice Note 18 “Transport” states that in order to determine the necessity and effectiveness of the Travel Plan, it is preferable that a TA is undertaken and the Travel Plan developed as a component of the Transport Implementation Strategy. It is therefore likely that only major traffic generating schemes will be expected to prepare and implement Travel Plans. Travel Plans will be expected to promote sustainable methods of travel and aim to reduce travel and car use. Obligations and contributions covered by Travel Plans may include:-

- The provision of public transport infrastructure / initiatives in order to serve the development.
- The provision of information and schemes to promote cycling, walking and car sharing.
- The provision of car parking to serve the development. Parking provision will be assessed against the adopted maximum parking standards as set out in the Parking Standards SPG.

12.13 An off-site contribution for public car parking may be appropriate for developments proposed within or on the edge of town centres or for developments with insufficient car parking provision to meet its own needs.

12.14 Levels of contributions will be calculated on a site by site basis to reflect the impact of the development and the need for improved transport facilities, as well as the requirement to ensure that necessary and adequate maintenance is provided.

## **Delivery Trigger**

12.15 The timescales for delivery of the required works will be agreed with the Local Planning Authority and form part of the Legal Agreement. The timescales for payment of contributions will depend on both the nature of

the development and type of contribution required. However, some works may be required prior to the commencement of development, particularly when necessary for safety reasons. Costs will be worked out on a site by site basis depending on the issues involved and the mitigation or management measures required.

12.16 In terms of obligations coming from the Travel Plan, public transport contributions may be required before the development is occupied. Additional measures such as parking provision and cycle links can be phased throughout the development period.

## **13. Education Provision**

- 13.1 Denbighshire County Council is committed to modernising education and to ensuring our schools provide the best possible learning environments. This is a key corporate priority for the Council. Education infrastructure is an integral part of new residential development and has a crucial role to play in achieving and maintaining sustainable communities.
- 13.2 Due to the geographical nature of Denbighshire there are some areas which have surplus places and there are other areas, predominantly in the north of the County, which are facing significant capacity issues. Denbighshire's admissions policy grants parental preference where there are sufficient places available. In some instances 'empty places' in a school do not equate to there being capacity in the school due to these places being restricted to certain year groups. A contribution towards the upgrading and/or extension of existing educational facilities will be sought if the implementation of the development will result in the generation of additional pupil numbers in excess of existing or planned capacity at local schools.
- 13.3 Contributions may be used for:-
- The provision of new classrooms to accommodate an increase in pupil places within existing schools;
  - Replacement and/or improvement of existing school facilities to adequately facilitate an increase in pupil places;
  - Provision of land for a new school where required and related to the scale of the development;
  - Provision of additional facilities (for example, playing fields) necessitated by an increase in pupil numbers.

## **Justification**

- 13.4 The detailed policy basis and justification for seeking developer provision or contributions in respect of educational facilities is set out in:-
- Planning Policy Wales
  - National Assembly for Wales Circular 09/2006 'Measuring the Capacity of Schools in Wales'
  - Denbighshire Local Development Plan Policy BSC3 "Securing Infrastructure Contributions from Development"

## **Threshold for Provision**

- 13.5 Contributions will be sought from proposed developments which comprise of 5 or more dwellings, or a site area of 0.2 hectares or more, that have the potential to increase demand on local schools. This will be for primary and secondary provision where a capacity issue has been highlighted by

Education Services, Denbighshire County Council. The Council will use the most recent school roll figures available. It should be noted that empty places does not necessarily equate to there being sufficient capacity at that school. Investment may be needed to bring it up to the required standard to make it suitable for the pupils generated from the proposed development.

### Exceptions

13.6 The exceptions to the provision of school places will be the following type of residential development from which planning authorities will not seek contributions:

- Housing specifically designed for occupation by elderly persons (ie restricted by planning condition or agreement to occupation by those over aged 55 years or more).
- 1 bed dwellings or 1 bed apartments or flats.

### Mitigation of Development

13.7 Contributions towards additional or improved school facilities will be based on the following factors:

1. **The number of qualifying dwelling units in the development.** The policy will apply to developments with 5 or more dwelling units or over 0.2 hectares.
2. **The number of school age children likely to be generated by each residential unit.** This is based on the data gathered by local authorities to estimate likely pupils arising from developments. This would generate a figure of 0.24 as the primary school formula multiplier and 0.174 as the secondary school formula multiplier. This will be reviewed by the local authority.
3. **Cost Guidelines.** For new build and extensions the Council will require a sum of £16,000 per pupil place for a primary school and a sum of £15,000 per pupil for a secondary school. For remodelling the Council will require a sum of £8,000 per pupil place for a primary school and £7,500 per pupil place for a secondary school. These sums are based on average cost/m<sup>2</sup> data sourced from the Building Cost Information Service. The Council's Education Service will advise on what type of improvements are required.

#### **Calculation of commuted sums for primary education contribution:**

The commuted sum payable is based on the likely number of pupils generated by the development. This is assumed to be an average of 0.24 pupils per house for primary education. The cost per pupil place for primary education is £16,000.

For example if school capacity was 240 and if actual number of pupils 230:  
Development of 140 houses  $140 \times 0.24 = 33.6$  additional pupils (round up to 34).  
This would lead to a total of 264 pupils, 24 in excess of the school capacity.  
Therefore contributions would be required for 24 additional pupils.

Contributions for 24 pupils.  $24 \times £16,000 = £384,000$

#### **Calculation of commuted sums for secondary education contribution:**

The commuted sum payable is based on the likely number of pupils generated by the development. This is assumed to be an average of 0.174 pupils per house for secondary education. The cost per pupil place for secondary education is £15,000.

For example if school capacity was 1400 and if actual number of pupils 1395:  
Development of 140 houses  $140 \times 0.174 = 24.36$  additional pupils (round to 24).  
This would lead to a total of 1419 pupils, 19 in excess of the school capacity.  
Therefore contributions would be required for 19 additional pupils.

Contributions for 19 pupils.  $19 \times £15,000 = £285,000$

- 13.8 In assessing whether a proposed development or a site is eligible for seeking the provision of, or contributions towards, education facilities, the number of dwellings specified in this guidance will apply to, or take into account, the cumulative area to be developed for housing. For example, where a development is made up of two or more phases, or is the subject of two or more separate planning applications, the total number of dwellings will be the basis for determining whether provision will be sought. Thus developers should be aware that if it is considered that a contribution is justified, the requirement cannot be avoided by dealing with a site through more than one planning application.

### **Management of Development**

- 13.9 Contributions collected will be used to increase capacity at education facilities affected by the development. Only those schools affected by the development will receive the benefit of the financial contribution. Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional facilities, Denbighshire may combine contributions as necessary to negate the cumulative effect.
- 13.10 Contributions received by Denbighshire will be held in interest bearing accounts with a unique finance code which is to be used only for the purpose

specified in the obligation. If this contribution is not spent within an agreed timescale the contribution will be reimbursed with interest.

## **Delivery Trigger**

- 13.11 The timescales for delivery of contributions will be agreed with the Council and will form part of the legal agreement. We would normally require contributions to be made in a phased manner alongside completion of the new homes, depending on both the nature of the development and type of contribution required and always before the completion of the last home. In cases where this is not considered possible, sufficient justification must be provided by the developer.

## **14. Natural and Built Environment**

14.1 Denbighshire enjoys a rich and diverse environment and there is a need to protect and enhance the character of the countryside, landscape and built environment. There are many elements that can fall into the term 'environment' so contributions under this area can be wide ranging.

### **Justification**

14.2 The detailed policy basis and justification for seeking developer provision or contributions in respect of the natural and built environment is set out in:-

- Planning Policy Wales
- TAN 5 – Nature Conservation and Planning
- TAN 15 – Development and Flood Risk
- Denbighshire LDP, notably Policies RD1 “Sustainable Development and Good Standard Design”; VOE1 “Key Areas of Importance”; VOE2 “Area of Outstanding Natural Beauty & Area of Outstanding Beauty”; VOE3 “Pontcysyllte Aqueduct & Canal World Heritage Site”; VOE4 “Enabling Development”; VOE5 “Conservation of Natural Resources”.
- Denbighshire County Council SPG: Conservation & Enhancement of Biodiversity

14.3 Planning Statements accompanying a planning application should identify any potential impacts of the proposed development and the ensuing mitigation or management required.

### **Threshold for Provision**

14.4 Obligations and contributions in respect of the natural or built environment will be required where there is a need to improve, maintain, protect or enhance conservation objectives. This is not necessarily related to the size of the site and it is therefore not appropriate to apply a set threshold for the negotiation of planning obligations in this instance. Costs will be worked out on a site by site basis depending on the issues involved and the mitigation or management measures required.

### **Delivery Trigger**

14.5 The timescales for delivery of obligations and contributions will be agreed with the Council and will form part of the legal agreement, and will be dependent on both the nature of the development and type of contribution required. Mitigation measures may be required before development starts on site but this will be depend on the nature of the potential impact and mitigation proposed.

## **15. Health care provision, Community Development and Leisure**

- 15.1 Community facilities play an important role in meeting the needs of society and lend support to building a cohesive community. Community facilities comprise facilities used by local communities for leisure and social purposes and include community centres and meeting places, libraries, health care provision (i.e. Doctor/Dentist surgery), nursery/child care facilities and leisure centres.
- 15.2 For the purposes of this SPG, community facilities do not include privately run facilities, including members only clubs or schools, religious buildings.

### **Justification**

- 15.3 The detailed policy basis and justification for seeking developer provision or contributions in respect of the natural and built environment is set out in:-
  - Planning Policy Wales
  - Denbighshire LDP, notably Policies RD1 “Sustainable Development and Good Standard Design” & BSC3 “Securing Infrastructure Contributions from Development”.
- 15.4 Where residential development is likely to increase the need for community facilities, the Council will be justified in seeking a contribution towards either building more facilities or improving existing facilities.

### **Threshold for Provision**

- 15.5 The level of contribution will depend on the type of facility required, which will in turn be dependent on the type and size of the development proposed. For example, the impact on local health services will be affected by the likely health care dependency of the new population and the amount, if any, of spare capacity in local GP practices and other health facilities.
- 15.6 Financial contributions may be used to improve existing community facilities or to provide for new facilities, where a need will be generated by the proposed development. In certain situations, where the existing community facilities are adequate enough to accommodate the level of additional capacity created by a development, a contribution may not be required. On-site provision may be required for large developments e.g. 200 dwellings or more.

### **Mitigation of Development**

- 15.7 Where a contribution towards community facilities is sought, the total will be derived from the current average build costs specified by the Building Cost Information Service (BCIS). Contributions may be sought to enhance existing

community facilities either in terms of increasing capacity of such facilities or expanding the range of functions that can be delivered through these existing facilities; or contributions to provide new community facilities ie purchase of land, construction costs, fitting out etc.

## **Management of Development**

- 15.8 Where a financial contribution is sought, only those areas affected by the development will receive the benefit of the contribution. Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional or enhanced facilities, Denbighshire may combine contributions as necessary to negate the cumulative effect.
- 15.9 Contributions received by the Council will be held in interest bearing accounts with a unique finance code which is to be used only for the purpose specified in the obligation. If this contribution is not spent within an agreed timescale the contribution will be reimbursed with interest
- 15.10 In those instances where the developer has provided a new community facility, the Council will require developers to make appropriate arrangements for the future maintenance of the facility. Proposals should be discussed with the Council at an early stage. We will need to be satisfied that appropriate arrangements have been made for long term maintenance; for example by the establishment of a sufficiently resourced management company, residents association or Community, City or Town Council responsible for their upkeep. If the building is to be adopted by a City , Town or Community Council, a commuted sum should also be provided for the maintenance of the facility for an agreed period. In most circumstances this will be for a period of 25 years, however there may be situations where a different maintenance period is required.

## **Delivery Trigger**

- 15.11 The timescales for delivering the obligations and contributions will be negotiated with the Council but will be required prior to the completion of the development Timing of contributions will depend on both the nature of the development and type of contribution required.

## **16. Training and Employment**

- 16.1 The Council has identified ‘Developing the Local Economy’ as one of its Corporate Priorities and seeks to promote the application of ‘Community Benefits’ in all new developments. New developments can make significant contributions to the future economic well-being of a local community through the provision of appropriate local training and employment opportunities. An emphasis on ensuring local people and businesses are involved early on in the development of an area will ensure the benefits of development are more fully realised. Various training and employment measures may be sought through planning obligations to provide for the following as examples:
- Local supply chain initiatives
  - Local construction training
  - Provide work experience and apprenticeship opportunities
  - General employment and training contributions that enable local residents to improve their skills and secure jobs created
  - Local employment / training strategy
  - Site visits for students

### **Justification**

- 16.2 The detailed policy basis and justification for seeking developer provision or contributions in respect of employment and training is set out in:-
- Planning Policy Wales
  - Technical Advice Note 23 Economic Development
  - Denbighshire LDP Policies RD1 “Sustainable Development and Good Standard Design”; BSC3 “Securing Infrastructure Contributions from Development”; PSE1 “North Wales Coastal Regeneration Area”;
  - Denbighshire Economic and Community Ambition Strategy 2013 – 2023
- 16.3 New development places additional demands on the skills base of a local area and it is considered that financial contributions can make a significant positive impact on delivery of initiatives to upgrade local workforce skills to meet these demands.

## **Threshold for Provision**

- 16.4 There is no specific local formula for seeking contributions with regard to local training and employment. Where appropriate, developers will be encouraged to engage with the Department for Work & Pensions - Job Centre Plus at an early stage, preferably prior to the submission of an application to maximise opportunities for local training and employment and additional contributions will be assessed by the council on a case by case basis. Contributions will largely be sought from major commercial and industrial developments and developers of significant housing developments may be required to provide or support local apprenticeships, training and employment opportunities.
- 16.5 The Council's Economic and Business Development Team will be consulted on relevant applications to identify opportunities for links to local supply chains and to identify links between the development and measures, projects or programmes that contributions will support.

## **Delivery Trigger**

- 16.6 Obligations and contributions in respect of training and employment may be required prior to commencement of development and may continue throughout the development period. The opportunities could be provided either throughout the construction phase of a development or for the end use of (non-residential) development.

## **17. Community Safety**

- 17.1 There will be instances, particularly within town centres, where the nature of development will create the requirement for management measures to be put in place to tackle risks of access and security in the area of a development. Often such measures will be incorporated in the development itself. Social exclusion exists in places that suffer problems where groups are segregated from other parts of society, usually low-income groups where there are problems with unemployment, poor housing and other aspects that increase exclusion. Design solutions can help to integrate groups better. By creating a better-connected environment that is inclusive and accessible will enhance the sense of safety and security within a development and out to surrounding areas.
- 17.2 Measures to improve community safety in the vicinity of developments may include:-
- Improved street lighting
  - CCTV camera installation, coverage, and monitoring arrangements
  - Pedestrian improvements required to address community safety
  - Signage with regards to security and community safety.
- 17.3 Contributions will be determined in consultation with the Designing out Crime Officer, North Wales Police.

### **Justification**

- 17.4 The detailed policy basis and justification for seeking developer provision or contributions in respect of community safety is set out in:
- Planning Policy Wales
  - TAN 4 “Retailing and Town Centres” & TAN 12 “Design”
  - Denbighshire RD1 “Sustainable Development and Good Standard Design”; PSE8 “Development within Town Centres”; & BSC3 “Securing Infrastructure Contributions from Development”

### **Threshold for Provision**

- 17.5 The level of contribution will be considered on a case by case basis. Contributions are most likely to be sought from developments that are in high profile public areas, such as town centres, are in a high crime area or are for a use that is considered to be of high risk. They will apply to both new developments and to changes of use, extensions, applications for extensions to opening hours.

## **18 Streetscape improvements and public art**

- 18.1 Streetscape and public art is an important contributor to the achievement of high quality urban design and can help to raise the quality of development. Therefore, where appropriate the Council will encourage public art features to be included within a new development, depending on its relationship to the public realm, the physical environment and its setting.
- 18.2 Our town centres are facing challenging times and the quality and condition of the public realm has a significant impact on the way in which an area is perceived and experienced. High quality public realm is important for attracting investment as well as providing an enjoyable experience for residents, businesses and visitors. This is recognized in the Council's Vibrant and Viable High Streets Plan, which sets out actions which aim to improve the appearance of town centres and public spaces.
- 18.3 Streetscape and public art can be diverse in form and function and does not only encompass sculptural or monumental features, but also work that is integrated into a development, such as street furniture, lighting, brickwork, pedestrian railings, access ramps and signage. Streetscape improvements could also include improvements to shop frontages and actions to address 'eyesores'.
- 18.4 When assessing a contribution, developers will be expected to demonstrate how streetscape and public art will be incorporated into their scheme that reasonably relates to the scale, location and use of the site as well as any consultation with the local community, for example where commissioned artists are involved.

### **Justification**

- 18.5 The detailed policy basis and justification for seeking developer provision or contributions in respect of public art is set out in:
  - Planning Policy Wales
  - TAN 12 – Design
  - Denbighshire RD1 “Sustainable Development and Good Standard Design”; PSE7 “Proposals for New Retail Development”; PSE8 “Development within Town Centres”; & BSC3 “Securing Infrastructure Contributions from Development”
- 18.6 The requirement must be necessary to make development acceptable in planning terms, through either compensation or mitigation which may include loss of habitat or built fabric, socio-economic or physical appearance changes to an area and which could only be delivered outside of the application site. Public art can therefore seek to mitigate against such impacts through:

- Providing works which re-establish local identity, a sense of place and thereby contributing to local distinctiveness;
- Creating a stimulating environment to live, work, invest or visit;
- Enhancing important public spaces;
- Helping to integrate new development within the existing built fabric; and,
- Involving the community directly in new developments, creating a sense of local pride and ownership.

## **Threshold for Provision**

18.7 The determination of whether public art and/ or streetscape enhancements should be provided on or off-site will be determined on a case by case basis and will be dependent upon the size and nature of the development, its location and proximity to key public and civic spaces.

## 19. Welsh Language and Culture

19.1 The future of the language in the County and across Wales will depend on a wide range of factors, particularly education, demographic change, community activities and a sound economic base. The land use planning system can assist in providing a framework to enable sustainable communities to grow and thrive, protecting the social and cultural use of language.

### Justification

19.2 The detailed policy basis and justification for seeking developer provision or contributions in respect of linguistic and cultural fabric is set out in:-

- Planning Policy Wales
- TAN 20 - Planning and the Welsh Language
- Denbighshire LDP, policy RD5: The Welsh language and the social and cultural fabric of communities.
- Denbighshire County Council SPG: Planning and the Welsh Language

19.3 Where residential or commercial development could cause significant harm to the character and language balance of a community the Council will seek obligations and/or contributions to mitigate those impacts.

### Threshold for Provision

19.4 LDP Policy RD5 requires the needs and interests of the Welsh language to be taken in to account in the determination of planning applications. To enable an informed decision to be made on applications which may have an effect on the future of the Welsh language within communities, the policy sets out thresholds for the requirement for Community Linguistic Statements and Community and Linguistic Impact Assessments to be submitted with planning applications, also set out below. These should identify any potential impacts of the proposed development and mitigation measures required. Further guidance on the content required is provided in Denbighshire County Council SPG: Planning and the Welsh Language.

Thresholds for requirements for linguistic submissions		
Development proposed	Community Linguistic Statement required	Community & linguistic Impact Assessment required
Housing – 5 - 20 units in village,	✓	

hamlet or open countryside		
Commercial, industrial, leisure/tourism development 1000m <sup>2</sup> – 3000m <sup>2</sup> floorspace in village, hamlet or open countryside	✓	
Development leading to loss of community facilities or employment opportunities in village, hamlet or open countryside	✓	
Housing – 20 or more units in any location		✓
Commercial, industrial, leisure/tourism development 3000m <sup>2</sup> or more floorspace in any location		✓
Large scale infrastructure projects with long term community impacts		✓

## Mitigation of Development

19.5 Mitigation measures should be related to the proposal and relevant to planning and fairly and reasonably related in scale and kind to the level of harm to Welsh language and culture caused by the development. Each proposal will be treated on its own merits and therefore mitigation measures will vary between different types of development. Certain proposals such as for sufficient affordable housing will have in-built mitigation and it is unlikely that further measures will be required. Examples of mitigation include:

- Affordable housing provision (secured on-site through a legal agreement or commuted sum, whichever is appropriate);
- Phasing of housing proposals (secured on-site through legal agreement or planning condition);
- Education provision and places (commuted sum contributions);
- Signage and place names (including marketing name, street names and other signage) (secured on-site through legal agreement or planning condition);
- Employment initiatives and training (commuted sum contributions);
- Contribution to community facilities and groups (commuted sum contributions);
- Funding for Welsh courses or other related initiatives active in the Community (commuted sum contributions).

19.6 The Council will work closely with partner organisations, such as Menter Iaith to identify local issues and potential mitigation measures. Where a financial contribution is sought, only those areas affected by the development will

receive the benefit of the contribution. Where a number of developments are being proposed within close proximity which as a whole will necessitate a need for additional facilities or initiatives, Denbighshire may combine contributions as necessary to negate the cumulative effect.

- 19.7 Contributions received by the Council will be held in interest bearing accounts with a unique finance code which is to be used only for the purpose specified in the obligation. If this contribution is not spent within an agreed timescale the contribution will be reimbursed with interest

## **Delivery Trigger**

- 19.8 The timescales for delivery will be agreed with the Council and form part of the Legal Agreement or planning conditions. Proposals should be discussed at an early stage to ensure that appropriate mitigation measures can be agreed. The timing of contributions will depend on both the nature of the development and type of contribution required. Obligations and contributions in respect of the Welsh language may be required prior to commencement of development and may continue throughout the development period and beyond. The policy offers an opportunity for developers to seek early engagement with local communities to explain their proposals and if possible to obtain their endorsement and support.

# Appendix 1

## SITE VIABILITY CHECKLIST

Where a viability assessment is required, this should take the form of a residual development appraisal. In addition, any supporting evidence for any abnormal or unusual costs should be submitted. The residual appraisal, in most circumstances, will need to reflect the value of the land purchase cost, and therefore the residual value will be a profit level. This should be expressed as a figure as well as a percentage against total development costs.

This information should include the following as a minimum guide, but other factors may need to be requested:

<b>Development Proposal</b>
<ul style="list-style-type: none"><li>Brief description of the scheme, with site area (ha), layout, mixed use development details and reasons why an economic case is being made</li><li>Total number of dwellings – type, square metre size, number of beds and mix including number, type, size of any residential element to the scheme</li></ul>
<b>Values</b>
<ul style="list-style-type: none"><li>Market value of sales units (expressed in terms of price per square metre and per unit type, with suitable comparables provided) and total revenue for the whole site</li><li>If affordable housing is to be provided-Sale of affordable housing units shown at the value to be paid by a Registered Provider (confirmation from at least 3 registered providers as to likely affordable housing offers)</li><li>Service charge information, where applicable</li><li>Value of ground rents/leases</li></ul>
<b>Costs</b>
<ul style="list-style-type: none"><li>Site acquisition – include the date of acquisition, or whether based on conditional contract or option. Where possible, comparable land transactions would be helpful in order to set the site purchase price in context.</li><li>Costs associated with acquisition – broken down into legal and agents' fees, stamp duty etc. Also include any items such as the costs for covenant release or 'ransom' strips</li><li>Build costs (include cost of superstructure, external works, preliminaries, roads and services and infrastructure costs)– give the building cost of units. Please provide a cost breakdown to support the headline cost (expressed in cost per square meter) being used and say whether this is a tendered sum or an estimate. These should be compared against latest BCIS costs for the locality and build type, and costs that are significantly higher should be justified.</li><li>External works – include boundary treatment, landscaping, demolition and site preparation costs, etc as necessary</li><li>The costs of sales, or letting, including marketing, agents' fees and legal costs</li><li>Abnormal costs with supporting professional and third party evidence. Reasons why these abnormal costs were not reflected in the land purchase price.</li><li>Standard planning costs – planning and building regulation fees, commuted sum contributions for all Planning Obligations Any additional community benefits or commitments made by the scheme</li></ul>
<ul style="list-style-type: none"><li>Professional fees – identified by specialism</li><li>Contingencies – what allowance has been made</li><li>Cost of finance – indicate the period and interest rate</li><li>Developers Profit/Margin and overheads – the residual amount</li><li>If the residual appraisal is built on the basis of a residual land value – anticipated residual land value</li></ul>

**NB:** In cases where a development appraisal is required to help us determine your application the information will be available in the public domain unless it is specifically requested otherwise.

## **Appendix 2**

### **Contacts & Further Information**

For enquiries regarding planning policy matters and this SPG:

Strategic Planning & Housing Team, Denbighshire County Council, PO Box 62, Ruthin, Denbighshire LL15 9AZ Phone: 01824 706916  
Email: [ldp@denbighshire.gov.uk](mailto:ldp@denbighshire.gov.uk)

For pre-application enquiries, please contact:

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