

Committee	<b>Cabinet</b>
Date	<b>17 November 2004</b>
Report By	<b>Director of Transport and Environment</b>
Title of Report	<b>Implementing the adopted interim Supplementary Planning Guidance (SPG): A New Approach to Development Contributions.</b>
Purpose of Report	<b>To approve a draft protocol as a template for arrangements with the district &amp; borough councils in East Sussex.</b>

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## **RECOMMENDATIONS**

**The Cabinet is recommended to:**

- 1. approve the draft protocol (the Protocol) as the template for implementation of the adopted interim Supplementary Planning Guidance (SPG);**
  - 2. to authorise the agreement of detailed arrangements with the district and borough councils based on the template;**
  - 3. to support partnership working with the district and borough councils to develop a model form for legal agreements securing development contributions; and**
  - 4. to support regular reviews of the arrangements and the model form of agreement.**
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### **1. Financial Appraisal**

1.1 The Protocol has been progressed by County Council officers and a planning consultant, working primarily with Lewes District Council officers but also consulting with colleagues across the county, district and borough councils. Work to date has been financed from within existing Transport and Environment budgets. Further work to agree arrangements with the other districts and boroughs including work on a model form of legal agreement, will be funded in a similar manner.

1.2 The 'Development Contributions Coordinator', a new post funded from existing Transport and Environment resources, will be responsible for liaison with the district and borough councils arising from the proposed protocols. This is expected to result in additional development contributions towards the provision of County Council services and, as such, the work will become self-funding.

1.3 Awards of planning appeal costs against local planning authorities are rare and recent appeal decisions on development contributions sought in accordance with Development Plan policies and adopted supplementary planning guidance indicate the potential for adverse decisions is slim. Nevertheless, district and borough councils are wary of the costs being awarded against them, as the responsible local planning authority, in seeking development contributions on behalf of other service providers. The Protocol, therefore, provides for the County Council to reimburse a share of the appeal costs awarded against district and borough councils to the extent they relate to contributions sought towards additional County Council service provision. In the event such costs arise, they will be financed from within existing resources.

## **2. Supporting Information**

2.1 New Development should contribute towards the costs of upgrading the County Councils facilities required to serve it. In adopting both the Supplementary Planning Guidance (SPG) and its Local Sustainable Access Improvement Contributions (LSAIC) addendum to progress towards that objective, the Cabinet supported the development of detailed implementation protocols with the district and borough councils.

2.2 An initial draft protocol was not acceptable to the district councils, mainly because they were concerned that the proposed arrangements would significantly delay the determination of many planning applications. However, to assess the effect of securing development contributions on performance, over a 12 month pilot period from August 2003, Lewes District Council implemented its own internal protocol in respect of a limited range of services.

2.3 In parallel with arriving at their assessment that the internal protocol "has generally worked well over the period", Lewes District Council officers have worked with the County Council's planning consultant and staff to move towards a common approach to implementation. The Protocol is intended as a framework for the flow of information required to support implementation of the SPG from responses to the district and borough councils' initial consultations through to monitoring the progress of development contributions agreed.

2.4 The Protocol covers:

- i) timeliness and the provision of good supporting information to initial consultation responses (both crucial to success in securing development contributions);
- ii) inclusion of supplementary comments from this authority in reports to planning committees where consideration is being given to seeking contribution(s) less than those required to accord fully with the SPG;
- iii) sharing of information monitoring the progress of legal agreements, particularly the receipt and expenditure of financial contributions; and ,
- vi) partnership work to develop a model form for legal agreements securing development contributions.

In that context, I recommend the County Council agrees to reimburse a share of appeal costs awarded against district and borough councils to the extent they relate to contributions sought towards additional County Council service provision; including LSAICs but not improvements to the immediate (local) highway and transport networks needed to access developments.

2.5 The Office of Deputy Prime Minister (ODPM) recently commissioned consultants to develop good practice guidance for local planning authorities including a model form for legal agreements. Regular reviews of the Protocol and the model form for legal agreements securing development contributions will enable adjustments in line with experience and ODPM's forthcoming guidance.

2.7 The Protocol is being submitted to Lewes District Council's Cabinet on 24 November for approval.

## **3. Conclusion and Reason for Recommendation**

3.1 Detailed protocols with provision for regular review and adjustment are required to promote implementation of the SPG by dovetailing the arrangements into the district and borough councils' development control processes.

BOB WILKINS

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16 November 2004      C17November-Protocol Report      Local members: All

### **BACKGROUND DOCUMENTS**

The adopted SPG on Development Contributions incorporating the LSAIC addendum.

**REVISED Draft prepared following a third round of informal discussions between Lewes District Council and East Sussex County Council officers.**

**NOVEMBER 2004**

***PROTOCOL FOR THE IMPLEMENTATION OF SUPPLEMENTARY PLANNING GUIDANCE ON DEVELOPMENT CONTRIBUTIONS TO INFRASTRUCTURE AND FACILITIES***

This protocol sets the guidelines for the local planning authority and the providers of infrastructure and facilities to work together to implement planning policy on the provision of infrastructure and facilities with development. These policies are set out in the Development Plan and have been elaborated in the local planning authority's supplementary planning guidance.

The protocol sets out the responsibilities of different authorities at the various stages of a development proposal. It is accompanied by Annexes 1 and 2 and these form part of the protocol.

For District Council read District or Borough Council as appropriate.

**Draft Protocol**

**1. Supplementary Planning Guidance (SPG)**

1.1 The District Council will develop its own Local Development Document (LDD) to elaborate Development Plan policies. This will deal with all the infrastructure and facilities related to development, whether provided by the District Council, County Council, or other authorities or agencies. It will incorporate and supersede the County Council's adopted SPG.

1.2 Until this LDD is adopted, the District Council will use the County Council's adopted SPG as guidance to determine its infrastructure and facilities requirements.

1.3 The District Council will update its guidance annually, in association with other authorities and agencies.

**2. Pre – Planning Application**

2.1 The District Council will alert developers to the SPG requirements, to 4.2 (below) and to the standard Section 106 Agreement once the exact wording of this has been agreed by the District Council and County Council.

2.2 The District Council may consult the County Council and other agencies to clarify contributions using the proforma in Annex 1.

2.3 Liaison with infrastructure and facilities providers will be through the relevant officer within the County Council's Highways & Transport Development Control Team, the County Council's Development Contributions Coordinator (for County Council services other than Highways & Transport), and through a similar nominated person in other authorities and agencies.

2.4 The District Council will inform the County Council and others of discussions involving forthcoming major development schemes where contributions would be sought. Thresholds of 30 dwellings and 2,000 m<sup>2</sup> of business space are suggested at this stage as a guide for Case Officers.

### **3. Planning Applications**

3.1 The District Council will screen applications and alert applicants to the need for contributions where appropriate.

3.2 The District Council will inform the County Council and other authorities and agencies of applications (including revised planning applications) on which the requirement for development contributions is triggered by the thresholds. The County Council and other agencies may request consultation on other applications.

3.3 The District Council case officer may opt to estimate the contribution requirements (in so far as this is possible) in accordance with the SPG. In that event, the Case Officer should consult County Council, service departments of the District Council, and other agencies on the contributions to be sought, using the proforma in Annex 1.

3.4 The authorities and agencies will respond to this proforma consultation within 10 working days of its receipt. The response will clearly state:

- a) reasons for any changes or additions to the stated contributions;
- b) how contributions sought would be applied;
- c) how this relates to the proposed development itself; and,
- d) the timing of the proposed expenditure.

3.5 The current standard consultation on planning applications with the Highway Authority will continue.

### **4. Negotiations with Applicants**

4.1 The District Council case officer will be responsible for leading/coordinating all negotiations but may involve others as necessary. Negotiations by other authorities or agencies may only take place with the case officer's agreement or knowledge.

4.2 If a development is considered unviable by the applicant because of the level of contributions being requested, the District Council must seek detailed evidence from the applicant and obtain independent valuation advice, normally at the applicant's cost. That evidence and advice will be provided to the appropriate infrastructure and facilities authorities and agencies.

4.3 If the District Council is intending to seek less than the contributions required by the SPG, then the County Council, other authorities or agencies, must be informed and given 7 working days to respond. This response must include the implications of a reduced contribution and will be included in the planning application report.

### **5 Determination of Applications**

5.1 The District Council will take the lead in drafting Section 106 Agreements for planning applications determined by the District Council. For contributions of small amounts of money, such agreements may be unilateral.

5.2 The standard Section 106 Agreement will be used as the basis for negotiations with an applicant. Departures from this standard agreement should only be made to meet the planning authorities' (not the applicant's) requirements.

*The Standard Agreement will include:*

- (a) clauses to allow for defined schemes on which the contribution will be spent or, where schemes are reliant on pooled contributions and implementation is therefore out of the applicant and service providers' hands, a fallback of related alternative schemes;*
- (b) provision for the effects of inflation between the base date for assessment of contribution amounts required and the actual date of payment to be factored into sums payable; and,*
- (c) a clause to allow the County Council to enforce against the developer if necessary.*

Where time and/or circumstances give rise to the need to vary from the specified scheme, the variation should be confirmed as set out at 6.2 (c) below

- 5.3 The District Council will include the heads of any Section 106 Agreement in planning application reports which will include a summary of what contributions are being sought, how much the sums are, and what these are planned to be spent on. The level of detail included will take into account the progress on the Section 106 Agreement.
- 5.4 Having regard to performance targets, paragraph 2.37 of the SPG and case law, the District Council may condition that the development shall not commence until a S106 agreement has been signed which makes provision for appropriate contributions towards local infrastructure.
- 5.5 The County Council and, where appropriate, other authorities and agencies will be party to agreements which involve contributions to infrastructure or facilities that they provide, and will be required to respond within a reasonable timescale.
- 5.6 In relation to attaining performance targets or other crucial objectives, and where the use of standard clauses is appropriate, such agreements may be bilateral.

## **6. Contributions Payments**

- 6.1 The District Council will monitor Section 106 Agreements and other development contributions and receive payments.
- 6.2 The District Council will pass payments to the relevant authorities and agencies within **X** days of their receipt, subject to their being 'ring fenced' for expenditure on the schemes set out in the proforma in Annex 1.

This could be achieved by:-

- a) appropriate indemnities to the District Council on 'misuse' of money, such as the County Council's responsibility in law for the way money is spent on schemes it is responsible for;
  - b) real-time access (subject to appropriate safeguards) to one another's databases, to view progress on implementing agreements and expending contributions; and,
  - c) confirming that proposals for expenditure of contributions comply with the terms of the agreement by:
    - (i) the relevant authority or agency completing and submitting Part A the proforma at Annex 2 not less than 12 weeks prior to the commencement of works; and,
    - (ii) the Case Officer responding by completing and returning Part B of the proforma at Annex 2 within 10 working days
- 6.3 The District Council, County Council and other agencies will each maintain databases of all relevant Section 106 Agreements and other development contributions requirements, showing their progress.

## **7. Appeals against Application Decisions**

7.1 Where there is an appeal against the refusal of planning permission because the applicant would not accept the level of contributions, the County Council will meet costs awarded against the local planning authority in relation to an appeal decision on contributions to the County Council's infrastructure and facilities.

7.2 The County Council and other authorities and agencies, will provide support for appeals.

## **8. Monitoring**

8.1 The District Council will provide the County Council and other authorities and agencies with a quarterly monitoring statement which will include:-

- a) a schedule of all applications involving development contributions including total and individual contributions collected, with dates;
- b) the defined purposes and schemes for which those monies are allocated;
- c) the timescale in which the contributions must be spent;
- d) any conditions or restrictions on the implementation of those schemes.

8.2 The County Council and other providers of infrastructure and services will provide the District Council with an annual statement setting out the progress on expenditure of contributions on schemes, in relation to applications.

## **9. Monitoring Operation of the protocol**

9.1 The County Council, as planning authority, will arrange a 6-monthly meeting of all East Sussex planning authorities, together with relevant infrastructure and facilities providers, to consider policy and procedural issues on development contributions.

9.2 The protocol shall be reviewed annually to take account of its effectiveness in relation to the relevant Development Plan policies and its effects on, and interaction with, the District Council's development control processes.

## ANNEX 1

### PROTOCOL FOR THE IMPLEMENTATION OF SUPPLEMENTARY PLANNING GUIDANCE ON DEVELOPMENT CONTRIBUTIONS TO INFRASTRUCTURE AND FACILITIES

#### 1 DEVELOPMENT CONTRIBUTIONS PROFORMA

*(This proforma is for the case officer to send to infrastructure providers and for them to respond. This means that the development contributions requirements are completed by this 'dialogue' as early in the process as possible. The specification of schemes will take into account the inclusion in the standard Section 106 Agreement of a fallback position allowing alternative schemes should time or circumstances require it. See content and notes in protocol on these points.)*

**Application no. :**

**Site :**

**Proposed development :**

Case officer's Notes :

*(e.g. implications of the proposal to be borne in mind; queries about infrastructure schemes; related applications)*

**Development Contributions required:**

*(calculated by case officer on basis of SPG)*

[a] £XXXX towards education – increasing/improving primary school provision in the town of XXXX.

[b] £XXXX towards accessibility – improving pedestrian, cycling and public transport access links between the site and local facilities/employment in the town of XXXXX.

[c] etc

**Specific, local proposals towards which contributions will be put:  
(to be completed by the case officer/service providers)**

[a] Education – towards replacement of temporary classroom at XXXX primary school with a permanent facility etc

[b] Accessibility –

1) Measures arising from the development of the site

*(e.g. direct footpath/cycle links between the site and facilities etc or provision of new bus / real time-info shelter etc)*

2) Measures arising locally from development

***(e.g. contribution towards improvement of bus service in the town, main bus corridor etc to shorten journey times and make bus travel a more attractive option)***

3) Contribution to town or area wide schemes

*(only in specific circumstances – e.g. contributions in Peacehaven to A259 public transport corridor etc)*

**2** How the spending relates to the proposed development

***(For the service provider to complete. NB Also need to include info on whether the spending forms part of any larger projects that are planned etc)***

[a] Education – catchment areas, likely number of primary school pupils generated by development etc

[b] accessibility – how the improved transport accessibility links back to the site etc

**3** Timing

*(to be completed by service providers)*

[a] Education – primary school temporary classroom replacement will be carried out between XXXX and XXXX

[b] Accessibility – works under categories 1,2 and 3 will be carried out 1- between XXXX and XXXX 2, between XXXX and XXXX, 3, between XXXX and XXXX

**Also include details of total cost of project and how remainder of project funding to be raised**

Date :

## ANNEX 2

4

### 5 EXPENDITURE OF DEVELOPMENT CONTRIBUTIONS PROFORMA

*This proforma is to facilitate the District Council's confirmation that expenditure complies with the terms of the agreement.*

*Part A is for the County Council to complete for submission to the District Council's case officer not less than 12 weeks prior to the commencement of works.*

*Part B is for the case officer to complete and return within 10 working days*

*N.B. The specification of schemes will take into account the inclusion in the standard Section 106 Agreement of a fallback position allowing alternative schemes should time or circumstances require it. See content and notes in protocol on these points.*

#### **PART A**

**Application no. :**

**Site / Development :**

**Agreement details:**

*(Date, parties, etc.)*

**Development Contribution Received:**

*(Plus interest accrued; less sums(s) previously expended)*

**Net amount held:**

**Expenditure proposed and relationship to the development / agreement:**

*(Scheme, description, estimated costs and timing)*

**Signed:**

**Dated :**

#### **PART B**

I am able to confirm that expenditure of the development contribution as proposed complies with the terms of the agreement.

**Signed:**

**Dated :**