

**Gedling Borough
Council**

**Planning Obligations
Protocol**

June 2014

Gedling Borough Planning Obligations Protocol

Purpose

- 1) This document sets out the protocol between Gedling Borough, its neighbouring Councils and the County Council for dealing with planning obligations relating to development within Gedling which would have an impact on the services and facilities in a neighbouring District. In this context, it is acknowledged that development within Gedling can impact on the services and facilities located within an adjoining District including in particular Ashfield District and also Nottingham City and Newark and Sherwood District. (It is considered unlikely that impacts would be felt in Rushcliffe Borough given the boundary between the two authorities is the River Trent which is effectively a “barrier”).
- 2) The potential impact on services and facilities within the Hucknall part of Ashfield is particularly significant given that the Aligned Core Strategy for Gedling Borough identifies Hucknall as a Sub-Regional Centre and makes provision for sustainable urban extensions to this settlement. Bestwood Village is also identified as a key settlement for growth in the Aligned Core Strategy and Bestwood residents obtain services from both Hucknall and Bulwell. Gedling Borough recognises that there is a need to ensure that the necessary services and facilities required by the sustainable urban extensions are provided regardless of which Councils’ administrative area they fall within.
- 3) As Nottinghamshire County Council is a key service provider within Gedling Borough this document recognises the need for a collaborative approach to working with the County Council on planning obligations. The County Council is producing a specific Protocol between the County and Nottinghamshire Borough and District Councils to deal specifically with the County Council services.
- 4) Dependent upon the introduction of the Community Infrastructure Levy (CIL) and inclusion of projects on the 123 List, the protocol sets out an arrangement for making contribution from the CIL towards the offsite costs of services or facilities arising from development within Gedling Borough in a neighbouring Council

Policy Context

The Gedling Borough Aligned Core Strategy Submission Documents

- 5) Gedling Borough, Broxtowe Borough and Nottingham City Councils have prepared an aligned and consistent planning strategy for their part of Greater Nottingham. These Aligned Core Strategies have been prepared within the context of cooperative work taking place across the whole of Greater Nottingham which also includes Erewash and Rushcliffe Councils and the Hucknall part of Ashfield. Policy 19 of the Gedling Borough Aligned Core Strategy requires development to contribute to the cost of infrastructure necessary to support that development in order to make it acceptable in planning terms.
- 6) Policy 18 of the Gedling Borough Aligned Core Strategy requires development to be supported by necessary infrastructure. The Aligned Core Strategy is supported by an Infrastructure Delivery Plan (IDP) which has been prepared for Greater Nottingham and sets out the infrastructure capacity, constraints and requirements for Broxtowe Borough, Erewash Borough, Gedling Borough Council, Nottingham City Council and Rushcliffe Borough Council. Ashfield District is not included in the IDP. However, as Hucknall functions as part of Greater Nottingham, assumptions about growth within Hucknall have been taken into account in order to assess the cumulative impacts of development.
- 7) The IDP identifies critical infrastructure (IDP appendix B) and for strategic allocations the IDP identifies what, where, when and how critical new infrastructure will be provided. For strategic locations the IDP identifies likely infrastructure requirements and the measures needed to ensure their future delivery. As the process for bringing forward the sites progresses, this information will be updated and may identify other more minor infrastructure that is required. The IDP can be accessed via the link below:

<http://gossweb.nottinghamcity.gov.uk/gn/InfrastructureDeliveryPlanFebruary2013.pdf>

Delivery

Planning Obligations (Section 106 Agreements)

- 8) In line with the National Planning Policy Framework, local planning authorities should consider whether otherwise unacceptable development can be made acceptable through the use of conditions or planning obligations. Planning obligations or planning agreements should meet the following tests as set out in legislation:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the proposed development.

- 9) Planning obligations are taken forward through legal agreements, principally known as Section 106 Agreements made under Section 106 of the Town and Country Planning Act 1990 (as amended). They are usually negotiated and entered into between the local planning authority, the developer /applicant and all parties with a legal interest in the development site. All parties with an interest in the development site must be party to the agreement.

The Community Infrastructure Levy

- 10) The Community Infrastructure Levy (CIL) is a new planning charge introduced on 6th April 2010 through the Community Infrastructure Levy Regulations 2010 (now amended by the Community Infrastructure Levy (Amendment) Regulations 2014). These empower local authorities to charge a levy on development which can be used to fund a wide range of infrastructure that is needed as a result of development.
- 11) The CIL process should result in a scaling back in the use of section 106 Agreements but will not replace them altogether. Under CIL developers are still expected to directly provide “on site” infrastructure through Section 106 contributions to mitigate the direct impact of the development proposed.
- 12) Gedling Borough carried out a consultation on its Draft Charging Schedule during the autumn of 2013. The responses to this consultation are being considered and it is proposed that a further consultation on a final Draft Charging Schedule will be undertaken in order to take into account the implications of proposed changes to the Aligned Core Strategy and changes to the regulations. It is likely that CIL will be adopted in the summer 2015¹.

¹ The Gedling Borough CIL Charging Schedule was adopted on October 16th 2015.

Cross boundary Impacts arising from new development

The Protocol

- 13) Local planning authorities may require developers to provide infrastructure and services on or off development sites, where these are necessary to make the development acceptable in planning terms. Development can sometimes have an impact on the services and facilities in an adjoining Council for example; a major development either on its own or in combination with others could give rise for the need for off-site highway works. Gedling Borough acknowledges this potential for development to impact on neighbouring Council areas and accepts the need for close cooperation between the Councils to mitigate such impacts.
- 14) The following sections set out a working protocol between Gedling Borough, its neighbouring authorities and the County Council for dealing with section 106 planning obligations relating to development which would have an impact on the services and facilities in a neighbouring authority. It is proposed that the arrangements will apply to 'major' developments to be consistent with the overall Nottinghamshire approach and which defined as follows:
- Residential development for 10 dwellings or more;
 - Residential development on a site in excess of 0.5 hectares where the phasing of developments will add up to 10 dwellings or more;
 - Non-residential development of 1,000 square metres or more gross floor space;
 - Non-residential development on a site of at least 1 hectare.

Gedling Borough will undertake to:

- **Consult** with neighbouring authorities on pre-application proposals and applications for planning permission for major developments (as defined above) and invite views on likely infrastructure and services required. Consultation will be undertaken in accordance with Gedling Borough Council's Statement of Consultation:
<http://www.gedling.gov.uk/media/documents/planningbuildingcontrol/Appendix%20D%20-%20Statement%20of%20Consultation%20June%202014.pdf>;
- **Request** that the adjoining authority and the County Council should clearly set out the basis on which infrastructure or contributions to its own services are required and provides this information by the deadline agreed; and

- **Take the lead in drafting Section 106 Agreements** and will seek to share early “Heads of Terms” drafts with adjoining authorities where development impacts on their area.
- 15) Gedling Borough acting as local planning authority will ultimately be responsible for prioritising service requests and for arriving at a decision. Gedling Borough Council will encourage an open book collaborative approach to agreeing requirements for infrastructure, sharing information and positively engaging with other authorities. Whilst councils will seek to reach agreement, the final decision will rest with the local planning authority.
- 16) Gedling Borough, adjoining Districts and the County Council will be expected to act in accordance with relevant planning policies and have regard to national planning policy guidance and planning legislation.

What Gedling Borough would expect from Neighbouring Councils and the County Council

- That in responding to pre-application proposals the **adjoining Council/County Council clearly stipulates the type of infrastructure contributions it would wish to see sought** by the agreed deadlines so that these can be considered alongside other requests for contributions at an early stage (for example a new primary school or off site highway works etc.); and
- That in respect of the adjoining Council’s own services or County Council’s own services provide evidence and reasoned justification based on planning policies for the contributions sought.

Negotiations with developers

- 17) Gedling Borough’s case officer will be responsible for leading/coordinating all negotiations. Where the developer approaches the service provider directly then Gedling Borough should be copied in to any advice given.
- 18) If the development is considered unviable by the applicant because of the level of contributions being requested then Gedling Borough must seek detailed evidence from the applicant. The Affordable Housing Viability Toolkit provided by the Three Dragons as part of the Viability Study will be used by the Council to assess viability. More information on the Toolkit is provided at Appendix 2 of the Viability Study

[http://www.gedling.gov.uk/media/documents/planningbuildingcontrol/gedling_bc_final_viability_report_\(nov_2009\)_-corrected.pdf](http://www.gedling.gov.uk/media/documents/planningbuildingcontrol/gedling_bc_final_viability_report_(nov_2009)_-corrected.pdf)

- 19) However, where the developer is disputing the methodology of the Viability Study, they must provide a full financial appraisal of the scheme and allow the appraisal to be verified, at their expense, by an independent agent chosen by the Council.

Protocol for Managing CIL Contributions

- 20) Gedling Borough Council will in principle support the use of CIL monies to help fund necessary infrastructure in an adjoining District made necessary by major development in Gedling Borough and which impacts on adjoining Council's services and facilities. The exact infrastructure requirement and level of contribution from CIL sought will need to be negotiated between the two Councils and the County Council on a case by case basis.
- 21) In order that Gedling Borough Council can provide CIL monies to a neighbouring authority to help fund necessary infrastructure, appropriate reference will need to be included in the Gedling Borough's Regulation 123 list.