

MALDON DISTRICT
**Developer
Contributions
Guide**

Adopted December 2005



MALDON DISTRICT
COUNCIL

DISTRICTPRIDE
DISTRICTWIDE

Contents

1.

Introduction page 3

2.

Central Government Legislation and Guidance page 4

3.

The Local Planning Policy Context page 6

4.

Need page 7

5.

Making a Contribution page 9

6.

Maldon District Priorities page 12

7.

Competing Demands on
Development Contributions page 18



Introduction

Developer contributions are normally secured through planning obligations under section 106 of the Town and Country Planning Act 1990 which are typically agreements between local authorities and developers negotiated in the context of granting planning consent. They were introduced to secure improvements not coming forward under conditions of planning permission.

Through this mechanism developers contribute towards sustainable communities and help ensure the success of new developments. They can make cash or in-kind contributions towards a range of infrastructure and services including local roads and public transport schemes, public spaces, community facilities and affordable housing.

The purpose of this document is to set out Maldon District Council's approach to seeking developer contributions when considering planning applications. It brings together the policy approach of Central Government and the development plan context as in the adopted Maldon District Replacement Local Plan and the Essex and Southend-on-Sea Replacement Structure Plan.

The document represents a guide to Maldon District Council's adopted position in relation to negotiations it will undertake to secure appropriate developer contributions as part of planning approvals.

The guide is consistent with current national planning policy and guidance and with the Development Plan. It has not been adopted as a supplementary document under the Planning and Compulsory Purchase Act 2004 as it does not elaborate existing adopted policy. Rather it represents an interim guide reflecting Maldon District Council's current adopted policy position with regard to Developer Contributions.

The District Council has now commenced preparation of a Local Development Framework part of which will be the adoption of a Core Strategy by October 2008. Following this adoption the District Council have timetabled the production of a Developer Contributions Supplementary Planning Document which will elaborate policy within the Core Strategy.

This interim guidance will therefore apply to saved Development Plan policy until replaced by the Core Strategy of the Local Development Framework. As the guide does not elaborate policy it has not been the subject of additional consultation, outside the Development Plan consultation processes, other than with key stakeholders.

Central Government Legislation and Guidance

The Government views developer contributions as a means of enabling a proposed development to proceed and to meet any increased needs of the local community associated with the new development. It is seeking to improve the operation of the system of obligations, by promoting greater speed, certainty, openness and accountability. The statutory basis of developer contributions is section 106 of the 1990 Planning Act, which allows anyone interested in land to enter into an obligation (legal agreement) that regulates the development of the land in some way or requires a financial contribution.

This is further elaborated in ODPM Circular 05/2005 'Planning Obligations' July 2005 which states that developer contributions should only be sought where they meet the following tests:

1. relevant to Planning;
2. necessary ie they are necessary to make a proposal acceptable in land use planning terms;
3. directly related to the proposed development;
4. fairly and reasonably related in scale and kind to the proposed development;
5. reasonable in all other respects.

Developer contributions may relate to matters other than those covered by a planning permission, provided there is a direct relationship with the planning permission. However, they should not be sought where this connection does not exist or is considered too remote. There should be a functional or geographical link between the development and the item being provided as part of the contribution.

Acceptable development should never be refused because an applicant is unwilling or unable to offer unrelated benefits. Unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by the applicant.

All planning applications must be determined on their own merits and contributions sought only if they are necessary to proceed. Developers should not be expected to pay for facilities that are needed solely in order to meet existing deficiencies. In summary contributions aim to mitigate the impact of proposals where the development itself is in other respects acceptable.

Central Government Legislation and Guidance

The Government has addressed transparency issues through 'Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2002 [Statutory Instrument 2002 no 828]' which came into effect on 1 July 2002 and requires details of the planning obligations for each development to be published in both Parts I and II (before and after the grant of planning permission as appropriate) of the local planning authority's Planning Register. In recent years the Government has also issued a number of consultation papers with a view to reforming developer contributions.

Given the statutory basis there are two ways in which the seeking of contributions must be justified - planning policy and need. These are elaborated in sections 3 and 4.

A developer may apply to modify a Section 106 agreement and has the ability to appeal to the Secretary of State against a Council's refusal to modify a section 106 agreement after 5 years. This replaces the need to go through the Lands Tribunal set out in an earlier Circular (01/97).

The Local Planning Policy Context

The development plan represents the current adopted planning policy position for which this guide is written.

The Essex and Southend-on-Sea Replacement Structure Plan (adopted April 2001) provides the relevant development plan policy context at county level for development proposals in Maldon District. Policy BE5 identifies the need for developers to contribute towards the infrastructure costs of their proposals.

POLICY BE5 states:

'Development will not be permitted unless it makes provision for community facilities, public services, transport provision, infrastructure, environmental works and any other requirements which are made necessary by and are directly related to the proposed development. The requirements will be set out in adopted local plans, Local Transport Plans and/or development briefs and will be negotiated when determining planning applications.

Developers will be required to finance the full cost or if appropriate a contribution towards the full cost of all such provision which is fairly and reasonably related in scale and kind to the proposed development and its impacts on the wider environment. This provision will be subject to planning obligations which will be secured prior to the issue of planning permission. These obligations will specify the nature and timing of all provision, both on and off a development site, made necessary by the development concerned '.

The policy is supported within paragraphs 8.15 - 8.17 of the Structure Plan.

The adopted Maldon District Replacement Local Plan (2005) adopts a more focussed approach to directing the specific use of developer contributions in relation to a number of topic based policies. These are:

- CC1 Development Affecting an Internationally Designated Nature Conservation Site
- CC2 Development Affecting a Nationally Designated Nature Conservation Site
- H9 Affordable Housing
- REC3 Children's Play Space Associated with New Housing Developments and Elsewhere in the District
- PU1 Provision of Education Facilities

These policy priorities are explained in more detail in section 6 of this guidance.

Need

Local needs identified via the Local Strategic Partnership are important when considering the nature of developer contributions. These are set out within the Maldon District Community Plan. The priority issues arising from consultation in this community planning process have been distilled into six themes presented in the Community Plan itself as follows:

COMMUNITY SAFETY

To reduce both the level and the fear, of crime to make our community a safer place to live, work and relax.

HEALTH, SOCIAL CARE & HOUSING

To maintain and improve the health, wellbeing and quality of life of everyone in Maldon District, especially amongst those whose health is poorest. To improve access to appropriate local housing.

TRANSPORT & ACCESS

To improve the provision and integration of all modes of transport and access to services and facilities within the District.

EDUCATION, TRAINING & EMPLOYMENT

To enhance educational achievement, lifelong learning and training and to support a thriving local economy that provides jobs.

ENVIRONMENT & PLANNING

To improve our quality of life and enhance, protect and preserve both our local and the wider environment for now and future generations.

LEISURE & RECREATION

To provide everyone with high quality opportunities for leisure, recreation, relaxation and culture throughout the District.

The Community Plan is being reviewed with the intention of producing a new Plan in early 2007. As part of this process needs may be expressed differently in future.

Need

In May 2006, the District Council adopted a new corporate vision of "Creating a District which takes pride in itself". This new vision is supported by the following four key external priorities:

SUPPORTING AN ACTIVE LOCAL ECONOMY

PROTECTING OUR RURAL HERITAGE

INCREASING THE AFFORDABLE HOUSING SUPPLY

PROMOTING CIVIC PRIDE

The new vision will underpin production of the Local Development Framework. Together with the new objectives, it supports many of the policies and proposals in the adopted Maldon District Replacement Local Plan.

Other plans and strategies have been used to help define development plan policy and can assist in providing background to issues when assessing developer contributions. These are usually topic based and will include:

- the Maldon District Housing Strategy;
- the Maldon District Recreation Strategy;
- the Maldon District Playing Pitch Strategy;
- the Essex Local Transport Plan (LTP2);
- the Essex Biodiversity Action Plan.

Such strategies provide a rationale and justification for both the principle and the relevant mitigation measures contained in a developer contribution and will be referred to as appropriate.

Making a Contribution

The assessment of need is carried out according to the subject. The steps in assessing the need and scale of developer contributions are:

- determining the nature, extent and timing of the impacts;
- establishing appropriate infrastructure standards;
- identifying those areas where there are infrastructure shortfalls or spare capacity and measuring the extent of the shortfalls or spare capacity;
- measuring impacts against standards in order to calculate appropriate mitigation;
- costing the mitigation measures and determining the timing of their delivery.

A developer contribution is established within an agreement between a developer and the District Council, and other parties as necessary. It can identify activities or work to be carried out on-site or financial contributions, revenue or capital, to be made. Where available it should be based on standard charges or formulae, elsewhere by negotiation on a case by case basis.

Where unacceptable impacts are identified on public infrastructure, contributions will be required by public agencies to address these. In some cases the developer will be asked to undertake the work directly. In other cases a facility may be required that is then run by a public or other agency. Some contribution to these running costs or in other cases maintenance costs may be required.

It is open to a developer or other interested person to make a contribution by way of a unilateral undertaking. This does not require the agreement of the local authority. These are appropriate for financial contributions in certain circumstances. In other respects the considerations set out in this guide apply.

The developer contribution process must be transparent, efficient, consistent and effective. The developer contribution will be finalised within a section 106 agreement, or unilateral undertaking, prior to a report on a planning application being placed before the planning committee. Exceptions to this procedure are only likely where the development is particularly complex or large. The scale and scope of a contribution will be negotiated, in relation to the specific circumstances of the development, including viability. Where a developer indicates that infrastructure costs are considerable and a S106 contribution will make the development of the site unviable or a lesser degree

Making a Contribution

of provision is being promoted by the developer, then the Council will require documentary evidence of those infrastructure costs or other unforeseen costs that are put forward at the time of any preliminary discussions. An 'open-book' approach to financial assessment will be encouraged.

The contributions will in each case be related directly to the scale of the impact or scale of development. A major development will trigger thresholds of provision in its own right. Smaller developments may make a quantifiable impact that cumulatively with other small developments will trigger a threshold. In such cases a contribution will be called for and pooled until provision is cost effective.

In some circumstances contributions may be a significant factor in development viability. However they remain a necessary cost of development and need to be identified as such by potential developers. Hence it will be expected that the likely cost of contributions be fully reflected in negotiations from the start of the development process. In limited circumstances, if a developer considers that the cost of the contribution, renders the project unviable then the Council, at its own discretion, may review the range and nature of contributions that would normally be sought. Such a review is likely to be considered where a development is seen as offering planning benefits separate to those normally required by a contribution. In order for this review to take place the developer will be required to make available the financial appraisal that gave rise to the conclusion. The Council will require its reasonable costs in reviewing the viability to be met by the party seeking review. Where a developer indicates that infrastructure costs are considerable and an S106 contribution will make the development of the site unviable or a lesser degree of provision is being promoted by the developer, then the Council will require documentary evidence of those infrastructure costs or other unforeseen costs that are put forward at the time of any preliminary discussions.

The Council will expect its reasonable costs in drawing up the agreement and in monitoring the agreement to be met by the developer. The Council will use its best endeavours to minimise these costs to specify them at the earliest possible opportunity in the application process and wherever possible set out a timetable for the steps it will take in dealing with the application and agreement.

Making a Contribution

The main features of the approach are:

- potential developer contributions will be raised at pre-application discussions;
- planning applications will be assessed against planning policy and expressed need in order to identify appropriate contributions;
- developers will be invited to discuss contributions early in the process;
- draft agreements will be prepared for the agreement of developers when registering an application other than in exceptional cases.

Maldon District Priorities

6.1 Environment

The adopted Structure Plan includes policies that seek to protect the quality of the County's environment against inappropriate development, **Policy NR1 requires development to respect its setting**. Development will not be permitted that would cause permanent destruction or damage to the character of the landscape. Other relevant policies include:

- NR6: Development that would adversely affect designated sites will not be permitted. If there is a risk of damage, obligations may be sought to secure future site management or to made compensatory provision elsewhere.
- NR7: Additional natural habitat sites will be protected by identification in the local plan, or during the consideration of development proposals.

The Maldon District Replacement Local Plan sets out the District Council's commitment to enhancing and safeguarding the environment. Two policies, focussed on the District's most prized wildlife sites refer to the potential use of developer contributions to seek environmental benefits. These are:

'CC1 DEVELOPMENT AFFECTING AN INTERNATIONALLY DESIGNATED NATURE CONSERVATION SITE

Development likely to have a direct or indirect effect on a Ramsar site, Special Protection Area or Special Area of Conservation will not be permitted unless it is necessary for reasons of overriding public interest. Any such proposals will be subject to the most rigorous examination. Where development is permitted the use of conditions or planning obligations will be considered, to avoid and/or minimise harm to the site, to enhance the sites nature conservation interest and to secure any compensatory measures and appropriate management that may be required.

CC2 DEVELOPMENT AFFECTING A NATIONALLY DESIGNATED NATURE CONSERVATION SITE

Development likely to have a direct or indirect effect on a National Nature Reserve, Site of Special Scientific Interest or Environmentally Sensitive Area will not be permitted unless the need for the development clearly outweighs the importance of the site or the effects can be satisfactorily mitigated. Where development is permitted the use of conditions or planning obligations will be considered, to avoid and/or minimise harm to the site, to enhance the sites nature conservation interest and to secure any compensatory measures and appropriate management that may be required'.

Maldon District Priorities

In pursuing policies CC1 and CC2 the District Council may seek agreements to regulate land use in the interests of the Environment, or seek capital contributions to secure mitigation, compensatory provision or enhancement of existing sites and resources.

The identification of specific mitigation measures to address the potential impact of a proposed development on the nature conservation and amenity value of the development site and the wider area will be assessed on a site-by-site basis. Impacts on the environment are directly related to the detailed nature of a particular proposal, and in most cases, given the policy requirement for an Environmental Statement to accompany any application that adversely affects the environment, both the impact and proposed extent of mitigation will be identified by the applicant.

The District Council will assess the appropriateness of the proposed mitigation as part of its normal consideration of the application. A developer may select to undertake the mitigation works. Alternatively it may be appropriate for the developer to make a financial contribution to the District Council. In this instance, a fully costed appraisal will need to be prepared by the applicant, to include provision for the long term maintenance should this be appropriate.

Contributions may be used to:

- secure compensatory habitat provision to mitigate the impacts of development;
- secure improvements to a site as part of a development proposal;
- secure proper provision for the long-term future of a site and its maintenance;
- secure contributions towards the management and maintenance of a site that is adversely affected by a development proposal;
- secure the use of appropriate sustainable development technologies and techniques;
- secure improvements to the setting or environs of the development including enhancements to the public realm and historic structures;
- secure facilities for waste management or their enhancement.

The financial contributions referred to above will relate to a particular off-site scheme and the planning application will be required to be accompanied by a statement to clarify the precise nature of the mitigation works required to address the impacts associated with the development.

Maldon District Priorities

6.2 Affordable Housing Circular 6/98 Planning and Affordable Housing and Planning Policy Guidance 3 (PPG3): Housing 2000 sets out the Government's policy on how the planning system can contribute to the overall supply of affordable housing. It should be noted that the Government is shortly to be issuing revised guidance in the form of PPS 3.

Affordable housing need is a material consideration in considering planning applications and should be taken into account in formulating development plan documents.

Maldon District Council seeks to balance the needs of the community by ensuring there is adequate affordable housing provision for households whose incomes are not sufficient to enable them to purchase or rent suitable accommodation in the local market.

To this end the District Council has produced a separate guide addressing the provision of Affordable Housing, adopted in December 2005 and it should be read in conjunction with this guide in considering development contributions for affordable housing.

The Affordable Housing Guide includes reference to the District Council's stated policy position within the Maldon District Adopted Local Plan (Policy H9 Affordable Housing).

6.3

Children's Play Spaces Maldon District Council is concerned that effective play space provision is in place to recognised standards for the children and young people of the District. The District Council expects that new development will make an appropriate contribution to that provision particularly where deficiencies are identified.

In March 2006 the District Council adopted a Children's Play Spaces Supplementary Planning Document to elaborate policy REC3: 'Children's Play Space Associated with New Housing Developments and Elsewhere in the District' within the adopted Maldon District Replacement Local Plan.

The SPD is designed to ensure adequate facility provision is contributed alongside new development or is already in place before development goes

Maldon District Priorities

ahead. It identifies the strategy used in identified need, the standards to be applied and a calculation of contribution. This guide should therefore cross refer to the SPD when considering the provision of Children's Play Spaces.

6.4

Transport Infrastructure The need to mitigate the impact of development on transport infrastructure and to improve road safety, reduce travel and encourage sustainable means of transport are fundamental to the good planning of the District and have a high Government priority.

Any development proposal will be expected to provide for safe and convenient access for all appropriate modes to a high standard. In many cases this will be achieved within the development site and will be addressed via planning conditions. Elsewhere, the scale or location or nature of the use may necessitate off site intervention in order to enable the development to go ahead. In some of these cases a condition, precluding development until such investment has been made may be appropriate. In other cases a financial contribution will be sought that will enable the improvements to the infrastructure to proceed prior to or in parallel with the proposal. The Highway Authority may allow the developer to carry out such works on highway land in certain circumstances, in lieu of a financial contribution.

Structure Plan policy BE 5 is the overarching policy requiring developer contributions for transport provision and infrastructure 'set out in adopted local plans, Local Transport Plans and/or development briefs.

Strategic transport priorities for Maldon District are set out in detail in the Essex Local Transport Plan 2006/11 (LTP2). Maldon District lies within the 'Chelmsford and the Heart of Essex' area focussing on Chelmsford as a regional interchange centre. The key priorities for Maldon District are:

- public transport improvement particularly accessibility to town services and amenities from remoter rural areas. Continued focus is required on the Dengie Village Link and Blackwater bus links;
- congestion issues on the A414, B1018 and junctions associated with the urgent need to link the Maldon area effectively with the A12/Great Eastern corridor;

Maldon District Priorities

- renewed focus on the promotion of the Crouch Valley Community Rail Partnership.

LTP2 considers the role of Development Control Funding and specifically states:

'...at least £10 million a year is realised (across Essex) either as money passed to the County Council or as works undertaken by the developer. This level will increase over the life of the second LTP given the scale and the level of completions presently coming through the planning process'.

Policy T2 of the adopted Maldon District Local Plan 'Transport Infrastructure in New Developments' identifies more local transport requirements of development:

1. The layout of new developments will where appropriate provide for:
 - (a) Safe access to and from the highway including adequate visibility and junction capacity;
 - (b) Off site improvements to the highway;
 - (c) Facilities giving priority to public transport, pedestrians and cycling;
 - (d) Road layouts which are appropriate to the location and provide a safe and pleasant environment;
 - (e) Improvements to rail infrastructure;
 - (f) Links to the adjacent or nearby foot/cycle path network and the road system;
 - (g) Promotion of social inclusion and accessibility.
2. Larger scale development that requires a travel assessment must include and implement a Green Travel Plan.

In addition to Policy T2, Policies T4 Cycle Routes, T5 Cycle Parking provision in new developments, T6 Improvement to Pedestrian Facilities, and T7 Shared Car Parking in New Development are also relevant,

A developer may also enter into a planning obligation with the Local Highway Authority and the Local Planning Authority for improvement works to local roads.

Maldon District Priorities

Contributions from major development proposals (more than 10 dwellings or 1000 sq. m.) will be based on a package approach related to corridors, as set out in the LTP. This will continue to form the basis of the approach to the assessment of development impact and mitigation measures.

6.5 Education

The basis for developer contributions for education is policy BE5 of the adopted Structure Plan. The detailed approach to considering contributions for education is contained in the Essex County Council Supplementary Planning Guidance (SPG), 'Developer Contribution Guidelines'. The District Council has not adopted the SPG as its own policy but will apply the principles in the SPG as an expression of Structure Plan policy, in appropriate cases. The County's SPG should therefore be referred to in such cases.

Competing Demands on Development Contributions

When considering the emphasis to be placed on each of the priorities set out in section 6 in an assessment of appropriate developer contributions Maldon District Council will adopt the following approach.

1. For housing applications contributions will generally be prioritised in the following order:
 - Affordable Housing
 - Infrastructure
 - Environment
 - Children's Play Spaces
 - Education
2. For most other applications contributions will be prioritised towards infrastructure and environment
3. An element of discretion will be retained to consider applications which have specific or unusual characteristics for which the above prioritisation may not be appropriate.

It is considered that by setting out the above approach to developer contributions it will be clear to developers and other interested parties the areas to which Maldon District Council gives highest priority.

for printer's information - leave blank (inside cover)

DESIGNED AND PRODUCED BY

MALDON DISTRICT COUNCIL

PRINCES ROAD
MALDON
ESSEX CM9 5DL

This document is available in
larger print, braille and audio. It
can also be viewed on our
website: www.maldon.gov.uk

APPENDIX 2