

## Adopted Planning Contributions and Affordable Housing Supplementary Planning Document.

### July 2009 Update: Mitigation and Clarification.

#### 1. Introduction

- 1.1 This Paper was approved by Torbay Council's Local Development Framework Working Party on 14<sup>th</sup> July 2009 as a basis for interpreting the Adopted Planning Contributions and Affordable Housing Supplementary Planning Document. ***It is not policy in its own right, but seeks to provide interpretation of the SPD and Saved Torbay Local Plan. It emphasises that Planning Contributions must meet the tests of reasonableness in Circular 5/2005.***
- 1.2 The Planning Contributions and Affordable Housing Supplementary Planning Document was adopted by Torbay Council in February 2008. The SPD provides guidance on implementing policies in the Saved Torbay Local Plan 1995-2011, in particular Policies H5 and H6 on affordable housing, Policy H11 "Open Space Requirements for New Housing", CF6 "Community Infrastructure Contributions", CF7 "Education Contributions" and TS "Land Use Transportation Strategy". The SPD seeks contributions in 4 areas:
- **Development site acceptability**
  - **Affordable Housing**
  - **Sustainable Development Contributions**
  - **Implementation**
- 1.3 The SPD focuses contributions on meeting **Community Plan** objectives and enabling **The New English Riviera Mayor's Vision** Projects. It also sets out that planning contributions need to meet the tests of reasonableness in Circular 5/2005.
- 1.4 The current very harsh economic climate means that s106 requirements need re-examining to ensure that they are reasonable. In particular it is important that they facilitate and do not impede economic regeneration, especially on Mayor's Vision schemes. Therefore this document seeks ways to mitigate contributions in the face of the current market conditions. It is intended to be a "living document" that will be reassessed when the market improves, or when other material considerations come to light. In particular, it is intended to set up a Housing Market Partnership/ Infrastructure Panel in Autumn 2009. This will advise on viability and similar issues in the context of the emerging Torbay Local Development Framework.
- 1.5 This paper also introduces a number of updates and clarification of the meaning of the SPD. The need for these has arisen from a year's experience of using the SPD. A summary of a "typical" residential contribution is attached at Appendix 1 for guidance purposes. This is intended as a starting point and not as a final sum that cannot be amended.

#### **Why have S106 contributions at all in a recession?**

- 1.6 Given the depth of the current recession, there is an argument that planning contributions should be waived, as a form of tax break to incentivise development. The counter argument is that S106 contributions are required to be necessary to make development acceptable (Circular 5/2005, paragraph B2). Therefore, waiving planning contributions would be 'selling the community short' by allowing development with inadequate mitigation or community infrastructure.
- 1.7 This issue has been discussed at the Torbay Agents Forum on 28<sup>th</sup> January 2009. At this meeting there were no objectors to the principle of planning contributions, but significant concern that they should be set at a reasonable level. This is already a test in Circular

5/2005 and the SPD (see Figure 1 on page 11) and it was suggested that this should be made more explicit in the operation of the SPD.

- 1.8 Because the Torbay Community Plan and Mayor's Vision make economic prosperity the central priority for Torbay, there is a case to provide additional mitigation to developments that create jobs as a short term measure.

## 2. Mitigation Measures

- 2.1 This section looks at ways of reducing the level of contributions, especially on developments that are desirable and contribute to the wider social, economic or environmental good.

### Applying the Policy Tests of Reasonableness

- 2.2 The SPD refers to the policy tests in Circular 5/2005 (Para 1.8, Figure 10, p10, Figure 2, p11 of the SPD; see box below). Paragraphs B8-B9 of Circular 5/2005 explain in more detail what the Secretary of State's policy tests mean.

#### **Box 1: Policy Tests In Circular 5/2005.**

A Planning Obligation must be **all** of the following:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development; and
- (v) reasonable in all other respects.

- 2.3 The SPD sets out a formal process for testing viability using independent assessors (such as Belvedere Vantage) for which the applicant pays (see page 48). Of course there may be times where a major application requires both parties to seek specialist advice. However, this is intended to be the exception rather than the rule and the intention is that the majority of cases should be agreed through the Development Management process.
- 2.4 Contributions should be reasonably related to the impact of the proposed development, and should be assessed against the likely turnover or added value arising from development. If the contribution request exceeds the likely yearly turnover of a business or value added by a development, then there is a prima facie case that it is not reasonable and could be reduced. This approach inevitably involves discretion in the development management process, and case officers should feel empowered to exercise this discretion.
- 2.5 Departments dealing with topics that receive s106 Contributions must be able to justify the need for contributions, relating to the need generated by a particular development. If it is not possible to do this, this contribution should not be sought. (Appeal decision relating to planning application P/2008/1031/PA refers).

### **Mitigation where there is an Identifiable Social Good (e.g. Meets Community Plan and/or Mayor's Vision Objectives).**

- 2.6 **Paragraph 7.50** of the Saved Adopted Torbay Local Plan indicates that:

*"(3) where development results in an identifiable social good, for example redeveloping brownfield sites or cleaning contaminated land, or provision of social housing, the authority will take a flexible approach to planning contributions in order to ensure that the social benefits of development are realised"*

- 2.7 Since the Torbay Local Plan was Adopted in 2004, the Community Plan “Turning the Tide for Torbay” and The “New English Riviera Mayor’s Vision” have both emphasised the importance of economic regeneration, particularly on Mayor’s Vision Action Framework Plan sites that are transformational to Torbay’s economic prospects. Ensuring that the operation of s106 Agreements helps to meet these objectives and facilitates such regeneration will be a central consideration.
- 2.8 The SPD identifies issues such as energy efficiency, flood protection, cleaning up contamination etc as development site acceptability (“inner circle”) measures. Brownfield development is often more expensive than greenfield development due to additional cleanup costs etc. These “abnormal costs” may be counted against sustainable development contributions.
- 2.9 **Affordable Housing** Paragraphs 3.45-3.48 of the SPD indicate that “sustainable development” contributions are not sought for social rented affordable housing, and a 50% discount applied to intermediate housing. Note that this relates to affordable housing within the definition in PPS3 (2006) and reiterated at 3.13 of the SPD. It does not apply to “low cost” open market units. In addition, “development site acceptability” matters have to be addressed on affordable housing developments.
- 2.10 Where intermediate housing provides additional sustainability benefits, such as exceeding minimum required code for sustainable homes standards, then the Authority will consider relaxing the requirement for (“outer circle”) sustainable development contributions.

### **Mitigation for Economic Prosperity**

- 2.11 Economic Prosperity is the central objective in the Community Plan and Mayor’s Vision. Therefore it is particularly important that planning obligations do not impede job creation. On this basis it is recommended that mitigation is given against additional jobs created by developments on the basis of the logic applied in Figure 11 of the SPD, which roughly estimates the public cost of creating a B class job at £4,125.
- 2.12 On this basis it is suggested that mitigation is given for developments that create net additional jobs as follows:
- B class jobs or other high value jobs (per annum salary of about £20K+): £4,130.
  - Non B class/ lower-medium value jobs (paying less than about 20K a year): £2060 per job.
- There are various ways of calculating the number of jobs generated by different uses. A good starting point is Employment Densities: A Simple Guide (Arup/English Partnerships 2001).

### **Mitigation for Existing Uses**

- 2.13 The Planning Contributions and Affordable Housing SPD is intended to meet the community (etc) impact of additional development. Therefore the existing use should be taken into account and contributions sought on the **net additional impact**. Note that this requires applicants to be specific about existing uses. (See also paragraph 3.15 below).

### **Publicising the Results: Good news Stories for Planning**

- 2.14 In order to promote the positive role of planning, and the public spirit of s106 contributors, it is recommended that there is publicity about s106 contributions, and for what they have been used. One way of doing this would be through a newsletter or on the website. A more tangible way would be through signs or a plaque indicating that the developer has contributed to specific items (e.g. a plaque on a bus or school, sign on open space/flower bed etc). It is suggested that contributions of over £10,000 could qualify for such publicity.

Arranging signs and “handover events” for large schemes would need to be a development management/ customer services officer function.

### 3.0 Clarification of How the SPD Should be Interpreted

3.1 This section tries to clarify matters that have emerged as “grey areas” in implementing the SPD.

#### Calculation of Contributions on the Basis of Floorspace.

3.2 For consistency all contributions should be calculated on the basis of **gross internal floor space** and not bedrooms. This is to make the SPD consistent and reduce complexity. Planning does not control the use of rooms within a dwelling, and floor area rather than number of bedrooms is a better measure of dwelling size.

3.3 The Homes and Communities Agency (then as English Partnerships) set out the following standards in ‘Places Homes People’ Policy Guidance (November 2007). These are similar to the range in the SPD.

**Figure 1: Typical Space Standards for Dwelling Type.**

English Partnerships 2007 Space Standard	SPD Ranges	Typical of Dwelling Type
51 SQM	Up to 54 SQM	1 Bedroom 2 Persons Homes
66 SQM	55-74 SQM	2 Bedroom 3 Person Homes
77 SQM		2 Bedroom 4 Person homes
93 SQM	77- 94 SQM	3 Bedroom 5 Person Homes
106 SQM	95 119 SQM	4 Bedroom 6 Person Homes
-	120 QSM	Larger properties

3.4 Therefore, the **gross internal floor space** of all proposed dwellings will need to be calculated, and ideally provided by the applicant. In addition the floorspace and use of buildings should be completed (Q23 on the application form). Not providing this information at the outset could delay the processing of the application, or result in existing uses not being fully taken into account when calculating mitigation.

#### Threshold for Contributions

3.5 Due to the cost of drafting and monitoring S106 Agreements, the cut off point for contributions will be £5,000. No contribution will be sought from developments where the sum sought would be less than £5,000.

3.6 For simplicity all contributions will be rounded to the nearest £10.

#### Development Site Acceptability Matters:

3.7 These are necessary to make development work in physical terms, for example the creation of a junction or footpath. They have to be worked out on a case by case basis. Where possible conditions should be used rather than s106 Agreements, if they can achieve the intended outcome. Conditions cannot require a financial contribution.

3.8 Paragraph 2.18 of the SPD seeks £50 (rounded down) per dwelling for waste and recycling facilities.

## Affordable Housing

- 3.9 Although house prices have fallen, there remains a pressing need for affordable housing (see text box 2 below). 30% of residential developments of 15 or more units is sought for affordable housing. The target is for 75% (of the 30% affordable housing) to be for social rent.

### **Box 2: Housing Requirement**

PPS3 requires local authorities to prepare Strategic Housing Market Assessments (SHMA) to provide evidence of housing need. The Exeter and Torbay SHMA was published in December 2007. Its assessment of the 5 year housing requirement is for 4087 dwellings, of which 49.4% should be social rented, 11.7% intermediate and 38.9% market.

Evidence from waiting list figures is that there is an overwhelming need for all types and sizes of accommodation.

#### **Affordability**

Affordability of housing has recently been measured by the ratio of house prices to average (median) earnings. A ratio of more than 3.5 indicates a problem with affordability. The ratio peaked at about 11.5 times earnings in 2006, but has subsequently fallen (see below). The effect of the Credit Crunch has been to reduce mortgage availability. However although house prices, and the ratio of earnings/house prices are falling, the need for affordable housing is likely to increase.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Median Gross Annual Pay (ASHE 2008)	Median Lower Quartile Annual Pay	Average House Price	Lower Quartile House Price (approx)	<b>Ratio of Average House Prices to Median Gross Pay (3/1)</b>	Ratio of average house prices to lower quartile pay (3/2)	Ratio of lower quartile house prices to lower quartile pay (4/2)
Torbay	15,899	10,677	150,164	115,000	<b>9.4</b>	14.1	10.8
South West	19,297	11,911	159,704	125,000	<b>8.3</b>	13.4	10.5
England and Wales	20,973	12,759	152,898	120,000	<b>7.3</b>	12	9.4

Annual Survey of Hours and Earnings 2008, Land Registry 2009.

House prices fell by 14.6% in Torbay between April 2008 and April 2009. This was less than the 16.2% fall in England and Wales and 18% fall for the South West over the same period.

- 3.10 The attached spreadsheet (Appendix 1) is intended as an aid to calculating off site contributions. Affordable housing must normally be provided in kind and on site (para 3.37). Off site contributions are only accepted in exceptional circumstances.
- 3.11 It is recognised that the Credit Crunch and Government funding for affordable housing have affected the viability of affordable housing viz a viz market housing, at least in the short term. However, the approach taken in the SPD using a supportable affordable housing transfer price should continue to apply as a starting point. This sets a guideline price for which registered social landlords will buy a completed affordable housing unit.
- 3.12 Where a reduced affordable housing provision is made because of viability, the Council will seek an **overage scheme**, where additional affordable homes or a proportion of any gross sale price above an agreed expected figure will be paid to the Authority for the provision of affordable housing.

- 3.13 As a guideline, a minimum of 50% of any sales price above the gross open market value figure, averaged over the development, will be paid to the Authority. There will be a ceiling on such payments of the figure that would normally have been paid as a commuted sum had there not been a viability issue. Further advice can be obtained from the Council's Affordable Housing Manager.

### **Sustainable Development Contributions**

- 3.14 Contributions are sought to make development sustainable in broad terms, based on delivering on Community Plan Themes.

### **Sustainable Transport**

- 3.15 Contributions only apply to net additional development that creates additional traffic on the road network (paragraph 4.20). The traffic generated by existing uses will need to be deducted from the assessed level of traffic generated by the proposal use. It would serve as a disincentive to bring vacant land into use to not mitigate lawful use on vacant sites on units. Therefore the lawful use of a vacant site will be taken as the baseline for the existing level of traffic generation.
- 3.16 Holiday apartments (where occupancy is restricted through condition or s106 Agreement) will be calculated at 50% of the residential rate set out in Figure 10 of the SPD. This reflects that they are likely to generate fewer trips than permanent residential accommodation in a yearly period.

**Figure 2: Sustainable Transport Contributions for Holiday Apartments.**

Floor area	contribution
Up to 54 SQM	£630
55-74 SQM	£860
75-94 SQM	£1170
95-119 SQM	£1350
120 + SQM	£1810

- 3.17 **Hotels and Catering.** Hotel contributions based on unadjusted TRICS calculations are very high and could act as a disincentive to a very desirable form of development. One explanation is that the TRICS-derived figures in Figures 8 and 9 include out of town catering such as drive-thru restaurants. In addition there is a case to argue that many hotel related trips will be off peak and therefore the average cost is less than the average trip cost for all trips. On this basis, the baseline contribution for Hotel and Catering developments will be amended as follows:

**Figure 3: Amended Sustainable Transport Contributions Sought from Hotels and Catering (Revises Figure 9, p36 of the SPD).**

Sector/location	Trips per 100 Sqm/Contribution per 100sqm (unadjusted)	Amendment	Contribution sought per 100 sqm
Serviced accommodation in the Built up area/PHAAs	78.791/ £28,758	25% of total divided by 2 (off peak trips)	£3,590
Serviced accommodation outside the urban area	78.791/ £28,758	50% of total divided by 2 off peak trips)	£7,190
Class A3/4/5 Food and drink in town centre	78.791/ £28,758	Treat as retail in absence of more precise TRICS data	£10,200
Class A3/4/5 Outside built up area (e.g. drive thrus)	78.791/ £28,758	Treat as retail in absence of more precise TRICS data	£63,350

3.18 **Elderly Persons Accommodation.** Bus Passes create a significant additional cost to the Council (around £4.4 Million in 2008-9). On this basis sheltered accommodation will be charged sustainable transport contributions at the full rate in the SPD. Class C2 residential institutions will be charged at the rate in Figure 9 of the SPD (£13,020 per 100 sq m).

**Figure 4: Sustainable Transport Contributions for dwellings, including Sheltered Housing. (Amends Figure 10 of the SPD).**

Floor area	Contribution sought (per dwelling)
Up to 54 sq m	£1260
55-74 sq m	£1720
75-94 SQM	£2350
95-119 SQM	£2710
120 + SQM	£3610

### Compensation for Loss of Employment

3.19 Figure 11 of the SPD suggests that applications resulting in the loss of class B jobs make a contribution of £4,120 per job (measured on floorspace: see p38 of the SPD). This is intended to apply to changes of use to residential or other non-job generating uses. It is not intended to apply to changes of use to other employment generating uses (even if outside the "B" use classes). Most studies indicate that the majority of jobs in Torbay over the next 20 years will come from non-B uses such as leisure, health and public services. Draft PPS 4 "Planning For Economic Prosperity" (2009) also includes such uses within the definition of economic development. Paragraph 4.27 of the SPD recognises the need for flexibility in order to avoid harming local businesses or organisations. It is also not intended to apply where it could impact negatively on regeneration schemes such as promoted in the Mayor's Vision.

## Stronger Communities

- 3.20 Contributions towards Stronger Communities apply to developments of 10 or more dwellings.

**Figure 5: Contribution for Safer Communities (per dwelling, on developments of 10+ dwellings). (No Change from Figure 12 of the SPD, apart from measurement by floor area).**

Floor area	Safer Community Contribution
Up to 54 sq m	£90
55-74 sq m	£130
75-94 sq m	£170
95-119 sq m	£200
120 + sq m	£200

- 3.21 Non residential developments which give rise to particular safer communities issues (e.g. licensed premises) will be charged contributions based on a case by case assessment of their impact. This is likely to need consultation with relevant bodies such as Safer Communities Partnership: <http://www.torbay.gov.uk/safercommunities>
- 3.22 Out of centre retail developments may give rise to a need for increased town centre management or marketing to offset the negative effect of out of town shopping on town centres. This will need to be calculated with regard to the spending diverted from town centres, and be ring fenced for specific town centre enhancement/management projects.

## Education and Lifelong Learning

- 3.23 Advice from the Council's Children's Services is currently that there is no need for additional secondary school places in Torbay. There is a primary school place need in Paignton but not Torquay or Brixham. On this basis no education contributions should be sought for applications in Brixham or Torquay.
- 3.24 Education contributions in Paignton should reflect the cost of primary schooling only, which is 6 years out of 13 (i.e 54%). This comes to £830 for 2 bedroom dwelling (based on 54% of £1549 in Figure 13 of the SPD). This should be sought as follows, reflecting that larger properties will be more likely to contain children:

**Figure 6: Primary Education Contributions: Paignton only (Amends Figure 13 of the SPD).**

Floor area	
Up to 54 sq m	0
55-74 sq m	£410
75-94 sq m	£830
95-119 sq m	£1240 (x 1.5 baseline contribution)
120 + sq m	£1660 (x2 baseline contribution)

- 3.25 **Lifelong Learning.** This is sought from all dwellings (including sheltered housing) as per Figure 14 of the SPD. It contributes towards libraries.

**Figure 7: Lifelong Learning Contributions (No Change from Figure 14 of SPD, other than measurement by floor area).**

Floor area	
Up to 54 sq m	£160
55-74 sq m	£220
75-94 sq m	£300
95-119 sq m	£410
120 + sq m	£470

### **Greenspace and Recreation**

- 3.26 Open space contributions for dwellings are set out in Figure 17 of the SPD

**Figure 8: Open space Contribution per dwelling (No Change from Figure 17 of SPD, other than measurement by floor area).**

Floor area	
Up to 54 sq m	£550
55-74 sq m	£1120
75-94 sq m	£2050
95-119 sq m	£2370
120 + sq m	£2370

- 3.27 A rate of £550 applies to sheltered accommodation, which excludes the cost of equipment for school children.
- 3.28 Green space and recreation contributions still apply to developments that include private amenity space (e.g. gardens). However, where public open space is provided as a planning obligation, this may be counted against contributions, although the Authority will still seek contributions towards maintenance for 10 years.

### **Implementation Issues**

- 3.29 This section sets out advice on implementation including contributions for hard to monitor uses, such as holiday occupancy conditions
- 3.30 **Hard to Monitor Uses.** Paragraphs 5.6- 5.8 of the SPD seek contributions for hard to monitor uses. This only applies to developments that raise particular issues that require monitoring, such as non-RSL provided affordable housing, or holiday occupancy conditions. It does not apply to all developments. Contributions towards hard to monitor uses is sought on the basis of the following:

**Figure 9: Hard to Monitor Contributions (Amends Paragraph 5.8 of the SPD)**

Scheme Size	Contribution
Schemes of up to 10 dwellings/ Non major applications.	£200 per unit up to £2000 (for 10 units)
Each 10 units over 10 (or part thereof).	£200

- 3.31 **Overage Scheme:** Where a reduced planning contribution or provision of affordable housing is agreed on the basis of viability, the Council will operate an overage scheme. This will require an anticipated sales price (or present value of a rental scheme) to be

agreed with the Authority. A minimum proportion of 50% of any gross sales price/open market value above this figure will be paid to the Council as planning contribution (up to the amount that would have been sought normally). This approach should be agreed through the viability testing mechanism set out in the SPD (page 48).

**Planning Contributions and Affordable Housing Supplementary Planning Guidance  
(Adopted February 2008). Appendix 1: Guideline to Calculating Contributions for  
Residential Developments**

Developer Contribution	Dwelling Type				
	45-54 Sq M	55-74 Sq M	75-94 Sq M	95-119 Sq M	120 Sq M+
<b>Floor area</b> (1sq m = 10.76 sq ft)	1 bedroom Flat	2 bedrooms	3 Bedrooms	3 or 4 Bedrooms	Larger properties 4+ bedrooms
<b>(Typical dwelling type)</b> For info only: calculations should be based on gross internal floor area.					
<b>Site Acceptability Contributions:</b> Have to be carried out in order to make development work in physical terms. Has to be calculated on a case by case basis					
Waste Management (all dwellings)	£50	£50	£50	£50	£50
<b>Affordable Housing</b> Sites of 15+ dwellings. 30% on site provision.					
<b>Sustainable Development Contributions:</b> Where development gives rise to a wider need that is a community plan priority, especially where there is a gap in other funding (see para 4.8 (p32)					
Sustainable transport – net increase in traffic generated. Also applies to sheltered flats. 50% rate applies to holiday flats.	£1,260	£1,720	£2,350	£2,710	£3,610
Loss of employment: Only applies where there is loss of B1/B2/B8 uses					
Stronger Communities. Only applies to developments of 10+ dwellings	(£90)	(£130)	(£170)	(£200)	(£200)
Education – Applies to Primary school provision in <b>Paignton</b> only.	Not on 1 bed dwellings	£410	£830	£1240	£1,660
Lifelong learning – libraries	£160	£220	£300	£410	£470
Greenspace and recreation (assuming no on-site public open space provision)	£550	£1,120	£2,050	£2,370	£2,370
<b>Implementation</b>					
Legal fees – where there are outstanding S106 issues @ £100 per hour.					
<b>Monitoring-</b> Only applies to difficult to monitor uses e.g. non-RSL housing or Holiday Flats £200 per dwelling up to £2000 9 for 10 units). £500 per 10 dwellings thereafter					
<b>Sub Total</b>	£2020	£3520 (Pgn) £3110 (Bxm/Tqy)	£5580 (Pgn) £4750 (Tqy/Bxm)	£6780 (Pgn) £5540 (Tqy/Bxm)	£8160 (Pgn) £6500(Tqy/ Bxm)
<b>5% Discount for early payment at signing of S106 Undertaking.</b>	£100	£233 (Pgn) £160 (Tqy/ Bxm)	£280 (Pgn) £240(Tqy/B xm)	£338.4 (Pgn) £280 (Tqy/ Bxm)	£410 (Pgn) £330 (Tqy/Bxm)

**Notes:** Figures for guidance only. Figures rounded to nearest £10. Figures will be mitigated by existing use (e.g. transport generated by existing use) and direct on-site provision e.g. of public open space. No contribution will be sought where less than £5000 due to administrative costs. The Level of contributions sought should be **reasonable** within tests of 5/2005, i.e. not more than the value generated by development and related to the needs created by development.