



North Warwickshire
Borough Council

**Section 106 Obligations and Affordable Housing
(Practice Note)**

NOVEMBER 2010

1 Background

The Development Plan contains saved policies from the North Warwickshire Local Plan 2006 that require the provision of affordable housing within the Borough. In general terms these seek a minimum of 40% provision from all residential development proposals, with that provision being in perpetuity and available to people in the locality. (Saved Core Policies 8 and 11, together with saved policies HSG2 apply)

The Council has sought this provision through a number of different measures – one of which is through Section 106 Obligations. Typically these will require the provision of a percentage of housing on a site to be for affordable purposes, or for a financial contribution for off-site provision in lieu of on-site provision. The final percentage figure or the amount of the contribution will have been agreed following the submission of a Financial Appraisal undertaken by the developer and verified by the Council. This Appraisal will contain assumptions on development costs and on the likely value of the development when completed. It is recognised that the current economic downturn has altered these assumptions, and prospective developers are beginning to seek re-negotiation of Obligations, because it is said that their development projects have become unviable. This Practice Note sets out the Council's approach to such requests, and to the Council's approach to affordable provision on new sites during this downturn.

The Legislation relating to Section 106 Obligations has recently changed with the introduction of the Community Infrastructure Levy (CIL). This has narrowed the applicability of Section 106 Obligations, and has introduced statutory tests for their use. However the use of these Obligations to continue to provide affordable housing remains unchanged.

2. Development Plan

In general terms the saved policies of the Local Plan require a minimum of 40% provision of affordable housing on site. There are differential triggers as to when this requirement is introduced, and there are different housing tenures that can be used. The policies however do make it explicit that this level of provision may not be viable on certain sites and thus any lower provision, or indeed any off-site contribution in lieu of on-site provision has to be evidenced through a robust and verifiable Financial Appraisal. There are examples throughout the Borough where such an Appraisal has led to lower provision. These come about either because North Warwickshire has historically had lower land values than surrounding areas, and because many of the development projects have involved regeneration sites with substantial initial development costs for demolition. The current economic downturn can significantly impact on marginal sites.

In these circumstances, this Note is intended to assist, and to offer guidance to land owners and prospective developers in preparing the evidence base referred to above, either in proposing a new project or in seeking to renegotiate an existing permission. It will thus be taken to be material planning consideration.

3. Basic Principles

It remains the Council's policy to achieve the level of affordable housing as set out in the Development Plan. Any Financial Appraisal for a new project should start from this premise. It is for the prospective developer to provide the evidence as to why that provision can not be made. Similarly, if an extant permission has not been

commenced or completed, and renegotiation is sought, the presumption will be that it is for the developer to provide the case for lower provision.

The Appraisal should be explicit in the assumptions that it makes, and in identifying its sources, in respect of development costs, particularly if there are abnormal costs associated with the land, or if the design specification is higher than normal. Evidence of the outcome of marketing the site should also be available if appropriate. Final values should be identified using local evidence and sources so as to reflect the local context.

The Council is prepared to be flexible, particularly in the case of those seeking to renegotiate current Obligations, if there is the evidence base to show that the Obligation itself is preventing implementation of the permission. However it needs to be persuaded by evidence, and that a number of options have first been considered. Different sites will have different outcomes, and thus each case will be considered individually and the outcome may be a combination of options.

As a starting point the Council will wish to know the “gap” between the policy expectation and what the developer considers can be provided. In the case of renegotiations, the “gap” between the provision already agreed and what the developer considers can now be provided. The purpose in exploring options is to examine how these gaps can be closed.

Options that should be considered in the case of developers seeking renegotiation of financial contributions include:

- a phased approach to the payment of the already agreed contribution over the life of the project
- an initial payment at commencement, but payment of the balance only at final occupation.
- an initial nominal payment at commencement but a re-evaluation of the development project just prior to final occupation, seeking a new contribution based on final realised market values.
- postponement of any contribution until an evaluation at the time of final occupation based on final realised market values.

Options that should be considered in the case of developers seeking renegotiations of affordable housing provision already agreed for a site, or for seeking affordable provision on new sites, include:

- a phased approach to the provision of affordable housing throughout the life of the development
- all affordable provision to be made just prior to final occupation of the site
- a phased approach but with the provision at each phase based on a re-evaluation, built in at each phase in the life of the project
- a combination of a lower level of affordable provision on site, but with a compensatory off-site contribution to make up the provision so as to meet policy requirements.
- agreement of a lower level of provision on site, but at completion, a further appraisal being undertaken to establish an off-site contribution based on final realised market values.

The Council is prepared to be flexible because it recognises the current economic downturn; the local circumstances and impacts of that downturn on North Warwickshire, the need to regenerate sites, to build houses and to provide affordable

housing to meet the particular needs of its population. Hence the options and principles set out above will be used to negotiate a balanced outcome to meeting these varied objectives.