

Developer Obligations Frequently Asked Questions



moray
council

What are developer obligations?

Developer obligations are contributions sought from developers to mitigate any negative impact their development may have on existing infrastructure. When a development takes place there is a need for infrastructure and services to accompany it. This can include roads, schools or a wide range of facilities depending on the scale and location of development.

Developer contributions are intended to ensure that developers make appropriate provision for any losses, or supply additional facilities that are required to mitigate the impact of a development in the local community.

Guidance on developer obligations?

Guidance on developer contributions is set out the Scottish Government Circular 3/2012: Planning Obligations and Good Neighbour Agreements. A copy of this document can be www.scotland.gov.uk/Publications/2012/12/1885/downloads

Further guidance is provided in the Council's Supplementary Guidance on Developer Obligations. A copy of this document can be found online at:

www.moray.gov.uk/developerobligations

Does Moray Council have policies on infrastructure requirements, developer obligations and affordable housing?

Yes, policies are contained within the Moray Local Development Plan 2015. Policy IMP3: Developer Obligations, Policy H8: Affordable and Special Needs Housing, Policy IMP1: Developer Requirements, Policy T2: Provision of Access set out the Council's approach on these areas. Copies of these can be found online at:

http://www.moray.gov.uk/moray_standard/page_100458.html

Who deals with developer obligations in Moray?

Developer obligations are dealt with separately to Development Management, all queries should be directed to the Developer Obligations Officer first instance or Senior Planning Officer based in Development Planning & Facilitation at Moray Council.

Developers are encouraged to contact the Developer Obligations Officer at an early stage to ascertain if a financial contribution or affordable housing provision is required and, if so, what the likely level would be.

Assessment reports are issued by the Developer Obligations Officer who is responsible for advising the Development Management Case Officer when agreement has been reached and the detail of the obligations sought.



Moray Council DEVELOPER OBLIGATIONS

Who do developer obligations apply to?

The Developer Obligations Officer is consulted on all planning applications and in liaison with other Council Services and NHS Grampian prepares an assessment which sets out the contributions that are required to mitigate any negative impact the proposed development has on existing infrastructure.

The assessment issued sets out the methodology as to how the obligations were calculated. Obligations are agreed and paid either upfront or through a S75 agreement before planning consent is issued.

Do I have to pay developer obligations if I want to sell the land after receiving a planning permission?

The planning consent is attached to the land and when land is to be sold on, the level of developer obligations paid by the applicant should be taken into account.

How are developer obligations secured?

In the first instance the Council seeks to secure obligations through a planning condition with an appropriate trigger such as prior to commencement of development or completion of xth house.

The majority of financial obligations are met through upfront payments [for major developments, under Section 69 of the Local Government (Scotland) Act 1973] prior to the release of the planning decision notice and this would be a personal agreement between the developer and Council in line with the assessment report.

Contributions for transportation may also potentially be secured by an agreement under Section 48 of the Roads (Scotland) Act 1984. This agreement may be entered into for works such as junction upgrading, installation of traffic lights and pelican crossings, traffic calming measures etc. to deal with the effects of new development.

Where larger obligations are required then a legally binding Section 75 agreement would be required which may secure contributions as phased payments and runs with the land. If the developer sells the site the new owner takes on the responsibility of meeting the obligations.

How do I pay a small contribution and who should I contact?

The Developer Obligations Officer will advise the agent/applicant when the developer obligation is required to be paid and the methods of payment. The payment must be made within 7 days of receipt of correspondence preferably over the phone, although cheques will be accepted.

What can you seek developer obligations for?

When the Council considers what obligations there may be for a particular development they must refer to the Local Development Plan and also apply all five 'tests' which are set out in national government legislation (Circular 3/2012) over the page.



THE 5 POLICY TESTS

1

Necessary to make the proposed development acceptable in planning terms

Obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of the particular development. Where the need to improve, upgrade or replace that infrastructure does not arise directly from the proposed development then planning authorities should not seek to address this through a developer obligation.

2

Serve a planning purpose and where it is possible to identify infrastructure provision requirements in advance, should relate to development plans

An obligation must be related to the use and development of land and be set out in the Development Plan. Information on the items for which contributions will be sought and the occasions when they will be sought require to be set out in the Development Plan. The methods and exact level of contributions required to be set out in statutory supplementary guidance. This is to provide as much certainty as possible to the developer early in the process to allow these to be factored in.

It is therefore important to ensure that information on infrastructure and community requirements to support a development are included at the development plan stage. For example the replacement of the heating system in the local village hall is not relevant to the planning process therefore could not be funded through developer obligations.

3

Relate to the proposed development either as a direct consequence of the development or arising from the cumulative impact of development in the area

Any obligations must be directly related to the development. We therefore require to clearly set out the purpose for which any contribution is required and the infrastructure to be provided. It is not sufficient to simply advise that an obligation is required for sport facilities. We require to evidence that there is a clear link between the mitigation and development proposed.

4

Fairly and reasonably relate in scale and kind to the proposed development

Contributions should always be proportionate to the scale of the proposed development.

Planning obligations should not be used to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives which are not strictly necessary to allow permission to be granted for the particular development.

For example where there is an existing shortfall in the sports facilities within a local community the developer cannot be expected to fully meet this shortfall through obligations but could potentially make a proportionate contribution towards additional infrastructure required as a result of their development.

5

Be reasonable in all other respects

For example obligations could not be used to fund a private facility such as a golf club where only selected members would benefit.



What gets funded through developer obligations?

Developer obligations may be sought for the following infrastructure:

- Affordable Housing
- Education
- Transportation
- Healthcare
- Sports and Recreation facilities

The use of funds received from developer contributions must be in line with the original agreement under which they were secured. Contributions are directed towards capital costs.

Affordable Housing

Developments of, and above 4 units are required to provide 25% affordable housing. This is preferably to be delivered on site, but in certain circumstances a financial contribution is allowed to the Council to deliver affordable housing elsewhere.

Education

Where a development will bring more children to an area and the functional capacity of the school is at, or above 90%, a contribution might be sought towards a new school, permanent extension or reconfiguration of existing space within the school to create additional capacity.

Transportation

Small scale developments located within a rural area with no access to bus services will be required to pay contributions towards the Council's Demand Responsive Transport Service (dial-a-bus).

For major developments, a Transportation Assessment is required to be carried out and mitigation measures identified accordingly.

Healthcare

Contributions will be sought where the capacity of existing healthcare facilities is exceeded as a result of the proposed development.

Contributions may be sought for a new build facility, permanent extension or reconfiguration of existing GP, Dental Chairs and Pharmacy facilities.

Sport and Recreational Facilities

There is a shortage of 3G pitches in Moray, falling behind national standards. Therefore contributions are sought towards 3G pitches.

When is money from developer obligations available?

Small scale developments are required to pay the requested developer obligations upfront prior to the release of the planning consent.

Major applications usually enter into a S69 agreement, which requires upfront payment or S75 agreement where payments are made on a phased basis. The triggers for S75 payments are generally the completion of certain amount of houses.

Can developers modify the Section 75 agreement?

A developer can apply to the Council to modify or discharge an obligation within a Section 75 legal agreement and has a subsequent right of appeal to the Directorate of Planning and Environmental Appeals if the authority refuses the application. These applications are assessed against the relevant development plan policies and five tests.

If a new planning application on a site under development is submitted this has no impact on the existing Section 75 agreement unless a new planning permission is granted with an associated Section 75 that amends the original agreement.



What to do if the level of developer obligations makes a development unviable?

In order to assess the financial viability of a development, the developer is required to undertake a development viability assessment and include all requested information, which can be found in the Council's Supplementary Guidance on Developer Obligations.

The developer should allow for a certain level of obligations in their development appraisal and the inclusion of infrastructure requirements in the Development Plan and Supplementary Guidance assists in providing certainty early in the process. For a developer, uncertainty equals risk so they are keen to determine costs as early as possible.

Further Information

For further information please contact:

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Developer Obligations Officer

on 01343 563265 or

Eily Webster

Senior Planning Officer on 01343 563287

or via **email**:

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