

Shaping Our Place 2026

Local Development Framework

Core Strategy

Policy Direction Paper
Implementation Planning and
Developer Contributions

January 2010

CORE STRATEGY POLICY DEVELOPMENT

Core Policy Area(s): Implementation Planning and Developer Contributions

Preferred Policy Direction

Developer contributions are currently sought to offset direct impacts of development using Section 106 Planning Obligations in accordance with government circular 05/05, UDP Policy DR5 and the Council's SPD on Planning Obligations which came into effect in 2008. The legislation and policy basis for this is due to change in April 2010 and therefore a different approach will be required to deliver the Core Strategy.

The option of continuing with the current practice will effectively have to change once the legislation is changed and the anticipated 2 year transition period has expired. Consequently, in preparation for that work needs to commence on the use of the Community Infrastructure Levy. This will require the preparation of a Charging Schedule to be examined alongside the Core Strategy.

The use of Implementation Plans to set out how LDFs will be achieved on the ground is becoming standard practice, is explicitly encouraged by Government and has already featured in Phase 2 of the review of the Regional Spatial Strategy. An Implementation Plan will therefore be required to supplement the Core Strategy and give a context for the use of CIL as well as for continuing the use of Planning Obligation Agreements where the scope for them is still allowed in the anticipated new legislation.

1.0 Introduction

- 1.1 This report provides background information and evidence to support the policies directions that will form part of the Core Strategy Place Shaping Paper. The full policy wording will form part of the pre-submission Core Strategy.
- 1.2 The Core Strategy will set out the vision and objectives for the Herefordshire Local Development Framework (LDF), together with the 'place shaping policies' at a strategic level, explaining how the County as a whole is expected to develop up to 2026.
- 1.3 The current Local Development Scheme timetable anticipates the Core Strategy will reach submission by June 2010 and adoption March 2011.
- 1.4 The remainder of this report seeks to address the following questions:
 - What is the current situation (issue)?
 - What is the national, regional and local policy framework?
 - What is the available evidence base indicating?
 - What can the Core Strategy do?
 - What were the results/indications of the Developing Options Consultation?
 - What further consultation has taken place?

- What conclusions can be drawn?
- What happens next?

2.0 The need for the policy.

- 2.1 The provision of infrastructure to support new development will depend, in part, on funding from the developments themselves. In the past Planning Obligation agreements under Section 106 of the Town and Country Planning Act 1990 (as amended) (known as “Planning Obligations”) have provided for some of that funding. This has been supported by UDP Policy DR5 and the related Planning Obligations SPD adopted in 2008.
- 2.2 The Council's current policy of Section 106 agreements was adopted in March 2008 and came into effect in April 2008. Unfortunately this coincided with the economic recession and thus, whilst income from Section 106 agreements had increased in previous years, in 2008/09 it declined to nothing. In round numbers:

year	section 106 income
2005/06	£1 million
2006/07	£2 million
2007/08	£4 million
2008/09	£0

- 2.3 It should be noted that in 2008/09 planning permissions were granted with associated Section 106 agreements to the value of £4 million, but none of the those developments commenced and hence no payment was made.
- 2.4 Thus, in the absence of a formal policy the Development Control Team had successfully negotiated a high level of Section 106 income up to 2008, but the impact of the recession was such that those levels of income have not been sustained. Furthermore, as a response to the Recession the Cabinet Member decided in January 2009 to approve a moratorium on Section 106 agreements in the cases of small developments – further reducing S106 income.
- 2.5 The fact that the Council could negotiate Section 106 agreements without a detailed policy, and then partly suspend the policy, by Cabinet Member decision, demonstrates the flexibility of the current system. However, the Government regards this as a weakness – due to its alleged unpredictability. The Government therefore proposes substantial reform.
- 2.6 The advent of CIL was anticipated in the current Local Development Scheme although hitherto there has been no formal commitment by the Council to the use of the CIL. It had been understood that the use of CIL would not be mandatory and therefore the choice would have remained to continue with the current Section 106 system and policy. However, the current consultation makes it clear that the Government wants to scale back the scope of Section 106 substantially to the point that the Council's current policy would be no longer tenable. Indeed, in some respects it may even become unlawful.
- 2.7 The government's current (August 2009) intention is to introduce new regulations in April 2010 and for the current use of Section 106 agreements to

be scaled down by the end of an anticipated transition period of two years. Local Planning Authorities will need to get their CIL policies and supporting documents (including LDF policies) in place by April 2012 at the latest in order to continue to seek developer contributions for most types of infrastructure.

Section 106 Agreements and CIL – the critical differences.

- 2.8 Section 106 agreements are intended to deal with the impact of development; thus, there should be a direct link between what is proposed and the intended purpose of the payment. Government policy is set out in circular 05/05 and seeks to restrict the use to direct impacts, although it does allow for the possibility of pooled contributions and the use of tariffs. Case law, however, has allowed a very wide interpretation of the linkage between the development in question and the purpose of the contribution and that, combined with the fact that each agreement is negotiated individually, has resulted in wide variations within and between local planning authorities in the use of Section 106 agreements. The government does not like the unpredictability it perceives in the system and, furthermore, does not like the fact that the law and the national policy are not in complete alignment. The key principle, however, remains that Section 106 agreements should only be used to address specific impacts of the development in question.
- 2.9 CIL is intended to take a different approach. It would in effect be a tariff system whereby the tariff has been through a rigorous public examination and should be applied across the board within a local planning authority, i.e. with complete consistency. There would be no negotiation on a case-by-case basis over the amount of the contribution. Furthermore, CIL breaks direct link between the development in question and the purpose of the contribution. This is especially relevant where infrastructure may be needed on a large scale (for example a major road scheme) but is not required for any one small development. In Hereford's case a scheme of say 20 houses can hardly be used to justify an Outer Distributor Road, but the cumulative effect of all development over 20 years may well require one. Thus the CIL provides an across-the-board tariff to contribute to a large scale item of infrastructure.
- 2.10 The proposed CIL regulations require local planning authorities to prepare a CIL Charging Schedule which provides the justification and the amount of any contribution. Unlike S106 agreements where contributions are tailored to the individual development, CIL charges are likely to be levied on the basis of floorspace of relevant development across the board. There would thus be one charge per square metre of new building irrespective of whether the building is a house or commercial development.
- 2.11 The justification for the Charging Schedule must come from an up-to-date development plan in the form of one of the new style Development Plan Documents. CIL could not be charged on the basis of the current policies in the UDP.
- 2.12 The Charging Schedule would not be a Development Plan Document itself but it would go through a similar process including public examination before it can be adopted. This could happen at the same time as the Core Strategy – indeed there will be encouragement from the GOWM to do a joint examination of the Core Strategy and the CIL Charging Schedule.

- 2.13 A further, and critical element of the Government's proposals is that once the ability to use CIL is in place the scope of Section 106 agreements will be drastically reduced – to the point that the current SPD on Planning Obligations would no longer be useable. For example the current SPD requires all proposed dwellings (apart from Affordable Houses) to make a contribution to Children's Services if the local schools are at or close to capacity. This is the type of "Pooled contribution" that will only be possible under the CIL system in future.
- 2.14 The one element of the Section 106 system which would remain would be the ability to levy a contribution towards affordable housing. At present UDP policy does not seek affordable housing below a certain threshold. An outcome of this which has been highlighted in current viability studies is that on small schemes, for example below six new houses, no affordable housing is achieved. In future, given a suitable S106 policy, instead of accepting that such sites are too small to provide any affordable houses, they should make a contribution towards affordable housing elsewhere. That will require revision of the current Planning Obligations SPD.
- 2.15 **Conclusion in respect of Developer Contributions.** The current Planning Obligations SPD is unlikely to be able to be used once the new CIL system comes into operation. In order to secure funding for Pooled Contributions for Infrastructure a **CIL Charging Schedule** will be required, and the **Planning Obligations SPD** will need revising to restrict its scope to Affordable Housing Contributions and any development site specific issues that cannot be dealt with by planning condition.

Implementation Plan

- 2.16 Since the 2004 Act the new planning system has become much more focussed on alignment with other Council policies such as the Sustainable Community Strategy. The concept of partnership working has become embedded in the new system. Furthermore, in order to be adopted, a Development Plan Document has to pass the test of "Soundness" which includes demonstrating that the proposals have a realistic chance of being implemented. Since 2004 this has developed into the concept of the "Implementation Plan" which would be a document to sit alongside the statutory planning documents and act as a project plan for bringing planning proposals to fruition.
- 2.17 The Regional Spatial Strategy now has a draft Implementation Plan and it is the Government's intention that all statutory plans should be accompanied by an Implementation Plan of some sort.
- 2.18 The Implementation Plan should be used to demonstrate who will carry out key actions, when they will take place, and how they are expected to be financed. Thus, it is no longer acceptable for a development plan to have an aspiration for infrastructure on the assumption that the developers will have to pay for it eventually anyway. (This is typically the case, for example, with water supply and drainage, and with highway works in the immediate vicinity of the site). In the new regime the local planning authority has to set out what needs to happen, who is going to do it, and where the money is coming from.
- 2.19 This is a new area of planning work and will require close partnership working with a variety of agencies, developers and other public sector bodies.

- 2.20 A Draft Implementation Plan will be needed by the time the Core Strategy gets to "Submission Stage" – currently programmed for early 2011.
- 2.21 In the case of major infrastructure such as the Outer Distributor Road the Implementation Plan may well need to identify a number of different sources of finance, together with practical proposals for the phasing of its implementation. CIL will be an important part of this picture.
- 2.22 Section 106 cannot be left out of this process because that will be needed to implement Affordable Housing.
- 2.23 **Conclusion in respect of the Implementation Plan.** An **Implementation Plan** will be needed, as a separate document from the Core Strategy, and will need to be sufficiently advanced as a draft document that it can be considered alongside the Core Strategy at submission stage.

3.0 The policy framework

- 3.1 National policy in respect of Planning Obligations is set out in Circular 05/05, but this is currently under review as part of the Government's proposals to replace, in part, Planning Obligations with the Community Infrastructure Levy (CIL). The government's are set out in the consultation paper in July 2009 alongside draft new regulations which will curtail the use of Section 106 and promote the use of CIL. Whilst the use of CIL will not be mandatory, the considerable reduction in the scope of the use of Planning Obligations will make its use essential in order to fund the infrastructure needed to deliver the Core Strategy.
- 3.2 Regional Policy is set out in draft form in the submission copy of the Phase 2 Revisions. This was accompanied by an Infrastructure Plan which, in the case of Herefordshire, referred to the likely use of CIL to fund infrastructure. The Inspector's Report on the Phase 2 Examination in Public was published in September 2009. The Secretary of State's proposed changes (in response to the Inspectors' recommendations) is not expected to be published until February 2010.
- 3.3 Current Herefordshire Council Policy is set out in the UDP Policy DR5 and in the Planning Obligations SPD as noted above.

4.0 Evidence base

- 4.1 The various elements of the evidence base identify the scale and kind of infrastructure needed to support the plan including:
- Transportation (Hereford Relief Road and second river crossing, Leominster Southern Bypass, Park and Ride, other sustainable travel options)
 - Affordable Housing
 - Water supply and treatment infrastructure
 - Green Infrastructure, sports provision
 - Other infrastructure such as schools and community facilities
- 4.2 Detailed costing have yet to be worked up for any of the above but will need to feature in an Implementation Plan.

5.0 What can the Core Strategy do?

5.1 The Implementation Plan is required to set out how the Core Strategy aims and objectives will be achieved across the board. The Core Strategy therefore needs an enabling policy in the same way that UDP Policy DR5 enabled the Planning Obligations SPD. The Core Strategy also needs to provide explicitly for the use of CIL in funding key elements of the infrastructure needed to achieve its development targets.

6.0 Developing Options Consultation Results

6.1 There were no specific questions/options raised in the Developing Options Paper about the use of developer contributions, although there were references to Delivery and Monitoring (Section 8 of Developing Options). The Government Office for the West Midlands commented to the effect that an Implementation Plan would be required.

7.0 Further consultation undertaken and Sustainability Appraisal

7.1 There was no sustainability appraisal of the concept of an Implementation Plan or the use of Developer Contributions as part of the Developing Options consultation..

7.1 Since the Developing Options paper was prepared a Draft Implementation Plan has been prepared for Herefordshire as a sub-Region as part of the RSS Phase 2 Examination in Public. No specific questions were asked of the Herefordshire element of the Regional Implementation Plan at the Examination in Public and so no issues have been raised. That draft Implementation Plan could be used as a the basis of a detailed one to accompany the Core Strategy.

8.0 Conclusion

8.1 The Government has stated its intention to scale back the use of Section 106 Planning Obligations, with new CIL regulations likely to come into effect in April 2010. There will be a transition period during which the Council's current SPD on Planning Obligations can continue to be used – but the transition period is expected to be no more than two years and hence, by 2012, the current SPD will be no longer effective (or, possibly, lawful). It is therefore concluded that work needs to progress on creating a CIL Charging Schedule to be considered as a critical element in funding the infrastructure needed to deliver the Core Strategy.

8.2 In parallel with the work on the CIL an Implementation Plan will be required as a separate document to accompany the Core Strategy and set out how its proposals will be brought into fruition.

9.0 Way forward

9.1 The Implementation Plan will lead directly to a set of monitoring indicators which can be used to assess the effectiveness of the Core Strategy in delivering the Council's priorities.