



Gloucestershire

COUNTY COUNCIL

**Gloucestershire County Council
Infrastructure Recovery Strategy
(Consultation Document)**

DRAFT

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1. Introduction

Gloucestershire County Council's (GCC) Infrastructure Recovery Strategy (IRS) sets out the policy justification, methodology and implementation mechanism for recovering funds from development sites that benefit from publicly funded infrastructure. The aim of the IRS is to ensure that development sites which see an uplift in land value from infrastructure that has been forward funded by public money do not unfairly benefit, by requiring such sites to make a financial contribution.

The methodology in the IRS, used to calculate the financial contribution that a development site will be asked to make, is based upon the uplift in land value of sites as a result of public funding awards. Each development site will realise a different level of benefit from infrastructure brought forward with public funding and it is this benefit that will be used to determine a capped recoverable value.

The IRS is in alignment with district and national planning policy as well as policy and guidance contained within GCC documents such as the Local Developer Guide and Local Transport Plan. It is also supported by government guidance relating to public funding, such as the guidance relating to the Housing Infrastructure Fund (HIF).

GCC will, through the IRS, use all reasonable but commercially prudent endeavours to secure the recovery of funds from development sites, with GCC's preferred option to achieve this being through the use of a planning obligation agreement made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). This would be done as part of the planning process relating to the relevant development site. Where necessary, funds may also be recovered through other mechanisms agreed with relevant parties. The IRS will also take account of any future planning reforms.

Recovered funds will be retained by GCC in perpetuity and used to help support further infrastructure which will unlock or accelerate additional growth delivery elsewhere in the county.

The M5 Junction 10 Scheme ('M5 J10') is an example of a case where GCC has received forward-funding in the form of the HIF and would wish to rely on this IRS to secure financial contributions from benefitting development sites. M5 J10 will see improvements to form an 'All Movements' Junction, as well as other scheme elements, with funding being awarded by Home's England as part of the £2.3bn (HIF). In line with Home's England's policy, GCC is committed to recovering funds from development sites that benefit from forward-funding where possible and to producing a recovery strategy to achieve this.

The IRS enables GCC to seek to recover the costs of the public funding, by way of negotiation with developers and Local Planning Authorities (LPA) based on the principles contained in the IRS, from development site allocations that will benefit from the infrastructure being delivered. The IRS will shape those negotiations by outlining the methodology to calculate recovery.

The IRS will also be applied to any future development (speculative/windfall/allocation) that comes forward and benefits from the publicly funded infrastructure, such as those at M5 J10.

2. Policy Justification

The IRS has been developed from a review of existing policy and key material considerations in order to provide justification of the recovery methods and mechanisms within.

Joint Core Strategy:

The Joint Core Strategy (JCS), adopted in December 2017, is a partnership between Gloucester City Council, Cheltenham Borough Council and Tewkesbury Borough Council which sets out a strategic framework for the three areas. Within the framework there are two policies that support the application of a recovery strategy.

- INF1 (Transport Network) states that if there are likely to be severe impacts on the transport network due to a development, they must be mitigated to the satisfaction of the planning authority in consultation with the highway authority.
- INF6 (Infrastructure delivery) states that for permission to be granted mitigation must be provided for the impact on existing infrastructure.

Stroud District Council Local Plan:

The Stroud District Local Plan was adopted in 2015 and contains policy CP6, which has also been retained in the emerging Stroud Local Plan currently undergoing review.

- Policy CP6 – Infrastructure and developer contributions ensures that infrastructure will be in place at the right time and will be achieved by a number of means, one of which is CP6.4 negotiating with appropriate planning obligations to mitigate any adverse impacts or proposed development – while avoiding duplication of payments made through CIL.

Forest of Dean District Council Core Strategy:

The Core Strategy was adopted in 2012 and contains Policy CSP.4.

- CSP.4 (Development principles, development at settlements). The policy discusses the additional infrastructure needs that can be sought by way of developer contributions.

Cotswold District Council Local Plan:

The Cotswold District Council Local Plan was adopted in 2018 and contains a specific infrastructure delivery policy.

- INF1 (Infrastructure Delivery) states that development will be permitted where infrastructure requirements identified to make the proposal acceptable in planning terms can be met. Provision of infrastructure will be secured having regard to regulatory and national policy requirements relating to developer contributions.

Gloucestershire Local Developer Guide (LDG):

The LDG is being prepared by GCC and sets out how the county council plans to engage with planning proposals, which may impact upon the infrastructure and services it is responsible for. It is expected to be adopted in March 2021.

The IRS aligns with Paragraph 45 of the emerging LDG. Paragraph 45 states the following,

- “Paragraph 45: In certain cases, the use of developer contributions through s.106 planning obligations will remain important for securing infrastructure to meet the demands from new development. It is likely, for example, that s.106 contributions will continue to be used for securing infrastructure on strategic sites, as well as in instances where the infrastructure is to be provided on-site and is directly related to the development. In such cases and where appropriate, contributions from several geographically located developments may be pooled to provide the required infrastructure, or contributions secured from developers towards recovering the cost of large scale infrastructure, for example M5 Junction 10, where appropriate as set out in GCC’s financial Recovery Strategy Guidance note.

Additional S.106 contributions will still be sought where an authority chooses not to introduce CIL.

On the potential granting of a planning consent, the decision will be made between the LPA and the county council as to whether the infrastructure contributions sought will be best secured via S.106 or via CIL, as appropriate, duly noting that CIL is a mandatory charge on developments, which has already undergone viability testing at the development plan EIP stage. S.106 is subject to viability testing at the planning application stage.”

Local Transport Plan (2015 – 2031):

The Local Transport Plan (LTP) sets out the long-term transport strategy for Gloucestershire. The LTP supports delivery of adopted council-based strategy and plans, district led Local Plans, as well as maximising the opportunity and ability of GCC to successfully negotiate with developers to secure infrastructure associated with emerging development.

- Policy PD4.4 (Maximising investment in the highway): The council will seek contribution from developers towards priorities and schemes contained in the plan. The Connecting Places Strategies and Delivery Chapter identify infrastructure needs that planning obligations can be secured against/for.

NPPF/NPPG:

The National Planning Policy Framework (NPPF) sets out the government’s economic, environmental and social planning policies for England and how these should be applied. The policies set out in the NPPF apply to the preparation of local and neighbourhood plans and it is a material consideration in planning decisions.

- Paragraph 56 states that planning obligations must only be sought where they meet all of the tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
 - o Necessary to make the development acceptable in planning terms;

- Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
- The requirement on a development site to make a financial contribution will need to meet the CIL tests and this remains a question of planning judgement that will be taken at the time of planning application and the negotiations into planning obligations.
- It can be argued that the seeking of a planning obligation to provide funds is directly related to the scheme for which funds are being recovered against, although it is acknowledged that these funds will be used to deliver infrastructure and associated housing elsewhere in the county. If the use of planning obligations is taken forward, the planning obligations sought must be fair and reasonable in scale and kind to the development and this is achieved by this recovery strategy which provides the mechanism of justification for the contribution being sought.

3. Recovery Methodology

The IRS will seek to recover funds in accordance with the following aims;

1. The Infrastructure Recovery Strategy will seek to maximise the recovery of funds from sites that benefit from publicly funded infrastructure.
2. The recoverable contribution will be sought via planning obligations made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended), or other agreed methods during the planning process.
3. The Infrastructure Recovery Strategy will be applicable to housing and non-residential use classes as specified in the Town and Country Planning (Use Classes) Order 1987 (as amended) and implemented on a site-by-site basis.
4. Recovered monies will be retained in perpetuity by the GCC and used to enable the delivery of growth elsewhere in the county.

To determine whether a development site can support recovery, a recovery fund cap calculation, necessary to apportion benefit, and financial viability assessment, to ascertain surplus or loss, will be undertaken through engagement between GCC, Local Planning Authorities and applicants and/or other relevant third parties, during the site specific planning application stage.

Recovery Fund Cap:

The recovery fund will be capped and will be calculated by;

- Undertaking a dependent development analysis of an individual development site(s) to calculate the number of dwellings and level of non-residential use class land that is dependent on the publicly funded infrastructure.
- An evidence base will be compiled to calculate the level of demand for the infrastructure scheme that can be linked to the dependent development. This will allow the calculation of recovery estimates that comply with state aid rules from the development site. This evidence base will utilise a variety of tools including council traffic model(s) and identify a suitable forecast year to be tested.
- The proportion of trips travelling to/from the development site using the improvement scheme will be calculated.
- The proportion will then be applied to the total cost of publicly funded infrastructure with the 'cap' being the monies to be recovered.

Financial viability:

Unless the developer accepts the recovery sum sought by GCC as part of the s106 contributions an assessment of the financial viability of the proposed development will need to be undertaken, at the planning application stage, by the developer for review by the Local Planning Authority, to assess whether a scheme generates a sufficient surplus to make the contributions sought.

Government issued National Planning Guidance on Viability sets out the methodology of testing the financial viability of the site, taking into account, but not limited to, site specific costs, s106/CIL, grant funding etc. This guidance is supported by publications from the Royal Institution of Chartered Surveyors (RICS) which guide Chartered Surveyors on what must be included in a Financial Viability Assessment and how the process must be conducted. Planning applications will be assessed by reference to the relevant published guidance.¹

The IRS methodology will therefore follow these steps (the steps are not exhaustive);

Step 1: The publicly funded infrastructure benefit for each infrastructure scheme is calculated (See Recovery Fund cap section above)

Step 2: FVA will by default assess the following:

- Value of the Completed Development (GDV)
Less the:
- Benchmark Land Value
- Development costs (including Policy costs)
- Developer Profit.

Financial Viability Result:

If the calculation results in a surplus then viability is proven and the development is capable of paying the funds sought (up to the level of the surplus) through the IRS. However, should the surplus exceed the value of the recovery cap, only the value of the cap will be sought. If the calculation results in a loss, no recovery will be sought.

¹ <https://www.gov.uk/guidance/viability>

4. Implementation:

The IRS is a standalone document but closely aligned to existing adopted GCC documents such as the Local Developer Guide. The IRS whilst standalone can also be embedded within all relevant local planning documents such as Local Plans, Gloucestershire Local Transport Plan, Gloucestershire Local Developer Guide and Supplementary Planning Documents for the development sites benefiting from publicly funded infrastructure.

Transport Planning and Highways Development Management officers will raise awareness of the IRS during development pre-application discussions and the planning application viability appraisal.

The IRS is a mechanism to be used by GCC officers and appropriately chosen partners to seek appropriate contributions from developers of sites that benefit from infrastructure improvements, such as M5 J10, and from promoters of development that would be likely to have an impact on travel patterns in the vicinity of the infrastructure. GCC officers will work with developers through the planning application process to secure recovery monies in a timely manner and proportionate to their impact.

The IRS sets out the methodology to follow when calculating a recoverable figure. The means of achieving the figure and any associated trigger points will be negotiated during the application stage but will be based upon the methodology set out in the adopted IRS.

Each planning application will agree a payment profile based upon the cash-flow specific to that planning application. Recovery fund trigger points could be agreed by house sales, occupations, and prior to occupation or post occupation or any other agreed trigger. However, these are to be negotiated during the planning application process for a particular development site.

The IRS will be monitored by relevant GCC officers and recovered funds will be held by GCC in perpetuity and used to support further infrastructure which will unlock or accelerate additional growth.

GCC have sought legal advice into the use of planning obligations as a means of securing funds from development sites which benefit from public forward funding. In order to use planning obligations to secure funds the planning obligation will need to meet the test set out in Regulation 122 of the CIL Regulations 2010.

The use of planning obligations to secure funding from developments is preferable to GCC because of the enforcement powers and security afforded by a planning obligation agreement. Planning obligations run with the land and therefore offer GCC greater security as the obligation to pay a financial contribution would be enforceable against future occupiers of the land bound by the agreement.

However, GCC is aware that there are limitations on what constitutes a planning obligation and that to enforce the obligation as a planning obligation it will need to meet the CIL tests set out above. In the event that it is determined that the proposed obligation does not meet the CIL tests, GCC intends to use other general powers available to it to secure funds from development sites for this purpose. Those obligations would be contractual obligations, contained within a planning agreement

but not themselves planning obligations, and would be enforceable by GCC against the person giving the covenant as a contractual obligation.