



Planning Obligations Supplementary Planning Guidance

Developing Sustainable Communities

Adopted December 2007

Developing Sustainable Communities in Newport
Planning Obligations Supplementary Planning Guidance

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Glossary of Terms

BCIS – Building Cost Information Service

(Administered by the Royal Institute of Chartered Surveyors it provides an Index identifying the inflationary % increase in the costs of construction year on year)

MIPPS – Ministerial Interim Planning Policy Statements

(Updates to National Planning Policy published by the Welsh Assembly Government)

PO – Planning Obligation

(A requirement on the developer to do something or pay a financial sum - secured under S106 of the Town and Country Planning Act 1990)

PPW – Planning Policy Wales

(Sets out National Planning Policy which is a material consideration in the determination of planning applications – published by Welsh Assembly Government)

RPI – Retail Price Index

(An inflationary index based upon the increase in prices for a typical basket of goods)

SPG – Supplementary Planning Guidance

(A document prepared by the Local Planning Authority to provide more detailed local policy guidance to the policies contained in the adopted Unitary Development Plan)

TAN – Technical Advice Note

(A document prepared by Welsh Assembly Government to provide more detailed guidance to the policies contained in PPW).

TCPA – Town and Country Planning Act 1990

(Permits Local Authorities to secure planning obligations from developers).

UDP – Unitary Development Plan (1996 – 2011)

(Newport's local development plan policies that are material considerations in determining planning applications).

UU – Unilateral Undertaking

(A Legal Agreement offered and signed only by the developer that binds the developer to make a payment or carry out works in kind).

WAG – Welsh Assembly Government

PART ONE

1.0 Introduction

- 1.1 New development can create detrimental effects upon local amenity and infrastructure unless additional, or improved, services and facilities are provided through planning obligations. This Supplementary Planning Guidance (SPG) will identify what, and when, the Local Planning Authority will expect contributions from developers in terms of planning obligations in order to assist the Council in creating sustainable communities that provide social, economic, and environmental benefits to the whole of Newport.
- 1.2 The aim of the SPG is to provide clarity to developers, development control officers, statutory consultees, service area employees, and local residents regarding the framework from which planning obligations will be sought in respect to applications for new development.
- 1.3 A planning obligation is a legally binding agreement, which usually runs with the title of the land rather than with the person entering into the agreement. It usually requires the developer to either carry out certain works (known as a contribution in kind), or to contribute financially towards the provision of measures that will mitigate the detrimental impacts of their development.
- 1.4 Part One of this guidance sets out the overall approach to planning obligations in terms of policy context, types of obligations, monitoring/administration fees and the Section 106 Toolkit; and Part Two details the policy justification, threshold (and if relevant any formula), used to calculate what feasible contribution a development will be expected to provide where obligations are sought by the Council. Part Two also identifies a number of other Supplementary Planning Guidance documents, which provide in depth detail in relation to some of the obligation areas; particularly affordable housing, and public open space.

2.0 National and Local Policy Context

National Planning Policy

- 2.1 Section 106 of the Town and Country Planning Act (TCPA) 1990, as amended by Section 12 of the Planning and Compensation Act (1991), is the legislative framework for planning obligations. Further guidance on the provisions of Section 106 of the TCPA is currently to be found in Welsh Office Circular 13/97 (Planning Obligations).

2.2 Circular 13/97 contains five tests that must be fulfilled for planning obligations to be legitimately required:

- 1) Any obligation must be necessary to make the proposed development acceptable in planning terms.
- 2) The obligation must be relevant to planning.
- 3) The obligation must be directly related to the proposed development.
- 4) Obligations must be fairly and reasonably related in scale and kind to the proposed development.
- 5) Obligations must be reasonable in all other respects.

2.3 Welsh Assembly Government published Planning Policy Wales (PPW) in March 2002. Section 4.7 (Negotiating Planning Obligations) identifies that:

- Planning obligations are useful arrangements to overcome obstacles that could otherwise prevent planning permission from being granted.
- Contributions may be used to offset negative consequences, help meet local needs, or to secure benefits that will make development more sustainable.
- Arrangements should be fair to both the developer and the community.
- The process should be as transparent as possible.
- Parties should work for an early agreement to avoid unnecessary delays in the planning process.
- Unacceptable development should never be allowed because of unrelated benefits.
- Acceptable development should never be refused simply because an applicant is unwilling to offer such benefits.

2.4 The Planning and Compulsory Purchase Act 2004 has provided the option to modify Section 106 of the TCPA through secondary legislation.

Local Planning Policy

2.5 The Council adopted the Unitary Development Plan (1996 – 2011) in May 2006. Whilst new development proposals should have regard to all relevant policies of the plan the following policy is particularly pertinent in relation to planning obligations and new developments.

2.6 Policy SP11 (Planning Obligations) states:

“Where it is relevant, necessary, and directly related in scale and kind to a development proposal, benefits for the community will be sought. Such benefits could include educational, community, and leisure facilities; land for employment and/or retail purposes; affordable housing; public transport investment; highway investment; other infrastructure provision; additional landscaping; layout and/or design measures to offset the impact of development on the environment; open space provision and habitat creation.

2.7 A Community Strategy for Newport – Building our Future Together (2005 – 2015) was published in July 2005. The community strategy identifies the following visions and priorities for the future. Planning obligations have an integral role in achieving:

- **An Accessible City**
 - 1) Introduce sustainable patterns of transportation and development.
 - 2) Develop a safe and convenient environment for walking, cycling and disabled people.
- **An Attractive City**
 - 1) Improving educational, arts and cultural facilities.
 - 2) Making sure neighbourhoods and public spaces are clean, well designed and liveable.
 - 3) Regenerate the riverside, industrial areas and brownfield sites.
- **An Enterprising City**
 - 1) To ensure the availability of high quality business premises and infrastructure in key locations across the city.
 - 2) To promote existing and new sports facilities.
- **A Greener City**
 - 1) To conserve green spaces and architectural heritage.
 - 2) To maintain and enhance existing parks and develop new open spaces, particularly along the riverfront.
 - 3) To promote sustainable design and construction and reduce energy use in buildings within the city.
 - 4) Encourage the use of public transport and alternatives to the car.
- **A Healthy City**
 - 1) Development of primary care resource centres within communities.
 - 2) The development of a local general hospital and the re-provision of a specialist critical care facility.

- **An Inclusive City**
 - 1) Support area regeneration and build stronger communities
 - 2) To provide quality housing at a reasonable price and improve energy efficiency.
 - 3) Tackle social exclusion.
- **A Learning City**
 - 1) To secure continuing and measurable improvements in education and skills attainment.
 - 2) Enhanced access to educational opportunities for all residents.

2.8 The purpose of planning obligations is to overcome the negative impacts that new development can place upon the local community. Therefore planning obligations have a key role in ensuring positive planning so that new development supports and enhances legitimate social, environmental and economic requirements in order to create sustainable local communities.

3.0 Drafting of Agreements & Monitoring Fees

- 3.1 Planning Obligations can be contained in Unilateral Undertakings or Agreements. Unilateral Undertakings are usually drafted by the developer's solicitors whereas Agreements are usually drafted by the Council's in house solicitors (but there is no objection to the developers arranging for their own solicitors to draft the Agreement if preferred). Either way the developers will be responsible for the Council's legal costs incurred in relation to the process of drafting, approving and completing any Deed of Obligation, including costs of title investigation which is necessary to ensure the correct parties enter into the Deed.
- 3.2 In addition a Monitoring Fee, equal to 15% of the planning application fee, will be required to cover the Council's costs incurred in entering into early negotiations and ongoing monitoring of the obligations. Applicants will be expected to contractually agree within the legal agreement that they will make this payment prior to the commencement of development.
- 3.3 All financial contributions identified in legal agreements will usually be index linked using the Retail Price Index – all items (except Education which will use the Building Cost Information Service (BCIS) All in Tender Price Index figure) to the date of the committee, or delegated authority approval. Trigger dates for the payment of financial contributions will be included within the legal agreement, and a clear timetable of when the contribution should be spent will also be identified within the agreement.

- 3.4 Once financial contributions have been received by the Council they will be held in interest bearing accounts, which will be allocated a unique finance code. Contributions remaining unspent at the end of the specified period will be returned to the payee along with any interest accrued, unless alternative provision is agreed between the payee and the Council.
- 3.5 Planning Obligations will be monitored by the Planning Contributions Manager to ensure that all obligations are complied with by both the developer and the Council. Regular monitoring reports will be produced that will provide details of agreements entered into, financial contributions received, and the completion of schemes that have been funded through financial contributions in whole or in part.

4.0 Types of Obligations

4.1 When negotiating the level of contributions that will be provided the Local Planning Authority will take into account any abnormal costs that developers may face. However, the Local Planning Authority considers that costs incurred in delivering sustainable development that benefits Newport's communities is to be expected, and therefore a development site should still be able to contribute towards, where appropriate, the following planning objectives*:

- Affordable Housing Provision
- Community Facilities Provision – improvements to libraries, community halls
- Community Woodland Initiatives
- Education Provision
- Highway Infrastructure Works
- Landscape Improvements
- Local Labour & Training Initiatives
- Pedestrian, Cycle and Public Transport Improvements
- Habitat Conservation & Improvement
- Provision of Public Realm
- Recreational Facilities – including formal and informal play space, sports provision, and associated commuted maintenance payments
- Travel Plans

4.2 The priority given to the different types of planning obligation will be at the discretion of the Local Planning Authority, and dependent upon the characteristics and location of individual sites. The Planning Officer's report to Committee will provide the justification for the chosen priorities.

*These are listed in alphabetical order and not in order of priority. The list should be regarded as illustrative (and not exhaustive) of the types of contributions that might be necessary depending on individual circumstances.

5.0 S106 Toolkit

- 5.1 The Local Planning Authority, in conjunction with other Local Planning Authorities in South East Wales, has commissioned a 'Development Appraisal Toolkit' from Three Dragons Consultancy. This toolkit will be used by the Planning Contributions Manager to determine the impact of planning contributions, and abnormal costs, on the viability of a proposed development as part of the Section 106 negotiations. It is therefore expected that an 'open book' approach to negotiations will be supported by developers in order that planning obligations can be secured at appropriate levels, whilst ensuring that the development remains viable. Any financial information supplied by a developer as part of this 'open book' process will be considered as being 'information supplied commercially in confidence'. Consequently any applications under the Freedom of Information Act to gain access to this information would be strongly resisted by the Local Planning Authority.

PART TWO

6.0 Affordable Housing

Policy Background

- 6.1 Welsh Assembly Government (WAG) published Technical Advice Note 2: Planning and Affordable Housing (TAN2) in June 2006. TAN2 defines affordable housing as 'housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers'. TAN2 identifies that affordable housing includes social rented housing (e.g. provided by local authorities and registered social landlords) and intermediate housing (e.g. Homebuy), where prices or rents are above those of social rent but below market housing prices and rents.
- 6.2 Policy H5 (Housing Mix and Affordable Housing) of Newport's Adopted Unitary Development Plan (1996 -2011) identifies that the Council will seek to negotiate appropriate elements of affordable housing on new developments.
- 6.3 In June 2006 WAG issued Ministerial Interim Planning Policy Statement (01/2006) on Housing (MIPPS). Paragraph 9.3.5 of the MIPPS states that where development plan policies identify that affordable housing, or other developer contributions, are required on specific sites, then this will be a material consideration in determining relevant applications.

Trigger for Obligation

- 6.4 Up to **30% affordable housing will be sought on appropriate sites that meet the relevant thresholds identified in the Affordable Housing SPG**. Affordable housing should normally be provided on-site in order to contribute to socially mixed communities, though in exceptional circumstances it may be provided off-site or a commuted sum paid in lieu.
- 6.5 Registered Social Landlords are key partners in the process and the Council will involve them at an early stage in negotiations with developers.
- 6.6 **Detailed guidance** on the type and provision of affordable housing in Newport can be found in **Affordable Housing Supplementary Planning Guidance**. Further information in relation to affordable housing provision, Housing Market Assessments, and waiting lists can be obtained from the :

Housing Strategy & Development Officer Social Wellbeing & Housing Civic Centre Newport NP20 4UR Tel 01633 233387	OR	Planning Contributions Manager Planning & Economic Regeneration Civic Centre Newport NP20 4UR Tel 01633 232514
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7.0 Education

Policy Background

- 7.1 The justification for requiring financial or in-kind contributions in respect to educational facilities is set out in Welsh Office Circular 13/97 (Planning Obligations). Paragraph A4 identifies that Section 106(2) of the Town and Country Planning Act 1990 provides for payments of money to be made, either of a specific amount or by reference to a formula. Paragraph B10 states that provision of educational facilities may be acceptable provided that such facilities are directly related to the development proposal, the need for them arises from its implementation, and they are related in scale and kind.
- 7.2 Paragraph 7.34 of the Adopted Unitary Development Plan (1996 -2011) states that in areas identified for new housing, the Council will seek contributions towards the cost of additional education provision generated as a result of the development.

- 7.3 Contributions may be used for:
- provision of new schools
 - provision of new classrooms
 - improvements and refurbishment of existing facilities to provide additional capacity
 - provision of additional resources or improvements to existing resources necessitated by the additional demand.
- 7.4 Negotiations with developers on planning agreements will include:
- the project(s) to which their contributions may be used
 - the timing of the payment of agreed contributions; on large sites payments may be phased by agreement with the authority
 - when contributions will be spent; this will normally be within 5 years of receipt of the final payment.

Trigger for Obligation

- 7.5 A contribution will be sought from a developer if the number of dwellings to be built is 5 or more and where:
- (a) the pupils probably arising from the development will cause the capacity of any catchment area school to be exceeded; and/or
 - (b) there is surplus capacity in schools to accommodate some or all of the pupils probably arising from the development, but refurbishment is required to make these places suitable for use.

In both cases (a) and (b) the contribution requested will relate to the number of pupils expected to be generated by the proposed development.

The only form of exempt dwelling will be:

- bed-sits/studio apartments and 1 bedroom dwellings, or
- sheltered/elderly person housing and student housing

- 7.6 The Council will take the following factors into account when calculating if, and how much, of a financial contribution towards education facilities will be required:

- **School capacities and allocated development sites**

The school capacity is published in the Newport City Council Schools Organisation Plan. However, for the purposes of planning contributions, the pupil capacity will be calculated net of any capacity that has been achieved through using temporary accommodation (e.g. portacabins) within school grounds. The Council will seek contributions from developers of sites allocated in the Unitary Development Plan as new schools, or improvements and refurbishments to existing schools, have already been planned to meet the anticipated demand from these sites.

- **Windfall Sites**

Where the number of pupils on roll is lower than the capacity (having taken temporary accommodation into account), the Council will consider the potential intake of pupils from any allocated sites within a school catchment area before calculating the contributions from developers of windfall sites.

7.7 Where appropriate large scale development that generates sufficient pupil numbers to justify a new primary or secondary school will be required to provide a suitable educational facility within their development, or make an equivalent financial contribution (e.g. land value and building costs) towards its offsite provision if not physically able to accommodate the facility on site.

Education Contribution Formula

7.8 Firstly calculate the number of pupils in each age range that are expected to arise from each type of dwelling in the development.

<u>Proposed Dwelling Type*</u>	<u>Nursery</u> <u>No. of</u> <u>Dwellings x</u>	<u>Primary</u> <u>No. of</u> <u>Dwellings x</u>	<u>Secondary</u> <u>No. of</u> <u>Dwellings x</u>
Houses: 2+ beds	0.02	0.31	0.22
Flats and apartments: 2+ beds	0.02	0.07	0.05

*Where an outline planning application is submitted that does not identify the proposed mix or total number of units then as a starting point for negotiation the presumption will be that the development would be all for 2+ bed houses, and that development will be at a gross density of 35 dwellings per hectare (or pro rata).

Total number of nursery pupils generated.....	A
Total number of primary school pupils generated.....	B
Total number of secondary school pupils generated.....	C

7.9 Calculate the requirement for increased capacity taking into account capacity and “number on role” (NOR).

a. If the NOR is **less than** identified capacity

Calculate the number of additional pupils by which the school NOR exceeds the published “capacity” once the number of pupils generated are added to the school role.

Nursery: **D = NOR + A – capacity**
Primary: **E = NOR + B – capacity**
Secondary: **F = NOR + C – capacity**

Or

b. If the NOR is already **greater than** identified capacity

Use the number of additional pupils generated by the development.

Nursery: **D = A**
Primary: **E = B**
Secondary: **F = C**

Then

**Section 106 Contribution = ([D + E] x Nursery/Primary Cost Multiplier)
+ (F x Secondary Cost Multiplier) + (F x 0.2 x Post 16 Cost Multiplier)**

7.10 The 2006/7 Cost Multipliers are:

2006/7 Cost Multipliers for Additional Places
Nursery and Primary: £16,932 Secondary: £16,071 Post 16: £17,253

The average take up of post 16 school places in Newport is 0.2 of Secondary School places. The Post 16 figure of £17,253 should therefore be multiplied by 0.2 to calculate the relevant contributions towards post 16 education.

The primary cost multiplier is based on actual costs of developing a primary school in Newport.

The costs of developing a secondary school in Newport, are based on actual costs of developing secondary schools in other local authorities in Wales, and the estimated average cost figure for building a new secondary school in Newport identified as part of the Secondary School rebuild programme for Bettws, Hartridge, and Duffryn.

All cost multipliers will be reviewed and updated annually.

Example:

A development of:

- 500 dwellings (100 one-bedroom flats, 100 two-bedroom flats and 300 three or four bedroom houses)
- In the catchment of nursery X (capacity 45, current number on role 45), primary school Y (capacity 210; current number on role 208) and secondary school Z (capacity [1,500 – 40 temporary accommodation] = 1,460; current number on role 1,467).

$$\text{Nursery pupils} = (100 \times 0.00) + (100 \times 0.02) + (300 \times 0.02) = 8 \text{ (A)}$$

$$\text{Primary pupils} = (100 \times 0.00) + (100 \times 0.07) + (300 \times 0.31) = 100 \text{ (B)}$$

$$\text{Secondary pupils} = (100 \times 0.00) + (100 \times 0.05) + (300 \times 0.22) = 71 \text{ (C)}$$

Nursery school is at capacity thus:

$$\mathbf{D = 8(A)}$$

Primary school is below capacity thus:

$$\mathbf{E = 208 + 100(B) - 210 = 98}$$

Secondary school above capacity thus:

$$\mathbf{F = 71(C)}$$

$$\begin{aligned} \text{Contribution} &= (106^{\text{D\&E}} \times \pounds 16,932) + (71^{\text{F}} \times \pounds 16,071) + (71 \times 0.2^{\text{Post 16}} \times \pounds 17,253) \\ &= \pounds 1,794,792 + \pounds 1,141,041 + \pounds 244,993 \\ &= \pounds \mathbf{3,180,826} \end{aligned}$$

7.11 Further information on school capacities and 'numbers on roll' can be obtained from:

Senior Building and Capital Officer
Lifelong Learning and Leisure
Civic Centre
Newport
NP20 4UR
Tel 01633 232734
Fax 01633 244721

OR

The Planning Contributions Manager
Planning & Economic Regeneration
Civic Centre
Newport
NP20 4UR
Tel 01633 232514
Fax 01633 232565

8.0 Leisure & Recreation

Policy Background

- 8.1 Welsh Assembly Government published Planning Policy Wales (PPW) in 2002. Paragraph 11.1.3 of PPW identifies that the Assembly Government's main planning objective is to promote a more sustainable pattern of development by creating and maintaining networks of facilities and open spaces particularly within urban areas. In addition paragraph 11.1.12 of PPW highlights that planning authorities may be justified in seeking Section 106 contributions to contribute to the maintenance of facilities, open space, meet the needs of new communities, and ensure that standards of provision are met.
- 8.2 Policy CF4 (Open Space Standards) of the Adopted Unitary Development Plan (1996-2011) states that provision of open space at a minimum standard of 2.4 hectares per 1000 population will be sought on all new housing developments with the developer making a requisite commuted sum towards future maintenance.

Trigger for Obligation

- 8.3 Outdoor play space will be sought on all residential developments of **5 units and over** as a collective number of small sites would place the same level of pressure on resources as a large individual site. A financial contribution in lieu of on site provision will be sought for developments between 5 and 15 dwellings. For developments of 15 or more dwellings the preference is for provision to be situated on site, however in exceptional circumstances a financial contribution will be considered.

Further Information

- 8.4 Further information and details on types of equipment and maintenance costs can be found in the Council's Outdoor Play Space Supplementary Planning Guidance. Detailed requests can be directed to:

Parks Manager
Sports & Leisure
Civic Centre
Newport
NP20 4UR
Tel 01633 232830

Or

Planning Contributions Manager
Planning & Economic Regeneration
Civic Centre
Newport
NP20 4UR
Tel 01633 232514

9.0 Transportation

Highway & Infrastructure Provision

Policy Background

- 9.1 Welsh Office Circular 13/97 (Planning Obligations) identifies in Paragraph B10 that if appropriate contributions may be sought towards new access roads, improved junction layouts, extra car parking facilities, new/improved rail/bus stations, park and ride schemes, improved bus services, and improved measures for cyclists and pedestrians both on, and where necessary off, the development site.

Trigger for Obligation

- 9.2 The Local Planning Authority will require contributions from any development, regardless of size or type, where there is a requirement to improve existing, or construct new, highway infrastructure, either in order to provide safe access to a new development, or, as a result of the additional traffic impact associated with the development. This contribution would be required in addition to contributions to other travel modes such as public transport provision, cycle routes, or footpaths.

Further Information

- 9.3 Further information on highway design requirements, Section 278 Agreements (1980 Highways Act), and car parking standards can be obtained from:

Principal Engineer (Planning)
Civic Centre
Newport
NP20 4UR
Tel 01633 232677

OR

Planning Contributions Manager
Planning & Economic Regeneration
Civic Centre
Newport
NP20 4UR
Tel 01633 232514

Residential and Employee Travel Plans

Policy Background

- 9.4 PPW (2002) identifies (Paragraph 8.7.1) that when determining a planning application for development that has transport implications, local planning authorities should take into account the willingness of a developer to promote travel by public transport, walking or cycling, or to

provide infrastructure or measures to manage traffic and overcome transport objections to the proposed development.

- 9.5 Paragraph 8.7.5 of PPW (2002) states that planning obligations may also be used in appropriate circumstances to secure off-site improvements in public transport, walking and cycling, where such measures are likely to influence travel patterns to and from the development site.

Trigger for Obligation

- 9.6 Developers will be required to produce a Travel Plan where Traffic Impact Assessments (TIAs) identify that a proposed development could have a detrimental impact upon travel movements on the existing highway network. The Travel Plan will need to identify what measures will be implemented by the developer to overcome any detrimental impact through promoting sustainable integrated transport solutions that will reduce the reliance on the private car. The objective of the travel plan will be to achieve at least a 10% modal shift in travel behaviour of the occupiers of the site. The Travel Plan obligation will require occupiers of development to undertake a staff/resident travel survey and implement and monitor a staff/resident travel plan. The Travel Plan should include the provision of up to date information about public transport services, timetables, and opportunities for car sharing (e.g. via a car share website). However additional measures may also be sought, including provision of designated car share parking spaces, discount vouchers/passes for public transport, or financial contributions toward shuttle buses and park and ride schemes.

Further Information

- 9.7 For further information please contact:

Planning Contributions Manager
Planning & Economic Regeneration
Civic Centre
Newport
NP20 4UR
Tel 01633 232514

10.0 Local Labour and Training Initiatives

Policy Background

- 10.1 Paragraph 7.1.6 of PPW (2002) identifies that all communities need new employment opportunities. As a result Newport City Council has produced a Construction Employment Charter (CEC). The CEC's purpose is to help secure the social and physical regeneration of the City for the lasting benefit of local communities through creating a genuine partnership between the public sector, the private sector and the community. The CEC invites construction employers to use their best endeavours to recruit locally skilled and locally trained people on construction projects.

Trigger for Obligation

- 10.2 The Charter is a voluntary code of practice, and developers are encouraged to make a commitment to the following principles;
- To inform the Charter Manager of new employment opportunities within Newport and to identify whether those jobs can be filled by suitably experienced local unemployed people;
 - To use local companies as suppliers where appropriate.
 - To adopt the Charter principles, including equal opportunities, and health and safety, and, also provide a commitment to employee and apprentice development and training.
- 10.3 It is considered that all construction related developments may be able to offer employment opportunities, and consequently all developers are asked to sign up to the Construction Employment Charter.

Further Information

Construction Employment Charter
Manager
Civic Centre
Newport
NP20 4UR
Tel 01633 259163