

Place and Communities Policy Scrutiny Committee

14th September 2022

Developers Contributions Guide Supplementary Planning Document

1. Purpose of Report

The purpose of this report is to provide the Committee with draft Developers Contributions Guide (DCG) Supplementary Planning Document (SPD) library and explain the process of what, why and how developer contributions will be sought for various infrastructure types in accordance with national policy and regulations.

2. Links to Council Priorities and Objectives

Priorities

Environment

People

Place

Enablers

Resources

Partnership

3. Recommendation

The Place and Communities Policy and Scrutiny Committee review the contents of this report, and following discussion and debate make recommendations to the Cabinet on:

- The approval of the Draft Developers Contributions Guidance (DCG) Supplementary Planning Document (SPD) library as set out in appendix 1-5 for public consultation.
- The endorsement of the Essex Planning Officers Association (EPOA) Viability Protocol

4. Background

- 4.1 Developer contributions are ways developers contribute towards infrastructure to support growth and mitigate the impact of development on existing infrastructure. This could be secured on-site or in kind through Section 106 Agreements. Financial contributions may be secured through Section 106 Agreements or CIL.
- 4.2 The Council adopted the Developers Contributions Guidance (DCG) Supplementary Planning Document (SPD) in 2008. Various national planning reforms have since been implemented such as the introduction of the Community Infrastructure Levy (CIL) Regulations 2010 and the National Planning Policy Framework (NPPF) in 2012.

- 4.3 Additionally, on 26th January 2022 the Council approved to submit the draft CIL Charging Schedule after public consultation on the document to the Planning Inspectorate for examination. The Council submitted the CIL Draft Charging Schedule on 1st March 2022 and after further public consultation on the request of the Examiner, the Examination hearing is due to take place in October 2022. A key part of the evidence is an assessment of infrastructure requirements to meet the need of foreseen growth in the Borough. Post submission of CIL for examination, the new Castle Point Local Plan has been withdrawn. That included an Infrastructure Delivery Plan as a key evidence piece which was used to support CIL. As the Plan has been withdrawn the CIL Examiner asked the Council to review the CIL Evidence to exclude the now withdrawn local plan from the IDP. This new evidence was subject to consultation this summer, and this new evidence has been used to help inform this new Developers Contributions Guide.
- 4.3 For the reasons set out above there is a case to implement an updated DCG SPD that accords with up-to-date national policy and regulations as well as ensuring the Council's position on developer contributions is clear for all stakeholders and ensure that the Council is able to secure the right infrastructure in a timely manner.

5 Report

5.1 What are developer contributions?

- 5.1.1 Developer contributions is a collective term mainly used to refer to Section 106 obligations and CIL. As set out in CIL Regulation 122 (2), Section 106 obligations should only be used to secure infrastructure where the following tests are met:
- They are necessary to make the development acceptable in planning terms;
 - They are directly related to the development; and
 - They are fairly and reasonably related in scale and kind to the development.
- 5.1.2 Section 106 Agreements or Unilateral Undertakings are legal agreements between two or more parties which are used to agree planning obligations which will make a planning application acceptable in planning terms. This, for example, could include agreement of financial contributions towards highways improvements between the developer, the Borough Council and the County Council, or it could apply to the agreement of affordable housing provision between the developer and the Borough Council.
- 5.1.3 The Draft CIL Charging Schedule is currently in Examination, once CIL has been formally adopted by the Council, it will be a way of collecting developer contributions to provide infrastructure that aligns with growth. The national planning practice guidance does not normally allow financial contributions from Section 106 from smaller developments, therefore Section 106 Agreements are normally used for major schemes of 10 dwellings or more (023 Reference ID: 23b-023-20190901), CIL contributions can be sought on smaller schemes unless exemptions apply.

5.2 Supplementary planning documents (SPD)

- 5.2.1 SPDs should build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot

introduce new planning policies into the development plan or in their own right. They are, however, a material consideration in decision-making. They should not add unnecessary financial burdens on development.

5.3 What is structure of the draft Developers Contribution Guide Supplementary Planning Document?

5.3.1 The draft Developers Contribution Guide (DCG) Supplementary Planning Document (SPD) (**DCG SPD**) is made up of the following documents:

- DCG – Cover Document
- DCG – Highways, Travel, Education, Libraries, Flooding and Drainage Infrastructure
- DCG – Healthcare Facilities
- DCG – Playing Pitches and Indoor Built Facilities
- DCG – Affordable Housing

5.3.2 SPDs have to follow a process to adoption including public consultation and formal adoption, this all takes time and resources. Due to the input from different infrastructure providers and stakeholders and the variety of infrastructure the DCG covers, it is proposed that each document will be adopted as a separate SPD. This means that if one element is delayed, it does not delay the adoption of other elements.

5.3.3 It also means that if the process for collecting developer contributions for one infrastructure provider, for example the NHS, changes it would mean that only the Healthcare Facilities DCG SPD would have to be updated and adopted, rather than starting the process of preparing, consulting and formally adopting the entire infrastructure types.

5.3.4 Additionally, Members may note that there is no SPD currently proposed to deal with the environment such as open space, biodiversity and blue and green infrastructure. These infrastructure types cross over significantly and the evidence base for this of infrastructure is either out of date, has not yet commenced or been made into a strategy by which developer contributions can be sought. Similarly, no DCG SPD has been prepared for heritage aspects, it is expected that as further evidence is gathered, a more informed SPD can be made on this matter.

5.3.5 As such the flexibility of having multiple DCG SPDs means that as new evidence emerges, these infrastructure types can be added to the DCG SPD library more easily.

5.4 DCG SPD Cover Document

5.4.1 The Cover Document sets out the policy background to developer contributions and should be read alongside each infrastructure DCG SPD. It sets out the policy context and approach to collecting developer contributions through Section 106 Agreements and CIL, it also sets out the types of measures that will be included within a Section 106 Agreement.

5.4.2 The document illustrates the type of development that would be liable for developer contributions through Section 106 and/or CIL. Appendix 1 gives an indication of the types of infrastructure that would be sought through Section 106 Agreements or CIL.

Approach to securing developer contributions

5.4.3 Section 3 in the Cover Document defines the general approach to securing developer contributions. It includes where developer contributions would be required in terms of thresholds, application types, how developer contributions will be sought, phasing, pooled contributions, management arrangements, viability and index linking.

5.4.4 In line with the NPPF, this SPD proposes that a scheme delivering 10 units or more is considered a major application and, therefore, planning obligations through a Section 106 will be sought if appropriate.

5.4.5 Applications for a smaller number of units will be liable for CIL contributions. It should also be noted that other infrastructure providers such as Essex County Council (ECC) may have varying thresholds and applicants would be advised to consult with ECC on those infrastructure aspects.

5.4.6 Where multiple developments impact on local infrastructure it may be appropriate to pool contributions from different sites to fund infrastructure improvements, for example a primary school expansion to provide school places to serve the relevant developments.

5.4.7 Different infrastructure will be required at different times within the construction of developments. For example, drainage is likely to be required before development commences on a site, whereas school places may be required at the latter stages of development when there is a need from new residents. Therefore, the phasing and drafting of a Section 106 Agreement is important.

5.4.8 The Section 106 Agreement will include a cost inflation index dated from the date of the cost estimate used to calculate the infrastructure contribution. That indexation will run until the date that the payment is made (i.e., when the infrastructure is required) to ensure that the value of the contribution is not diminished by inflation.

5.4.9 Planning obligations will therefore be sought at the appropriate time to not impact development viability, this is in accordance with national guidance. It is therefore proposed within this SPD that the following phasing limits are applied:

- For residential developments, all planning obligations will need to be delivered before more than 80% of the market dwellings can be occupied.
- For non-residential developments, all planning obligations will need to be delivered before the development is used for the first time.

5.4.10 This SPD requires management arrangements to be put in place for certain types of infrastructure, this could include drainage, open space or other relevant infrastructure types. This will ensure that the infrastructure is managed and maintained correctly in perpetuity. Where a service provider agrees to take on the management of the infrastructure then the developer will be required to pay a maintenance contribution to

cover the physical upkeep of the infrastructure for a period of no less than 10 years. The timeframe and all other relevant aspects to management and maintenance will be defined in a Section 106 Agreement.

5.4.11 Evidence collected for the draft CIL Charging Schedule assessed various site typologies in terms of viability and found that they were generally viable within the borough and able to support relevant infrastructure provision. Therefore, the need for further viability assessments should not be necessary. However, where an applicant deviates from the requirements set out in the DCG SPD library a full viability assessment should be submitted with the application setting out what has changed since the Council's latest viability assessment. If the viability report submitted by the applicant fails to satisfy the Council that a reduced level of contributions should be applied or that the level of planning contributions that the development can viably support cannot mitigate the impact of the proposed development, then the planning application may be refused.

5.4.12 Essex Planning Officers Association (EPOA) has produced a [Viability Protocol](#) that sets out overarching principles for how Essex Local Planning Authorities will approach development viability. The protocol does not alter Local Plan policies or the guidance in this SPD, but does provide additional advice and guidance on the information requirements and approach taken when assessing viability at the decision-making stage.

5.4.13 The EPOA Viability Protocol has not been adopted by the Council. It is proposed that through the adoption of the SPD that it is endorsed by the Council.

Drafting of Section 106 Agreements

5.4.14 The Council's legal team or external solicitors acting on behalf of the Council will issue Section 106 Agreements. In all cases the Council will undertake due diligence on the landowner and all landowner parties. This will be in the form of checks at Company House and/or credit agency references.

5.4.15 The SPD also requires a guarantor in any instance where a financial contribution is required, this will ensure that payments will be made on all planning obligations and provide reassurance to the Council. Where a financial contribution is required at a deferred stage a bond may be required to provide financial security to the Council. The use of guarantors and bonds and the types of each financial obligation will be drawn out and agreed in the relevant Section 106 Agreement.

5.4.16 Where financial contributions are paid to the Council, these will be held in an interest bearing account and will be paid in accordance with the trigger points set out in the Section 106 Agreement, these will be linked to when and what infrastructure is required to be delivered at that time. Unless specified otherwise where these contributions are unspent within 10 years by the Council, they will be returned to the payee in accordance with the terms of the agreement.

Charges for Planning Obligations and Monitoring Fees

5.4.17 The SPD identifies the following charges towards the monitoring and administration of the relevant planning obligations:

- The maintenance and development of the planning obligations, including the preparation, completion, monitoring and review;
- The monitoring of trigger points and development progress;
- Recovery obligation contributions not made, including any necessary formal or legal action;
- Liaison between the Council and infrastructure providers in respect of financial contributions requested and held for such providers;
- Reporting on the operation and outcome of developer contributions

5.5 DCG SPD Highways, Travel, Education, Libraries, Flooding and Drainage Infrastructure

5.5.1 The infrastructure in this DCG SPD all fall under the remit of Essex County Council (ECC) as the Highways Authority, Education Authority or Lead Local Flood Authority. This SPD provides a signpost to ECC's own [Developers' Guide to Infrastructure Contributions](#). This allows flexibility for when the County Council updates their own guidance, ensuring the information is kept as up to date as possible.

5.6 DCG SPD Healthcare Facilities

5.6.1 In the Adopted Local Plan, policy CF1 states the following:

POLICY CF1 - SOCIAL AND PHYSICAL INFRASTRUCTURE AND NEW DEVELOPMENTS

Where the infrastructure requirements generated by development cannot be met by the existing provision the council will require developers to provide, prior to the occupation of the development approved:

- (i) appropriate highway and drainage improvements; and*
- (ii) appropriate improvements to social infrastructure to serve the needs of the new development*

5.6.2 As identified in the Cover Document DCG SPD in appendix one, Section 106 obligations will be sought for on-site and off-site provision of healthcare needs where they would serve the proposed development.

5.6.3 The NHS have calculated that based on an average household size of 2.4 in the borough, that within major schemes of 10 or more units a contribution of £496 per net new dwelling will be required for off-site provision. This figure will be regularly updated by the NHS and the latest figure will be used at the time a Section 106 Agreement is entered into and be index linked.

5.6.4 Where the NHS has identified that on site provision is required on a development site, contributions will be sought for £496 per net new dwelling, or the latest requirement set out by the NHS at that time. The developer will be expected to provide land and build the facility and either rent the facility back to the service provider on a 20-year

lease or sell the facility to a third-party provider who will lease the facility to the NHS. In either instance the Section 106 contribution figure will be discounted from the rent of the facility during the first 20 years with rent returning to market values after the first 20 years.

- 5.6.5 Where contributions have not been secured through Section 106 Agreements and are required to accommodate growth the [NHS Estates Plan](#) for Castle Point will be used to identify where CIL contributions may be used, if a request is made by the NHS.

5.7 DCG SPD Playing Pitches and Indoor Built Facilities

- 5.7.1 In the Adopted Local Plan, policy CF1 states the following:

POLICY CF1 - SOCIAL AND PHYSICAL INFRASTRUCTURE AND NEW DEVELOPMENTS

Where the infrastructure requirements generated by development cannot be met by the existing provision the council will require developers to provide, prior to the occupation of the development approved:

- (i) appropriate highway and drainage improvements; and*
- (ii) appropriate improvements to social infrastructure to serve the needs of the new development.*

- 5.7.2 This DCG focuses on sporting facilities and is supported by the [Playing Pitch Strategy Action Plan](#) and [Indoor Built Facilities Needs Assessment Action Plan](#) ("Action Plans") 2018 and relevant 2022 updates. These documents set out the demand and supply of active sports in the borough and identify where supply could be protected, maintained or enhanced.
- 5.7.3 Sport England as the public body for sport have produced a Playing Pitch Calculator and a Sport Facility Calculator which takes the population growth projected from residential development at an estimated 2.4 or 2.5 persons per household. The calculator has an algorithm which calculates the expected demand from the development and the proportional cost to maintain supply and meet the increase in demand for particular sports.
- 5.7.4 As set out in both Action Plans there are a number of proposals which could see facilities improved for various sporting facilities. As highlighted in appendix 1 in the DCG Cover Note the following sports and recreational facilities will be sought through Section 106 planning obligations:
- [Local Football Facilities Plan](#) (Appleton School, Deanes School, Waterside Leisure Centre, King George's playing field)
 - On-site indoor sports provision
 - Reprovision or compensatory provision of lost playing pitches
- 5.7.5 The Local Football Facilities Plan provides a more advanced stage of planning for new football facilities with identified funding streams. The greater certainty of delivery is why this type of facility is included within the Section 106 obligation column.
- 5.7.6 In terms of on-site sports provision, where a development or multiple developments would generate the need for a new sporting facility on a development site, the size

and type of the facility will be agreed with the Council in consultation with Sport England and the relevant sport governing body. Management arrangements and the timing for payment or provision of works would be agreed through a Section 106 in accordance with the DCG Cover Document.

- 5.7.7 In accordance with the NPPF, planning obligations will be sought for re-provision or compensatory measures for developments that remove sporting facilities. Advice will be obtained from Sport England and/or the sporting governing bodies on suitable compensatory or re-provision measures.
- 5.7.8 CIL contributions will be used for the elements within the Action Plans that have not been obtained through Section 106 planning obligations, this largely covers all other aspects, excluding football. In accordance with the CIL Regulations, CIL monies could be used for relevant provision or enhancements where it is directly linked to the growth of development.

5.8 DCG SPD Affordable Housing

- 5.8.1 Affordable housing is generally defined as either affordable housing for rent or affordable home ownership products. This DCG SPD looks at both types of affordable housing and describes how they will be delivered. It sets the level of affordable housing requirements (as per local plan policy), housing mix, tenure, exempt applications and specialist housing units. As well as the more technical aspects of how affordable will be delivered and secured.
- 5.8.2 Since 2011/12 only 169 affordable homes have been delivered in the borough. This includes both affordable housing for rent and affordable home ownership products. This equates to an average of 17 per annum against a need which was identified in the South Essex Strategic Housing Market Assessment (SHMA) Addendum 2017 for up to 353 affordable homes per annum. This highlights the need for affordable housing within the borough and how important it is to maximise the number of affordable homes on development sites.

Affordable Housing Requirements

- 5.8.3 In the Adopted Local Plan, policy H7 states the following:

'POLICY H7 – AFFORDABLE HOUSING

Where appropriate the Council will seek to negotiate a proportion of affordable housing for rent, shared ownership, or outright sale, where appropriate to the scale of development schemes. The number of affordable dwellings to be provided will be dependant upon the size of the site, its location, and any substantial costs associated with the provision of other necessary infrastructure, and will be determined by the Council, following negotiation with the applicant'

- 5.8.4 Where residential development results in a net increase in dwellings, 35% affordable housing has been sought on development sites. Evidence collected in the [CIL Viability Study 2020](#) found that this requirement is acceptable in most cases. Affordable housing provision will also be sought on sites where there is an uplift in floorspace where vacant building credit has been applied, consistent with national guidance.

- 5.8.5 In all cases where the requirements for affordable homes for rent does not produce a whole number, the SPD would require a financial contribution to the proportion leftover or an additional unit should be provided to round up to a whole number.
- 5.8.6 The requirement for affordable housing for rent products would help provide homes for those on the Council's housing register. This SPD therefore ensures that the Council has nomination rights to those affordable homes, this would be agreed in a Section 106 Agreement.
- 5.8.7 Section five of this DCG SPD sets out an indicative affordable housing mix. This includes the current housing mix requirements from those on the Council's housing register as well as market led assumptions based on the Strategic Housing Market Assessment (SHMA) 2020, which is more likely to influence the affordable home ownership products. In any case, the housing mix should be informed by the site context and any changes to the market or the Council's housing register.
- 5.8.8 This SPD would support specialist accommodation in affordable housing provision, this could be in the form of adapted or easily adaptable housing. As the need for specialist housing may depend on the amount of specialist homes required from those on the Council's housing register some specialist housing could be requested by the Council to the developer.
- 5.8.9 To ensure the maximum amount of affordable homes are provided, this SPD ensures that where proposals seek to artificially divide sites to reduce the number of affordable housing, through piecemeal or low density development the Council would apply the affordable housing requirement to the whole site, through investigation such as land ownership, planning history, topography, site constraints and the natural boundaries of the site.

First Homes

- 5.8.10 The government introduced First Homes in 2021 as their preferred discounted market tenure. The planning practice guidance states that they should account for 25% of all affordable housing units provided from developers (PPG: 001 Reference ID: 70-001-20210524). This SPD highlights that the Council would accept First Homes as a form of affordable housing provision.
- 5.8.11 First Homes are discounted market sale units which:
- a) must be discounted by a minimum of 30% against the market value;
 - b) are sold to a person or persons meeting the First Homes eligibility criteria;
 - c) on their first sale, will have a restriction registered on the title at HM Land Registry to ensure this discount (as a percentage of current market value) and certain other restrictions are passed on at each subsequent title transfer; and,
 - d) after the discount has been applied, the first sale must be at a price no higher than £250,000.

5.8.12 To be eligible to purchase First Homes the government has set the following national criteria which will apply on the initial and all future sales of First Homes:

- A purchaser (or, if a joint purchase, all the purchasers) of a First Home should be a first-time buyer as defined in paragraph 6 of schedule 6ZA of the Finance Act 2003 for the purposes of Stamp Duty Relief for first-time buyers.
- Purchasers of First Homes, whether individuals, couples or group purchasers, should have a combined annual household income not exceeding £80,000 in the tax year immediately preceding the year of purchase.
- A purchaser of a First Home should have a mortgage or home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% of the discounted purchase price.

5.8.13 Additionally, the Council can set local eligibility criteria, this can include lower income caps (if this can be justified with reference to local average first-time buyer incomes), a local connection test, or criteria based on employment status such as key worker status.

5.8.14 This SPD proposes to set a local eligibility criteria providing a local connections test to ensure that local people are given the first opportunity to purchase First Homes. In line with national guidance this local connections test will apply for a maximum of three months from when the home is first marketed and if the home is not reserved then the eligibility criteria will revert to the nationally set criteria.

5.8.15 Local connections may include (but are not limited to) current residency, employment requirements (including key worker), family connections or special circumstances such as caring responsibilities

Providing Affordable Housing

5.8.16 Some Registered Providers (RP's) who provide homes in the borough, will have a strategic partnership and be approved by Homes England. Homes will therefore have to meet certain requirements in order to be adoptable by RP's: this includes design standards such as Nationally Described Space Standard. RP's in return will have to set affordable rents in line with the Council's standards, implement long-term management and maintenance, give the Council 100% nominations rights on dwellings, this will be agreed through a Section 106 Agreement.

5.8.17 Affordable housing will always be sought on sites. Only in exceptional circumstances will consideration be given as to whether an equivalent financial contribution or the provision of free-serviced land to an RP will be allowed. The applicant would be advised to discuss this at the pre-application stage highlighting any viability issues.

5.8.18 The SPD sets out the parameters within which a developer must provide on-site affordable housing. It will always be a priority to secure them as early as possible, but as a ultimate long stop date they should be completed before the completion of 80% of the market housing

Financial Contributions for affordable housing

- 5.8.19 In all instances on-site provision of affordable housing is the preference. There may however be some scenarios e.g. viability or the site context that would make it difficult to deliver affordable housing on-site. In those exceptional cases the Council would accept financial contributions. Section 7 of the Affordable Housing DCG SPD sets out how the Council would deal with financial contributions in-lieu of on-site affordable housing.
- 5.8.20 The financial contribution will be the equivalent to the cost of on-site provision. As a guide, unless the type of affordable housing provided on site indicates otherwise, the SPD states that it should be assumed that this will be for a 2 bedroom, 4 person terraced house: this is the most common type of affordable housing required in the borough.
- 5.8.21 The payment of contributions will be set out in a Section 106 Agreement, including the timing of payments. Financial contributions in lieu of affordable housing must be made by the date of 80% of the market units are occupied on the site, or if it is being constructed in phases, each of the phases unless agreed otherwise.
- 5.8.22 Where a contribution is required a guarantor provision will be included in the Section 106 Agreement. This may be in the form of a bond or parent company guarantee.

Procedure for Planning Applications and Section 106 Agreements

- 5.8.23 In all instances where affordable housing is required on a development site it is recommended that the applicant seeks pre-application advice, this will ensure applicants are aware of the requirements prior to submitting an application.
- 5.8.24 Where an outline application is approved and the number of affordable housing units has not been specified as the number of dwellings proposed is not clear. A planning condition will be included requiring further details and the housing mix to be submitted at the reserved matters stage, this ensures that the delivery and level of affordable housing is agreed in accordance with the Council's requirements.
- 5.8.25 Within a Section 106 Agreement, planning obligations will be used to secure the following elements related to the provision of affordable housing, *inter alia*:
- The number of units;
 - Eligibility criteria;
 - Nomination rights;
 - The type of units;
 - Tenure of units;
 - Phasing of units;
 - Location of units;
 - Parking provision;
 - Commuted sums in lieu of provision (where appropriate);
 - Guarantor provisions;
 - A late-stage viability review, if required.

5.8.26 To ensure the maximum level of affordable housing is achieved, where a scheme is providing less than the 35% affordable housing requirement in the SPD, a late-stage viability review mechanism will be put in place where the viability will be tested when 75% of the development is sold to see if more affordable homes could be developed on the site.

5.9 Blue and green infrastructure, open spaces and biodiversity

5.9.1 Member's may notice that there is no DCG SPD for blue and green infrastructure, open spaces and biodiversity. It is the intention to create an SPD in due course covering all of these infrastructure types, a summary for each type is set out below.

5.9.2 Blue and green infrastructure – In terms of evidence, the [South Essex Blue and Green Infrastructure Strategy](#) was completed in 2020. This document sets an approach for blue and green infrastructure across South Essex, and provides high-level objectives, strategic opportunities and policies driven by a coordinated approach across the sub-region. More evidence work needs to be completed at a local level in how to create and enhance this network.

5.9.3 Open spaces – An [Open Space Appraisal](#) was completed in 2012. This assessed the quantity and quality of different types of public open spaces in the borough from natural green open space, children play areas to cemeteries. Within the past ten years, although many of the Council's open spaces remain, there has been changes to supply e.g., the closure of The Paddocks splash park and the expansion of the Hadleigh Country Park as a consequence of the 2012 Olympics. Therefore, an update to this assessment is required to ensure the most up-to-date picture is captured.

5.9.4 Biodiversity – The Environment Act 2021 requires a minimum of 10% biodiversity net gain on development sites. Sites should in all instances avoid harm to biodiversity, if this cannot be achieved this should be adequately mitigated, or, as a last resort compensated for. There are multiple aspects to this set out below:

- Firstly, the last full [Local Wildlife Site Review 2012](#) should be updated to see if these have changed. There is also an opportunity here to identify the level of biodiversity on these sites making it easier to identify opportunities for biodiversity enhancements in the future.
- Secondly, the Environment Act 2021, identifies a minimum 10% biodiversity net gain, the Council could justify an increase to this threshold if it is found to be suitable. In order to do this, evidence needs to be obtained as to whether this is achievable and viable within the borough.
- Thirdly, the Council needs to fully understand where and how compensatory biodiversity net gain measures are to be secured offsite. This includes where the sites are and the mechanisms in place to ensure that they are delivered, otherwise the Council is at risk of development offsetting its biodiversity to areas outside of the borough boundary.

5.9.5 Biodiversity and open spaces all fit into the wider blue and green infrastructure, which is why it is proposed that an additional 'Green' DCG SPD will be produced and adopted by the Council once the various evidence is completed to fit into the DCG library.

5.9.6 Developments will be required to achieve a standard 10% biodiversity net gain in accordance with the Environment Act 2021. Open space requirements will be dealt with using the Fields in Trust standards which are nationally recognised and currently used on major schemes. Options to enhance or create Blue or Green Infrastructure will be looked at on a case-by-case. The DCG Cover Note provides a basis for how these developer contributions to be sought.

5.10 Heritage

5.10.1 Development impacting heritage, and which may result in improvements to such infrastructure in absence of a Heritage DCG, developer contributions will be sought on a case-by-case basis. This will be in accordance with the DCG Cover Document which provides the mechanisms for developer contributions to be obtained by the Council.

5.11 Next Steps

5.11.1 Dependent on whether the Place and Communities Scrutiny Committee wishes for changes to be made to any of the DCG SPDs and the level of changes proposed, it is recommended that the Council's Cabinet take the decision to approve the draft DCG SPDs for public consultation.

5.11.2 A consultation plan will be included as part of the papers to Cabinet setting out how the Council will consult with the public. In all circumstances, this will be in accordance with the Council's adopted [Statement of Community Involvement](#) and will run for a minimum of four weeks.

5.11.3 There is currently no examination process for SPDs. Therefore after public consultation officers will prepare final versions of the DCG SPD library and take for formal adoption to a Full Council meeting. If the public consultation raises issues which need further investigation and significantly changes the draft documents, then there may be another Policy and Scrutiny meeting on those issues.

5.11.4 As highlighted in this report, as new evidence emerges new DCG SPDs may be prepared, such as a biodiversity, open space, blue and green infrastructure SPD and a heritage SPD. These SPDs will follow the same process as above, or if planning reforms take place, adoption will be in line with current legislation at that time.

6.0 Conclusion

6.1 There are various benefits of having an up-to-date developer contributions guidance, it ensures that the SPD is in line with national policy and legislation, it puts the Council in a stronger position to require planning obligations of the right amount and type and it provides a clear checklist for developers of what is expected from them from the outset.

6.2 The existing Developers Contributions Guide has served the Council well and provided clear advice to applicants. But it is dated. This new version will provide that update and align our requirements with those in the Essex Developers Contributions guide.

- 6.3 By creating a DCG SPD library it allows the Council a more flexible position to amend and update each document as and when there are changes to evidence or processes from the Council or other stakeholders. This ensures that the SPD library can be effective and maintained more easily.
- 6.4 For the reasons set out in this report it is therefore recommended that the Place and Communities Scrutiny Committee approve the recommendations in order to proceed to the next step in the SPD process.

7.0 Financial implications

- 7.1 The collection of developer contributions already takes place through Section 106 Agreements. It is anticipated that the update to the DCG SPDs currently proposed will improve the levels of contributions sought for affordable housing, health and sports facilities. Additionally, it is proposed that monitoring fees for S106 Agreements will provide the revenue necessary to monitor compliance.
- 7.2 There will be financial implications to the Council to complete a public consultation on the draft DCG SPDs. The scale of the consultation will be set out in the consultation plan to Cabinet.

8.0 Legal Implications

- 8.1 Section 106 agreements are drafted by the Council's legal team, or appointed external team. They are legally binding on all parties to the agreement. Where there are requirements of Essex County Council in the agreement, as a local authority they are a party and any provision of payments is direct to Essex County Council. If there are provision to third parties who are not a party to the agreement, such as the NHS, then the Council will collect those contributions and hold them on behalf of the third party. The Council would release those funds when required with appropriate agreements in place with the recipient.

The CIL Regulations set out the requirements for the collection and expending of CIL. The governance arrangement for this will be subject to a separate scrutiny and approval process of the Council.

9.0 Human Resources

- 9.1 As identified in the CIL Cabinet report in January 2021 an officer will be required to implement CIL, alongside an appropriate computer system. It is anticipated that revenue from CIL alongside S106 monitoring fees will be used to fund a CIL and S106 Officer post.

10.0 Equality Implications

- 10.1 There are no negative equality implications arising from this report.
- 10.2 Developer contributions provide the opportunity for the Council and its partners to deliver the infrastructure needed to support the community in Castle Point, including those with protected characteristics.

11.0 IT and Asset Management Implications

- 11.1 The consultation process associated with the public consultation on the DCG SPD library will make use of existing IT resources.

12.0 Background Papers

[EPOA Viability Protocol](#)

[Castle Point Borough Infrastructure Delivery Plan Addendum 2022](#)

[Developers' Guide to Infrastructure Contributions](#)

[NHS Estates Plan](#)

[Playing Pitch Strategy \(PPS\) Action Plan](#)

[Indoor Built Facilities Needs Assessment \(IBFNA\) Action Plan](#)

[Local Football Facilities Plan](#)

[CIL Viability Study 2020](#)

[South Essex Blue and Green Infrastructure Strategy](#)

[Open Space Appraisal](#)

[Local Wildlife Site Review 2012](#)

[Planning Practice Guidance - Planning Obligations](#)

[Planning Practice Guidance – First Homes](#)

[Planning Practice Guidance – Community Infrastructure Levy](#)

[National Planning Policy Framework](#)

13.0 Appendices

Appendix 1: Draft Developer Contributions Guidance – Cover Note Supplementary Planning Document

Appendix 2: Draft Developer Contributions Guidance – Affordable Housing Supplementary Planning Document

Appendix 3: Draft Developer Contributions Guidance – Healthcare Facilities Supplementary Planning Document

Appendix 4: Draft Developer Contributions Guidance – Highways, Travel, Education, Libraries, Flooding and Drainage Infrastructure Supplementary Planning Document

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Castle Point Borough Council

**Developers Contributions Guidance
Supplementary Planning Document (SPD)
Cover Document**

DATE

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1. Introduction

1.1. Purpose of this Document

1.1.1. This Supplementary Planning Document (SPD) Cover Document has been produced to provide advice to developers on when and how the Council will expect to use Section 106 Agreements alongside the Community Infrastructure Levy (CIL) to secure an acceptable development that is sustainable, contributes towards a high-quality environment and is supported by the services, facilities and infrastructure required to make Castle Point a good place to live, work and visit.

1.1.2. This document provides the basis for how contributions will be sought and details the overarching process for developer contributions. Further documents will outline more detailed information for how contributions will be sought for specific infrastructure. The following list is not exhaustive but will include:

- Highways and transportation
- Flooding and drainage
- Education and childcare
- Health facilities
- Sporting and recreational facilities
- Open spaces
- Biodiversity
- Green and blue infrastructure
- Heritage
- Affordable housing

1.1.3. It is important that developers are made aware at the outset of what will be required by the Council in respect of Section 106 Agreements and CIL so that they are able to incorporate the funding of any required provision into the development process. It also sets out a clear position to developers, landowners and stakeholders, of the scope and scale of planning obligations applicable to different scales and types of development.

1.1.4. It should be noted that not all the obligation types within this SPD will apply to all types of development. This SPD has been produced to apply to varying scales of development, but proposals will be assessed on a site-by-site basis with the individual circumstances of each site being taken into consideration.

1.2. How have we got to this point?

List consultation and to adoption etc

2. Policy Background

2.1. National Planning Policy Overview

2.1.1. The government is clear that new development should provide infrastructure to meet the demands it creates through the growth of that development. New development creates demands on infrastructure. It has long been government policy, that where that is the case, investment in infrastructure should be secured via developer contributions. Without the investment, there is reason to refuse planning permission as the development would not be acceptable in planning terms.

2.1.2. There are three main mechanisms used to secure infrastructure funding and provision from developers, these include:

- The Community Infrastructure Levy (CIL) as set out in the CIL Regulations 2010 were formed under the Planning Act 2008;
- Planning Obligations under Section 106 of the Town and Country Planning Act 1990 (as amended); and
- Agreements made with Essex County Council (ECC), as highway authority, under Section 278 of the Highways Act, whereby the works are incumbent on the developer to fund and deliver.

2.1.3. In some circumstances, planning conditions attached to planning permissions may also be used to secure non-financial mitigation, to define timing or apply standards.

2.1.4. As set out in CIL Regulation 122 (2), Section 106 obligations should only be used to secure infrastructure where the following tests are met:

- They are necessary to make the development acceptable in planning terms;
- They are directly related to the development; and
- They are fairly and reasonably related in scale and kind to the development.

2.2. The National Planning Policy Framework (NPPF)

2.2.1. The NPPF advises that local planning authorities should consider the use of planning obligations where they could make an otherwise unacceptable development acceptable. They should only be used where it is not possible to address unacceptable impacts through planning conditions.

2.2.2. The national Planning Practice Guidance (PPG) offers a web-based resource to support the NPPF and provides further information on [planning obligations](#) and how they are used.

2.2.3. The Planning Act 2008 (as amended) identifies various infrastructure types, in addition to this the NPPF highlights where further infrastructure could be secured to make a

development appropriate in planning terms. The Council will therefore seek planning obligations for the following infrastructure:

- Highways and transportation,
- Flood protection and water management (including SuDS),
- Education and childcare,
- Health,
- Sporting and recreational facilities,
- Open spaces,
- Biodiversity,
- Blue and Green Infrastructure,
- Heritage,
- Affordable Housing.

Highways and Transportation

2.2.4. The NPPF prioritises walking, cycling and then high-quality public transport in new developments. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. The NPPF states that development should not cause an unacceptable impact on highway safety or cause severe residual cumulative impacts on the road network.

2.2.5. All development proposals will need to be assessed on their own merits regarding impact on the highway and transportation network and are all subject to highway infrastructure obligations. Mitigation will need to be evidenced and funded in order to make developments acceptable in planning terms. This may be a financial contribution towards new or expanded facilities and the maintenance thereof; on-site provision (which may include building works); off-site capacity improvement works; and or the provision of land.

2.2.6. It is therefore appropriate to seek developer contributions in circumstances where new infrastructure or highway measures are required to make the development acceptable in planning terms.

Flood Protection and Water Management (including SuDS)

2.2.7. The NPPF identifies how flooding and drainage should be managed in new developments. In terms of developer contributions or obligations, development should be directed away from high-risk flood areas and not increase the risk of flooding elsewhere. In some instances it will be necessary for the developer to implement sustainable drainage systems to prevent flooding following advice from ECC, as the Lead Local Flood Authority (LLFA) and consistent with the [Sustainable Drainage Systems Design Guide for Essex](#).

2.2.8. In compliance with the CIL Regulations, such measures will be required to make development appropriate in planning terms.

Education and Childcare

2.2.9. The NPPF is clear that there should be a sufficient choice for school places to meet the needs of existing and new communities accessible by attractive, safe and direct walking and cycling routes.

2.2.10. As of 2022 Essex County Council assess all planning applications of 20 or more dwellings with regards to the anticipated pupil numbers generated, checked against current capacity of the relevant school and potential solution identified, which may be a contribution towards expansion or the provision of serviced land and contribution towards a new facility. No contribution is sought where sufficient existing surplus capacity exists to meet the demand from specific development. This is consistent with the NPPF in achieving sustainable locations providing greater choice of education opportunities for existing and new residents.

Health

2.2.11. The NPPF requires protection of community facilities where they help create healthy and safe communities and provide local services that enhance the sustainability of communities and social needs.

2.2.12. Medical facilities provide for the needs of communities and are essential to meeting local need. It is therefore fair and reasonable to seek developer contributions where development will increase the demand for medical facilities and there is not enough identified existing capacity in the local area.

Sporting and Recreational Facilities

2.2.13. The NPPF is clear of the importance of sporting and recreational facilities and seek to promote and enhance facilities where appropriate. Up to date assessments should be used to determine what sport and recreational provision is needed.

2.2.14. In terms of sports and recreational facilities a Playing Pitch Strategy Action Plan and Indoor Built Facilities Needs Action Plan has been prepared and have been kept up to date. This highlights the demand and supply of key sporting and recreational facilities.

2.2.15. Where demand is likely to increase through development, it is reasonable to seek developer contributions to contribute towards improvements or provide new facilities where appropriate and justified through the Playing Pitch Strategy Action Plan and Indoor Built Facilities Needs Action Plan.

Open Spaces

2.2.16. The NPPF recognises and seeks to protect the benefits that access to high quality open spaces can provide, including opportunities for physical activity which is important for the health and well-being of communities, and can deliver wider benefits for nature and support efforts to address climate change.

2.2.17. Up to date assessments should be used to determine what level of open space provision is needed. There are various national standards that set out accessible green space standards, which are reasonable to expect in new development. It is therefore appropriate to expect provision of new open spaces on development sites. Where that is not possible improvements to access or improvements to existing open spaces will be sought in close proximity of the development site as appropriate.

Biodiversity

2.2.18. The NPPF seeks to conserve and enhance the natural environment and highlights that decisions should contribute and enhance the natural and local environment. It states that development should minimise impacts on and provide net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

2.2.19. In compliance with the CIL regulations and the NPPF, to make a development acceptable in planning terms then it is reasonable to expect development contributions where the developer cannot avoid harm to biodiversity in the first instance.

2.2.20. This is reiterated in the Environment Act 2021 where a requirement for a 10% biodiversity net gain is required as mitigation for harm to biodiversity.

Blue and Green Infrastructure

2.2.21. Blue and Green Infrastructure acts as a recurring theme throughout the NPPF, not only can it provide a basis and create essential links for habitats, assisting in reaching biodiversity net gain, it can also manage flood water and create spaces for recreation and active and sustainable modes of travel. Trees make an important contribution to the character and quality of urban and rural environments, and can also help mitigate and adapt to climate change, contributing greatly to green infrastructure. Where possible, the Council will seek to secure multi-functional benefits.

2.2.22. The RAMS provides a mechanism for local planning authorities to comply with their responsibilities to protect habitats and species in accordance with the UK Conservation of Habitats and Species Regulations 2017. Measures required to mitigate the impacts of recreational disturbance on European Protected Sites will be delivered as detailed in the RAMS and the Essex Coast RAMS SPD, which was adopted by the Council in 2020.

2.2.23. The Essex Coast RAMS SPD provides the scope of RAMS; the legal basis for RAMS; the level of developer contributions being sought for strategic mitigation and how and when applicants should make contributions.

2.2.24. Blue and Green Infrastructure therefore promotes the objectives of the NPPF and may be necessary to make a development acceptable in planning terms.

Heritage

2.2.25. Heritage assets extend from sites and buildings of local historic value to those of the highest significant, such as World Heritage Sites. Castle Point has heritage assets ranging from non-designated locally listed buildings, Grade I, II and II* Listed Buildings, Conservation Areas and Scheduled Monuments.

2.2.26. Conserving and enhancing the historic environment is a key theme within the NPPF. The NPPF highlights that plans should set out a positive strategy for the conservation and enjoyment of the historic environment Where proposals may cause harm to a heritage asset there are certain criteria that needs to be met to ensure that harm is first of all avoided and then mitigated.

2.2.27. In some instances where proposals may impact a heritage asset it may be appropriate to for the development to provide infrastructure or management to ensure that the heritage asset is preserved and where appropriate enhanced.

Affordable Housing

2.2.28. As identified in the South Essex Strategic Housing Market Assessment (SHMA) 2016, the Council has a substantial affordable housing requirement. The needs identified in the evidence therefore supports provision of affordable housing within developments.

2.2.29. As identified in the NPPF, where affordable housing is identified it is expected to be met on site, in this instance a Section 106 will be essential to set out the specific requirements.

2.2.30. Where affordable housing cannot be met on site, off -site provision or an appropriate financial contribution in lieu of this will be required unless an agreed approach with the Council has been arranged, this is consistent with the NPPF.

2.3.Section 106 Planning Obligations

2.3.1.As identified in paragraph 2.1.4 the basis for collecting Section 106 Agreements is set out in CIL Regulation 122.

2.3.2.Section 106 Agreements and deeds are used to secure infrastructure/services required to mitigate the impact of a particular development and/or to meet specific planning policy requirements. Developer contributions through Section 106 Agreements can be:

- Financial contributions
- Affordable housing provision
- The provision of land or the restriction on the use of land
- The direct delivery of facilities or infrastructure

2.3.3.A planning obligation is usually an agreement between interested parties (e.g. a developer, landowner, the Borough Council and the County Council). However, it can also take the form of a Unilateral Undertaking (where the developer makes an

unconditional promise) that is made to the Borough Council and/or County Council to make a planning application acceptable in planning terms.

2.4. Community Infrastructure Levy (CIL)

2.4.1. CIL is a charge which local authorities can place on developers to help fund infrastructure needed to support new development in their areas.

2.4.2. CIL will be utilised by the Council to secure infrastructure projects which are necessary to support growth which cannot be secured through a Section 106 Agreement.

2.4.3. Unlike Section 106 Planning Obligations, CIL receipts are not earmarked for particular infrastructure. Instead, CIL monies are pooled into one fund, which can be used for any infrastructure needed to support new development across the Council's administrative area.

2.4.4. Castle Point Borough Council approved its CIL Charging Schedule on **DATE** with an effective date of **DATE**. The charging schedule sets out the CIL charge required for different types of development.

2.4.5. Further details of the CIL Charging Schedule can be found here **LINK**.

2.5. Local Planning Policy

2.5.1. The relevant plan for the purposes of this document is the Castle Point 1998 Adopted Local Plan, hereon known as the 1998 Local Plan. The housing and economic strategies in the 1998 Local Plan are no longer relevant. However, the policies of the 1998 Local Plan set development parameters which continue to enable development within the existing urban areas year after year. A schedule of the policies saved under direction under paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004 identifies the policies within the 1998 local plan that continue to apply.

2.6. Infrastructure Delivery Plan (IDP)

2.6.1. The Castle Point Infrastructure Delivery Plan (IDP) has been undertaken to identify the infrastructure needed to support growth in the Borough. The IDP is a 'live' document which is regularly reviewed and updated as required to present the best and most up to date information on infrastructure requirements throughout the Borough. The IDP provides the following information:

- Baseline information, providing background information on the infrastructure item and current provision in the Castle Point Borough.
- Determines infrastructure needs throughout the Borough to support identified growth.
- Estimates the costs of delivering identified infrastructure needs and considers potential funding sources.

- Allocates infrastructure contributions to appropriate development sites where the identified needs are directly related to the proposed development in accordance with the CIL Regulations.
- Identifies key bodies and organisations with responsibility for delivering identified infrastructure improvements, and outlines what actions may be required now and in the future to support infrastructure delivery.
- Identifies if there are any gaps in information or funding which needs to be addressed.

2.6.2. Information contained within the IDP is produced in collaboration with relevant infrastructure providers such as the NHS, Essex County Council, the Environment Agency and Anglian Water, and is therefore subject to change and regular updates as the various organisations undertake further assessment work and produce new information.

2.7. Essex Developer's Guide to Infrastructure Contributions

2.7.1. Essex County Council published a revised Developers' Guide for Infrastructure Contributions in 2020. This document sets out the scope and range of contributions that the County Council, within its statutory remit, may seek from developers. This document addresses the County Council's approach to seeking planning obligations for services for which it is responsible, and should be read in conjunction with this document. A copy of the Guide can be found here:

www.essex.gov.uk/planning-advice-guidance/guidance-for-developers

2.7.2. Other relevant ECC documents that should be utilised are linked below:

[ECC Local and Neighbourhood Planners Guide to School Organisation](#)
[Garden Communities and Planning School Places Guide.](#)

3. Approach to Securing Developer Contributions

3.1. Planning Obligations and CIL

3.1.1. Section 106 Agreements will usually be used to secure developer contributions for residential developments of 10 units or more, therefore CIL will be the primary means by which the Council will seek contributions from developments below that threshold towards meeting the infrastructure demands of new growth.

3.1.2. There will be instances where a development may generate a need for infrastructure due to its size or location. For example, a large residential development may generate a need for a new co-located primary school with early years to specifically serve that development. In this instance the developer will be expected to provide serviced land and the necessary financial contribution consistent with the ECC Developer's Guide. Other sites that benefit from this new provision may also be required to contribute towards build costs as pooled Section 106 contributions.

3.1.3. There may also be instances where a development will put specific pressures on a location that would not otherwise exist, for example a new housing development may have an adverse impact on a particular road or junction that would therefore require improvements. This would need to be funded and delivered directly by the developer, preferably by entering into a S278 Agreement with ECC, the highway authority, thereby making permanent alterations or improvements to the public highway. Further details are contained in the ECC Developers Guide, Section 5.5.3.

3.1.4. Planning obligations will be used in addition to CIL to mitigate these types of direct impacts of development on infrastructure and to ensure that the development is acceptable in planning terms. In order to ensure that proposed developments do not reduce the existing capacity of existing infrastructure to serve existing residents. These types of obligations will usually be sought through Section 106.

3.1.5. Additionally, it should be recognised that planning obligations can be used to secure requirements that are not infrastructure related. For example, they may be used to secure affordable housing and ecological mitigation. The role of planning obligations is to ensure that development is acceptable in all areas, delivering sustainable developments that secure economic, social and environmental benefits for the community and manage the impacts of development on all aspects of the environment.

3.1.6. A guide to the spending split of Section 106 and CIL contributions is set out in Appendix 1.

3.2. Planning Obligation Process

3.2.1. The Council's [Statement of Community Involvement \(SCI\)](#) encourages applicants and agents to discuss development proposals with planning officers before submitting a planning application. Discussions with a Council planning officer, assisted where appropriate by officers representing various service areas or other public bodies, will

highlight the likely impact of the development and suggest ways to mitigate them. Applicants will be advised of any known infrastructure requirements specific to their site, and the appropriate process for securing the mitigating infrastructure needed together with the parties likely to be involved in the obligation. An indication will also be given as to whether it is appropriate to use a Section 106 Agreement or a Unilateral Undertaking.

3.2.2. Applicants will be expected to discuss and agree draft heads of terms of the planning obligations at the pre-application stage and submit the completed obligation with the application. A questionnaire, requesting background information on the application, interest in the land, proof of title, mortgages on the land, legal representative and an undertaking to pay the Council's legal costs of preparing the draft agreement, once the application has been received and validated, will be given to the developer at the pre-application stage.

3.2.3. Planning officers will present in their report to Development Management Committee on the application and key aspects of the proposed obligations. The Council requires applications involving planning obligations to be decided within eight or 13 weeks of submission, depending on the size and nature of the proposed development. Those applications accompanied by an Environmental Impact Assessment should be decided within 16 weeks. If the applicant fails to enter into an agreement or delays completion of the obligation, the application may be refused, or recommended for refusal, as it is unlikely to be acceptable in planning terms.

3.2.4. Applicants may also have legal obligations to Essex County Council (ECC) as the highway and transport authority, including responsibility for the development and delivery of the Essex Local Transport Plan; the lead authority for education including early years and childcare (EYCC), Special Education Needs and Disabilities, and Post 16 education; Minerals and Waste Planning Authority; Waste Disposal Authority; Lead Local Flood Authority; lead advisors on public health; and responsibilities for adult social care in relation to the securing the right housing mix which takes account of the housing needs of older people and adults with disabilities. Where appropriate applicants should refer to ECC's Developers Guide to Infrastructure Contribution 2020, or succeeding documents www.essex.gov.uk/planning-advice-guidance/guidance-for-developers. If a planning obligation is sought for contributions covering these matters, then ECC should be party to any Section 106 Agreement.

3.2.5. Developers will be encouraged to use Unilateral Undertakings when the requirements relate solely to Borough Council or County Council functions. For the purposes of a Unilateral Undertaking developers need to evidence that they have title to the land to which it applies. The legal agreement questionnaire highlighted in paragraph 3.2.2 still needs to be completed and submitted with any application that officers have indicated requires a financial contribution. Unilateral Undertakings or Section 106 Agreements may be required under the planning appeal process.

3.2.6. A single Section 106 Agreement or Unilateral Undertaking would normally be used to cover the full range of requirements for a particular development. However, some areas of community infrastructure, such as education, libraries, health facilities and most

transport infrastructure are provided by the County Council and other outside agencies. Their requirements may be the subject of separate agreements to those entered into by the Borough Council, although joint agreements will be used wherever possible.

3.3. Master Plans

3.3.1. Where a master plan has been prepared, the Council would expect them to set out all infrastructure requirements including any necessary and related land requirements. Such master plans will take account of the matters relating to thresholds, standard charges, and formulae, pooling of planning obligations within the site or with other sites nearby, and the phasing of development.

3.4. Outline Applications

3.4.1. When dealing with outline planning applications, where all or some of the details of the proposal are reserved for a subsequent application, it will be necessary to frame the Section 106 Agreement to ensure that any planning obligations likely to be required are identified with the precise details to be assessed on the basis of subsequent details.

3.4.2. As an example, where the principle of housing development is agreed through an outline application but the precise number of homes to be provided is reserved, the requirement for affordable housing will be expressed as a proportion allowing the eventual requirement to be scaled up or down depending on the overall number of homes provided.

3.5. Using Thresholds, Standard Charges and Formulae

3.5.1. The Council and County Council along with other infrastructure providers have been developing means by which it is possible to calculate the impacts of new development on the need for community infrastructure. The supporting Infrastructure Delivery Plan (IDP) to this SPD sets out guides and standards for contributions and how they are calculated.

3.5.2. With regard to services provided by the County Council, thresholds, standard charges and formulae are set out in the Essex Developers' Guide to Infrastructure Contributions. This document should be considered when preparing a planning application for submission to the Council. Where a developer believes that there may be a need for a planning obligation in relation to a County service, the developer should contact that service directly to determine their requirements.

3.5.3. With regard to services provided by other organisations including the Borough Council, details of thresholds, standard charges and formulae are provided in the supporting infrastructure documents to this SPD. Details are also provided on requirements surrounding non-infrastructure related matters such as affordable housing, ecology and other environmental matters.

3.5.4. It should however be recognised that each development proposal is unique and may give rise to a matter that is less common and not addressed specifically by this SPD or

supporting infrastructure documents. In such cases, as with all planning obligations, it is necessary to refer back to the three tests in the CIL Regulations to check that a planning obligation is an appropriate means by which the matter can be addressed. The three tests are:

- They are necessary to make the development acceptable in planning terms;
- They are directly related to the development; and
- They are fairly and reasonably related in scale and kind to the development.

3.5.5. The Council considers development that would produce 10 or more dwellings as major and consequently would require a Section 106 Agreement. Developers should refer to the ECC Developers' Guide, Table 2 which sets out the developer contribution requirements by type and scale of development.

3.6. Calculating Change

3.6.1. When calculating the impact of development using thresholds, standard charges and formulae, it is important that the net change in the number of homes, bedspaces, the amount and use of floorspace and the net change in the demand for services is considered. In appropriate circumstances, some consideration may be had to vacant building credits.

3.7. Pooled Contributions

3.7.1. It may be appropriate to pool financial contributions towards infrastructure from different sites. For example, where multiple sites within close proximity to each other generate the need for new primary school provision, pooled contributions, proportionate to the size of the individual sites will be collected through Section 106 Agreements. Pooled contributions may also be used to fund capital works, for example the necessary expansion to a new school.

3.8. Phasing

3.8.1. The phasing of planning obligations is important for two reasons. The first is to ensure that the impacts of development are mitigated in a timely manner. The second is to ensure that the viability of development is not unduly affected by the particular planning obligation.

3.8.2. Some planning obligations will need to be delivered early on in a development. For example, a planning obligation related to drainage is likely to be required before a development commences to ensure that it is appropriately integrated into the development. Sustainable transport requirements meanwhile will be required during an early phase in the occupation of the site so that early residents of the site do not develop a reliance on car borne travel.

3.8.3. Planning obligations do however cost money, and will potentially increase the financing costs of a development when sought early on in a development scheme. This may have implications for development viability and the overall amount of contributions that can

be sought. Therefore, the Council will only seek to secure planning obligations at the appropriate time to avoid unnecessary impacts on viability. However, the Council is mindful that a developer may seek to avoid delivering a planning obligation by not completing the development. To this end, the following phasing limits will be applied in most cases:

- For residential developments, all planning obligations will need to be delivered before more than 80% of the market dwellings can be occupied.
- For non-residential developments, all planning obligations will need to be delivered before the development is used for the first time.

3.9. Management Arrangements and Maintenance Contributions

3.9.1. Where development results in the need for new infrastructure for the benefit of the occupiers of the associated development such as open space or sustainable drainage systems, then the Council would normally expect the developer to put in place management arrangements which ensure the good management and maintenance of that infrastructure in perpetuity.

3.9.2. There will be cases where the Council, County Council or another service provider will agree for infrastructure to be transferred into their ownership. In such cases, the County Council or other service providers will require a maintenance contribution, usually as a one-off payment. This contribution would be to cover the physical upkeep of the infrastructure for a period of no less than 10 years with the timeframe and terms set out in a Section 106 Agreement. Further information on maintenance matters are available in Essex County Council's Developers' Guide to Infrastructure Contributions (Revised 2020) in Section 5.5 – Highways and 5.11 – Flood and Water Management and SuDS.

3.10. Development Viability

3.10.1. The Council has tested the development viability of a range of site types that are most likely to come forward over the next few years.

3.10.2. The CIL Viability Study 2021 and preceding work uses Residual Value Methodology to assess the impact of meeting all the Council's policy requirements and developer contributions on a range of development typologies. The residual value is the combined value of the complete development less the cost of creating the asset, including a target profit margin. If the residual value exceeds the existing use value by a satisfactory margin, a scheme is judged to be viable.

3.10.3. The results of the Viability Study show that in most of cases, the residual value exceeds the existing use value by a satisfactory margin indicating that most development likely to come forward under the sites tested is viable and will be able to bear the range of developer contributions at the adopted, and subsequently indexed, rate.

3.10.4. The use of further viability assessments at the decision-making stage should not be necessary.

- 3.10.5. Where a viability assessment is submitted to accompany a new planning application this should be based upon, and refer to, the Council's latest Viability Study. The applicant should provide evidence of what has changed since the Viability Study was conducted. A full viability report prepared by the applicant should be enclosed as part of the submission of the planning application.
- 3.10.6. Once submitted, this report (including scheme viability statements, appraisals and relevant information) will be considered and assessed by the Council and an independent viability advisor appointed by the Council with reasonable agreed costs borne by the applicant.
- 3.10.7. Any viability assessment should reflect the government's recommended approach to defining key inputs as set out in National Planning Guidance.
- 3.10.8. Essex Planning Officers Association (EPOA) has produced a [Viability Protocol](#) that sets out overarching principles for how Essex Local Planning Authorities will approach development viability. The protocol does not alter Local Plan policies or the guidance in this SPD but does provide additional advice and guidance on the information requirements and approach taken when assessing viability at the decision-making stage.
- 3.10.9. The assessment will define land value for any viability assessment based on the existing use value of the land, plus a premium for the landowner. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant Council policies.
- 3.10.10. The weight to be given to a viability assessment is a matter for the Council, having regard to all circumstances, including any changes since the Council's Viability Study was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.
- 3.10.11. If the viability report submitted by the Applicant fails to satisfy the Council that a reduced level of contributions should be applied or that the level of planning contributions that the development can viably support cannot mitigate the impact of the proposed development, then the planning application will be refused.

3.11. [Index Linking](#)

- 3.11.1. Where a planning obligation is in the form of a financial payment, then the value of the required payment will be index linked from the date used in the cost estimate for the specific infrastructure in order to ensure that the financial payment reflects the true costs of providing a specific piece of infrastructure at the time development occurs. The indices used will differ according to the type of infrastructure that the financial payment is required for and will be agreed with the developer. The date of the cost estimate will be clearly shown in the cost estimate document.
- 3.11.2. The Council will set out in the planning obligation the most appropriate indices to be applied in respect of the infrastructure required, as set out in each individual infrastructure related SPD.

4. Drafting of Section 106 Agreements

- 4.1.1. Section 106 Agreements will normally be issued by the Council's Legal Services team, or by external solicitors acting on behalf of the Council. Applicants will be required to pay the Council's reasonable costs incurred in drafting and completing the agreement or the costs of external solicitors acting on behalf of the Council, where relevant. In most cases Essex County Council (ECC) provide a first draft of the clauses required to deliver contributions it has requested. A template agreement is provided in Appendix A of Essex County Council Developers' Guide to Infrastructure Contributions (Revised 2020).
- 4.1.2. In all circumstances where a legal agreement is required, the applicant will be expected to provide details of land ownership during the application process. These should be copies of the title document and plan obtained within the preceding three months from the Land Registry, or if the land is unregistered, copies of the most recent conveyance.
- 4.1.3. In the preparation of the Section 106 agreement, the Council will undertake due diligence on the developer and landowner parties. This will be in the form of Company House and or credit agency references. This is to provide reassurance to the Council that the parties are able to fulfil their obligations. In addition, a guarantors provision will be included – please see sub-section 4.3.

4.2. Financial Obligation

- 4.2.1. Where a financial obligation is necessary, trigger points for payments will be included in the legal agreement, as will the period in which any contribution will have to be spent.
- 4.2.2. It is reasonable to expect that, when contributions are paid to the Council the monies will be held in an interest-bearing account. The payment of contributions will be linked to the provision of infrastructure, the trigger points for which will be set out in the Section 106 Agreement. Those financial contributions (excluding commuted payment relating to maintenance) that are paid to the Council and remain unspent at the minimum of ten years from the date when the money was paid will be returned to the payee in accordance with the terms of the individual agreements, unless they relate to infrastructure items that are required beyond a ten-year period.

4.3. Guarantors

- 4.3.1. Where a contribution is required, in all cases the Council will include a guarantor provision in the Section 106 Agreement. As a Section 106 Agreement is to ensure that a development is acceptable in planning terms, a guarantee that payments will be made will provide that assurance. Without guarantees, the Council cannot guarantee that a Section 106 Agreement will be signed and delay the issue of the planning permission.

- 4.3.2. How the guarantee is provided will be dealt with on a case-by-case basis but could include parent company guarantees, a company director's guarantee or a bond. Please note that where a Section 106 Agreement includes other financial obligations on the developer, the guarantee must also include those obligations.

4.4. Bonds

- 4.4.1. Section 106 Agreements often require the payment of deferred financial contributions, which are triggered after the implementation of the corresponding development. As these financial contributions have been identified as necessary to allow the development to proceed, it is reasonable for the Council to take steps to secure their delivery in the event of unforeseen circumstances resulting in the under/non-payment of the obligations.

- 4.4.2. Occasionally, a development will require the provision of a facility of substantial value, such as a school, protection may be required to ensure that delivery is sought. Consequently, the Council may require appropriate security in the form of a bond to be provided by the developer and this requirement will initially be identified in the advice from the Council following the submission of a planning application.

4.5. Monitoring and Enforcement of Obligations

- 4.5.1. Monitoring of obligations will be undertaken by the Council to ensure that all obligations entered into are complied with by both the developer and the Council, these are set out in section 5.
- 4.5.2. The Council will take enforcement action if a party does not comply with the obligations. If enforcement of financial obligations fails then the Council will use the relevant legal channels to remedy this, and the party in breach will be liable for any legal costs incurred by the Council.

5. Charges for Planning Obligations and Monitoring Fees

5.1.1. The Council will seek a charge towards the monitoring and administration of the relevant obligations in a Section 106 Agreement to cover the following:

- The maintenance and development of the planning obligations, including the preparation, completion, monitoring and review;
- The monitoring of trigger points and development progress;
- Recovery obligation contributions not made, including any necessary formal or legal action;
- Liaison between the Council and infrastructure providers in respect of financial contributions requested and held for such providers;
- Reporting on the operation and outcome of developer contributions.

5.1.2. The charge will usually be charged at a rate per obligation and will be payable on commencement of the development.

6. Monitoring and Review

6.1. Monitoring

6.1.1. The Council is required to publish an Infrastructure Funding Statement each year setting out the infrastructure projects or types of infrastructure that the authority intends to fund, either wholly or partly, by the levy or planning obligations. Infrastructure Funding Statements will also report on CIL and planning obligations revenue received, allocated and spent, as well as reporting on progress of works that have received funding.

6.2. Review

6.2.1. A review of this SPD will be considered if:

- There is a significant change in national planning guidance; or
- The SPD is insufficiently effective in enabling developer contributions

7. Appendix 1: Split on Developers Contributions Spending between Section 106 and CIL Contributions

Section 106 Contributions	CIL Contributions
Schools and other education facilities	
<ul style="list-style-type: none"> Education (including early years and childcare, primary, secondary and post-16) Hadleigh Library – redevelopment and enhancement 	<ul style="list-style-type: none"> Education (including early years and childcare, primary, secondary and post-16) where not secured through S106 Adult employment, skills and training facilities in Castle Point Other Library provision and/or enhancements in Castle Point
Medical Facilities	
<ul style="list-style-type: none"> On-site provision of healthcare facilities Contributions towards off-site facilities that would serve the proposed development 	NHS Estates Plan for Castle Point where not secured through S106
Open Spaces	
<ul style="list-style-type: none"> On-site open space provision, management and maintenance Local off-site open space in lieu of on-site provision 	<ul style="list-style-type: none"> Strategic level open space provision and enhancement Green connectivity to and between open spaces
Sports and Recreation Facilities	
<ul style="list-style-type: none"> Local Football Facilities Plan (Appleton School, Deanes School, Waterside Leisure Centre, King George’s playing field) On site indoor sports provision Reprovision or compensatory provision of lost playing pitches 	<ul style="list-style-type: none"> Playing Pitch Strategy – non football elements Built Facilities Strategy where not secured through S106
Flood defences	
On-site SUDS and other measures to deliver site level drainage strategy	<ul style="list-style-type: none"> South Essex Surface Water Management Plan Projects in Castle Point Infrastructure projects in the Canvey Six Point Plan
Roads and other transport facilities	
<ul style="list-style-type: none"> Any transport schemes required to deliver any site Any public transport schemes required to deliver any site On-site cycle and walking network infrastructure, and connections into wider network Other measures as identified as necessary through a site level Transport Assessment 	<ul style="list-style-type: none"> Strategic Transport Projects Sustainable Transport Projects
Other matters – list is not exclusive but is indicative of common requirements	

<ul style="list-style-type: none"> • Affordable housing • Biodiversity Net Gain • Essex Coast RAMS (as set out in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document) • Landscaping provision, maintenance and management • Heritage Assets – enhancement, protection, maintenance and management 	
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Castle Point Borough Council

**Developers Contributions Guidance
Supplementary Planning Document (SPD)**

Affordable Housing

DATE

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1. Introduction

1.1. Purpose of this Document

1.1.1. This document specifically sets out the types of developer contributions or planning obligations required for affordable housing. It will also highlight the process for how affordable housing will be sought and delivered.

1.1.2. This document should be read alongside the **Developers Contributions Guide Cover Note**, which sets out in greater detail the process the Council expects planning obligations to be sought and implemented.

2. Policy context

2.1. What is Affordable Housing

2.1.1. The government defines affordable housing in the Glossary (Annex 2) of the National Planning Policy Framework (NPPF) as:

‘housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

- **Affordable housing for rent:** *meets all of the following conditions: (a) the rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).*
- **Starter homes:** *is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household’s eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.*
- **Discounted market sales housing:** *is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.*
- **Other affordable routes to home ownership:** *is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement. ‘*

2.1.2. The affordable housing market evolves over time depending on the private sales market, rented market and the availability of funding. The government often introduce new schemes to assist people into homes and to purchase a property. New schemes such as ‘First Homes’, was introduced by the government in 2021 to provide a new type of affordable housing. The Planning Practice Guidance defines First Homes as discounted market sale units which:

a) must be discounted by a minimum of 30% against the market value;

b) are sold to a person or persons meeting the First Homes eligibility criteria;

c) on their first sale, will have a restriction registered on the title at HM Land Registry to ensure this discount (as a percentage of current market value) and certain other restrictions are passed on at each subsequent title transfer; and,

d) after the discount has been applied, the first sale must be at a price no higher than £250,000 (or £420,000 in Greater London).'

(Paragraph: 001 Reference ID: 70-001-20210524)

2.1.3. First Homes are the government's preferred discounted market tenure and should account for at least 25% of all affordable housing units delivered by developers through planning obligations.

2.1.4. The Council will accept First Homes as a form of affordable home ownership product in the Council's affordable housing mix in line with government policy.

3. National Planning Policy Framework (NPPF) 2021

- 3.1.1. The NPPF sets out the government's planning policies for England and how these are expected to be applied. The NPPF seeks to significantly boost the supply of homes and ensure that the number of affordable homes required are assessed within the overall housing needs.
- 3.1.2. The NPPF expects affordable housing to be provided on site unless *'off-site provision or an appropriate financial contribution in-lieu can be robustly justified'* and *'the agreed approach contributes to the objective of creating mixed and balanced communities.'* (NPPF 2021, paragraph 63)
- 3.1.3. It is clear that affordable housing should be sought wherever possible. This includes sites of 10 units or more dwellings. However, to encourage the use of brownfield land the NPPF also indicates that where vacant buildings are used affordable housing provision can be reduced by a proportionate amount, this is explained in greater detail in section 5.10 'Vacant Building Credit'.
- 3.1.4. The government sets out that a minimum of 10% of the total number of homes to be affordable unless this exceeds overall requirement for the borough (NPPF 2021, paragraph 65). This means that developments should provide affordable home ownership products such as 'Help to Buy', 'Shared Ownership' and 'First Homes', as well as properties for affordable rent, with a preference for on-site provision. There are exemptions however: development that provides solely for Build to rent homes; provides specialist accommodation; provide for self-build; or is solely for affordable housing (so additional provision is required) or an exception site.
- 3.1.5. In order to provide a sufficient supply of the right type of homes local planning authorities should provide a variety of size, type and tenures in order to meet local needs. Such needs have been identified within the borough through Strategic Housing Market Assessments, as well as the specific needs of those on the Council's housing register. This requirement includes the right mix for affordable homes.

4. Affordable Housing Needs and Priorities

4.1. Strategic Housing Market Assessments (SHMA)

4.1.1. A South Essex Strategic Housing Market Assessment (SHMA) was completed in 2016 and a further SHMA Addendum was completed in 2017. A borough wide SHMA Addendum focusing on housing mix was also completed in 2020. This evidence largely defines market-led housing needs, although does provide some detail on affordable housing needs. The Council holds specific information on the Council's housing register.

4.1.2. The 2017 SHMA Addendum updated the housing need figure projections using the 2014 updated population figures. Similarly, to the 2016 SHMA the Addendum predicted outcomes from market signals, household formation rates, natural change, migration and employment assumptions to form an objectively assessed housing need (OAN). This concluded that an OAN of 311 dwellings per annum was required in Castle Point from 2014-2037.

4.1.3. To reflect the increased number of newly forming households anticipated under the updated demographic projection in 2017, the net annual affordable housing need of 353 dwellings per annum was assumed in Castle Point over the 2014-2037 period.

4.1.4. The SHMA report clearly identifies an affordable housing need within Castle Point that is greater than the OAN assumed in 2017. In 2018 the government implemented a standard methodology for calculating housing needs. This formula indicates a higher OAN than what was previously assessed in 2017, to 355 new homes per within the borough per annum. This further increase and under delivery of housing in Castle Point highlights the sustained under delivery of affordable homes within the borough.

4.1.5. Affordability issues and backlog can be associated with a range of household needs, this includes those in urgent need or housing (without a current home) or those in overcrowded or substandard homes (who are currently housed).

4.1.6. In identifying the different type of affordable housing needs it creates a picture of the size, type and tenure of affordable homes that are required in the borough. For example those on the Council housing register may require family housing in the order of three-bedroom homes, whereas a proportion of the local need may require affordable home ownership products to enable first time buyers into the housing market.

4.1.7. The SHMA 2016 indicates that there will be significant demand from young people who cannot access the housing market due to issues with the availability of first-time homes and wider issues in the housing market associated with mortgage availability. Diversification of the housing stock to include a greater number of smaller properties and the government's mechanisms to support first time buyers will assist these people in accessing the general housing market.

4.1.8. The Castle Point SHMA Addendum 2020 reviewed the need for different house sizes and types to meet the changing needs of the borough's population. This Addendum concluded that there will be demand from a range of different household types, although demand will be particularly strong from families with children and people of retirement age. This means that there is a strong

demand for 3-bedroom properties reflecting the needs of growing families in the general population. It is important that these homes are provided as they will help to attract more professional and working aged people to live in the area. This is particularly important for both business growth and in sustaining public services, such as healthcare.

4.1.9. The SHMA 2020, in identifying a housing pressure arising from the growing population of older people, highlights the desirability of bungalows in Castle Point. Bungalows make up 29% of the housing stock currently and it is expected that there will be demand for additional bungalows, reflecting the characteristics of the local housing stock. It also identifies the need for specialist accommodation for older people, suggesting a need for around 45 units per annum of sheltered housing types. In addition to this, around 20 additional bedspaces are required each year in residential care/nursing accommodation.

4.2. Viability Assessment

4.2.1. A 2021 Viability Assessment and preceding work took into account a number of factors affecting development viability including infrastructure required to make development acceptable (as set out in the Council's latest Infrastructure Delivery Plan), development costs and tested thresholds for affordable housing ratios.

4.2.2. In 2022 there were 591 households on the Council's housing register. In addition, the SHMA 2016 highlighted that there were 449 concealed households and 1,005 overcrowded households in 2011. Although these fields may overlap and does not represent a true need for affordable housing, it does highlight that there is a potential increase of need for those looking to leave overcrowded or concealed households that do not have access to suitable affordable housing. Therefore, the Viability Assessment tested various affordable housing provisions on different site typologies. The aim of this was to identify the highest level of affordable housing provision that could be achieved, without rendering development unviable.

4.2.3. As a consequence of the viability testing different affordable housing thresholds became apparent for different types of development and locations within the borough. In the case of Canvey Island higher development costs combined with lower property values mean that for some forms of development there are challenges in relation to the commercial viability of development.

4.3. Why is this document important?

4.3.1. The borough has one of the largest gaps in Essex between incomes from those that work within the borough and those that do not. This means that it is more likely that homes on the open market will be affordable to those who work outside the borough, than to those who live and work in the borough. Demand for affordable housing in the borough therefore outstrips existing and planned supply, particularly for local people who live and work in the area.

4.3.2. As of 2022, there were 591 individuals or families on the Council's housing register, of those 591, 233 fall within categories A and B which are considered priority bands. Within that need there is the greatest demand for 1 and 2-bedroom properties.

4.3.3. As demonstrated in table 4.1 since 2011/12, only 169 affordable homes have been developed in the borough. The SHMA Addendum 2017 indicates that there is a need for up to 353 homes per annum to be affordable. This highlights the high need for affordable housing within the borough and therefore it is imperative that development maximises the number of affordable homes that can be delivered.

Table 4.1: Number and type of affordable homes delivered in Castle Point (gross)

Year	Social Rent	Intermediate	Affordable Rent	Total
2011/12	17	0	0	17
2012/13	22	0	0	22
2013/14	0	0	0	0
2014/15	25	15	15	55
2015/16	0	0	19	19
2016/17	0	4	12	16
2017/18	0	18	7	25
2018/19	2	0	0	2
2019/20	0	0	0	0
2020/21	7	0	6	13
Total	73	37	59	169

4.3.4. In accordance with national policy, the Council completed a Viability Assessment in 2020. This highlighted that although the levels of affordable housing identified in the SHMA cannot be viably achieved, a level of affordable housing can be reasonably delivered on development sites to significantly boost the supply within the borough. This SPD sets out those requirements.

5. Affordable Housing Requirements

5.1. Which developments may require affordable housing?

5.1.1. Affordable housing will be sought from all proposals for residential development, and mixed-use proposals that include an element of housing, resulting in 10 or more net additional homes.

5.2. Exemptions

5.2.1. Affordable housing will not normally be sought for the following:

- Householder applications (e.g. house extension or a garage) and self-build development as defined by the CIL Regulation 2014;
- Residential Annexes, staff accommodation or extension to an existing home which is incidental to the main dwelling;
- Listed building, conservation area, advertising or tree preservation order applications (although contributions may be sought from the overarching scheme);
- Replacement dwellings;
- Residential institutions providing specialist housing for the elderly (excluding self-contained units – like Sheltered or Extra Care schemes).
- Purpose built hostel or holiday accommodation which are incapable of occupation for general residential purposes because of their layout, ownership, management or occupancy restrictions; and
- Gypsy and Traveller accommodation.

5.3. Affordable Housing Requirement

5.3.1. In the Adopted Local Plan, policy H7 states the following:

'POLICY H7 – AFFORDABLE HOUSING

Where appropriate the Council will seek to negotiate a proportion of affordable housing for rent, shared ownership, or outright sale, where appropriate to the scale of development schemes. The number of affordable dwellings to be provided will be dependant upon the size of the site, its location, and any substantial costs associated with the provision of other necessary infrastructure, and will be determined by the Council, following negotiation with the applicant.'

5.3.2. As demonstrated within this SPD there is an identified need for affordable housing within the borough. Consistent with historic practice, where residential development results in a net increase in dwellings, 35% affordable housing has been sought on development sites. Evidence collected in the withdrawn Local Plan (CIL Viability Study 2020 [\[DV-005\]](#)) found that this requirement is acceptable in most cases.

5.3.3. The Council will therefore seek 35% affordable housing on development sites proposing 10 or more units.

5.3.4. In those cases where the affordable housing requirement does not generate a whole number, a financial contribution will be sought equal to the value of the partial unit. Alternatively, the number can be rounded up to the nearest whole number and all units can be provided on site.

5.3.5. The affordable housing provision in this SPD will be reviewed in a plan review.

5.4. Affordable Housing Tenure

5.4.1. As identified in section 5.3 the Council will seek 35% affordable housing on development sites. The Council will expect 25% of the site to be affordable housing for rent products, the remaining 10% should be made up of affordable home ownership products.

5.4.2. Where the calculation of 25% of the total number of affordable dwellings to be provided as affordable housing for rent does not result in whole numbers, it should always be rounded up in order to achieve the required 25%.

5.4.3. The balance of the total number of dwellings, should be provided as affordable home ownership products. This can include rent to buy schemes, discounted market sale housing (including First Homes), shared ownership and other routes to affordable home ownership as defined by the NPPF.

5.4.4. Where a dwelling under the First Home scheme is implemented a Section 106 Agreement will be required securing the necessary restrictions on the use and sale of the property, as well as a legal restriction on the title of the property to ensure that these restrictions are applied to the property at each future sale.

5.4.5. As highlighted in the PPG (Paragraph: 001 Reference ID: 70-001-20210524) First Homes are the government's preferred discounted market tenure and should account for at least 25% of all affordable housing units delivered by developers through planning obligations.

5.4.6. The affordable housing provision for rent should proportionately reflect the needs identified by the Council, in determining the optimum affordable housing mix by size and type. This will be considered on a case-by-case basis.

5.5. Affordable Housing Mix

5.5.1. The evidence base indicates that there is a clear need for a diverse mix of house sizes and types in Castle Point in order to respond to demographic trends in the borough including an increasing number of older people. By securing an appropriate mix of homes on development sites, these needs can be met.

5.5.2. The Council expects a suitable mix of housing in both the market and affordable sectors to enable a better flow of existing housing stock and to meet the needs of different demographics within the borough.

5.5.3. The Council may consider a different mix, for example, if local housing needs would benefit from an alternative, the location does not support the delivery of a particular size or type of homes or a revised mix would help to redress the balance of existing affordable homes in an area. This should be discussed with the Council's Housing Team at the pre-application stage.

5.5.4. The housing mix on any site should reflect the local context of the site, as it will be recognised that it will not be possible to secure a full mix of house sizes and types on all sites. Very small sites

will be constrained by site capacity and the existing street scene. However, larger sites will be able to make an increasingly more significant contribution to the mix within the local housing market. In taking the local context into account it is recognised that some sites may provide mainly flatted developments, whilst others will potentially provide more houses and bungalows. Consideration will be made on an individual site basis.

Affordable Housing for Rent

5.5.5. The Council reviews its housing register annually. As of January 2022, the housing mix highlighted in table 5.1 is the existing housing mix requirements. This provides a guide for the types of dwellings required for affordable housing for rent products, the Council would expect delivery against the percentages set out below, or consultation with the Council's Housing team for latest demand requirements.

5.5.6. Bands A and B are the highlight priority bands for the Council and the needs identified within those bands will be given the greatest consideration when defining housing mix requirements for affordable housing for rent products. This usually has the greatest need in the form of 1- and 2-bedroom properties with some need for 3+ bedroomed properties.

Table 5.1: Housing Mix Requirements for Affordable Housing for Rent January 2022

Breakdown of Housing Need						
Band	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	Total
A	37	43	22	2	1	105
B	47	36	38	7	0	128
C	115	83	51	2	0	251
D	106	1	0	0	0	107
Total	305	163	111	11	1	591
Dwelling Type Need as a Percentage of Total Need						
Band	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom	
A	35%	41%	21%	2%	1%	
B	37%	28%	30%	5%	0%	
C	46%	33%	20%	1%	0%	
D	99%	1%	0%	0%	0%	
Total	52%	28%	19%	2%	0%	

Affordable Home Ownership

5.5.7. There is a demand for different property sizes in the borough. A Strategic Housing Market Assessment (SHMA) was completed in 2020 to reflect private housing market needs. The Council expects affordable home ownership products delivered in accordance with private housing market needs, as set out in table 5.2. Alternatively a market survey data to justify a deviation from this mix will be required. The following housing mix is therefore the most up to date assessment:

Table 5.2: SHMA 2020 Housing Need by Size

Size of Accommodation Required			
1-bed	2-bed	3-bed	4 or more bed
6%	22%	43%	29%

5.6. Specialist Accommodation

5.6.1. The Council will support specialist or supported accommodation where there is an identified need in the borough, such as for older people and people with disabilities. This may be provided as solely affordable housing or sought as part of a market housing scheme.

5.6.2. The Council will consult other relevant agencies to ensure that the provision does not place any unnecessary burdens upon the borough's infrastructure, such as health and social care. This may include Essex County Council who has responsibilities for adult social care and may have specific specialist accommodation requirements.

5.6.3. The Council will encourage the delivery of affordable homes to meet the M4(2) requirements of the Building Regulations 2015 to enable homes to be adaptable to users. In some instances where there is a need on the Council's housing register, the Council may request specialist accommodation e.g. in the form of a fully wheelchair accessible property. Where the addition of specialist features may cause a disproportionate cost to the developer the Council may consider adjusting affordable housing provision, this should be discussed at the pre-application stage.

5.7. Mixed-Use Schemes

5.7.1. Where a scheme proposes non-residential development alongside an element of housing, affordable housing will be required for all qualifying residential development.

5.7.2. Where planning permission is granted for a mixed use-scheme and there is a proposal to change the use of the non-residential element to residential, a full re-assessment of the affordable housing provision will be required.

5.8. Loss of Affordable Housing

5.8.1. Given the acute demand for affordable housing in the borough, the loss of affordable housing will not normally be acceptable unless this is to enable the provision of an equivalent or greater number of affordable homes.

5.8.2. The only exceptions would be:

- where wider housing benefits would outweigh the loss of units in that particular location by providing the type of affordable housing that cannot be provided elsewhere;
- the condition of stock is so poor that it is not viable to refurbish; and
- it is not feasible to develop the same amount, for example for design reasons.

5.8.3. In these cases, to compensate for any loss it is expected that the Council would require the on-site affordable housing tenure and mix to meet identified local needs.

5.8.4. The approach should be agreed at the pre-application stage.

5.9. Artificial Sub-Division of Sites

- 5.9.1. Proposals which seek to circumvent the affordable housing requirement set out in this SPD by developing at a low density, through phased or piecemeal development, by re-drawing the boundary of a larger site or by sub-dividing land will not be acceptable.
- 5.9.2. The Council will base the affordable housing requirement on the gross number of dwellings that can be accommodated on a site. In reaching a view on this, the Council will take into account such issues as land ownership, planning history, topography, site constraints and the natural boundaries of the site.

5.10. Vacant Building Credit

- 5.10.1. National policy provides an incentive for brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution. Affordable housing contributions will be sought for any increase in floorspace.
- 5.10.2. The vacant building credit applies where the vacant building has not been abandoned. The reference to abandonment is the applicable planning test for the vacancy credit and is recognised in law. The courts have held that, in deciding whether a use has been abandoned, account should be taken of all relevant circumstances, such as:
- The condition of the property
 - The period of non-use
 - Whether there is an intervening use
 - Any evidence regarding the owner's intention
- 5.10.3. Vacant building credit will not automatically be applied, the intention of vacant building credit is to incentivise brownfield development and the re-use of vacant buildings so only relevant buildings will be considered as being able to generate vacant building credit. For example, a brownfield site containing a scrap yard with few buildings would not be relevant because the amount of credit that could be applied would be limited and would do little to incentivise development.
- 5.10.4. Where a proposal provides a reasonable return to the landowner, a competitive profit to a developer and is policy compliant, vacant building credit should not be applied as the development would be sufficiently incentivised and viable. Applying vacant building credit at the outset would reduce the affordable housing contributions and potentially increase the financial returns to both landowner and developer. If a developer considers vacant building credit should be applied, sufficient evidence will be required to ensure that an application can be considered appropriately. This may include a viability assessment (see Developer Contributions Cover Note SPD). The vacant building credit will be taken from the residual land value.
- 5.10.5. National policy states that vacant building credit should not apply to every vacant building, therefore the Council will be mindful to a building being made vacant for the sole purposes of re-

development and/or the wilful neglect of properties with the intention of securing redevelopment. Therefore, applicants must demonstrate that the relevant vacant buildings have been actively marketed on realistic terms based on the current or any permitted use for at least 12 months continuously in the previous two years. The Council may also use Council Tax, Business Rates or Electoral Register records in their vacant building credit assessment.

- 5.10.6. Where the Council considers that vacant building credit applies where there is an overall increase in floorspace in a proposed development that includes a vacant building, the Council will apply the following formula to calculate the affordable housing contribution, an example of how this could be used is below:

Elements of the scheme	Floorspace (sqm)
Existing floorspace	500
<i>Existing floorspace to be retained</i>	<i>300</i>
<i>Existing floorspace to be demolished</i>	<i>200</i>
Proposed	1500
Increase in floorspace	1000
Vacant building credit calculation example	
35% (example affordable housing requirement) of 20 units = 7	
1000sqm as a percentage of the overall development of 1500sqm = 66.67%	
66.67% of 7 units = 4.66 units	

- 5.10.7. In this case the Council will require 4 affordable units on site and the 0.66 units as a financial contribution. Alternatively, the figure can be rounded up to the nearest whole number and 5 affordable units can be delivered on site.

- 5.10.8. For wholly residential schemes the total proposed Gross Internal Area (GIA) will be the GIA of the sum of all dwellings. Where flatted development is proposed the GIA will include all communal and circulation areas. For mixed use schemes, only the GIA of the proposed residential elements will be included.

- 5.10.9. For outline planning applications it may not be clear how many dwellings are proposed or the size of those dwellings. In these cases, it will be difficult to identify the vacant building credit. A Section 106 Agreement will ensure that the issue can be dealt with at Reserved Matters stage. All requests for vacant building credit will be included in the Planning Committee report.

5.11. Amendments to Planning Permission

- 5.11.1. When affordable housing is being provided and amendments to a planning permission increase the number of market houses/floorspace, the affordable housing requirement sought will be a percentage of the revised total number of homes across the application site.

- 5.11.2. Where amendments are sought to a planning permission that is being delivered in phases, the affordable housing requirement will be re-assessed and applied to the total number of units proposed in the remaining phases. If the number of dwellings is increased the Council will expect an increase in affordable housing in accordance with the requirements set out in this SPD.

6. Providing Affordable Housing

6.1. On-Site Provision

- 6.1.1. Consistent with national policy, the preferred approach in the borough is for the on-site provision of good quality affordable housing.
- 6.1.2. The tenure, phasing and housing mix may be re-considered to improve viability along with the possibility of providing grant or other forms of public subsidy. Only in exceptional circumstances where, a viability assessment shows that it is not feasible to deliver all, or part of the provision on-site and no grant subsidy is likely, will consideration be given to an equivalent financial contribution or the provision of free-serviced land transferred to a Registered Provider.

6.2. Public Subsidy

- 6.2.1. So that high quality, affordable homes can be delivered that meet identified needs, the Council expects developers to cover the cost of the affordable homes so that there is no need for public subsidy (including grants, public loans and public land). The expectation is that policy compliant schemes will be viable without the need for grant or other forms of subsidy.
- 6.2.2. Where only a proportion of the required number of affordable homes can be secured as part of a viable scheme, a review mechanism will be incorporated in the Section 106 agreement to ensure that if grant, subsidy or other investment become available at a later date a review of the affordable housing provision can be secured in accordance with a policy compliant scheme.

6.3. Design of Affordable Housing

- 6.3.1. To promote integrated communities, affordable housing should be designed to meet the requirements set out in the Council's adopted Residential Design Guidance SPD and be indistinguishable from market housing, in terms of the quality of the homes provided, the adequacy of internal living and the location and quality of outdoor amenity space and parking provision.
- 6.3.2. Homes should be designed in a way that makes them suitable to be taken on by Registered Providers, this includes meeting Nationally Described Space Standards. The Council would encourage a proportion of affordable homes to meet the M4(2) requirements of the Building Regulations 2015 to enable homes to be adaptable to users.
- 6.3.3. Applicants should discuss design requirements with the relevant Registered Provider or the Council's Housing Team especially in regard to the types of items used in the final homes to ensure it fits with the stock used by the provider such as heating systems, kitchen and bathroom types. This ensures the effective ongoing management of such homes.

6.4. Management

- 6.4.1. In general, affordable housing should be developed in conjunction with a Registered Provider, approved by Homes England. In exceptional cases, where an alternative provider is involved, they will need to be approved by the Council and will be expected to deliver affordable housing in the same way as a Registered Provider. Evidence of equivalent accountability, funding for the scheme and long-term management and maintenance arrangements will be required.
- 6.4.2. A Section 106 Agreement will be used to confirm the approach and to ensure, where appropriate, that the dwellings will remain available in perpetuity for those in housing need. There may be legitimate circumstances where affordable housing can be sold, for example, through right to buy or staircasing out of shared ownership. The provider will be expected to make every reasonable effort to recycle any subsidy for affordable housing in the borough.
- 6.4.3. In setting affordable rents, Registered Providers should be guided by the Local Housing Allowance (LHA) rates for the borough, as these rates will limit the amount of Housing Benefit available to households. Registered Providers are expected to use these rates as the upper limit in setting affordable rent levels. See the Council's current rates here www.castlepoint.gov.uk/local-housing-allowance/
- 6.4.4. The location, size and number of bedrooms, occupancy capacity and the tenure and phasing of affordable housing should be agreed at an early stage with the Council and the Registered Provider who will purchase and manage the affordable housing. So that the affordable housing meets all planning requirements, and the rents, service charges and maintenance are affordable to future residents.
- 6.4.5. Developers must ensure the affordable dwellings are transferred as completed units at a price agreed with the Registered Provider, reflecting what they can pay for the dwellings without the need for other public subsidy. The Council expects that delivery of affordable housing will be based upon the provision of free serviced land plus the cost of construction of the units and a reasonable margin based upon current recognised standards. Developers may seek to obtain a value for affordable homes that is higher than this but in so doing should not use the expectation of these higher values as a minimum threshold.
- 6.4.6. Appropriate occupancy and management arrangements should be put in place: a nominations agreement must be signed for affordable rented properties with the Registered Provider or other affordable housing provider so that the Council has 100% nomination rights on the first let of all affordable homes in the borough.
- 6.4.7. Where affordable rented properties are re-let, the Council will seek 100% nomination rights, provided that they can fill the property within 8 weeks from the date it is deemed to be in a suitable condition for re-let.
- 6.4.8. For all Intermediate Accommodation, the Section 106 agreement will normally require the Registered Provider to seek tenants that meet locality eligibility criteria for Castle Point both in the first instance, and during any re-sale / re-let. The Council will relax this requirement if a suitable tenant cannot be identified within 3 months of the property being completed / deemed to be in a suitable condition for re-sale / re-let.

6.5. First Homes Eligibility Criteria

6.5.1. In accordance with the national Planning Practice Guidance, particular eligibility criteria for people purchasing under the First Homes scheme is applied. Those who are eligible to purchase a First Home includes:

- A purchaser (or, if a joint purchase, all the purchasers) of a First Home should be a first-time buyer as defined in paragraph 6 of schedule 6ZA of the Finance Act 2003 for the purposes of Stamp Duty Relief for first-time buyers.
- Purchasers of First Homes, whether individuals, couples or group purchasers, should have a combined annual household income not exceeding £80,000 (or £90,000 in Greater London) in the tax year immediately preceding the year of purchase.
- A purchaser of a First Home should have a mortgage or home purchase plan (if required to comply with Islamic law) to fund a minimum of 50% of the discounted purchase price.

6.5.2. In addition to the above criteria the Council, through Section 106 Agreements will enforce a local connection test criteria to ensure that local people are given first opportunity for First Homes in the borough. This local eligibility criteria will apply for a maximum of three months from when a home is first marketed. If a suitable buyer has not reserved a home after three months, the eligibility criteria will revert to the nationally set criteria as set out in paragraph 6.5.1.

6.5.3. Local connections may include (but are not limited to) current residency, employment requirements, family connections or special circumstances such as caring responsibilities.

6.6. Delivery of Affordable Housing

6.6.1. The expectation is that no more than 80% of the market housing on the application site should be completed before all affordable housing has been constructed, transferred or leased to the Registered Provider.

6.6.2. Where land is being transferred it needs to be serviced and transferred before 40% of the market housing has been constructed. This will be set out in the Heads of Terms for the Section 106 Agreement.

6.6.3. Where affordable housing is within a phased scheme, the delivery of the affordable housing element of the development will be agreed within the Section 106 Agreement.

7. Financial Contribution in Lieu of Affordable Housing

7.1.1.A financial contribution will only be acceptable where:

- A policy compliant scheme does not generate a whole number. For example, if the percentage requirement generates 3.5 properties, 3 properties should be provided on site and either an additional property is provided to round up to the nearest whole number, or a contribution would be required equivalent to the 0.5; or
- To create a better quality development there are justifiable design and housing reasons for affordable housing to be located off-site. For example, if the site size would result in a design and/or type of homes that would not meet the housing requirements identified by the Council; or
- Due to the type of development, where a freehold cannot be transferred to a Registered Provider; or
- Provision of any affordable homes on site would make a development financially unviable but there is sufficient value from the development to make a financial contribution; or
- The Council agree that the need for affordable homes could be better served through the receipt of financial payment.

7.1.2.The percentage target will be applied to the total number of market dwellings to be provided on the application site, including any increase in market units on the application site resulting from the provision of a financial contribution. Unless the type of affordable housing provided on site indicates otherwise, it should be assumed that this will be for a 2 bedroom, 4 person terraced house: this is the most common type of affordable housing required in the borough.

7.1.3.The contribution will be based upon the average benchmark price to a Registered Provider for a home of that size and tenure (at the time of the application). The Council's Housing Services will provide this information.

7.1.4.All contributions will be based upon the formula below:

Developer contribution: $A = B \times C$

A: the affordable dwelling payment

B: the average price for an affordable dwelling (by size and tenure)

C: policy requirement number of units

For example if 0.1 of a two bed property is required, which a Registered Provider is paying £300,000 for, then the financial contribution would be £30,000 = 300,000 x 0.1.

7.1.5.This approach is considered appropriate and in line with national legislation. The cost is a generally accepted value between Registered Providers and developers because it is directly linked to the cost of providing equivalent affordable homes in the borough without including the cost of land which would be a disproportionate level of contribution for schemes which are struggling with viability. The costs are proportionate and can also be easily updated to take

account of any changes in market conditions so the approach will remain relevant in the long term.

7.2. Payment of Contributions

7.2.1. Timing of delivery is important and the structure of the Section 106 Agreement will reflect this.

The phasing of which payments are made will be agreed in a Section 106 Agreement, however all payments must be made by the date of completion of 80% of the market units on the site, or in the phase that is being completed. The date of completion will be defined by the building control certificate or registration for Council Tax, whichever is earliest.

7.2.2. This should be in accordance with a scheme of works to be submitted to the Council for approval.

Where a development is being constructed in phases, this will apply to each phase unless it is agreed that the provision of affordable homes can be addressed in subsequent phases. In the case of large financial contributions, it may be possible to negotiate phased payments, particularly where it helps to improve scheme viability.

7.2.3. So that a financial contribution keeps its value and reflects changes in inflation costs arising between the date of planning permission and payment, financial contributions will be adjusted in line with an index of inflation, usually the Royal Institute of Chartered Surveyors (RICS) and Building Cost Information Service (BCIS) indices. This will be set out in a Section 106 Agreement.

7.2.4. The contribution will be ring-fenced and - because affordable housing is not capable of being funded by the Community Infrastructure Levy - if necessary, pooled:

- to provide or increase the proportion of affordable housing in the borough;
- alter the tenure of affordable homes to help deliver affordable housing; or
- make changes to the existing housing stock to meet an identified housing need; or
- adjust tenures to meet the need of the borough

7.2.5. In some cases, contributions may be sought to enable the provision of affordable housing - e.g. to provide infrastructure, remediation or re-provision of open space to allow the release of a suitable site for affordable housing where this will be the most cost-effective solution and additional affordable homes will be provided.

7.2.6. All contributions will be allocated within 10 years of receipt of the funding. This is considered to be a reasonable timescale for the delivery of affordable housing. However, where a more strategic or complex intervention is needed, or resources need to be pooled from several large-scale developments, then a longer time period may be sought (up to a maximum of 15 years). If the contribution is not spent at the end of the agreed contribution period, if requested by the payee, it will be returned.

7.2.7. Where a contribution is required, in all cases the Council will include a guarantor provision in the Section 106 Agreement. As a Section 106 Agreement is entered into, it ensures that a development is acceptable in planning terms, a guarantee that payments will be made will provide that assurance. Without guarantees, the Council cannot guarantee that a Section 106 Agreement will be signed and delay the issue of the planning permission.

7.2.8. How the guarantee is provided will be dealt with on a case-by-case basis but could include parent company guarantees, a company director's guarantee or a bond. Please note that where a Section 106 Agreement includes other financial obligations on the developer, the guarantee must also include those obligations.

8. Procedure for Planning Applications and Section 106 Agreements

8.1. Pre-Application and Application Negotiations

8.1.1. Developers should discuss their proposals with the Council before submitting a planning application. Pre-application discussions enable developers to positively discuss appropriate provision and justify their approach. Pre-application discussions will highlight the likely impact of development, the amount and type of affordable housing required, and level of other developer contributions likely to be sought. This service is intended to help speed up the development process and avoid unacceptable proposals.

8.1.2. For pre-application discussions to be productive developers need to ensure that as much information as possible is supplied. This should include, where known, information on:

- Total amount of housing proposed;
- Total amount of housing proposed in terms of units and habitable rooms;
- Amount of affordable rented and affordable home ownership housing proposed;
- Number of bedrooms, floor areas and number of people able to occupy affordable rented and intermediate housing units;
- For each tenure, the numbers of dwellings of different sizes (i.e. number of bedrooms);
- Phasing of delivery and the mechanism for handover of affordable homes;
- Mechanisms for ensuring adequate management of the properties.

8.1.3. This information will form the basis of the draft Heads of Terms.

8.1.4. If pre-application discussions are not sought, affordable housing requirements will be identified when a planning application is submitted. To reflect current government thinking the Council will expect all relevant applications to submit draft Heads of Terms containing the information identified in paragraph 8.1.2 and proof of title. The applicants' solicitor's details should also be provided.

8.1.5. At outline planning application stage it may not be clear how many dwellings are proposed, and potentially this number could change at reserved matters stage. Where the housing mix has not been determined in an outline planning application, the Council will append a planning condition which stipulates that the details of the housing mix are submitted as part of the reserved matters application and should be in accordance with the Council's latest SHMA or based on discussions with the Council's Housing Team as set out in section 5.5 of this document.

8.1.6. When submitting an application or through the pre-application process, the applicant should ensure that as much information is submitted in terms of affordable housing to inform a Heads of Terms. Applicants should check the Council's validation checklist to ensure that the correct information is submitted.

8.2. Section 106 Agreements

8.2.1. Provision of affordable housing will be secured by Section 106 Agreement. This is a deed entered into by the Council and the landowner and/or applicant which outlines the details of a planning obligation, such as affordable housing. It is made under the provisions of Section 106 of the Town and Country Planning Act 1990.

8.2.2. Planning obligations will be used to secure the following elements related to the provision of affordable housing, *inter alia*:

- The number of units;
- Eligibility criteria;
- Nomination rights;
- The type of units;
- Tenure of units;
- Phasing of units;
- Location of units;
- Parking provision;
- Commuted sums in lieu of provision (where appropriate);
- Guarantor provisions;
- A late-stage viability review, if required.

8.2.3. Triggers will be used to enable delivery of affordable housing or a financial contribution. Appropriate clauses will be included to secure interest for late payment from the relevant trigger point in the agreement. In exceptional cases, the original Registered Provider may be unable to fulfil their agreement to deliver the housing. To prevent the housing being lost from the affordable stock a standard clause will be used to require the developer to secure a second provider.

8.3. Review Mechanism

8.3.1. To maximise affordable housing delivery in the longer term and acknowledging the potential for changes in values in the housing market, the Council supports the use of review mechanisms. Where the agreed affordable housing provision is below the 35% required through this SPD, the Council will require a review mechanism.

8.3.2. Review mechanisms provide a reappraisal mechanism to ensure that maximum public benefit is secured over the period of a development and can encourage the build out of schemes. These mechanisms recognise the need to maximise affordable housing provision and address the economic uncertainties which may arise over the lifetime of a development proposal. They allow increases in Section 106 contributions to reflect changes in the value of a development from the date of planning permission to specific stages of the development programme. Such approaches are intended to support effective and equitable implementation planning policy while also providing flexibility to address viability concerns such as those arising from market uncertainty.

8.3.3. Viability tested schemes should be subject to late reviews which will be applied once 75 per cent of homes are sold, or at a point agreed by the Council. The benefit of this approach is that the review can be based on values achieved and costs incurred. The review takes place prior to sale

of the whole development to ensure that the review and any additional contribution arising from this are enforceable. The outcome of this review will typically be a financial contribution towards off-site affordable housing provision.

9. Monitoring and review

9.1.1. The delivery of affordable housing through new development will be monitored annually in the Council's Infrastructure Funding Statement and also in the Council's Authority Monitoring Report (AMR). It will enable the Council to identify and monitor the number of developments that meet identified standards across the borough.

9.1.2. A review of this SPD will be considered if:

- The AMR identifies that this SPD is not effective in delivering the identified level of affordable housing;
- There are significant changes to the local evidence base which indicates that the level of affordable housing set out in this SPD is undeliverable;
- There is a significant change in national planning guidance; or
- This SPD is insufficiently effective in enabling affordable housing.



Castle Point Borough Council

**Developers Contributions Guidance
Supplementary Planning Document (SPD)**

Healthcare Facilities

DATE

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1. Introduction

- 1.1.1. This document specifically sets out the types of developer contributions or planning obligations required for health and social care. It will also highlight the process for how contributions will be sought and delivered.
- 1.1.2. This document should be read alongside the **Developers Contributions Guide Cover Note**, which sets out in greater detail the process the Council expects planning obligations to be sought and implemented.

1.2. Justification

- 1.2.1. The National Planning Policy Framework (NPPF) seeks to promote healthy and safe communities by enabling and supporting healthy lifestyles, especially where it can address local health and well-being needs.
- 1.2.2. An important element of enabling and supporting healthy communities is the provision and protection of healthcare facilities and ensuring that communities have good access to quality healthcare facilities.
- 1.2.3. The provision and commissioning of primary and secondary healthcare services is the responsibility of the Clinical Commissioning Groups (CCG) in liaison with NHS England and NHS Improvement. The Castle Point and Rochford CCG maintain a strategy for the delivery of high-quality healthcare services within the area. Hospital provision is outside of the Borough, with principal locations in Basildon, Chelmsford and Southend. These hospitals are part of the Mid & South Essex University Hospitals Group offering a breadth of acute and specialist services.
- 1.2.4. The Mid & South Essex Sustainability & Transformation Partnership (STP) has indicated that they will seek to deliver capacity improvements to meet existing and future needs within its area through improvements to existing facilities where possible. There may also be a requirement for additional infrastructure to accommodate new modes of care as set out within the NHS Long-Term Plan (2019).
- 1.2.5. New homes will increase pressure of existing provision, creating additional demand for healthcare services. As appropriate, new development proposals will therefore be asked for contributions towards the provision of healthcare facilities.

2. Possible Section 106 Obligations

- 2.1.1. For sites that are delivering 10 or more units contributions will be sought towards new healthcare infrastructure in the form of Section 106 agreements.
- 2.1.2. Healthcare provision may be required to be provided on-site or off-site. In both scenarios the NHS will identify the type of infrastructure required based on the level of growth through the use of the NHS Estates Locality Plan for Castle Point, which is regularly updated.
- 2.1.3. A contribution of £496 per dwelling will be required. This figure is correct from 2022 and is based on a BCIS costs study updated to 01/01/2022 and rebased for Essex. The cost

per dwelling will be regularly kept up to date by the NHS, therefore the cost provided by the NHS at the time of the application will be used when entering into a Section 106 agreement.

2.2. On-Site Healthcare Provision

2.2.1. Where the NHS has identified a need for a new healthcare facility on site, the developer will be expected to provide land and build the facility. There are two options in how the facility can be delivered:

- The developer can rent the facility back to the service provider on a 20-year lease; Or
- The developer can sell the facility to a third party provider who will lease the facility to the NHS.

2.2.2. In both instances the Section 106 contribution will be calculated based on the number of dwellings as set out in paragraph 2.1.3. This contribution figure will be discounted from the rent of the facility during the first 20 years. Rent after the first 20 years will return to market values.

2.3. Off-Site Healthcare Provision

2.3.1. Where development does not generate a need for new healthcare facility on-site, contributions will be sought in accordance with paragraph 2.1.3 for off-site provision. This could include improvements to existing healthcare facilities within the vicinity of the development.

2.4. Pooled Section 106 Agreements

2.4.1. Where a small number of large sites generate the need for a new primary healthcare facility or service, such as a new GP surgery and other new healthcare infrastructure and services, the cost of this provision will be secured through pooled Section 106 agreements and the location of the facility identified through the master planning and planning application process.

2.5. Community Infrastructure Levy (CIL)

2.5.1. Contributions to CIL will help deliver improvements to healthcare infrastructure as per the actions set out in the NHS Estates Plan for Castle Point where those actions address the impacts of any growth arising in the borough.

3. Timing/Trigger for payment or provision of works

3.1.1. The timing for the provision of such healthcare facilities or financial mitigation will be considered on a case by case basis, with the specific requirements being set out within any Section 106 Agreement. It is likely to be linked to phases of a development, with facilities being required either upon a certain level of units being completed, or when a certain threshold of occupation at a development is reached.



Castle Point Borough Council

**Developers Contributions Guidance
Supplementary Planning Document (SPD)**

**Highways, Travel, Education, Libraries, Flooding
and Drainage Infrastructure**

DATE

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1. Introduction

1.1. Purpose of this Document

1.1.1. This document specifically sets out the types of developer contributions or planning obligations required for transport, education and libraries. It will also highlight the process for how contributions will be sought and delivered.

1.1.2. This document should be read alongside the **Developers Contributions Guide Cover Note**, which sets out in greater detail the process the Council expects planning obligations to be sought and implemented.

1.2. Essex County Council (ECC)

1.2.1. Castle Point Borough is a two-tier authority area, with Essex County Council (ECC) providing a range of services and infrastructure including (but not limited to) highways and transportation, education, minerals and waste planning, social services, libraries, and surface water management at a county-wide level.

1.2.2. As a service and infrastructure provider ECC also has its own thresholds and processes for planning obligations. As stated in the covering document, developers should read this document alongside the ECC Developer's Guide to Infrastructure Contributions found here www.essex.gov.uk/planning-advice-guidance/guidance-for-developers

2. Planning Obligations

2.1.1. Planning obligations may be required for the following service areas:

- Early years and childcare
- Schools
- School transport and sustainable travel
- Employment and Skills Plans
- Highways and transportation
- Sustainable Travel Planning
- Passenger Transport
- Public Rights of Way
- Waste Management
- Libraries
- Flood and Water Management and Sustainable Drainage Systems (SuDS)

2.1.2. Planning obligations for infrastructure that is provided for by ECC will be sought in accordance with ECC's Developer's Guide to Infrastructure Contributions.

2.1.3. As the Lead Local Flood Authority ECC have created [The Sustainable Drainage Systems Design Guide for Essex](#). This resource has in depth guidance on design, evidence gathering, maintenance and what ECC expect from proposals. This should be read alongside this document.



Castle Point Borough Council

**Developers Contributions Guidance
Supplementary Planning Document (SPD)**

Playing Pitches and Indoor Built Facilities

DATE

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1. Introduction

1.1. Purpose of this Document

1.1.1. This document specifically sets out the types of developer contributions or planning obligations required for playing pitches and indoor built sporting facilities. It will also highlight the process for how contributions will be sought and delivered.

1.1.2. This document should be read alongside the **Developers Contributions Guide Covering Note**, which sets out in greater detail the process the Council expects planning obligations to be sought and implemented.

1.2. Policy Context

1.2.1. The National Planning Policy Framework (NPPF) is clear that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities.

1.2.2. The NPPF highlights the need for up-to-date assessments to calculate the quantitative and qualitative deficits or surpluses. This has been completed and further detail of those assessments can be found under heading 1.3. These evidence base documents identify where there are opportunities for new or improved provision of sporting facilities.

1.2.3. The NPPF specifies that existing sports or recreational buildings or land, including playing fields should not be built on unless:

- An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- The loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- The development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

1.3. Playing Pitch Strategy and Indoor Built Facilities Needs Assessment

1.3.1. A [Playing Pitch Strategy \(PPS\)](#) and an [Indoor Built Facilities Needs Assessment](#) were completed in 2018. Both documents have a supporting action plan for the relevant sports active in the borough.

1.3.2. The PPS and action plan highlights the current supply and demand of outdoor sports and indicates actions for the sport facilities, such as providing more facilities, enhancing existing facilities or protecting existing facilities. An assessment was undertaken in 2022 with the support of the PPS Implementation Group to help ensure that the actions within the 2018 action plan remains up to date. **A 2022 update was therefore prepared to the 2018 report and both reports were endorsed by the Council's Cabinet in 2022.**

1.3.3. Similarly, the Indoor Built Facilities Needs Assessment focuses on supply and demand for indoor sports and provides an action plan to ensure facilities are provided, protected

or enhanced. An assessment of changes to supply to squash and indoor bowls were identified by the Council in 2022, these were included as a 2022 update to the 2018 report and both reports were **endorsed by the Council's Cabinet in 2022.**

2. Section 106 Obligations

2.1. Calculating Contributions

2.1.1. For development sites that are delivering 10 or more residential units contributions will be sought towards new indoor and outdoor sports infrastructure in the form of Section 106 Agreements.

2.1.2. Sport England have a Playing Pitch Calculator and a Sport Facility Calculator. These tools will be used to clarify the contributions that will be sought from development. Based on the net number of dwellings that are being built these tools will calculate the increase in population and generate the costs associated with growth for the various sports.

2.1.3. Sport facility provision may be required to be provided on-site or off-site. In both scenarios the Council will identify the type of infrastructure required based on the level of growth through the use of the Playing Pitch Calculator and Sport Facility Calculator. This calculator takes the population growth figures which is estimated at 2.4 or 2.5 persons per household (dependant on the housing mix on the development site) multiplied by the number of new homes that will be built. For example, for a flatted scheme of 10 one or two bedroom flats the following would be applied:

2.4 persons x 10 new units = population growth of 24 people

2.1.4. For a residential scheme providing larger family homes a 2.5 person house assumption may be used within the above formula.

2.2. On-Site Provision

Where development is large enough to justify on site provision of sporting facilities this will be sought through a Section 106 Agreement. This requirement should be discussed with the Council and may vary from the outputs of the Playing Pitch Calculator and Sport Facility Calculator.

2.2.1. The size and type of facilities should be agreed with the Council in consultation with Sport England and the national governing body for the particular sport the facility is providing for.

2.3. Off-Site Provision

2.3.1. Where development does not generate a need for new sporting provision on-site, contributions will be sought in accordance with section 2.1 for off-site provision. This could include improvements to existing sporting facilities.

2.4. Pooled Section 106 Agreements

2.4.1. Where a small number of large sites generate the need for a new sporting facility, such as a new 3G Artificial Grass Pitch, the cost of this provision will be secured through pooled Section 106 Agreements and the location of the facility identified through the master planning and planning application process.

2.5. Planning Applications for New or Improved Facilities

2.5.1. Where an applicant submits a planning application for a new sporting facility or improvements to existing facilities, the Council will where appropriate require a community use agreement, as set out in section 2.6.

2.5.2. The applicant should engage with Sport England and the relevant national governing body of the particular sport that the facility is providing for.

2.5.3. New and/or enhanced sporting facilities will be expected to accord with Sport England and the relevant sport national governing body design guidance to ensure that they are fit for purpose.

2.6. Community Use Agreements

2.6.1. As identified in the Council's Playing Pitch Strategy and Indoor Built Facilities Needs assessments the use of community use agreements can be beneficial to increase the participation levels of sporting facilities by allowing the community to use the facilities. This widens the overall benefit of a new or improved facility.

2.6.2. Where appropriate the Council will require community use agreements on development of new or improved sporting facilities. This will be obtained through a Section 106 Agreement or planning condition.

2.7. Compensation

2.7.1. Where development results in a loss of a playing pitch or indoor sport facility, compensatory measures will be sought in either the form of financial contributions or reprovision of the facility loss in accordance with the NPPF. The loss should be replaced by equivalent or better provision in terms of quantity and quality.

2.7.2. Compensatory measures will be sought in addition to financial contributions sought in accordance with the level of growth anticipated because of the development, as set out in section 2.1.

2.7.3. Compensatory measures will need to be agreed with Sport England. In order to achieve the best outcome, this should be discussed with Sport England and the Council at the pre-application stage.

3. Community Infrastructure Levy (CIL)

3.1.1. Some sports such as netball, athletics or various indoor sports currently have no algorithm to accurately identify the cost required for development based on the population growth predicted through that development.

3.1.2. Where appropriate, and where there are no specific costed schemes for improvements to playing pitches or indoor sports facilities, CIL contributions will be used where growth is likely to lead to increased need for sporting facilities. The PPS and indoor built facility needs action plans will provide the basis of how CIL contributions will be used, this will be in consultation with Sport England and the sporting national governing body where relevant.

4. Timing/Trigger for Payment or Provision of Works

4.1.1. The timing for the provision or payment of sporting facilities will be considered on a case-by-case basis, with the specific requirements being set out within any Section 106 Agreement. It is likely to be linked to phases of a development, with facilities being required either upon a certain level of units being completed, or when a certain threshold of occupation at a development is reached.

4.1.2. Where compensatory measures are required this will usually need to be implemented and operational before any development starts on the existing facility site. This will be set out in the Section 106 Agreement.