



Castle Point Borough Council

**Developers Contributions Guidance
Supplementary Planning Document (SPD)
Cover Document
March 2023**

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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
 - Emergency service 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?

- 1.2.1 As a Supplementary Planning Document (SPD) this document has been prepared in accordance with relevant planning legislation. Engagement was undertaken on a draft version of this guidance from November 2022 to January 2023. Amendments were made to this document as a result of consultation comments and this document was ultimately approved by the Council in March 2023.

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, childcare and school transport,
- Health,
- Emergency service facilities
- 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. Development proposals will be required to be supported by a Transport Statement/Assessment as set out in Section 5.5.2 of the ECC Developers' Guide to Infrastructure Contributions (2020) or successor document. 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.
- 2.2.9. The NPPF requires the use of a Sequential and Exceptions test where necessary. Where land with existing flood risk is developed following an initial sequential test, the developer must demonstrate that the development will provide wider sustainability benefits to the community that outweigh flood risk. One example of how a developer could demonstrate that the wider sustainability benefits to the community outweigh delivery on a site with existing flood risk, would be to deliver an overall reduction in flood risk to the wider community through the provision of, or financial contribution to, flood risk management infrastructure.
- 2.2.10. In some instances it may be appropriate for development to contribute towards flood defences where projects have been identified, such as within the Thames Estuary 2100 Plan. The Environment Agency has the Flood and Coastal Resilience Partnership Funding Defra Policy Statement, which applies to such infrastructure that would seek grant aid to help obtain additional funding where shortfalls have been identified. Developer contributions may be sought in appropriate circumstances to help funding of such initiatives.

Education and Childcare

- 2.2.11. 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.
- 2.2.12. As of 2022 Essex County Council assess all planning applications of 20 or more dwellings with regards to the anticipated pupil and early years and childcare places generated, checks against current capacity of the relevant school or setting and the potential solution is identified, which may be a contribution towards expansion or the provision of serviced land and contribution towards a new school, nursery or pre-school. 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

- 2.2.13. 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.
- 2.2.14. In promoting healthy lifestyles the planning system should provide the social facilities and services the community needs. It should take into account and support the delivery of local strategies to improve health and social wellbeing for all sections of the community, and ensure an integrated approach to considering the location of housing and community facilities and services.

- 2.2.15. 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

- 2.2.16. 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.
- 2.2.17. 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.
- 2.2.18. 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

- 2.2.19. 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.
- 2.2.20. 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

- 2.2.21. 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.
- 2.2.22. In accordance with the NPPF, the Council will follow the biodiversity mitigation hierarchy of Avoidance; Minimisation, Rehabilitation/ Restoration and Offsetting. Any residual impacts will need to be compensated for on-site or off-site with long term management/stewardship secured, and appropriate enhancements included to ensure biodiversity net gain for at least 30 years via obligations/ conservation covenant.

- 2.2.23. 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.
- 2.2.24. 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

- 2.2.25. 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.
- 2.2.26. 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.
- 2.2.27. 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.
- 2.2.28. Blue and Green Infrastructure therefore promotes the objectives of the NPPF and may be necessary to make a development acceptable in planning terms.

Heritage

- 2.2.29. 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.
- 2.2.30. 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 and the contribution made by their setting there are certain criteria that needs to be met to ensure that harm is first of all avoided and then mitigated.

- 2.2.31. 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

- 2.2.32. 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. National guidance also identifies that affordable housing should meet the needs of groups with different needs, such as older persons or those with disabilities and specialist needs.
- 2.2.33. 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.
- 2.2.34. 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 – to be added) with an effective date of (DATE – to be added). 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 – to be added).

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 in 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.
- 2.5.2. Essex County Council is the Minerals and Waste Authority for Castle Point Borough and is responsible for the production of mineral and waste local plans. The Development Plan therefore also comprises of the Essex Minerals Local Plan 2014 and the Essex and Southend-on-Sea Waste Local Plan 2017. These plans set out the policy framework within which minerals and waste planning applications are assessed. They also contain policies which safeguard known mineral bearing land from sterilisation, and existing, permitted and allocated mineral and waste infrastructure from proximal development which may compromise their operation.

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, the East of England Ambulance Service NHS Trust 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 and other major development, 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. It should be noted that Essex County Council (ECC) implements its own thresholds for planning obligations and therefore regard should be had to Table 2 – Developer Contributions Reference Table in the ECC Developers' Guide to Infrastructure Contributions in determining thresholds for specific infrastructure types.
- 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 this 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 and Section 6 of that document which provides further advice on key infrastructure issues.

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 unless otherwise agreed by the Council:
- 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.
- 4.4.3. Developers should refer to the Essex County Council's (ECC) Developer's Guide to Infrastructure Contributions for bond requirements specific to ECC.

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.Planning Obligations

- 5.1.1. The Council's legal service reserves the right to a fee for the preparation of planning obligations, this is set out in the Council's schedule of fees and charges.

5.2.Monitoring Fees

- 5.2.1. Monitoring of planning obligations will be undertaken by the Council to ensure that all obligations entered into are complied with by both the developer and the Council.
- 5.2.2. The Council will seek a charge towards the monitoring and administration of the relevant obligations in a Section 106 Agreement, this will cover the following:
- Implementing the administration of the planning obligations in the monitoring system;
 - The monitoring of trigger points and development progress;
 - Liaison between the Council and infrastructure providers in respect of financial contributions requested and held for such providers;
 - Dealing with the discharge of planning obligations;
 - Reporting on the operation and outcome of developer contributions.

- 5.2.3. The charge will usually be charged at a rate per obligation and will be payable on commencement of the development. All monitoring fees will be subject to indexation.
- 5.2.4. A fee of £576.45 will usually be charged per obligation. This fee has been calculated at an officer cost of £27.45 and hour. This has been calculated based on the estimated time that the Monitoring Officer and other staff will spend on monitoring, identifying and notification of triggers as well as following up with the developer and discharging the obligation.
- 5.2.5. Larger sites that are delivered over multiple phases are more complex by nature and as they usually cover a longer time period they will take more time to monitor. The Council therefore may require a higher amount of monitoring fees than that set out in paragraph 5.2.4. This will be dealt with on a case-by-case basis.
- 5.2.6. Additionally, where there is a requirement for an annual assessment of planning obligations such as biodiversity monitoring, there may be an additional annual monitoring fee set out in the relevant planning obligation.

5.3. Affordable Housing Monitoring Fees

- 5.3.1. A monitoring fee will also be charged per affordable housing unit, this will be at a rate of £100 per affordable housing unit.
- 5.3.2. The fee includes monitoring, conducted on a plot-by-plot basis, of the completion and initial occupation of affordable dwellings.
- 5.3.3. In respect of affordable housing for rent, monitoring this obligation includes the time and costs associated with entering into nomination agreements with Registered Providers, this excludes the cost of the Council's legal service team.

5.4. Essex County Council Monitoring Fees

- 5.4.1. Essex County Council charge separate monitoring fees for Section 106 obligations that they are responsible for such as highways and education. Further information on the fees charged can be found at Essex Developers Guide to Infrastructure Contributions on the link below:

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

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: Indicative 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 and green infrastructure	
<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 Infrastructure projects within the Thames Estuary 2100 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, bridleway and walking network infrastructure, and connections into wider network 	<ul style="list-style-type: none"> Strategic Transport Projects Strategic Sustainable Transport Projects

<ul style="list-style-type: none"> • Other measures as identified as necessary through a site level Transport Assessment 	
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 • Emergency service facilities 	<ul style="list-style-type: none"> • Emergency Service Estate Improvements