

# supplementary planning document 2

## planning obligations: a guide to section 106 and developer contributions 2014

local development framework  
delivering regeneration and growth





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section one



# 1. Introduction

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## The Status of this Guide

- 1.1 This guide is a Supplementary Planning Document (SPD) and is part of the Southend on Sea Local Development Framework (LDF) (also known as the Development Plan or Local Plan). The LDF is a set of development plan documents (DPDs) and supplementary planning documents (SPDs) that together form the planning policy framework for the town. Supplementary Planning Documents, which are subject to a public consultation process, provide guidance and further clarification of planning policy that is included in DPDs, which go through a formal statutory examination in public conducted by an independent planning inspector prior to adoption.

## The Statutory Basis of Section 106 Agreements

- 1.2 Planning obligations are private agreements negotiated, usually in the context of planning applications, between local planning authorities and those with an interest in a piece of land (or "developers"). Planning obligations can be secured through a bilateral Section 106 (S106) Agreement or Section 106 Unilateral Undertaking from a developer.
- 1.3 The statutory basis allowing anyone interested in land in the area of a local planning authority to enter into planning obligations is Section 106 of The Town and Country Planning Act (TCPA) 1990 (as amended by Section 12 of the Planning and Compensation Act 1991). Further legislation is set out in Regulations 122 and 123 of the Community Infrastructure (CIL) Regulations 2010 (as amended).
- 1.4 In dealing with planning applications, local planning authorities consider each on its merits and reach a decision based on whether the application accords with the relevant development plan, unless material considerations indicate otherwise. Where applications do not meet these requirements, they may be refused. However, in some instances, it may be possible to make acceptable development proposals which might otherwise be unacceptable in planning terms, through the use of planning conditions (see NPPF paragraph 176 and 203) or, where this is not possible, through planning obligations.

Section 106 (1) of the TCPA allows a planning obligation to:

- a) restrict development or use of the land in any specified way;
- b) require specified operations or activities to be carried out in, on, under or over the land;
- c) require the land to be used in any specified way; or require a sum or sums to be paid to the authority on a specified date or dates or periodically.

The CIL Regulations 2010 came into force on 6 April 2010. Part 11 Section 122 (2) of the Regulations set out the statutory tests for planning obligations, namely that they should only be sought where they are:

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

For example, planning obligations might be used to prescribe the nature of a development (e.g. by requiring that a given proportion of housing is affordable); or to secure a contribution from a developer to compensate for loss or damage created by a development (e.g. loss of open space); or to mitigate a development's impact (e.g. to pay for or implement changes to the highway required to address traffic/access issues arising from the development).

- 1.5 This SPD adheres to a fundamental principle that planning permission may not be bought or sold and that planning obligations must only be sought to make acceptable development which would otherwise be unacceptable in planning terms. The outcome of the use of planning obligations as set out in the statutory tests should be that the proposed development concerned is made to accord with published local and national planning policies. Planning obligations affect all those with an interest in the land being developed and will continue to affect subsequent owners of the property if the obligations are still capable of being complied with or carried out.

## National Planning Policy Framework

- 1.6 The National Planning Policy Framework (NPPF), published 27 March 2012, sets out the government's planning policies in England and how these are expected to be applied. Paragraphs 203 to 205 of the NPPF relate to planning obligations. The NPPF is supported by on-line National Planning Practice Guidance (NPPG) launched in 2013, which also includes guidance on planning obligations.

Paragraph 203 of the NPPF requires local authorities to *"consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations"*. Paragraph 204 reiterates the statutory tests for planning obligations, as set out in the CIL Regulations, setting them out as policy tests. Paragraph 205 states the following:

*"Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planning development being stalled."*



1.7 The NPPF clearly states in paragraph 14 that there should be a presumption in favour of sustainable development and, as such, the principal objective of the planning system is to deliver sustainable development. So as not to prevent sustainable development, policies for seeking obligations must be grounded in an understanding of development viability. Local authorities must be willing to negotiate on planning obligations based on scheme viability evidence and specific site circumstances. Further details in respect of viability and deliverability can be found in paragraph 173 of the NPPF.

1.8 The Community Infrastructure Levy (CIL) came into force in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their areas to ensure that the costs incurred in providing infrastructure to support development and growth of an area can be funded by owners or developers of land.

The introduction of the CIL Regulations means that upon adoption of a local CIL, or by April 2015, whichever is sooner, planning obligations are to be scaled back to cover provision of affordable housing and site specific measures to mitigate the impact of development only. This means that local authorities will no longer be able to pool financial S106 contributions to fund infrastructure from more than five developments. The Council intends to implement a CIL for Southend on Sea concurrently with the adoption of this revised SPD. Obligations contained in the Council's previous Planning Obligations SPD (SPD2, adopted in November 2010) that involved pooling of funds, such as education, cycle routes and public transport, will cease on adoption of a CIL Charging Schedule, as these matters will be covered by CIL.

1.9 In accordance with the NPPF and NPPG, Southend Borough Council's development plan documents, including this SPD, set out the Council's policy and approach in seeking planning obligations. It is likely that this SPD will need to be adapted as other Local Development Documents emerge to reflect any new national and local policies relating to planning obligations.

## Local Policy Framework

1.10 All Council activities are guided by, and should be consistent with, the objectives and priorities set out in a Corporate Plan and a Community Strategy. Southend Borough Council's Corporate Plan 2013 aims to create a safer, cleaner, healthier and more prosperous town with excellent Council services. The Sustainable Community Strategy 2007-2017 provides an agenda to improve the quality of life of the population of Southend. The Community Strategy aims to create a thriving regional centre which celebrates and enriches our community ensuring that the Borough develops in a sustainable manner. The ambitions are as follows:

- a) To provide visionary leadership and enable inclusive, active and effective participation by individuals and organisations;

- b) To create a safer community for all;
- c) To be recognised as the cultural capital of the East of England;
- d) To create a thriving and sustainable local economy, which extends opportunity for local residents and promotes prosperity throughout the borough;
- e) To continue improving outcomes for all children and young people;
- f) To protect the borough for current and future generations and to remain an attractive place for residents, businesses and visitors;
- g) To provide opportunities, support and information to people of all ages and abilities to enable them to take responsibility for their health and choose a healthy lifestyle;
- h) To be a borough with decent housing, in safe and attractive residential areas, that meets the needs of those who want to live here;
- i) To be a borough that has a safer, more accessible, and affordable means of getting about, which supports the potential for regeneration and growth.

1.11 These themes provide a long term framework for the town and developer contributions will be essential to their implementation and delivery. Planning obligations will, therefore, be required to ensure that development proposals are proactively assisting the community in its efforts to achieve the priorities and targets outlined in the Community Strategy.

1.12 The Core Strategy Development Plan Document (adopted December 2007) sets out a clear aim and set of strategic objectives for the spatial planning policies that will guide development in the Borough to 2021. Improving the quality of the built and natural environment and minimising the impact on climate change are key to achieving national and local priorities in Southend. The aim of the Core Strategy is as follows:

“To secure a major refocus of function and the long term sustainability of Southend as a significant urban area which serves local people and the Thames Gateway.

To do this there is a need to release the potential of Southend’s land and buildings to achieve measurable improvements in the town’s economic prosperity, transportation networks, infrastructure and facilities; and the quality of life for all its citizens. This will include safeguarding and improving the standards of the town’s amenities and improving the quality of the natural and built environment.”

1.13 The Core Strategy aims to deliver 13,000 net additional jobs (distributed as outlined in Core Strategy policy CP1) and 6,500 net additional dwellings (distributed as outlined in Core Strategy policy CP8) in the period 2001 to 2021 within Southend. This is in addition to aiming to secure sustainable regeneration and growth focused on the urban area and securing a ‘step change’ in the provision of transport infrastructure as an essential concomitant to new development. Greater levels of infrastructure will be required to support the growth proposed in the Borough and developer contributions through S106 and CIL will play

an important role in securing appropriate levels of required services, facilities, and infrastructure to support growth.

- 1.14 The current local policy basis for planning obligations is found in Core Strategy DPD policy KP3 'Implementation and Resources', which states that the Council will:

"require developers to enter into planning obligations to carry out works or contribute towards the provision of infrastructure and transportation measures required as a consequence of the development proposed. This includes provisions such as;

- a) roads , sewers, servicing facilities and car parking,
- b) improvements to cycling, walking and passenger transport facilities and services,
- c) off-site flood protection or mitigation measures, including sustainable drainage systems (SUDS),
- d) affordable housing,
- e) educational facilities,
- f) open space, 'green grid', recreational, sport or other community development and environmental enhancements, including the provision of public art where appropriate,
- g) any other works, measures or actions required as a consequence of the proposed development, and
- h) on-going maintenance requirements".

- 1.15 More detailed guidance is provided in Policies CP3 (Transport and Accessibility), Policy CP6 (Community Infrastructure), Policy CP7 (Sport, Recreation and Green Space) and Policy CP8 (Dwelling Provision). Policy CP8 'Dwelling Provision' makes specific reference to the provision of affordable housing (including key worker housing). It states that residential development will be expected to contribute to local housing needs; including special needs provision and sustainable use of land and resources. The policy describes the specific provision required by developers for various development thresholds and site areas.

- 1.16 The Southend on Sea Borough Local Plan (BLP), adopted in 1994, also provides policy guidance relating to the contribution of new and additional developments towards infrastructure, facilities and services. The following saved policies are relevant:

- a) Policy C11 – encourages the provision of new works of public art as part of a development;
- b) Policy L5 – encourages the provision of new entertainment, cultural and arts facilities in support of local arts organisations;
- c) Policy R1 – encourages the provision of additional outdoor sports facilities, both public and private;
- d) Policy R2 – encourages the provision of additional indoor sports facilities, both public and private;
- e) Policy R5 – encourages the provision of new open space facilities; and

- f) Policy U1 – states that in assessing development proposals the Borough Council will have regard to the need for additional infrastructure provision, such as roads, sewerage, schools and community facilities, and that applicants may need to enter into a legal agreement to ensure the provision of such facilities to enable the development to proceed.

1.17 Southend Borough Council, together with 281 other local authorities to date, has also signed up to The Nottingham Declaration on Climate Change, which requires local authorities to work with the community to develop an action plan to tackle climate change at a local level. By signing the declaration, the Borough Council committed itself to move towards environmental sustainability by cutting carbon emissions. In accordance with the commitments of the Declaration the Council will encourage developers to reduce their environmental impact.

## Consultation

1.18 This document is a revision, in the context of CIL, of the Council's previous Planning Obligations SPD (SPD2, adopted in November 2010), which was the subject of a 6 week public consultation from 9 November to 21 December 2009.

1.19 Previous consultations relating to this SPD included a Sustainability Appraisal as a supporting document. It is considered that neither the minor changes to this SPD in light of CIL or the legislation relating to Sustainability Appraisals require a revision to this supporting document.

## The Strategic Importance of Planning Obligations

1.20 Planning obligations will be used to ensure that the strategic objectives of the Core Strategy are met thus delivering sustainable development in Southend on Sea. Development often creates the need for additional infrastructure, services and facilities. If these are not provided, there could be negative implications for local amenity and the environment. Whilst CIL will provide funding for Borough wide infrastructure that generally supports growth, planning obligations will continue to provide the mechanism through which the direct impact of development is mitigated by the developer on a site specific basis.

## Purpose of this Supplementary Planning Document

1.21 The purpose of this document is to set out Southend Borough Council's approach and priorities in respect of seeking planning obligations when considering planning applications, together with a summary of the relevant national and local planning policies with which this SPD is consistent. In addition, the SPD sets out how Section 106 planning obligations, CIL, planning conditions and Highways Section 278 (S278)

agreements work together as a set of tools to help achieve sustainable development. The Council will consider the combined impact of all these tools on development when considering any planning decision. This document aims to provide clarity in respect of what infrastructure will be secured through planning obligations/planning condition/S278 and what will be CIL funded, plus procedural information and contact details to assist in the negotiation of S106 Agreements. However, it should be noted that this is a guide only and proposals will be assessed on a site by site basis with individual circumstances of each site being taken into consideration.

- 1.22 Where there is a choice between imposing conditions and securing a planning obligation through a legal agreement, it is noted that the Government considers the imposition of a condition as preferable. When considering applications, Southend Borough Council will therefore consider whether planning conditions can adequately control all the direct and indirect impacts of the development and secure the desired planning obligations, before it decides that a legal agreement is necessary.
- 1.23 A glossary of terms including a brief description of some of the words and acronyms that appear in this document is available in Appendix 5.





section two





## 2. Southend Borough Council's Approach to Planning Obligations

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### How Planning Obligations will be applied Across Southend

- 2.1 To some extent CIL replaces planning obligations. From April 2015, or once a CIL charging schedule is adopted, whichever is sooner, it will not be possible for a local authority to enter into s.106 planning obligations that pool together developer contributions from more than five schemes for any particular infrastructure item. However, site specific impact mitigation may still be necessary in order for a development to be granted planning permission, and this will continue to be secured through Section 106 agreements, Section 278 agreements or planning conditions (in addition to CIL payments). Further guidance on how CIL relates to other developer contributions can be found in the National Planning Practice Guidance (NPPG).
- 2.2. To ensure that local authorities do not charge twice through seeking contributions through S106, S278 and CIL, CIL Regulation 123 states that a planning obligation cannot be entered into where it would fund or provide relevant infrastructure listed on the Council's website that may be funded through CIL. The potential infrastructure projects that CIL will contribute funding to are set out in the Council's 'Regulation 123 Infrastructure List', and planning obligations will not be sought for any item of infrastructure included in this list. The Council will normally require a planning obligation where it is felt that a proposed development of whatever nature or scale, will in itself give rise to unacceptable pressure on public infrastructure or where the development is of such a nature or scale that it is considered that it should contribute to the supply of affordable housing in the Borough. The Council may also seek an obligation in pursuit of adopted policy, such as the provision of public art on large sites in the Southend Central Area, which seeks to provide for quality natural and built environments and sustainable communities. The precise scale and scope of a planning obligation will be determined, by negotiation, in relation to the specific circumstances of the development, including viability. In all instances, planning obligations will only be sought where they satisfy the tests set out in The Community Infrastructure Levy Regulations 2010 (as amended) i.e. necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
- 2.3 Southend Borough Council has decided on an approach that identifies the impacts of the development and sets these against its priorities for planning obligations, based on its knowledge of the locality and community. Whilst the Council does not seek to apply a blanket approach, it is necessary to have a consistent and transparent approach so that applicants can be aware early on in the development process what the Council's expectations might be.

- 2.4 Commercial developments bring employment and economic benefit but there is a need to integrate such developments into the local community and environment, hence planning obligations may be sought to achieve this. Both employees and other users require effective transport provision and a safe and functional environment. This may be achieved by improvements to the highway (including cycle paths and public footpaths) and the wider public realm. The increased workforce may also place increased demands on services such as libraries, health centres, leisure and recreational facilities.
- 2.5 Similarly, entertainment uses such as bars, restaurants, nightclubs and cinemas attract tourists, shoppers and after work patronage which needs to be balanced with Southend's residential communities. Many of these activities also operate late into the evening and so issues of safety, provision of transport, night time noise, litter and street fouling arise. These activities need to be managed in order to maintain the local character that people find attractive as well as protecting the amenity of residents and other business users.
- 2.6 In respect of new housing, such developments bring new residents who will use existing facilities and create a demand for additional ones, hence planning obligations may be sought to address this. Education and training, health facilities, arts and culture, open space and leisure demands will arise. Therefore, community facilities are also likely to be required in support of residential schemes where there is a demonstrable need for this supporting infrastructure.
- 2.7 For residential schemes of 10 or more residential units or 0.3 hectares as set out in Core Strategy the Council seeks the on-site provision of 20-30% affordable housing, depending on the scale of the development, in accordance with Policy CP8 'Dwelling Provision'. For sites providing less than 10 dwellings (or below 0.3 ha) or larger sites where, exceptionally, the Borough Council is satisfied that on-site provision is not practical, the Council will negotiate with developers to obtain a financial contribution to fund off-site provision. The Council will ensure that any such sums are used to help address any shortfall in affordable housing. Preferred arrangements for financial contributions will be set out in a subsequent Development Plan Document.
- 2.8 Planning obligation requirements may be applied more flexibly to applications for community, voluntary sector or education facilities. For example, such a development may be fulfilling Southend Borough Council's key policy priorities for a location such as provision of a local health care facility, an educational, leisure or cultural facility (e.g. pocket park, community theatre or arts centre). Planning obligations will also not normally apply to householder applications or small-scale commercial development (under the 1000m<sup>2</sup> threshold), which should have limited impact or be sustainable in their own right.

- 2.9 The Council acknowledges that in certain circumstances the costs associated with a development may be such that all the issues which ideally should be included within a planning obligation cannot be addressed without the scheme becoming unviable.
- 2.10 If a developer considers that the Council is placing unreasonable obligations upon a development scheme, the Council will require a developer to adopt an 'open book' approach, whereby relevant development finances are shared with Council officers and/or an appropriate assessor carrying out an independent financial appraisal, in order to provide appropriate and necessary information to support such a claim. For a full independent appraisal of the scheme's viability to be carried out, using a residual land valuation methodology, the following information must be provided:
- a) Supporting reports for site abnormalities etc.
  - b) QS cost assessment – the evidence should include a current day full build cost estimate, not summary, showing how the costs have been estimated (and include a full breakdown of both gross and net internal areas).
  - c) Market evidence – this needs to comprise:
    - (i) Estimate of sales/rental values
    - (ii) Market evidence in support of the sales/rental values
    - (iii) Values assessed for affordable housing.
  - d) Detailed valuation reports (include tenures, easements, description etc.). This needs to include a valuation of the site in its existing or potential or alternative use with an explanation showing how these values have been assessed and supporting evidence as appropriate.
  - e) Viability appraisal including cash flow. This needs to be an electronic viability appraisal model, and should be provided as an Excel document to see how the calculations have been done.
  - f) Development programme – this would show the anticipated period involved in development, including pre-build, build period and marketing period.

If issues of viability arise and there is a need for the Council to obtain independent valuation and financial advice, it will be expected that the costs from this would be met by the developer.

- 2.11 If the Council agrees that a development cannot reasonably afford to meet all of the Council's specified requirements, these requirements will then be prioritised by the Council in negotiation with the developer, subject to the proposal being acceptable in all other respects. While commercially sensitive information and detailed figures will be treated in confidence, it may be necessary to report the key issues and broad conclusions in reports to elected members at the time of their consideration of a planning application.
- 2.12 In assessing the precise nature of on-site and off-site planning obligations to be required on individual sites, the Council will take into account viability considerations.

Proposals may be considered unviable owing to unforeseen and abnormal costs associated with the development. The Council does however expect that abnormal costs will have been reflected in any residual land valuation, which should inform the land purchase price, and should not therefore affect a developer's ability to meet planning obligations. However, consistent with the advice relating to pre-application discussions, the Council will be seeking to agree draft heads of terms prior to submission of an application and any likely difficulties should be brought to the attention of the Council at this pre-application stage. This will avoid delays to the planning application process and will also avoid planning applications being refused on the basis of non-compliance with planning obligation requirements.

- 2.13 To inform the CIL Charging Schedule, issues in relation to viability have been considered upfront in a comprehensive Viability Study. The study included appraisals for a variety of uses and scale of development representing typical development in the Borough. And, based on an analysis of Section 106 records for the last 5 years (April 2008-December 2013 inclusive), the appraisals supporting Southend's CIL have factored in an allowance to address any S106/S278/planning condition costs of site specific mitigation. Any S106 contributions that are currently pooled were excluded from the analysis to accurately reflect the residual S106 payment that may be due in addition to CIL. As affordable housing (required by Core Strategy policy CP8) will continue to be secured by planning obligations, this requirement was also been factored into the appraisals. Therefore, in most instances, viability should not be a matter requiring further discussion at planning application stage.
- 2.14 In accordance with Regulations 73, 73A, 73B and 74 and the Council's Payment in Kind & Infrastructure Payments Policy, the Council may at its discretion accept a proportion of a CIL liability in the form of a transfer of land or infrastructure provision to the Council as payment. This would be secured by a legal agreement although will be considered separately from any Section 106 planning obligation requirements.

## Planning Obligation Types

- 2.15 Southend Borough Council recognises the need to achieve positive planning for sustainable communities within the Borough. This includes using developer contributions (including planning obligations and CIL) to provide infrastructure to support new development. The obligation types that may be required as part of any Section 106 Agreement and what will be covered by the Southend Borough Council CIL are set out in the following sections:
- Transport, Highways and Accessibility
  - Education, Training and Skills
  - Community Facilities,
  - Public Art and the Public Realm (including the Historic Environment)
  - Natural Environment and Conservation
  - Affordable Housing

- Flood Risk, Waste and Resources
  - Administration and Monitoring of Planning Obligations
- 2.16 The above categories are broadly consistent with the categories of infrastructure set out in the Council's Infrastructure Delivery Plan, which outlines what infrastructure is required to support the growth as outlined in the Core Strategy. The details in relation to each of the infrastructure types also reflect the objectives, needs and requirements of all Council strategies, and the policies and aims contained in national and local planning policy.
- 2.17 The infrastructure types are not set out in priority order and details of the planning obligations likely to be sought are not exhaustive. Other obligations not mentioned below may be sought to ensure the delivery of key policy and sustainable regeneration objectives depending upon the individual characteristics of a development proposal, as well as other requirements which may arise from specific circumstances. Similarly any thresholds and calculations, which may be applied once adopted, are not rigid and may be updated as and when it is deemed necessary. The Council's CIL Regulation 123 Infrastructure List, which is reflected below, may also be subject to change and this SPD will be amended accordingly if and when this occurs.

### Transport, Highways and Accessibility

- 2.18 Following the introduction of CIL, the intention is that the needs arising from new development in respect of this infrastructure type will be delivered using the following combination of CIL and S106/S278 agreements:

	CIL	S106/S278
A127 east-west strategic transport and freight corridor improvements (including Kent Elms, The Bell, Progress Road, Sutton Road, East/West Street, JAAP, etc.)	√	
Local public transport measures	√	
Local walking and cycling measures to upgrade network	√	
Site specific traffic management measures		√

- 2.19 Some development schemes will require specific works and improvements to mitigate direct impacts in terms of transport, the highway network or access. Site specific mitigation measures that will be secured through S106/S278 may include:
- On-site works to footways/cycleways/bridleways
  - Raised kerbs
  - New/improved junctions
  - Access roads within the site
  - Link/slip roads
  - Traffic Regulation Orders e.g. to impose waiting restrictions

- Traffic lights
- Pedestrian/toucan crossings
- Signage
- Where a new lay-by is required as a direct consequence of a development within the vicinity
- Local traffic calming measures
- Parking management schemes if required as a direct consequence of a development within the vicinity

## Education, Training and Skills

- 2.21 Most new development will lead to an increase in demand for school places or will place pressure on these services leading to a need for either new accommodation or refurbishment and improvement of existing educational facilities. The Council has a duty to ensure that there are sufficient school places in the local authority area to meet present and future demand for places. The Council are mindful of the impact new development may have on the level of education provision in the area and the cumulative effect on the Borough.
- 2.22 The Council is committed to achieving the economic, social and environmental well being of all residents so as to ensure that a better quality of life and prosperity is shared by all. To achieve this, the Council proposes that in appropriate circumstances contributions should be made by developers towards the training and skills base needed to achieve the jobs led growth and regeneration.
- 2.23 Following the introduction of CIL, the intention is that the needs arising from new development in respect of this infrastructure type will be delivered using the following combination of CIL and S106 agreements:

	CIL	S.106
Provision, improvement, replacement, operation or maintenance of Primary and Pre-School education facilities	√	
Site specific contributions to local skills and training provision, including improved recruitment and access to jobs locally		√

## Community Facilities including 'Open space, sport and recreation' and 'Health, social care and physical community needs'

- 2.24 A key priority for the Thames Gateway is to create places where people want to live and work, as well as delivering sustainable communities. Southend is a compact densely developed urban area, which presently has heavy demands placed upon its infrastructure. Community and cultural facilities, therefore, have an essential role to play in ensuring that a balanced and quality environment is created. The quality and quantity of fundamental services need to be maintained and improved, while

simultaneously achieving the regeneration objectives for the town, to ensure that the quality of life of individuals is maintained and improved.

2.25 The town's existing facilities will need protecting and enhancing according to the level of additional housing and commercial development and the pressures that these place on them. Any further growth within the Borough must not only safeguard the existing community infrastructure but seek to enhance the infrastructure balance. Improvements to and/or re-provision of community infrastructure, delivered through planning obligations, must therefore accompany development or act as a pre condition to it.

2.26 Following the introduction of CIL, the intention is that the needs arising from new development in respect of this infrastructure type will be delivered using the following combination of CIL and S106 agreements:

<b>Open Space</b>	<b>CIL</b>	<b>S.106</b>
Provision and management of on or off-site open space if required to offset a loss that would otherwise result from the development		√
<b>Sport and Recreation</b>	<b>CIL</b>	<b>S.106</b>
Children's Play Areas (Sidmouth Avenue Play Area, Priory Park, Warrior Square Gardens)	√	
New play or sports facilities required on or close to a development site as a result of the need generated directly and solely by that development		√
Youth facilities including Multi-Use Games Areas, parkour and wheeled sports (Priory Park, Southchurch area including Southchurch Park or Southchurch Park East)	√	
<b>Social and Community</b>	<b>CIL</b>	<b>S.106</b>
Provision, improvement, replacement, operation or maintenance of libraries	√	
Southend New Museum (Western Esplanade)	√	
New allotment space	√	
New community centres	√	
Replacement community facilities such as allotments or community centres required as a result of new development (i.e. to offset a loss that would otherwise result from the development)		√
<b>Health and Social Wellbeing</b>	<b>CIL</b>	<b>S.106</b>
Provision, improvement, replacement, operation or maintenance of Primary Healthcare facilities	√	
Infrastructure to enable people to remain living independently	√	
Refurbishment or redevelopment of Delaware and Priory House	√	
Health, social wellbeing and emergency services where provision is required to meet a need generated directly and solely by a development		√

## Public Art and the Public Realm (including the Historic Environment)

- 2.27 The quality of the built environment affects the way in which people perceive and enjoy places and spaces. Well designed, accessible and legible urban places and spaces will help promote and support greatly the creation of cohesive, pleasant and sustainable local communities. An environment and its surroundings, whether natural or built, will play a significant role in shaping the quality of life experienced by a population. Interesting and innovative buildings, quality streets, good relationships between new and existing development, the use of public art and soft and hard landscaping can all help to develop local identity, create places which people are proud of, and thereby, improve their quality of life and a sense of belonging. Accordingly, there is a need for greater emphasis on the use of buildings, streets, open spaces and landscaping – the public realm – and an understanding of how these elements relate to each other to create a unique ‘sense of place’ and identity. Indeed the public realm, comprising both ‘physical’ and ‘social’ elements, has a significant role to play in creating a quality environment, as it encapsulates the spaces and settings which facilitate and support social interaction and public life.
- 2.28 Following the introduction of CIL, the intention is that the needs arising from new development in respect of this infrastructure type will be delivered using the following combination of CIL and S106 agreements:

	CIL	S.106
Provision of or contribution towards public art for all major developments		√
Three Rivers Trail	√	
City beach Phase Two (Eastern Esplanade)	√	
Victoria Gateway Phase Two (London Road)	√	
Provision of Information Communication Technology (ICT), CCTV and street lighting on development sites and within the vicinity if required to mitigate the impact of a development		√
Community facilities that contribute to the quality of the public realm that are required as a direct consequence of the development (e.g. public toilets)		√
Contributions towards the conservation, restoration and enhancement of the historic environment and archaeological sites and monuments (including provision for public access and interpretation, and future management of historic assets where appropriate) where an impact is directly linked to a development site and requires mitigation		√

In addition, all development will be expected to be designed to comply with Core Strategy policy CP4 and be consistent with the objectives set out in the Design and Townscape Guide SPD including policy and guidance relating to landscaping, the public realm and public art.



The commissioning of public art work should involve professional art organisations and including stakeholder and community engagement. A written public art statement, with the commissioning process, artist briefs and budget is usually expected to be in place prior to the commencement of development; and if provided with the planning application the art work can be secured by planning condition. The completion date for public art will vary dependent on the nature of the development and the location of the art work, but will usually be expected to be completed prior to first occupation of a development.

## Natural Environment and Conservation

- 2.29 The cumulative effect of new development has and will impact greatly upon the physical and natural environment. Even though many developments are relatively small scale, their accumulation results in major effects on the overall natural systems of neighbourhoods, towns, cities, regions and, eventually, on the earth’s biosphere. Given serious concerns in relation to global climate change, pollution of the natural environment, and the depletion of fossil fuel sources, the need for environmental responsibility is an important consideration for those involved and associated with development. Development will need to have regard to environmental impacts as well as social impacts and long term economic viability to contribute towards the creation of truly sustainable communities and lasting environments.
- 2.30 In view of future development demands and pressures within the Borough, the Council will ensure that development contributes towards the provision of additional public open spaces, biodiversity and nature conservation areas, especially in circumstances where existing amenities would be impacted upon by development. It will also be necessary for developments to contribute towards enhancement, retention and management of these areas, in order to meet national, regional and local objectives and to offset any additional pressures and demands.
- 2.31 Following the introduction of CIL, the intention is that the needs arising from new development in respect of this infrastructure type will be delivered using the following combination of CIL and S106 agreements:

	CIL	S.106
Any measures to offset/compensate/mitigate for the loss of/impact on any natural or environmental resource, which is a direct consequence of a development. For example, woodland, grassland, open water, foreshore, hedgerows, allotments, public open space, species or habitat etc. This includes any impact on designated Special Protection Areas (SPA), Special Areas of Conservation (SAC), Sites of Special Scientific Interest (SSSI) and RAMSAR sites and Local Nature Reserves (LNR’s), including Southend-on-Sea foreshore		√

Any measures to mitigate/compensate against loss of or damage to species or habitats that contribute to biodiversity, where the loss/damage is a direct consequence of a development		√
Replenishment/replacement trees, vegetation or areas lost to/affected by development, through re-planting of suitable/appropriate species and by landscaping new and additional areas		√

In addition, all development will be expected to be designed to comply with Core Strategy policy KP2 in relation to the natural environment and conservation.

## Affordable Housing

2.32 A key objective of the Government and the Council is to ensure that everyone has the opportunity to a 'decent home'. To help meet this objective, the planning system is expected to provide housing that is genuinely affordable to a wide range of people. A 'step-change' in housing supply will be needed to tackle serious shortages that exist, particularly in London and the South East. Too many people do not have access to decent, affordable housing many are living in housing of poor quality. It considers that more affordable housing should be delivered, especially for key workers, young families and those in priority need; and new sustainable communities needs to be created in regions of high demand like the Thames Gateway.

2.33 In order to achieve this aim, and to ensure that affordable housing is provided in accordance with Southend Borough Council's Core Strategy, the Council proposes that following the introduction of CIL, affordable housing will be delivered through S106 agreements:

	CIL	S.106
Provision of affordable housing in accordance with Core Strategy policy		√

Core Strategy Policy CP8 'Dwelling Provision' states that the Borough Council will:

*....enter into negotiations with developers to ensure that:*

*a. all residential proposals of 10-49\* dwellings or 0.3 hectares up to 1.99 hectares make an affordable housing or key worker provision of not less than 20% of the total number of units on site; and*

*b. all residential proposals of 50\* dwellings or 2 hectares or more make an affordable housing or key worker provision of not less than 30% of the total number of units on the site.*

*\*The rationale which will be used by the Council to determine whether more than the specified floor target for affordable housing will be sought will be set out and justified in 'Part 6 Affordable Housing' of the 'Planning Obligations and Vehicle Parking Standards DPD'.*

*For sites providing less than 10 dwellings (or below 0.3 ha) or larger sites where, exceptionally, the Borough Council is satisfied that on-site provision is not practical, they will negotiate with developers to obtain a financial contribution to fund off-site provision. The Council will ensure that any such sums are used to help address any shortfall in affordable housing. Preferred arrangements for this will also be set out in the above DPD.*

## Flood Risk, Waste and Resources

- 2.34 The Council acknowledges and supports the Government's aims and objectives for flood and coastal defence. A key policy aim is to reduce the risk to people and the developed and natural environment from flooding and coastal erosion by encouraging the provision of technically, environmentally and economically sound and sustainable defence measures. Where existing water supply and sewerage infrastructure is inadequate for the demands placed on it by development, developers should also contribute to any necessary off-site improvements (including sea defences).
- 2.35 Core Strategy Policy CP4 'The Environment and Urban Renaissance' states that development proposals will be 'expected to contribute to the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend'. It aims to achieve this by promoting sustainable development and encouraging innovation and excellence in design, including design solutions that maximise the use of renewable resources and resource conservation. Therefore, a developer should ensure that any new development is environmentally sustainable in terms of energy, waste, build type and quality. It should also increase the use of sustainable build types and materials, and ensure that there are adequate facilities for recycling in order to meet local policy objectives and demands.
- 2.36 Following the introduction of CIL, the intention is that the needs arising from new development in respect of this infrastructure type will be delivered using the following combination of CIL and S106 agreements:

<b>Flooding and Unstable Land</b>	<b>CIL</b>	<b>S.106</b>
Chalkwell Sea Wall flood defence works (Chalkwell & Eastern Esplanades)	√	
Coast protection works (East Beach Shoeburyness)	√	
Flood Defence Works (Old Leigh)	√	

Lynton Road to Thorpe Bay YC Flood Defence Improvements (Eastern & Thorpe Esplanades)	√	
Any measures required to ensure a development creates no increase in flood risk within the Borough by provision of suitable flood protection measures and their future maintenance		√
Site specific mitigation measures required to manage unstable land		√
<b>Waste</b>	<b>CIL</b>	<b>S.106</b>
Litter Bins (as outlined in the Southend-on-Sea Litter Bin Strategy, July 2011)	√	
Site specific mitigation measures required relating to waste (including litter bin and recycling provision on a site)		√
Waste Transfer Station (WTS) – ‘Waste Solution’	√	
<b>Utilities</b>	<b>CIL</b>	<b>S.106</b>
Any measures required to provide for additional local water supplies and sewerage capacity, or provision/upgrading of utilities matching any additional demands generated by a development		√

In addition, all development will be expected to be designed to comply with Core Strategy policy KP2 in relation to flood risk, waste and resources (including avoidance of flood risk, sustainable use of resources, sustainable waste management and incorporation of sustainable urban drainage systems and renewable energy measures). Where possible, such measures will be secured by planning condition.

### Administration and Monitoring of Planning Obligations

- 2.37 In line with Government timescales the Council expects planning applications to be determined within statutory 8/13/16 week targets. The delivery of obligations within these timescales may take a considerable amount of time and resources and often requires public consultation, committee resolutions or involvement and support of third parties. Therefore, proposed development will be required to contribute towards the costs incurred during this stage of the process.
- 2.38 Once a planning obligation has been signed, administrative costs are incurred on tasks such as ensuring on-site measures are provided, financial contributions are received and contributions are spent in accordance with the terms of the obligation. This requires compliance checks, monitoring, project management and implementation by the Council.
- 2.39 The Council considers that a contribution towards the Council’s costs of administering and monitoring planning obligations essential to achieving these aims and objectives.

- 2.40 The administrative and staff costs of monitoring planning obligations will be recouped through a standard payment, which will be used to fund:
- Database development – initial cost £1000, support cost £3,300 per annum
  - S106 Monitoring – delivering planning obligations, enforcement of obligations, site inspections to assess status of schemes, data entry, monitoring of expenditure, report function
  - Legal advice – non payment procedures, legal action etc
  - Finance liaison and tracking of financial contributions
  - Building Cost Information Service (BCIS) subscription for indexation to ensure that contributions reflect current costs within the building industry

- 2.41 The estimated total annual cost for the administration and monitoring of obligations is approximately £44,000 per annum (as increased by inflation) and taking this into consideration the administration and monitoring payment will be required in accordance with the following criteria, which reflect the complexity of an agreement and the subsequent monitoring:

- For agreements with one obligation or a contribution of less than £5000 a fee of £250 is charged
- For agreements with one non-monetary obligation or one obligation with a contribution of more than £5000 a fee of £500 is charged
- For agreements with multiple Heads of Terms, 5% of the monetary contribution plus/or £750 per non-monetary Head of Term is charged
- The administration and monitoring fee shall be capped at a maximum of £10,000

Since adoption of SPD2 in November 2010 significantly less than the estimated costs of the administration and monitoring of planning obligations has been received. In FY 2010/11 £10,000 was received, FY 2011/12 £500, FY 2012/13 £12,106 and in FY 2013/14 £8,488. It is considered reasonable that the monitoring fee continue to be payable in accordance with the charges set out above. The charge will continue to be periodically reviewed to ensure it remains reasonable in the context of actual costs of administration and monitoring of planning obligations.

- 2.42 See the Council's CIL Charging Schedule for further details relating to the reporting and monitoring arrangements for CIL.

## Review

- 2.42 It will be necessary to review this SPD as a whole as further guidance is evolved by the Council and in light of Government policy and advice. In particular, if the Council's CIL Regulation 123 Infrastructure List is amended then this SPD will be amended as necessary.

2.43 Details on planning obligations secured, and the status and use of financial contributions will be reported annually.



section three





### 3. Procedure for Completing Planning Obligations

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- 3.1 The procedure for completing planning obligations is set out below and in diagrammatic form in Appendix 2.

#### Pre Application Stage

- 3.2 Applicants are directed to the policies relevant to the proposal and to any relevant supplementary planning documents, including this SPD on planning obligations. Further information in relation to pre-application advice and Borough Council policies can be found on the Planning and Building pages of Southend Borough Council's website ([www.southend.gov.uk](http://www.southend.gov.uk)). Having regard to the guidance contained in this SPD, applicants should come forward with proposals including any planning obligations (to be secured through a legal agreement or conditions) that are relevant and related to their development proposals. If a S106 agreement is considered necessary and appropriate, the Council will seek to agree draft Heads of Terms at pre-application stage so that these details can be submitted with a planning application, to provide greater clarity and speed up the planning application process. The Council will also seek confirmation from developers that they are satisfied that a Section 106 Agreement be drafted on the basis of the local authority's model agreement (available on our website or from the Section 106 and CIL Officer upon request). The model S106 agreement sets out details relating to timings/triggers for planning obligation payments or provision of S106 works; however, variations may be considered on a site by site basis providing sufficient time is allowed to deliver the infrastructure required to support the new development. Highways implications, including any necessity for a Section 38 or Section 278 agreement under the Highways Act 1980 in relation to works to the public highway or adoption of estate roads should also be identified at this early stage to ensure timely completion of any such matters. Developers will also be advised to liaise with statutory consultees (e.g. rail authorities) at pre-application stage if it is considered that their comments are likely to affect any future discussions in relation to planning obligations and the feasibility of a scheme.
- 3.3 It is appreciated that developers require as much clarity as possible in respect of planning obligations in advance of submitting a planning application. However, every site is different with a vast number of factors that can affect cost, making it impossible to predict costs. For example, highway works have previously ranged from £2500 for a vehicle crossover to £40,000 to form a new access to a large residential site (equivalent to approx. £850/unit, an amount not dissimilar to that factored into the CIL Viability Study appraisals as a residual S106 cost). Therefore, seeking pre-application advice is considered particularly important in respect of confirming likely S106/S278/planning condition costs at the earliest opportunity to inform a scheme's financial appraisal.

## Application Submission Stage

- 3.4 In accordance with the Council's local list requirements, planning applications that will require a Section 106 Agreement/Unilateral Undertaking must include the following on submission or they will be treated as invalid (unless exceptional circumstances dictate otherwise):
- a) Proposed heads of terms (i.e. the main aspects) for a S106 agreement and agreement to the model S106 agreement, draft/completed Unilateral Undertaking, or a justification for non-compliance with the planning obligation requirements as detailed in this SPD and confirmed by planning officer at pre-application stage;
  - b) Proof of the owner's title (including title plan). All the owners of the site will need to enter into the agreement. If the land is registered this will be by recent office copy entries (no more than 21 days old). If it is unregistered, an epitome of title should be provided;
  - c) Names and addresses of any chargees, lessees, mortgages or other holders of security on the land i.e. all parties with an interest in the land;
  - d) A solicitor's undertaking to pay the Council's reasonable legal costs in connection with the negotiation and preparation of a S106 Agreement/checking of a Unilateral Undertaking; and
  - e) Contact details of the solicitor acting on behalf of the applicant.

## Application Appraisal Stage

- 3.5 Once the application is submitted, the negotiation on any potentially appropriate obligations will proceed at the same time as consideration of the planning application, and will include an assessment of whether or not planning conditions will suffice instead of an obligation. This process is without prejudice to the determination of the application by the Development Control Committee. Where there have been no pre-application discussions, the case officer will also direct the applicant to Southend Borough Council's policies and supplementary planning documents, including this SPD on planning obligations.
- 3.6 Where the need for an agreement or undertaking has been identified, the applicant will be requested to progress matters as far as possible prior to a committee resolution. These negotiations are without prejudice to the final determination of the application by the relevant committee, but are an appropriate way to ensure timely decision-making in accordance with government targets.
- 3.7 The key element of the negotiation will be to confirm that the applicant agrees with the matters to be included in the S106 agreement. In conjunction with Southend Borough Council's legal team, the planning case officer will manage the negotiation process

and seek to agree the precise nature and scale of matters for inclusion as obligations, including when those obligations are triggered.

- 3.8 By the time the proposal is considered by the Development Control Committee the matters which are to be included in the obligations must be known and agreed with the applicant in detail. The obligations (including when those obligations are triggered) will be set out as part of the committee report and recommendation, which is a public document.

## **Committee and Post Committee**

- 3.9 Any recommendation to delegate authority to grant planning permission will be made subject to the completion of a satisfactory legal agreement or undertaking within a specified time period, which is likely to relate directly to the government's target period for determination of the application, and will authorise the Head of Legal and Democratic Services to complete the legal agreement or accept the undertaking. The committee will decide whether to approve the recommendation as set out in the report and whether the proposed obligations are appropriate.
- 3.10 A legal agreement or undertaking will normally be drafted prior to the committee resolution in the circumstances set out above, or, if this has not proved possible, immediately following the committee resolution. The draft obligation will be sent to the applicant's solicitor for comment and any negotiations will be progressed through each party's legal team. The reference number relating to the agreement or undertaking will correspond with the planning application reference number (e.g. SOS/09/00011/FULM) and this will be used on all correspondence and monitoring arrangements for the planning obligations.
- 3.11 Where it appears to Southend Borough Council that progress on the agreement is unnecessarily slow, the Council will actively chase progress. The Council is committed to meeting the Government's targets for determination of planning applications. Therefore, if the 8/13/16 week statutory deadline is approaching with no likely prospect of completing the S106 Agreement it may be necessary to refer the application back to committee, or to an officer with delegated powers (if previously agreed by committee), who will then reconsider the original resolution and permission may be refused in the absence of planning obligations being secured. It may also be necessary to refer an application back to committee if, for example, circumstances have changed which would require the obligations themselves to be changed in some way.
- 3.12 At the earliest possible date and certainly prior to completion of the legal agreement, the Council's legal services will ensure that all financial and title matters are in order. At the time the legal agreement is completed, the planning permission and any other consents will also be issued.

## **Post Completion of Legal Agreement or Undertaking**

- 3.13 Southend Borough Council will register the agreement or undertaking and consents as local land charges and the applicant will be required to register the agreement as a charge against the title to the property at HM Land Registry in accordance with the terms of the agreement or undertaking. Southend Borough Council will also update the statutory registers.

## **Monitoring Planning Obligations**

- 3.14 The S106 and CIL Officer will hold a copy of the completed agreement, the details of which will be entered into an electronic monitoring database. The database will track compliance with each obligation in the agreement as the development proceeds and the agreement will be enforced as necessary. This system will be operated by the S106 and CIL Officer whose responsibility it is to invoice developers when payments are due, monitor the allocation and oversee the expenditure of S106 funding, provide regular updates on obligations and improve the service delivery of the planning obligations process.
- 3.15 Details in respect of making a payment pursuant to a planning obligation can be found in the FAQ section 4 below.

## **Additional Considerations for Completing an Obligation involving Highway Works**

- 3.16 Planning obligations involving highways works may also require the completion of a Section 38 or Section 278 agreement under the Highways Act 1980.
- 3.17 The Council has powers under the Section 38 of the Highways Act 1980 to enter into agreements with developers or other persons to adopt highways, namely new estate roads, for future public maintenance provided they are constructed to the Council's specification. The Council's specification is designed so that future maintenance costs are kept to a minimum. The adoption of a highway relieves the developer from their liability to maintain that highway. Fees are paid in advance according to the size of the development to cover the Council's costs in preparing the agreement and inspecting the work during construction. A Bond is also deposited to cover the cost of bringing the road up to an adoptable standard should the developer become insolvent or is unable to meet their obligation. Developers should ensure that when entering into Section 38 Agreements they have complete undisputed title to the land on which the estate roads are to be built. You will need to give us the approved details of all necessary easements before we sign the agreement.

3.18 Prior to entering into a Section 38 agreement you will also need to prove a right to discharge surface water from the highway to an existing sewer, a proposed sewer or a water course. We will require proof that your drainage proposals have been approved by the relevant authorities. If the highway water discharges into sewers containing roof or yard water (or both), the relevant water company must approve the proposals and they must be included in a Section 104 agreement of the Water Industry Act 1991. We will not sign a Section 38 agreement before you have received a 'letter of intent' from the water authority that the drainage proposals are suitable for including in a Section 104 agreement. We will adopt only drains laid for the sole purpose of discharging surface water from the highway. However, you must also get consent from the Environment Agency or the water company for its discharge and we will require proof of this before entering into a Section 38 agreement. We must approve proposals for highway drainage, including calculations of surface water run-off. Highway drainage will then be included within the terms of the Section 38 agreement for future adoption.

3.19 Alterations to existing public highway are undertaken under Section 278 of the Highways Act 1980 and where development requires works to be carried out on the existing highway, you will need to complete a Section 278 agreement with us. Section 278(1) of the Act (as amended by the New Roads and Street Works Act 1991) states:

*"A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person -*

*a) for the execution by the authority of any works which the authority are or may be authorised to execute, or*

*b) for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,*

*on terms that that person pays the whole or such part of the cost of the works as may be specified or determined in accordance with the agreement."*

3.20 Highway matters must be discussed at an early stage in the planning application process to agree the extent and scope of any necessary works, the timing of those works (even where a planning obligation is not involved) and who should carry them out (either the applicant's contractor or the Council's contractors). During the initial discussions, some information on the background to the development will be required and the applicant should provide the highways officers with detailed plans and a specification of the proposed works. The drafting of any Section 38 or 278 agreements, based upon the local planning authority's standard format should commence at the same stage as a Section 106 agreement to ensure timely completion. Contact our Highways team on 01702 215003 at an early stage for further advice.





section four





## 4. Frequently Asked Questions

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### When will financial contributions be paid?

In order that the needs and impacts arising from new developments are addressed as soon as possible Southend Borough Council will generally aim to achieve the payment of financial contributions before the commencement of development. In the case of major phased developments, contributions may be paid in instalments on the commencement of each phase. The phasing of payments will be set out in the S106 agreement signed by the applicant and Southend Borough Council.

### Why are financial contributions Index Linked?

In order to maintain the value of contributions from the date of the committee resolution until the time development is commenced, they will be index linked to reflect changes in the Retail Price Index (RPI) or the Building Cost Information Services Tender Price Index (BCIS TPI).

The late payment of financial contributions is likely to incur interest at a rate 4% above the Base Rate of Barclays Bank plc (the Borough Council's banker). This is to ensure that the projects and works for which the contributions are earmarked are not unduly delayed or if delay occurs there is a contingency which may help negate the costs associated with delay.

### Why should I pay the Council's Legal Costs?

Applicants are requested to pay the Council's legal and technical fees in connection with the preparation and completion of a legal agreement as reimbursement for the costs incurred during the negotiation and completion of the legal agreement. This is due to the fact that an extra burden is placed on the local authority as a direct result of development that has planning obligations associated with it and as it is not within the local authority's control to adjust Business Rates to cover these additional costs it is considered reasonable to directly recoup them from developers on completion of a legal agreement.

### Do I need to involve a solicitor to complete the agreement?

You are strongly advised to appoint a solicitor because legal agreements and undertakings can restrict the use of the property in the future.

### How do I make payments to the Council?

Without prejudice to the legal liability of the Owner to make any payment due in respect of a planning obligation, the Owner shall request an invoice from the Council for the sum due and on receipt thereof payment can be made to the Council by such form of electronic transfer as is acceptable to the Council, on-line via the Council's website, over the phone, at the Customer Service Centre or by sending a cheque (made payable to "Southend Borough Council" and marked for the attention of the

Section 106 and CIL Officer, Development Control, 12th floor Civic Centre, Victoria Avenue, Southend-on-Sea SS2 6ZQ) and when making a payment in respect of an invoice it is essential that the invoice number be quoted and if payments are made in advance of an invoice being received this should be by cheque only, and contact should first be made with the Section 106 Officer to confirm the amount payable as increased by the Inflation Provision and cheques must be accompanied by a written statement detailing the following:

- a) The date of this Deed
- b) Planning application reference number
- c) The address of the land affected by this Deed
- d) What the payment relates to and the relevant clause in the Deed to which it relates

or payment may be by such other methods or in accordance with such other arrangements as the Council may reasonably require of the Owner.

For the avoidance of doubt compliance with the requirements of a planning obligation is the responsibility of the Owner of the Site and it is not reliant upon invoicing by the Council.

#### **What will happen to the payments?**

When payments are received they will be recorded by the S106 and CIL Officer and assigned to a specific Cost Code for the scheme and to specific accounts depending on the nature of the contribution. Progress in relation to contributions will be reported regularly to Members and senior officers of the Council. A summary will also be made publicly available on a periodic basis.

#### **How long will it take to complete a legal agreement or undertaking?**

This will depend on a number of issues including the complexity and size of the proposed development and the complexity of negotiations between the parties. The Council is committed to meeting the statutory 8/13/16 week deadlines for planning applications and therefore a Section 106 agreements should be close to completion and Unilateral Undertakings should be agreed by our Legal Services prior to committee consideration. Hence, applicants are strongly advised to commence negotiations in relation to planning obligations at pre-application stage, agreeing draft heads of terms and the model S106 agreement, to avoid the possibility of planning permission being refused in the absence of an acceptable legal agreement being completed within a the statutory timeframe for determining a planning application.

#### **How long will S106 obligations last?**

Some requirements of a S106 Agreement are of an ongoing nature, for example the maintenance of a facility or the community use of a building and so the obligation will continue for so long as development implemented under the associated planning permission continues.

Where financial contributions are being made it will depend upon when payments are due to be made. For example, if a contribution is due on commencement of the development that could be up to 3 years (or such other time limit that might be agreed by the Council) after the date the legal agreement is completed and permissions are issued.

After Southend Borough Council is satisfied that all the obligations in an agreement are complied with the Council will, if requested, provide written confirmation that the obligations in an agreement have been met.

### **Can I vary a Section 106 Agreement?**

Section 106A of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) provides a procedure by which an applicant can apply for the formal modification or discharge of planning obligations. Within 5 years of the date of the agreement this variation can be done by mutual agreement, including an exchange of correspondence, between the parties. After 5 years of the date of a S106 agreement, the agreement can be modified by a formal application to the local planning authority, which is subject to public consultation and includes the right of appeal to the Secretary of State should a negotiated arrangement prove unsuccessful. Either way any agreement between the parties to modify or discharge a planning obligation shall be by a Deed of Variation.

### **Can I use my own contractors for works on the Public Highway?**

This will depend upon the circumstances of the application and the site. Applicants often want to carry out repaving or environmental improvement works to the public highway adjacent to their own development using their own contractors. Southend Borough Council has a duty of care to the public as a local highway authority, including maintaining the highway to the appropriate standards. The Council must be sure that the appropriate safeguards are in place before applicants' contractors begin works on site and therefore a Section 38 or Section 278 agreement will need to be signed, and/or a Highways Licence issued prior to any works commencing that affect the public highway.

Applicants may alternatively want to make financial contributions to highway or environmental improvement works. In such cases, Southend Borough Council will apply the contribution to a scheme in the vicinity of the development and related to it. In some cases, this may be a scheme which uses pooled funding.

You are advised to contact the Council's highways department on 01702 215003 at an early stage to discuss this further.





appendices



### List of relevant national and local planning policies and other guidance

*(Note: This is a non-exhaustive list that was last updated on 19<sup>th</sup> September 2014)*

National Planning Policy Framework (NPPF) 2012  
National Planning Practice Guidance (NPPG) 2013  
Community Infrastructure Levy Regulations 2010 (as amended)  
South East LEP: Growth Deal and Strategic Economic Plan March 2014  
Thames Gateway South Essex: Fundamental Review of Strategic Housing Market Assessment Review 2013 – Report of Findings December 2013  
Environment Agency Medium Term Plan (MTP)  
Essex and South Suffolk Shoreline Management Plan (SMP)  
Essex Waste Partnership, Joint Municipal Waste Management Strategy for Essex (2007 to 2032)  
Local Transport Plan Strategy (LTP3) and Implementation Plan, 2011/2012-2026  
South East Local Enterprise (SELEP) Strategic Economic Plan (SEP)  
Southend-on-Sea Borough Council (2014) Infrastructure Delivery Plan  
Southend on Sea Strategic Housing Land Availability Assessment (SHLAA) Update Report 2013  
Southend on Sea Borough Local Plan (1994)  
Southend on Sea Core Strategy (2007)  
Southend on Sea Design and Townscape Guide (2009)  
Southend-on-Sea Borough Council (2004) Open Space and Recreation Assessment in Southend-on-Sea Borough  
Southend-on-Sea Borough Council (2004) A Study of Playing Pitches in Southend-on-Sea Borough  
Southend-on-Sea Borough Council (2005) Green Spaces Strategy: Draft, Executive Summary, Leisure, Culture & Amenity Services Department  
Southend-on-Sea Borough Council (2006) Public Art Strategy – Summary and Recommendations  
Southend-on-Sea Borough Council (2007) Southend-on-Sea Play Strategy  
Southend on Sea Borough Council (2013) Corporate Plan and Annual Report 2013  
Southend-on-Sea Borough Council (2013) Culture-on-Sea: A Cultural Strategy for Southend-on-Sea, 2012-2020  
SOSBC (2013) Southend-on-Sea Sport & Leisure Strategy, 2013-2020  
Sport England (2013) Planning Pitch Strategy Guidance: An approach to developing and delivering a playing pitch strategy

Southend on Sea Local Development Framework

**Planning Obligations – A Guide to S106 and Developer Contributions – Consultation Document**

Supplementary Planning Document 2 – November 2014

Sport England Sports Facilities Calculator: <https://www.sportengland.org/facilities-planning/planning-for-sport/planning-tools-and-guidance/sports-facility-calculator/>

Sport England Facilities Costs, Q4 2013: f

<https://www.sportengland.org/media/198443/facility-costs-4q13.pdf>

Sport England guidance document on football pitches:

<http://www.sportengland.org/media/197610/kitbag-nt-football-senior-2-2013.pdf>

Source: Sport England guidance document on rugby pitches:

<http://www.sportengland.org/media/197640/kitbag-nt-rugby-union-senior-2013.pdf>

Sport England Strategic Facilities Fund:

<http://www.sportengland.org/media/189581/strategic-facilities-prospectus.pdf>

Thames Estuary 2100 Plan

Thames Gateway South Essex (2005) Thames Gateway South Essex Green Grid Strategy



## Appendix 2:

### Procedure for Negotiating, Preparing and Completing a Legal Agreement

Stage	Actions	Paragraph ref. in SPD	Responsibility
Pre Application	Applicant to consider relevant policies and this SPD prior to submitting proposal for pre-application discussion	3.2-3.3	Applicant
	Need for planning obligations established and applicant provided with written advice following pre-application discussions. Any need for a S38 or S278 agreement also identified at this stage.	3.2-3.3	Case Officer
Submission of planning application	Check validity of application	3.4	Business Support Team
	Consultation with key stakeholders		Business Support Team/Case Officer
Consideration of planning application and preparation of legal agreement	Consideration by case officer and other key stakeholders in relation to policy, this SPD, Circular tests etc.	3.5 – 3.8	Case Officer
	Further negotiation meetings held if necessary, including stakeholder representatives where relevant	3.5 – 3.8	Applicant/Case Officer/Legal
	Ensure all financial and title matters are in order		Legal
	Draft legal agreement (including S38 or S278 agreement if relevant) sent to applicant's solicitors for consideration	3.10	Legal
	Agreed heads of terms and triggers to be included in committee report	3.8	Case Officer

Committee consideration	If proposal acceptable, resolution to delegate authority to Group Manager of DC & BC to grant permission subject to completion of legal agreement	3.9	Committee
	Timeframe for completion of legal agreement imposed (which is likely to be directly related to Government targets for determination of applications)	3.9	Committee
	Legal agreement completion		
Post legal agreement completion	Copy of legal agreement and decision notice(s) sent to applicant's solicitor and applicant/agent		Legal/Business Support Team/ S106 and CIL Officer
	Copy of S106 placed on Statutory Register and register updated to show that permission has been granted		Business Support Team
	Agreements and consents registered as local land charges	3.13	Legal
	Agreement registered as a charge against the title at HM Land Registry	3.13	Applicant
Monitoring	Details of agreement including clauses and triggers recorded on database	3.14 – 3.15	S106 and CIL Officer
	Implementation of planning permissions monitored	3.14 – 3.15	S106 and CIL Officer
	Fulfilment of applicant's and Council's obligations monitored and recorded on database. Compliance enforced as necessary	3.14 – 3.15	S106 and CIL Officer

### Useful Contacts and Information

#### Planning, Development & Building Control

Telephone: 01702 215004

Email: [council@southend.gov.uk](mailto:council@southend.gov.uk)

#### For Section 106 and CIL enquiries request one of the following:

- Section 106 and CIL Officer ext 5371

Postal Address:

Development Control, Department for Place, Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER

#### Strategic Transport and Planning Policy

Telephone: 01702 215004

Email: [ldf@southend.gov.uk](mailto:ldf@southend.gov.uk)

Postal Address:

Department for Place, Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ZF

#### Local Land Charges

Telephone: 01702 215004 ext 5124

Email: [landcharges@southend.gov.uk](mailto:landcharges@southend.gov.uk)

Postal Address:

Local Land Charges, Department for Corporate Services, Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER

#### Parking, Highways & Transport

Telephone: 01702 215003

Email: [council@southend.gov.uk](mailto:council@southend.gov.uk)

Postal Address:

Traffic and Highways Network, Department for Place, Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER

#### Useful external websites:

Department for Communities and Local Government – [www.communities.gov.uk](http://www.communities.gov.uk)

Land Registry – [www.landregistry.gov.uk](http://www.landregistry.gov.uk)

Office of Public Sector Information – [www.opsi.gov.uk](http://www.opsi.gov.uk)

Planning Portal – [www.planningportal.gov.uk](http://www.planningportal.gov.uk)  
Southend Borough Council – [www.southend.gov.uk](http://www.southend.gov.uk)  
Valuations Office – [www.voa.gov.uk](http://www.voa.gov.uk)

### **Other relevant information:**

#### **Guidance on viability**

In respect of considering viability for development sites at planning application stage, the Council follows this guidance:

- RICS Professional Guidance “Financial viability in planning” (2012)

And in plan making the following guidance is also taken into consideration:

- Local Housing Delivery Group Chaired by Sir John Harman (June 2012) “Viability Testing Local Plans: Advice for planning practitioners”

#### **Greater London Authority Affordable Housing Development Control Toolkit**

A tool to assist in appraising the viability of residential development schemes in relation to the provision of affordable housing. Available at:

[www.london.gov.uk/who-runs-london/mayor/publications/planning/affordable-housing-development-control-toolkit](http://www.london.gov.uk/who-runs-london/mayor/publications/planning/affordable-housing-development-control-toolkit)

#### **Homes & Communities Agency Development Appraisal Toolkit**

The HCA’s Development Appraisal Tool (DAT) is designed to appraise in detail the viability of an individual site. It takes into account local assumptions for costs and value, and records the dates at which these assumptions impact on a project cashflow over the life cycle of the development. This will help to identify the residual land value or funding deficit. It is intended to be transparent and easy to use by both delivery teams and client organisations. Available at:

[www.homesandcommunities.co.uk/ourwork/development-appraisal-tool](http://www.homesandcommunities.co.uk/ourwork/development-appraisal-tool)

#### **Sport England**

A toolkit including information to assist in securing improved sport and recreation facilities. Available at:

[www.sportengland.org/facilities\\_\\_planning/planning\\_tools\\_and\\_guidance/planning\\_kitbag.aspx](http://www.sportengland.org/facilities__planning/planning_tools_and_guidance/planning_kitbag.aspx)

### Glossary

This glossary contains words, phrases and names of organisations that are mentioned in this Guidance and are relevant to the planning process.

Affordable housing	Subsidised housing at below market prices or rents intended for those households who cannot afford housing at market rates. The accommodation is usually managed by an registered social landlord (RSL).
Borough Local Plan	Plan prepared under Part II, Chapter 1 of the Town and Country Planning Act 1990 by a local planning authority for its area. Borough local plans were replaced by a local development framework prepared under the provisions in the Planning and Compulsory Purchase Act 2004. Southend's Unitary Development Plan (UDP) was adopted 1 March 1994 although policies from the Borough Local Plan have been saved.
Character	The distinctive or typical quality of an area as described by its historic fabric; appearance; townscape; and other land uses.
Commercial Floorspace	Floorspace utilised by the following uses: offices, industry, warehousing, showrooms, hotels, retail, entertainment and private educational, health and leisure facilities, other than social and community uses that are principally provided by the public sector. This does not include residential use.
Commuted sum	A financial payment made, in accordance with a planning agreement, by a developer towards the provision of, for example, affordable housing.
Conditions	A restriction or qualification imposed when planning permission or other consent is granted under the Planning Acts. Conditions are required in law to be necessary, relevant to planning, directly related to the development to be permitted, enforceable, precise and reasonable in all other respects.
Conservation Area	An area of special architectural or historic interest designated by the local planning authority under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, the character or appearance of which it is desirable to preserve or enhance.

Department for Communities  
& Local Government (DCLG)

Government department, established in 2006, responsible for community cohesion and equality, for housing, urban regeneration, planning and local government.

Development

The carrying out of building, engineering, mining or other operations in, on, over or under the land; or the making of any material change in the use of any buildings or other land, as defined in the Town and County Planning Act 1990 as amended. Unless it is defined under the Act as 'permitted development', planning permission is required for the carrying out of any development of land.

Development Control  
Committee

The above committee has power to make most decisions in respect of planning applications and other development control matters. Made up of elected councillors in proportion to the political complexion of the Borough Council. Members of the committee are not bound to follow the recommendations of planning officers when taking their decisions.

Development Plan

Under the Planning and Compulsory Purchase Act 2004 (the Act), the development plan comprises the Southend Core Strategy and Southend-on-Sea Borough Local Plan 1994, until the latter is replaced by development plan documents prepared under the Act, and any DPDs or SPDs subsequently adopted as part of the Local Development Framework. If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan, unless material considerations indicate otherwise.

Development Plan Document  
(DPD)

These documents outline the key development goals of the Local Development Framework (LDF). The Southend Core Strategy was adopted in December 2007. Eventually these documents will replace the saved policies within the Borough Local Plan.

Entertainment Use

Uses within Class A3 (Restaurants and Cafes) A4 (Drinking Establishments) and A5 (Hot Food Take-aways) and other entertainment uses where the primary activity is use as a nightclub, live music and dance venue, discotheque, entertainment centre, dance hall, casino or bingo hall. These are mostly uses where the greatest attendances occur during the evening or at night. Most of

Key workers	<p>these uses fall within Class D2 of the Revised (2005) Use Classes Order 1987. It does not include theatres.</p> <p>Person having skills in an employment sector important to the functioning of the region in which employers have severe difficulties in recruiting and retaining staff. Some categories of key worker are eligible for special forms of housing assistance.</p>
Listed building	<p>A building contained in a list of buildings of special architectural or historic interest prepared by the Secretary of State for the Environment. Before any work can be carried out which affects the character or appearance of a listed building, inside or out, listed building consent is required.</p>
Local Development Framework (LDF)	<p>The plan-making system, introduced by the Planning and Compulsory Purchase Act 2004 requires local planning authorities to prepare a local development framework, which will comprise development plan documents and will form part of the statutory Development Plan. Supplementary planning documents will provide additional guidance and detail on specific matters. The framework will also include the Statement of Community Involvement, the Local Development Scheme (LDS) and the Annual Monitoring Report (AMR).</p>
Material considerations	<p>A factor which a local planning authority may take into account in making a decision on a planning application before it. In certain circumstances, such a factor, or a combination of them, may be sufficient to lead the authority to determine the application other than in accordance with the provisions of the development plan. Where that occurs, the factor or factors involved must, by law, be genuine planning matters, relating to the development and use of land, and must fairly and reasonably relate to the application concerned.</p>
Permitted development	<p>Some development does not require planning permission from the Borough Council. Blanket permission is given by the General Permitted Development Order.</p>
Planning agreement	<p>See planning obligation</p>
Planning obligation	<p>Also known as "S106 agreements". Private agreements negotiated, usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or "developers"), and intended to make acceptable</p>

Planning permission	<p>development which would otherwise be unacceptable in planning terms. Obligations can also be secured through unilateral undertakings by developers. For example, planning obligations might be used to prescribe the nature of a development (e.g. by requiring that a given proportion of housing is affordable); or to secure a contribution (financial or non-monetary) from a developer to compensate for loss or damage created by a development (e.g. loss of open space); or to mitigate a development's impact (e.g. through increased public transport provision). The outcome of all three of these uses of planning obligations should be that the proposed development concerned is made to accord with published local, regional or national planning policies.</p> <p>A written consent to the carrying out of development issued by a local planning authority or, on appeal, by a Planning Inspector or the Secretary of State. The permission is normally subject to conditions and will lapse if the development is not started within a stated period of time. Planning permission for buildings may be in outline where the principle is approved, subject to the later submission of further applications for the approval of reserved matters.</p>
Public Art	<p>Permanent or temporary physical works of art visible to the general public, whether as part of a building or freestanding: can include sculpture, lighting effects, and the designed treatment of street furniture, paving, railings and signs.</p>
Registered Provider (RP)	<p>A body registered as a provider of social housing under the Housing and Regeneration Act 2008 and who is approved by the Council.</p>
Residential Use	<p>As set out in the Use Classes Order (C3) Dwelling Houses unless otherwise stated.</p>
Section 38(6) (formerly 54A)	<p>The provision within the Planning and Compulsory Purchase Act (2004) which contains the principle of the development plan-led system. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.</p>
Section 106 Agreement	<p>An agreement or undertaking made under s106 of the Town and Country Planning Act 1990 to secure planning obligations. Sections 46 and 47 of the Planning and Compulsory Purchase Act (2004) give the Secretary of State the power to make regulations to replace S106, but these powers have not yet been taken up.</p>



Social, Community and Cultural  
Facilities

Most social, community and cultural facilities are in classes C2, D1 and D2 of the Use Classes Order. Such facilities can include social service uses, health facilities, some leisure and recreation facilities such as libraries, theatres and general social uses such as community meeting facilities and community halls etc.

Supplementary Planning  
Document (SPD) (formerly SPG)

Formally adopted policy statements that either elaborate key policies set out in the Borough Local Plan/LDF or set out how policies apply to a particular site. They are prepared to cover particular development topics, or area-based issues, such as planning briefs. SPDs will consist of a main document, a sustainability appraisal, an equalities impact assessment and a consultation plan. SPDs are a material consideration in the determination of planning applications.

