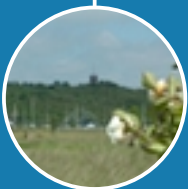
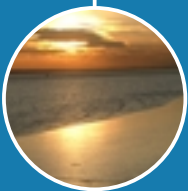


developer contributions guidance spd

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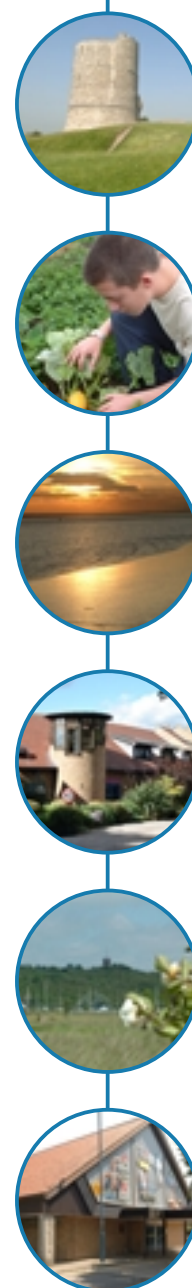
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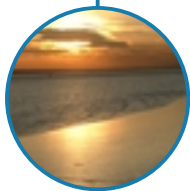


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1 preparing the developer contributions spd

1 Preparing the Developer Contributions SPD

In early 2007 the Council, building on best practice advice emerging from other Local Authorities commenced a programme of work with the Planning Advisory Service to improve the way the Council dealt with developer contributions in order to:

1. Increase the level of contributions sought and received from development; and
2. Improve the Council's speed and efficiency in dealing with applications where developer contributions were sought.

This work included the following:

- Process Mapping, in order to determine where time efficiency savings could be made;
- The introduction of standard unilateral undertakings; and
- The development and introduction of Developer Contributions Guidance in order to establish a negotiation starting point for pre-application discussions.

The process mapping and the use of unilateral undertakings was implemented in 2007 and the speed of dealing with developer contributions has already improved. This document sets out guidance on Developer Contributions and will hopefully enable the Council to increase the level of contributions sought also.

The guidance has been prepared for the Council by JWPC Planning Consultants and is based on best practice emerging from local authorities across the country, in response to local circumstances.

The first draft of the guidance was the subject of consultation from 8th December 2007 until 1st February 2008. As a result of this consultation, amendments have been made to the final guidance to make it more accurate and robust.

The final guidance, subject to Cabinet approval, will be adopted on the 1st October 2008.

2 executive summary

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2 Executive Summary

This Supplementary Planning Document has been produced to provide advice to developers on how the services, facilities and infrastructure requirements to be expected in relation to their proposed developments in Castle Point will be assessed and appropriate contributions sought through planning obligations. It is important that developers are made aware at the outset of what will be required so that they are able to incorporate the funding of any required provision into the development process.

The guidance has been prepared as part of Castle Point Borough Council's Local Development Framework. This Supplementary Planning Document is a material consideration in the determination of planning applications and will form the basis for discussions on individual applications and the drafting of planning obligations to deliver improved infrastructure, environmental enhancements and community facilities, such as education, health care, leisure activities and open space to support the development and enhance the quality of life of its residents. It will also ensure the delivery of affordable housing.

The document will also be used as a key reference for negotiations with landowners and developers who control land within the Green Belt, which may be required to be released for development in the Local Development Framework to meet future needs. The Council will look to secure the full range of contributions in such cases and maximise benefits from such development for the wider community.

This document, following a general introduction, first looks at national policy guidance on planning obligations and their use and the relevant policies in the Development Plan Documents that set out how and when development should contribute to the provision of community infrastructure and/or how planning obligations will be used to secure affordable housing. It then details how the Council will deal with the preparation of planning obligations and all the issues relating to their drafting, content and related matters. It then looks at the individual subject headings under which obligations may arise and details in a technical appendix the basis of any relevant calculations. It also includes draft model unilateral undertakings and Section 106 agreements to enable developers to use as templates and a planning obligation legal agreement questionnaire.



3 introduction

3 Introduction

Castle Point forms part of the Thames Gateway South Essex sub-region with the neighbouring boroughs of Basildon, Rochford, Southend-on-Sea and Thurrock, and is one of the East of England key growth areas. It is also part of the wider Thames Gateway Initiative, a Government priority for economic regeneration that is Europe's largest such area. The East of England Plan expects Castle Point to provide 4000 new dwellings within the 2001-2021 period and provide 2000 new jobs in the same period.

The Borough has experienced a number of major economic, environmental and demographic changes over the past few decades, all of which have combined to put a resultant strain on its services, facilities and infrastructure. New development will put additional pressure on these.

In order to create sustainable communities, the necessary infrastructure has to be put in place to address community needs. This includes not only facilities like roads and utilities, but affordable housing, community and environment improvements. These all combine to ensure that occupiers of all residential developments have affordable accommodation and safe access to services such as education, healthcare, leisure activities and open space, which enhances their quality of life. The delivery of these key social, environmental and economic objectives for sustainable development is provided for in a framework of planning policy documents, prepared at regional and local level.

A Supplementary Planning Document (SPD) is intended to expand upon policy or provide further detail to policies in Development Plan Documents as part of the Local Development Framework (LDF). It does not have Development Plan Document (DPD) status, but it will be accorded significant weight as a material planning consideration in the determination of planning applications and it will form the basis of discussions on individual planning applications.

In dealing with planning applications, Local Planning Authorities consider each one on its merits and reach a decision based on whether the application accords with the relevant DPD, unless material considerations indicate otherwise. Where applications do not meet these requirements, they may be refused, but in some instances they may be acceptable through the use of planning conditions and/or planning obligations. The imposition of a condition is normally the preferred approach. If appropriate planning obligations cannot be negotiated or secured, then the adverse impact the proposal might have on local services, facilities and infrastructure is also likely to result in a refusal of planning permission. The Borough normally expects developers, on acceptable schemes, to mitigate or compensate for the impact of their proposal by way of developer contributions, secured through planning obligations.

This document sets out the Borough Council's proposals for a SPD on Developers' Contributions, to form part of the LDF. Its purpose is to:

- explain how the Borough Council will seek to ensure speed, transparency and consistency in the implementation of planning policies through planning obligations;
- indicate the infrastructure requirements which are likely to be needed to make the development acceptable;
- allow developers to predict as accurately as possible the likely costs of contributions when considering the development potential of sites;
- provide guidance on standard formulae for calculating contributions, where considered appropriate;
- set out standard legal agreements so developers are aware of the undertakings required from the outset.

It has been produced in the context of the existing legislative framework set out in the relevant Acts, Circulars and Government Guidance documents.

This SPD does not cover every possible circumstance that may need to be taken into account in determining an application nor what infrastructure provision should be included in a planning obligation. Various infrastructure requirements may be secured by condition or negotiated separately. For the purpose of

3 introduction

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this SPD the term “infrastructure” covers the full range of services and facilities impacted on by the development.

The Borough Council is the Local Authority responsible for deciding the range and level of financial contributions for District Council functions and affordable housing and how both should be secured, together with enforcing any on-site or off-set measures. If infrastructure requirements relate to County Council functions, and are considered appropriate and acceptable to the Borough Council, the County Council will be party to the negotiations and any relevant planning obligations. The County Council will enforce any on and off site measures for County Council functions and may have its own obligations with the developers.

Many of the infrastructure requirements in this SPD relate to the development of land for residential purposes. The Council recognises that there may be different considerations relating to the development of land for employment purposes. However, it will seek infrastructure contributions in respect of employment development where this is appropriate.

Any general planning queries on the application of this Supplementary Planning Document should be referred to the Chief Development Control Officer, in the first instance. Any queries relating to planning obligations should be referred to the Head of Legal Services.



4 context for developers' contributions

4 Context for Developers' Contributions

National Policy Guidance

A planning obligation is a local agreement entered into under Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the Planning and Compensation Act 1991. It is a legally-binding agreement between the local authority, developer and landowner or persons with an interest in the land. It normally relates to an aspect of development that cannot be controlled by imposing a planning condition or by other statutory controls. It can serve various purposes, including:

- Restrictions on the use of land;
- Requiring specific operations to be carried out in, under or over the land;
- Requiring land or buildings to be used in a specific way;
- Requiring payment of a sum or sums of money on a specified date or dates, or periodically.

A typical example would be where a financial contribution is required towards off-site highway improvements or where on-site affordable housing is required as part of a development proposal.

Guidance on the use of planning obligations is set out in Circular 05/2005: Planning Obligations. They are negotiated agreements between Local Planning Authorities and individuals with an interest in the land and are enforceable by the local authority. Obligations can also be secured through unilateral undertakings by developers, where the local planning authority is not party to the agreement. Once completed, planning obligations are registered as a local land charge and run with the land. As such they can be enforced, by means of an injunction, not only against the person entering into it but also successors in title.

Circular 05/2005 sets out the following tests that must be satisfied in order for obligations to be required:

- Relevant to planning
- Necessary to make the proposed development acceptable in planning terms
- Directly related to the proposed development
- Fairly and reasonably related in scale and kind to the proposed development
- Reasonable in all other respects

The use of planning obligations is governed by the underlying principle that planning permission may not be bought or sold. It is reasonable to expect developers to pay for, or contribute towards, the cost of all or part of additional infrastructure necessitated only by the development. It is not legitimate to permit unacceptable development because of benefits of inducements offered by a developer. Similarly planning obligations should never be used purely as a means of securing for the local community a share in the developers profits, pay for facilities that are needed solely to remedy existing deficiencies or help to achieve wider planning objectives that are not necessary to allow permission to be given for a particular development.

Policies in a DPD, therefore, provide the only justification for seeking any planning obligations, since they set out the matters which, following consultation with potential developers, the public and other bodies, are agreed to be essential in order for development to proceed.

In March 2004, Kate Barker's report on Delivering Stability: Securing our Future Housing Needs recommended, however, that a new Community Infrastructure Fund should be established to fund the up-front costs of infrastructure needs which are blocking development.

She suggested that legislation, in the form of Section 106 of the Town and Country Planning Act 1990, needs to be reformed to provide more certainty and simplicity. The introduction of a Planning-Gain Supplement was put forward to offer the opportunity to achieve this objective by scaling back planning obligations to cover the direct impact of development and contributions to social housing only.

4 context for developers' contributions

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The Government's response was published in December 2005. It proposed to apply a supplementary levy on planning gain, based on a proportion of the rise in the value of land when planning permission is granted. This levy would fund strategic and local infrastructure. This proposal was however abandoned after substantial problems were identified as a result of consultation.

The Government has now introduced provisions in the Planning Bill, currently before Parliament, for a Community Infrastructure Levy (CIL) that enables local authorities to levy a standard charge on new development to support infrastructure delivery. A document on the CIL published in January 2008, explains how the Government envisages, at this stage, it will operate.

It is envisaged that the CIL will not just address major transport and strategic infrastructure, but also make certain that the very things that make the quality of life good in a neighbourhood are both maintained and improved when an existing community grows. It cites as examples adequate local facilities to serve families such as schools, parks, health centres, good public transport and provision for pedestrian and cyclists and flood defences to protect development from the impact of climate change.

It accepts that almost all development has some impact on the need for infrastructure, services and amenities, or benefits from it so considers it only fair that such development pays a share and those that benefit financially when planning permission is granted should share some of the gain with the community and the development itself should make more of a contribution to the infrastructure costs faced by local communities.

The clauses in the Bill allow the creation of regulations, which will be consulted on in Autumn 2008, and will set out the details of the new regime and how the CIL will work in practice. Authorities seeking to charge a CIL will need to identify what infrastructure is needed and how much it will cost and work out what contribution each development should make to that cost. They will also have to produce a draft charging schedule setting out the rate and/or formula determining how the levy might be calculated.

It is envisaged that the CIL will not necessarily be spent on entirely on new infrastructure; it could be used to facilitate better use of existing infrastructure to increase capacity, but not on general local authority expenditure or to remedy pre existing deficiencies in infrastructure provision, unless the latter has been, or will in time be aggravated by new development.

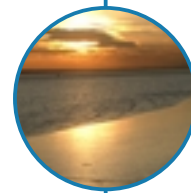
The Government advises that authorities should set the CIL at affordable levels and take the into account the wider range of development costs placed on developers by the authority to ensure development is delivered.

Section 106 of the Town and Country Planning Act will be retained and for authorities that choose not to introduce the CIL to fund local infrastructure, planning obligations will continue to provide a means of securing developer contributions. For local planning authorities that have developed standard charges or are considering them, the Government is encouraging them to continue, as it reflects current law and policy. This guidance makes a move towards establishing standard charges for some services and infrastructure.

Development Plans

East of England Plan

The East of England Plan was adopted in May 2008. It identifies the scale of development and growth in the region to 2021. The Plan concentrates on the Regional aspects and looks to Local Planning Authorities to deliver and finance through major public funding and developers' contributions the necessary sub-regional and local transport and other community infrastructure to support the amount of growth being proposed in the sub-region up to 2021. Specific reference is made to the need for affordable and key worker housing, health and education facilities throughout the East of England.



4 context for developers' contributions

Castle Point Borough Council Local Plan

The Castle Point Borough Council Local Plan was adopted in November 1998. It is saved until May 2008 when it will be replaced by the Local Development Framework. The Council has recently prepared and consulted on the Preferred Options for its Core Strategy & Generic Development Control Policies Development Plan Document (Core Strategy DPD) as part of the emerging Local Development Framework process.

Policy CF1 of the Local Plan requires developers to make provision for essential social and physical infrastructure to serve the needs of the proposed development. In appropriate cases this will be secured by planning obligations. This policy, together with H7 on Affordable Housing and RE4 on Provision of Children's Playspace & Parks, is among a number of policies saved beyond September 2007, until replaced by the Local Development Framework. The saved policies relevant to developers' contributions are set out in full in Appendix A.

Emerging policies in the Core Strategy that are relevant to this guidance are policies SS1 (Spatial Strategy) and MI3 (Developer Contributions). These require developers to enter into planning obligations to carry out works or contribute towards the provision of infrastructure and transport measures deemed necessary as a consequence of the nature and scale of the development proposed. Core and Generic Development Control Policies in the document detail specific requirements for affordable housing and the general requirements to contribute to or provide for community, recreational and educational needs. The relevant draft policies CP1 (Community Infrastructure), CP2 (Green Infrastructure), CP3 (Transport Infrastructure), CP8 (Meeting Housing Needs) and DC16 (Managing Open Space Provision) are set out in Appendix B.

Essex County Council have published a Developers' Guide for Community & Transport Infrastructure Contributions. This document sets out the scope and range of contributions that the County Council, within its statutory remit, will seek from developers. This document has been used to inform the drafting of this SPD and should be read in conjunction with it.

This document has also been informed by Castle Point's Community Strategy, prepared by a Local Strategic Partnership, an umbrella body bringing together a wide range of organizations from the public, private, voluntary and community sectors, working together to plan for the long-term needs of Castle Point. Its vision for 2020 is for:

"A community where everyone can prosper, be safe and live in a high quality environment."

The Council's Core Strategy and related LDF documents will play an important role in delivering this vision and the eight themes of that vision:

- *Learning for all*
- *Making our environment greener and cleaner*
- *Regenerating our local economy*
- *Having fun and getting involved*
- *Becoming healthier*
- *Feeling safer*
- *Getting around*
- *Involving everyone to serve you better*

5 general approach to developer contributions

5 General Approach to Developer Contributions

Introduction

5.1 All planning obligations shall ensure that the proposed development is not only sustainable and secures social, economic and environmental benefits for the community, but that the environmental/ecological impact is minimized.

5.2 All contributions or requirements that form the basis of a planning obligation will be assessed on a site by site and development by development basis and will be directly related to the impact the proposed development has on local services, infrastructure and resources. However, on such matters as education and library services a standard formulae for financial contributions has been set which will be applied where there is a known requirement to provide enhanced or new infrastructure on or within the vicinity of the development site. These formulae will be reviewed and updated by the Council on an annual basis, as necessary, and by reference to changes in Government guidance, its service providers and other bodies or organizations responsible for providing or specifying the costs and standard of infrastructure or service.

5.3 The standard formula and charges are set out as Appendix G-L to this SPD. The list for which a planning obligation is required is not, however, exhaustive since some developments may require additional or alternative contributions/ requirements, depending on the characteristics, infrastructure and social requirements of the development. There may be, for example, archaeological, ecological, geological or environmental implications that cannot be foreseen prior to site investigation, as evidenced following an Environmental Impact Assessment. Where there are highway and transportation implications these can sometimes only be quantified after an assessment of the development relative to the site's location, the surrounding highway network, existing infrastructure and following, for example, a Traffic Impact Assessment.

5.4 In all cases involving residential development the Council will seek contributions for affordable housing provision, and the provision of transportation improvements.

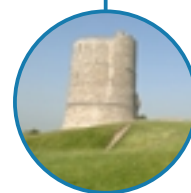
5.5 The Council will also seek contributions relating to the following matters where appropriate:

- Waste Management and Recycling Contributions
- Flood Risk Management Contributions
- Open Space, Sport, Leisure and Recreational Provision/Contributions
- Public Realm and Community Contributions
- Healthcare Contributions
- Community Facility Contributions
- Education Contributions
- Library Contributions
- Adult Social Care and Day-Care Provisions for Adults

5.6 The relative priority in which contributions are sought will relate to the nature of the development proposed and the issues relating to the location of that development. Considerations relating to the impact on viability are dealt with in paragraph 5.20.

5.7 Certain matters arising out of development proposals relating to landscaping, biodiversity, ecology, archaeology and fire and rescue would, in the main, be secured by condition. Where the Council is informed or consider that the infrastructure works are required to address the above matters and they can only be secured through a planning obligation, then they too will be assessed against any other competing demands.

5.8 Obligations may either comprise the provision of infrastructure in kind or in the form of a financial contribution. Where facilities are required to be provided, they are normally expected to be provided on the site of the development by the developer and it is only, where justified, that such provision can be



5 general approach to developer contributions

accepted elsewhere. The obligations should state the number, type and standard of infrastructure facilities being provided. In the case of financial contributions, payments will normally be required in the form of a lump sum, which may have to be paid in advance, or as phased payments over a period of time or related to defined dates, events or triggers to enable new facilities to be planned alongside the development being built to ensure that any new facilities are in place when new residents move in.

Planning Obligation Process

5.9 The Council's Statement of Community Involvement encourages all applicants and agents to discuss development proposals with planning officers before submitting a planning application. Discussions with a Council planning officer, assisted where appropriate by officers representing various service areas or other public bodies, will highlight the likely impact of the development and suggest ways to mitigate them. Applicants will be advised of any known infrastructure requirements and the appropriate process for securing the mitigating infrastructure needed together with the parties likely to be involved in the obligation. An indication will also be given as to whether it is appropriate to use a Section 106 Agreement or a Unilateral Undertaking.

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

5.11 Planning officers will present in their report to Committee on the application, key aspects of the proposed obligation. The Council requires applications involving a planning obligation to be decided within eight or 13 weeks of submission, depending on the size and nature of the proposed development. Those applications accompanied by an Environmental Impact Assessment should be decided within 16 weeks. If it is considered that the applicant delays completion of the obligation and thereby creates uncertainty for the community and adversely affects the performance of the Planning Service, the application will be refused, or recommended for refusal if the application is to be reported to Committee.

5.12 To speed the processing of a planning obligation, the Council has prepared specimen Section 106 Agreements and Unilateral Undertakings. These are attached as Appendices N and O respectively. Copies of these specimen legal obligations can be downloaded from the Castle Point Borough Council's website (www.castlepoint.gov.uk). Essex County Council also has on its website (www.essexcc.gov.uk) specimen legal obligations in connection with transport and education matters. Developers will be encouraged to use Unilateral Undertakings when the financial contributions required towards infrastructure are for solely Borough Council or County Council functions. They do not require the local authority but the developer to establish title to land and should require less time to complete. The legal agreement questionnaire (at Appendix M) still needs to be completed and submitted with any application that officers have indicated requires a financial contribution. Unilateral undertakings may also be offered under the planning appeal process.

5.13 If contributions are being sought for a range of facilities, they will usually be addressed in a single agreement. However, some areas of community infrastructure, such as education, libraries, health facilities and most transport infrastructure, are provided by the County Council and other outside agencies. Their requirements will often be the subject of separate agreements to those entered into by the Borough Council, although joint agreements will be used wherever possible.

Pooled Contributions

5.14 The majority of developments in Castle Point may not, of themselves, warrant major investment in new infrastructure, services or facilities. However, a series of small developments are likely to have a cumulative impact and in such circumstances the Council will take a view as to whether contributions should be sought from individual proposals when it is considered the existing infrastructure cannot adequately support the cumulative impact or no such infrastructure provision exists. Where these situations

5 general approach to developer contributions

occur contributions will be pooled to provide the necessary facilities. The cost of the infrastructure will be calculated and then split in proportion to the needs arising from the individual proposed development. The infrastructure would then be put in place after funding to start the project has been secured. In such cases there will need to be a clear framework on how the contributions will be collected and the infrastructure subsequently provided.

5.15 Other infrastructure works, such as highway improvements directly associated with the development, are sometimes required to have been carried out before any development can take place. Financial contributions for off-site works and longer term projects will normally be expected on commencement of development to enable the facilities, services or infrastructure to be in place on its first occupation. Forward funding and/or revenue support of public transport facilities like a bus service is a case in point.

Phasing

5.16 Delivery of specific elements of a comprehensive development scheme, including necessary infrastructure may be secured through phasing. An obligation could be phased so that a recreational facility, like a play area, in a residential development is delivered as part of the first phase of the development so that it is available as early as possible to incoming residents.

5.17 In cases where the Borough or other agencies create funds for the pooling of financial contributions, sometimes towards infrastructure projects across more than its administrative area, they will be held in interest-bearing accounts, ring fenced to the programmes and schemes identified in the relevant planning agreements. In the unlikely event that financial contributions secured from developers cannot be spent within the timescale provided for in the agreement, the money will be refunded with interest.

Outline Applications

5.18 When dealing with outline planning applications, where all or some of the details of the proposal are reserved for a subsequent application, it will be necessary to frame the planning obligation to ensure that payment towards the provision of services, facilities or infrastructure will be required and assessed on the basis of subsequent details. Where precise levels of development in an outline permission require subsequent approval, the obligation will include clauses allowing for a proportionate increase in the scale of contributions sought. For example, where outline permission is granted for 20 units of housing, if the reserved matters application increases this to 25 units, the obligation will include formulae requiring a proportionate increase in the contributions payable. Where it turns out that the resultant development is under the number stated in the outline application, then the legal obligation will be worded to allow an alternative approach.

Development Briefs

5.19 In the case of larger sites, Development Briefs will set out, amongst other matters, all infrastructure requirements, including any necessary and related land requirements.

Replacement Residential Units and Conversions

5.20 The contributions outlined in this SPD are, in the case of residential units, sought for all new units created. Allowance will be made for existing units on the site in determining the net increase in numbers. Where changes of use are proposed from any residential use with shared facilities, such as bed-sit accommodation or a care home, to independent residential units with separate facilities, then the gross number of units created will be used in assessing any applicable contribution.

Viability Issues

5.21 The Council considers that costs incurred in delivering a sustainable, high quality development are to be expected and should not reduce the inability of the site to contribute towards relevant planning objectives. Most developments are, therefore, expected to satisfy all the infrastructure requirements identified as well. Applicants who cite non-viability as a reason for not meeting all infrastructure requirements



5 general approach to developer contributions

must support their case with financial evidence, which they should submit at the pre-planning application stage. A Financial Viability Assessment schedule is attached as Appendix F and will be used by the Council to assess claims of non-viability. The evidence will not be open to public scrutiny as it may contain confidential information but where necessary it will be audited by external independent experts to obtain impartial advice if agreement cannot be reached between the applicant and the developer. It should therefore be set out in enough detail for viability to be properly assessed and tested. If independent valuation is required, the costs will be borne by the developer.

5.22 The Council expects developers to have considered the financial implications of planning obligation requirements when submitting proposals for sites already in their ownership or when purchasing or taking out an option to buy a site. The planning system is clear that such requirements should be taken off land value and therefore land costs will not be accepted as a reason for non-viability. One example of a potentially acceptable reason would be the costs of cleaning up a highly polluted or contaminated site.

5.23 If it is agreed that a scheme cannot reasonably afford to meet all infrastructure requirements, they will be prioritised in negotiation with the developer, subject to the scheme being acceptable in all other respects and as detailed previously.

Maintenance Contributions

5.24 Where development results in a need for new infrastructure or a new facility for the benefit of the occupiers of the associated development and it is transferred to the Council's ownership (as in open space, children's play area, public art) the Council will require a maintenance contribution, usually as a one-off payment. This contribution would be to cover the physical upkeep of the facility and will usually be equivalent to 10 years' maintenance costs. Where developers or a management company choose to retain responsibility for the facility, they will need to be bound by a planning obligation to ensure a proper and acceptable maintenance regime. As the maintenance contribution will be directly tailored to the specific infrastructure or new facility required or proposed, it is impossible to give standard contribution sums as part of this SPD. The precise figure will only be known once the scale, size and nature of the facility is known and thus will be provided by the Council during the processing of the application.

Index Linking

5.25 All financial contributions will normally be paid upon commencement of development, as defined in the planning obligation. Infrastructure and highway improvements directly associated with the development are normally required to have been carried out before occupation of the development, although in some cases may be required before any development can take place. Financial contributions will normally be required on commencement of development and will be index linked from the date of completion of the agreement to maintain the real value of the payments, so that the infrastructure can be provided in good time and to the required standard. The indices used will differ according to the type of infrastructure concerned. The Council will set out in the obligation the most appropriate indices that relate to the subject matter of the obligation for the period between creation of the obligation and full payment of the contribution. These indices will be reviewed and updated on a yearly basis.

Late Payment and Repayment

5.26 All obligations will include penalty clauses for late payments and will set out the time frame in which the monies shall be used for its intended purpose. If the money is not spent on the purpose for which it was secured and no provision has been made for it to be used on alternative infrastructure, within this period, the developer will be reimbursed on request for the relevant unexpended amount plus any interest accumulated.

Development Threshold

5.27 Planning applications or pre-submission proposals will be carefully scrutinized to ensure that they do not artificially fall below the given thresholds so as to avoid planning obligations. If it is considered that a proposed development is not maximizing the use of a site to avoid an obligation threshold, the application

5 general approach to developer contributions

will be refused. Similarly, where it is considered that a potentially large development proposal or site has been split into smaller applications in order to be under obligation thresholds, then each application will be refused or the individual proposals be treated collectively for the purpose of the planning obligation.

5.28 In principle contributions will be sought in respect of all new additional dwellings. However, certain types of infrastructure contain individual minimum thresholds below which an obligation will generally not be sought. Depending upon the nature, type, location and impact of the proposed development, there may be occasions when an obligation may be sought, irrespective of whether there is a given threshold or not.

5.29 There have been occasions where, since the resolution to grant planning permission and subsequent delays in negotiating the legal obligation, planning policies have changed. The Council will seek to avoid such cases in the future because of the uncertainty for the community and the adverse impact on the performance of the service.

Monitoring of Planning Agreements

5.30 All planning obligations will be monitored by the Council to ensure they are complied with, both by the developer and the Council. Clauses will be inserted within the obligations to require the developer to notify the Council and other parties as required in the agreement, in writing, on commencement of development so it can check whether this triggers financial and other requirements within the obligation. Information detailing the agreements and their progress will be kept by the Council and form the basis of an annual monitoring report to ensure a transparent spending of financial contributions, once they have been received, on the required infrastructure improvements for which they were secured.

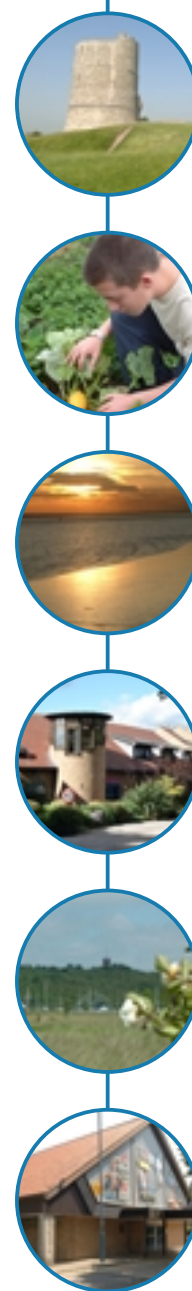
Charges for Agreements

5.31 Applicants must meet the costs of negotiating and production of the obligation. Castle Point Borough Council charge a set fee of £1000 for major applications, £400 for a private dwelling and £200 to amend an existing obligation and £300 for a unilateral undertaking. The County Council charges are made on an hourly rate, which is currently £100. All these charges are subject to periodic review.

5.32 Once the planning obligation is 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 Borough and County Councils. Standard charges will apply to recoup these costs. For large-scale developments, phased payments may be agreed by negotiation, although this will incur an additional administrative charge. The standard charges are:

Table 5.1 Monitoring Charges

Unilateral Undertakings used for infrastructure up to £10k	£100
Contributions up to £10,000	£100
£10,001 to £25,000	£250
£25,001 - £50,000	£500
£50,001 - £150,000	£1,500
£150,001- £500,000	£3,750
£500,000 - £1m	£5,000
Over £1m	0.5% of the value of the contribution
On-site measures or off-site measures within the applicant's control per clause	£700
Borough Council monitoring of County Council and other parties clauses – per clause	£75



5 general approach to developer contributions

5.33 Where the Borough and County Councils are both party to the obligation, these charges will apply separately according to the respective functions of the two authorities. For example, for an obligation involving on-site affordable housing, a £55k transport contribution and a £15k contribution towards a play area, the implementation contribution payable to the County Council would be £1,500 (for the transport contribution) and £1,025 to the Borough Council (£700 for on-site measure plus £250 for play area plus £75 for monitoring of County clause).

Formulae and Standard Charges

5.34 Circular 05/2005 encourages Local Planning Authorities to employ formulae and standard charges, where appropriate, as part of their framework for negotiating and securing planning obligations. It is considered that these can help speed up negotiations and ensure predictability by indicating the likely size and type of some contributions in advance. They can also promote transparency by making indicative figures public and assist in accountability in the spending of monies. The Circular, however, states it is for Local Planning Authorities to decide which matters, if any, to address through standard formulae and charges. Those for Castle Point are set out in the appendices.

5.35 With some infrastructure works the formulae approach may not be possible, especially where the complex nature of the proposal and its likely impact needs to be the subject of detailed analysis. A specific example is the transport implications of a proposed development which requires a Traffic Impact Assessment and a potential range of options to offset that impact.

Updating and Review

5.36 This SPD will be updated at least every two years to ensure that changes in legislation, Government guidance or the evidence base are incorporated and that the relevant and current financial indices are included. Charges for monitoring and handling legal obligations will also be updated every two years also.

6 Topic Papers

Affordable Housing

Policy Context

6.1 In November 2006 the Government published PPS3: Housing, superseding PPG3: Housing and Circular 6/98: Planning & Affordable Housing. PPS3 reflects the Government's commitment to improving the affordability and supply of housing in all communities and the provision of high quality housing for people who are unable to access or afford market housing or are seeking to make the step from social rented housing to home ownership. It requires Local Planning Authorities to set out in Local Development Documents a target for the amount of affordable housing to be provided. It also requires LPAs to set out the approach to seeking developer contributions that would facilitate the provision of affordable housing, with a presumption that it will be provided on site so that it contributes towards creating a mix of housing. PPG3 also advises that the target figure should reflect an assessment of the likely economic viability of land for housing and likely levels of finance available. The recommended minimum site size threshold for which affordable housing will be sought is 15 dwellings, but PPS3 advises that Local Planning Authorities can set lower minimum thresholds, where viable and practicable.

6.2 The East of England Plan, requires that 35% of all new housing granted consent after May 2008 should be affordable, reflecting the significant shortfall found from a regional Affordability Housing Study. The Thames Gateway South Essex Strategic Housing Market Assessment suggests that delivery at this level is needed to go some way towards meeting affordable housing needs in Castle Point.

6.3 Policy H7 of the Castle Point Local Plan states that, where appropriate, the Council will seek to negotiate a proportion of affordable housing where appropriate to the scale of development schemes, with the number of affordable dwellings to be provided dependent upon the size of the site, its location and costs associated with the provision of other necessary infrastructure. Draft policy CP8 of the Council's emerging Core Strategy and Generic Development Control Policies Preferred Options Report requires the provision of on-site affordable housing on all residential development sites, subject to economic viability and negotiation.

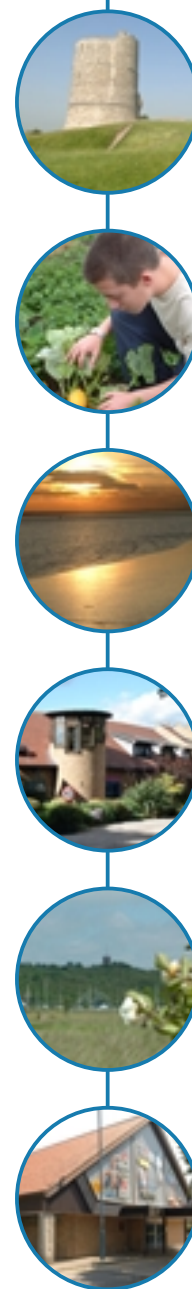
Castle Point Housing Needs

6.4 Government policy, outlined in national and regional planning guidance, requires Local Authorities to have an up-to-date assessment of housing needs to support Housing Strategies, bids for resources and Local Plan/Local Development Framework policies for affordable housing provision.

6.5 In 2002 the Council commissioned consultants to carry out a Housing Needs Survey, the purpose of which was to examine the housing requirements – needs, aspirations and demands – in the Borough.

6.6 The principal findings were:

- the supply of terraced properties were well below the national average;
- nearly 9% of households contained one or more households seeking independent accommodation;
- low income levels in these concealed households meant 69% were unable to afford even the cheapest available housing in the Borough;
- the concealed households mainly comprised of children over 16 living with their parents and elderly people living with relatives – the greatest demand was from people aged 16-29;
- there was a shortfall of flats in the existing housing stock, which needed 150 new units in the unsubsidised low cost market sector per annum to 2006 to meet the needs of concealed new households with income levels adequate to access the local market;
- there is an annual unmet housing need for 444 subsidised units of accommodation.



6 topic papers

6.7 The Council commissioned a survey update in 2004. Its principal findings were:

- entry to market housing had become more difficult for new households, increasing the demand for subsidized housing;
- 94% of concealed households were unable to buy in the general market and 66% are unable to afford private rental;
- there was a large increase in single person households;
- the increase in average house prices of between 85% and 69% for flats and terraced houses over the 2002-2004 period have excluded a large proportion of first time buyers from the market;
- there was an annual affordable housing shortfall of 412 units a year;
- the changed relationship between incomes and prices meant that those in 2002 who were able to access the market have reduced significantly and increased the scale of subsidized low cost market housing need.

6.8 The report recommended that the overall affordable housing target figure should be 35% with around a third of that provision as low cost market housing, provided it was delivered at a cost below the cheapest entry level and available on a similar basis to subsequent purchasers.

6.9 There are currently around 35,280 households in the Borough, the majority of which are in houses and bungalows built since the end of the Second World War. During the period 2001-2021 the population of Castle Point is expected to increase by up to 3,200, with an increase of 3800 households in the same period. This expected growth is slightly below the target for household provision for Castle Point, set out in the East of England Plan of 4000 between 2001 and 2021, of which approximately 1130 dwellings have already been provided. The increase in households over the increase in population reflects a trend in declining household sizes. In 2001 there were 2.4 people per household. This is expected to reduce to 2.24 people per household by 2021 and suggests an increased demand for smaller units within the Borough during the Plan period.

6.10 This is supported by the 2002 and 2004 Housing Needs Surveys for Castle Point. In 2002 only 6.8% of the Borough's housing stock consisted of flats, maisonettes and bedsits; the national average was 19.4%. With the majority of the housing stock comprising predominantly houses and bungalows, the average price of flats/maisonettes in Castle Point has increased by 122% during the period 2002-2006, indicative of the high demand for such accommodation. In the corresponding period detached house prices have risen 67%. Appendix D details average property price changes for Castle Point during the period 2001-2006.

6.11 The Land Registry average price for a flat/maisonette in the Borough was £142,917 in 2006. This resulted in a house price to income ratio for Castle Point of 5.07. House prices have continued to rise since 2006.

6.12 The 2004 Housing Need Survey indicated that there is a need for 523 affordable units annually within the Borough, of which 111 units are supplied through reallocation within the existing housing stock, resulting in the net requirement for 412 units a year. This annual need, when compared to the East of England target of 4000 dwellings for the period 2001-2021, would alone double this allocation.

6.13 This affordable housing requirement is therefore substantially beyond the total requirement for all new dwellings over the Plan period, set out in the East of England Plan. The Housing Need Survey therefore recommended that 35% of all new housing should be provided as affordable, which is in line with the East of England Plan. The Council will also seek to address the deficiency in small units by requiring the number of one and two-bedroom units to form a proportion of all new residential development in the Borough.

6.14 Due to the limited scale of developments in Castle Point and the generally corresponding small sites involved, it is felt that it is justified to require all new developments to contribute towards affordable housing in order to meet local needs and the target for affordable housing provision set out in the East of

England Plan. PPS3 enables Local Planning Authorities to require and set lower thresholds where they can justify it.

Affordable Housing Thresholds

6.15 The current percentage requirement for affordable housing in Castle Point is 35% on sites of 15 proposed units or more. This is consistent with the East of England Plan and PPS3 respectively. The Council is now seeking the provision of affordable housing in accordance with the following thresholds:

“all residential developments resulting in a net increase in dwellings to make a 35% contributions towards affordable housing on site and in kind, subject to negotiation and consideration of economic viability.”

6.16 In some instances a financial contribution in lieu of on-site provision may be permitted, particularly on smaller schemes where it is not economically viable to seek on-site provision. The financial contribution should be based on the shortfall between what local people can afford and the market value of the units proposed. The contribution will be calculated thus:

Market Value – (Average Household Income x 3) = Shortfall

Shortfall x number of properties x 35% = Financial Contribution

Affordable Housing Definitions

6.17 Annex B to Planning Policy Statement 3: Housing defines affordable housing as “including social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market”. Such housing should:

“Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.

Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.”

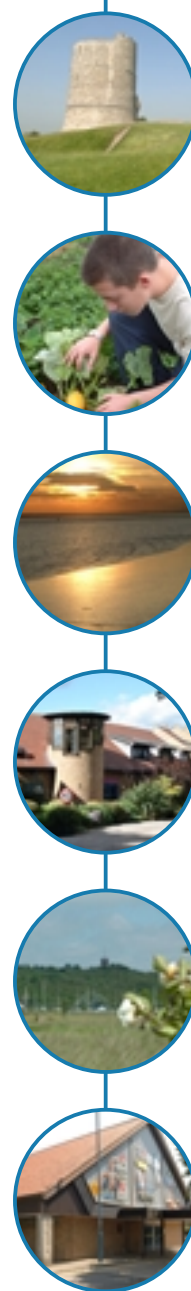
6.18 This definition would also cover rented housing provided by others under equivalent rental arrangements. Annex B defines social rented housing as:

“Rented housing owned and managed by local authorities and registered social landlords, for which guideline target rents are determined through the national rent regime. It may also include rented housing owned or managed by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Housing Corporation as a condition of grant.”

6.19 Intermediate affordable housing is defined as:

“Housing at prices and rents above those of social rent, but below market price or rents. These can include shared equity products (eg HomeBuy), other low cost homes for sale and intermediate rent.”

6.20 Shared equity schemes are where the equity in a property is shared between a purchaser and the affordable housing provider. In HomeBuy schemes the purchaser buys 75% of the property, receives an equity loan to cover the remaining 25%. This loan is paid back at 25% of the value of the property on resale or earlier. Intermediate Rented Accommodation is housing rented above the level of social rented accommodation but below market rents. Shared ownership affordable housing should be available in perpetuity to those in housing need.



6 topic papers

6.21 Unlike Registered Social Landlord (RSL) rented accommodation, there is no national guidance for shared ownership schemes and discussions on proposed schemes using this mechanism are recommended at an early stage to ensure that they are acceptable.

6.22 Dwellings sold below the market value or at the lower end of the property market are not considered to be an acceptable form of affordable housing, as the high property prices in Castle Point relative to incomes, means it would not solve the problem for most people in housing need. It is likely to be more expensive than private rented accommodation and would not solve the problem for most people in housing need.

6.23 A test of what is affordable to a household is done by comparing household incomes to house prices. A commonly accepted definition is one where a household is unable to afford private sector housing where the cost of housing, to buy or rent, exceeds 23%-35% of net household income.

Key Worker Accommodation

6.24 Due to a lack of affordable housing within Castle Point and the surrounding area, there are difficulties in recruiting workers for key public sector services. The identified key worker groups currently include:

- Clinical NHS staff (with the exception of doctors and dentists);
- Teachers and nursery nurses in schools and further education/sixth form colleges;
- Police officers, Community Support Officers and some civilian staff;
- Prison Service staff in certain prisons;
- Probation Service staff;
- Social workers, nursery nurses, educational psychologists, and therapists (eg occupational therapists) employed by local authorities, CAFCASS or the NHS;
- Local Authority Planners and
- Fire-fighters and other uniformed staff below principal level in Fire and Rescue Services.

6.25 For the benefit of this SPD, key worker accommodation will be regarded as affordable housing. Developers must enter into a legal agreement to make the accommodation available in perpetuity for key workers. The categories of key workers may be subject to change from time to time.

Tenure Split

6.26 In general the Council will seek a 50:50 split of tenure for affordable housing with 50% for social rented accommodation and 50% for intermediate accommodation.

Legal Obligations

6.27 The Council will secure the provision of affordable housing through legal obligations. It will set out the number and location of the affordable accommodation to be provided and that the units will be transferred to a RSL or an affordable housing provider that has been approved by the Council, that the occupiers of the affordable accommodation shall be nominated by Castle Point and that all units should be retained in perpetuity for Castle Point households in need of affordable housing.

Siting

6.28 The Council will expect the affordable accommodation contribution to be provided on site as an integral part of the development. This is a key Government objective to creating sustainable integrated communities that provide a mix of housing, both market and affordable, particularly in terms of tenure and price, that supports a wide variety of households in urban and rural areas.

6.29 In exceptional circumstances affordable housing may be provided off-site, but the Council will have to be convinced that there are good and soundly justifiable planning reasons why on-site provision is not suitable and if another suitable site, acceptable to the Council, can be identified.

Financial Contributions

6.30 In exceptional circumstances, an off-site financial contribution may be considered if it resulted in the provision of the appropriate amount of affordable housing. A greater contribution towards affordable housing will normally be sought in these circumstances to reflect the benefit the developer gains through using the whole site for private market housing. The amount of the financial contribution sought would be equivalent to the cost of building the required number of affordable dwellings of the size and type required together with the value of the land needed to build them on at open market value, minus the amount equivalent to what would be payable to an RSL.

Mix

6.31 In assessing the mix of affordable dwelling types and sizes proposed, the Council will have regard to the most recent information it has about groups in priority need of affordable housing and the characteristics of the site. As stated previously, the Council will generally expect a tenure split of 50% social rented and 50% shared ownership.

6.32 The overall strategic mix of affordable housing for Castle Point, should reflect great local needs with both smaller units, including units for people with special needs, and family housing making up the affordable housing supply.

Delivery

6.33 Before planning permission is granted developers must arrange to make their affordable housing available for those in housing need in perpetuity. RSLs are the recommended method by which affordable housing is managed.

6.34 The Council has a number of preferred partner RSLs and it encourages applicants to use one of them as the Council is satisfied that they can deliver their affordable housing management obligations effectively and efficiently and work with the Council to meet shared objectives for sustainable communities. Early contact with the Council is therefore strongly advised so that it can be decided who the most appropriate RSL is for the particular site. Applicants who wish to provide the affordable housing through an RSL that is not one of the Borough Council's preferred partners will need to satisfy the Council that they have established key principles for the management of the affordable housing. Applicants will be required to submit information on their preferred RSL and how it will allocate, manage and monitor the affordable housing units. These details will be incorporated into the terms of the legal agreement.

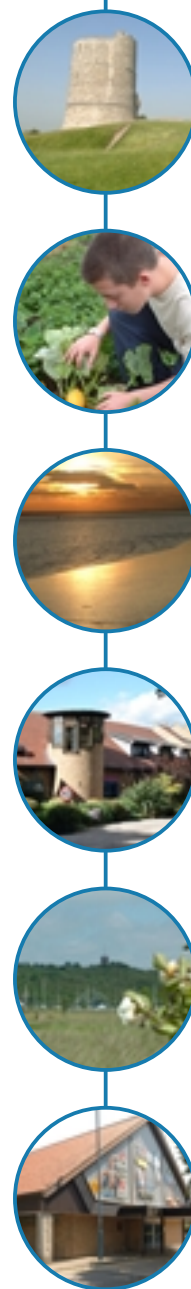
6.35 The Housing Corporation is unlikely to fund affordable housing delivered through legal agreements, so applicants will need to consider this when buying the land and at the early stages of the financial calculations of their development.

6.36 PPS3 and Planning for Mixed Communities states that development plan requirements should not affect whether or not a development was viable, as the impact would have to be absorbed by the landowner.

6.37 The Council will expect the price of the affordable housing units to be based on the funding that the RSL is likely to be able to raise using the income from the units as the repayment source.

6.38 Developers will be expected to provide the affordable units to a RSL at a discount equivalent to providing serviced land at nil cost; serviced land is defined as land that has all services connected, provided up to the frontage of each plot and ready to connect, with all commuted sums and infrastructure charges for connection and adoption or maintenance paid for by the developer.

6.39 Transfer of the land for affordable housing to an RSL should take place prior to the occupation of any dwellings on the site. On larger sites delivery should be phased throughout the development of the site, with the land transfer taking place prior to the time of the first occupation of the open market units within that phase of the development.



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6.40 It is essential that the units secured are affordable to those in need. In relation to affordable rented accommodation this is effectively defined by the Housing Corporation guidance on rent levels which RSLs have to adhere to. For shared ownership or sub-market rented housing, such as that for key workers, there is no guidance so it is necessary to discuss proposed costs at an early stage to ensure they are affordable and acceptable.

Design and Siting

6.41 In terms of design and layout, the affordable housing element should be integrated within the development as a whole. This should involve the distribution of affordable housing across a site or within a block of flats, rather than all being concentrated in one location. The separation out of the affordable housing from the remainder of the development should be avoided.

6.42 The Council will expect all affordable housing secured through planning obligations to be built to meet the Housing Corporation's 'Scheme Development Standards', to ensure good quality accommodation is provided. Regard should also be had to the Code for Sustainable Homes, particularly with regard to energy efficiency and water conservation. The affordable housing element of any scheme should also comply with the Council's standards regarding density, car parking and amenity and not be visually distinguishable from market housing in terms of details, build quality or materials. Where affordable housing is provided as part of a high density development the adopted sections of the Urban Place Supplement should be applied.

Transport

6.43 The northern boundary of the Borough is demarcated by the A127 Southend-on-Sea – Romford/M25 dual carriageway and the western boundary by the A130 Chelmsford/Canvey Island road. The A13 Southend-on-Sea – London/M25 passes through the Borough. Canvey Island is served by two points of access only, which converge at one roundabout. Castle Point has limited public transport. The London Fenchurch Street to Southend railway line stops at South Benfleet.

6.44 Approximately 19,000 people, or 62% of the economically active population, commute out of the Borough on a daily basis for work, the third highest level of out-commuting in the East of England. The majority of commuters travel by car, and at peak hours the main junctions and routes within Castle Point suffer from severe congestion, particular in the mornings when schools are open.

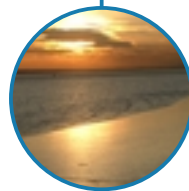
6.45 Government policy is to encourage and promote sustainable and integrated transport systems by encouraging the use of a variety of modes of transport, such as walking, cycling and public transport, rather than relying solely on the use of a motor vehicle. The key to delivering improvements in mobility and to deliver more sustainable solutions is the integration of transport and land use planning.

6.46 Road and transport planning for Castle Point is carried out by Essex County Council, as Highway Authority, and it is responsible for the management and maintenance of all adopted roads within the County other than those designated as trunk roads and Motorways. The Essex Local Transport Plan 2006-2011 sets out its road and transport strategy on an area basis and includes the Development Control Policy Framework and Development Control Policies. Castle Point lies within the Basildon and Thames Gateway Area and the Plan details a number of proposals for this area for 2006-2011. These are attached as Appendix H. In addition to these schemes the East of England Plan and the Canvey Island Sustainable Regeneration Report sets out transport infrastructure projects to achieve regeneration and ease congestion. These are also listed in Appendix E.

6.47 The Borough Council supports the Local Transport Plan, the East of England Plan and the findings of the Canvey Island Sustainable Regeneration Report and will work with partners to seek the delivery of the necessary transport infrastructure improvements. To this end the various transport/infrastructure proposals and projects have informed and shaped the improving Transport and Accessibility policy in the Council's emerging Core Strategy. This policy, CP3, sets out the improvements to the local transport infrastructure the Council wishes to see by 2021 and the contributions developers will be expected to make to the implementation of the Essex Local Transport Plan.

6.48 The Local Transport Plan details the Highway Authority strategies and proposals for improvements to the highway network, promotion of alternative means of transport to motor vehicle, measures to tackle road congestion, together with targets for maintaining the current infrastructure. As well as producing this plan the County Council, as Highway Authority, is a statutory consultee for all planning applications received by the Borough. These are assessed against its Highway Development Control Policies and whether the proposed development protects existing routes, is properly designed to optimise highway safety, does not cause congestion and is sustainable and accessible. The development control policies aim to provide, protect and maintain a reliable highway infrastructure that optimises safety and minimises congestion, improve access to both urban and rural services, reduce dependence on motor vehicle through the promotion of alternative modes of transport and support public transport provision.

6.49 Most developments generate new travel movements, even from a previously developed site. They also affect the ability of the County Council to deliver the objectives of the Local Transport Plan as it alters the transport movements on which the Plan was based. It is, therefore, essential that the transport impacts of developments are carefully assessed and, where appropriate, developments contribute towards upgrading or improving the current transport network in order to accommodate the additional movements that arise. Financial contributions will be used to improve movement and access within and to and from the site by a variety of means, including walking, cycling and public transport, as well as traffic calming and cycle safety measures. Travel plans will be required for developments likely to have significant transport implications. These will be secured by obligation.



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6.50 Policy 2 of the County's Highway Development Control Policies states that developers will be required to finance the cost of both mitigating the impact of their development on the immediate surrounding area as well as contributing towards funding the impact of the development on the wider transport network. The County Council as the Highway Authority is developing a standard charge approach, based on specific identified infrastructure requirements. It is estimated that within Essex, based on current levels of funding from the Local Transport Plan and regional funding allocations on infrastructure a funding gap has been identified of some £1.5 billion. When applied to Essex housing allocations within the East England Plan (between 2006 and 2021) this corresponds to an average figure per dwelling of £19,600. As well as including a wide range of transport infrastructure the £1.5 billion deficit includes a proportion of identified improvements to the Trunk Road network, which can be related directly to the proposed planned growth around large urban areas, in particular Chelmsford, Harlow and Colchester. As the largest impact will be felt in main urban areas, which will have to accommodate the majority of new housing and commercial developments the County Council propose to apply a standard charge differentially across the County based on a two stage charge related to sub-regional infrastructure and a local charge as District Council's Core Strategies and Local Development Documents are prepared.

6.51 Until such time as standard charging is adopted by the Borough Council the County Council, as Highway Authority will assess and comment on individual planning applications as part of the statutory function carried out by its Highways and Transportation Group and send these comments to the Borough Council. Each development is assessed as to its impact on the highway network. The need for any particular highway scheme related to a development proposed will be dictated by how it assesses the highway and traffic generated by it onto the existing highway network. For sites that propose 50 dwellings or more, or developments such as commercial or leisure uses that generate equivalent or greater traffic flows, the Highway Authority will require a full Transport Assessment or Transport Statement to be submitted with the application. They will then be used to identify mitigation measures associated with the development to make it sustainable in transport terms as well as contributions towards wider projects to improve modal shift and reduce private car trip rates and help towards funding sustainable transport improvements like public transport, cycling and walking. For developments below 50 residential dwellings or 40 passenger car movements during the peak hour, the Highway Authority consider a Transport Assessment or Transport Statement will be unnecessary and anticipate that financial contributions in the future will be calculated on the basis of a standard charge and pooled together towards appropriate schemes which address the cumulative impact of the developments. Guidance on the preparation of a Transport Assessment or Transport Statement can be found on the Essex County Council web site. Early discussion with the Highway Authority are recommended to scope the parameters of any Assessment or Statement.

6.52 The Highway Authority cannot give guide prices for individual, site specific, schemes and therefore the developer/applicant is recommended to seek specific guidance on costing for any scheme from the Highway Authority or another appropriate source. Factors such as the need for land acquisition or alterations to statutory undertaking plant need to be investigated and discussed with the appropriate bodies.

6.53 In seeking to obtain funding from developers for improved public transport the Highway Authority are seeking to ensure the development has an appropriate level of access to education, employment, food shopping and health services and that the public transport network in and around the development is maintained or improved and that it promotes a sustainable modes of transport

6.54 Travel Plans for certain sizes of types of development will be required and the Council will be advised by the Highway Authority. Travel plans are a package of measures designed to reduce reliance on car journeys, particularly single occupancy car journeys and to promote alternative, more sustainable forms of transport, including flexible hours and home working. PPG13: Transport advises that Travel Plans should be submitted alongside planning applications which are likely to have significant transport implications including all major development comprising jobs, shopping, leisure and services, smaller development involving offices, industry, health or education which are located in areas where there are local initiatives or targets for the reduction of road traffic on the promotion of public transport, walking and cycling.

6.55 Planning conditions and obligations will be required to ensure that a Travel Plan is implemented and a minimum list of Travel Plan measures are implemented, effects monitored and targets specified.

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The Highway Authority currently charge £3,000 for approving the draft Travel Plan, monitoring it and reviewing annual reports over 5 years.

6.56 For residential proposals of 12 dwellings or more the Highway Authority require a Transport Information & Marketing Scheme for each dwelling. Developers will be required to provide each eligible member of a residential household with a voucher, redeemable for a public transport season ticket.

6.57 The County Council has minimum requirements for cycling infrastructure in any scheme. These are detailed in Designing for Cyclists – A Guide to Good Practice and require high quality covered cycle storage facilities.

6.58 Where the impact of development on an existing public footpath network is significant in adjoining urban fringe areas, financial contributions will be sought to ensure they are appropriately upgraded to accommodate additional use. The creation of new footpaths to connect to existing and to improve the overall network will also be sought, where considered appropriate and necessary.

6.59 Special maintenance payments will be sought by the Highway Authority where traffic signals are required purely to facilitate access to larger developments, rather than assisting with the overall movement and capacity of the network. These costs will include both the maintenance of the equipment to the same standard as the Highway Authority for 10 years and making provision for the complete refurbishment of the site after that time. Similarly, for public transport and street lighting a developer would be required to provide a commuted maintenance sum for 10 years in respect of infrastructure taken over by the County Council.

6.60 Castle Point Borough Council will however have regard to requests from the Highway Authority for financial contributions to transport matters when processing applications and their appropriateness to the development proposed.



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Open Space, Sport and Recreation Facilities

6.61 PPG17: Planning for Open Space, Sport & Recreation defines open space as all open space of public value, including not just land, but also areas of water and lists the broad range of open spaces that may be considered to be of public value. These include urban and country parks; formal gardens; natural and semi-natural urban green spaces; green corridors, such as cycle ways and river banks; outdoor sports facilities; amenity green space, normally found in housing areas; formal and informal play areas; allotments, cemeteries; accessible countryside and civic spaces. It advises that most areas of open space can perform multiple functions – defining and separating urban areas; providing visual interest; promoting health and well being through informal recreation, a haven for flora and fauna and a community resource. Sport and recreation are not defined in PPG17 but include swimming pools, indoor sports halls and leisure centres, community centres and village halls. PPG17 encourages local authorities to seek opportunities to improve the local open space network, to create public open space from vacant land, incorporate open space within new development on previously used land and establish new areas to remedy local deficiencies. The advice in PPG17 is to set locally derived standards, as national standards cannot cater for local circumstances.

6.62 The draft East of England Plan includes issues covering the provision and location of strategic leisure, sport and recreation facilities, culture and the environment. Draft Policy ENV1 seeks to protect, create, extend, enhance, manage and maintain the network of green infrastructure throughout the region and reflects the Green Grid strategy developed for the Thames Gateway South Essex areas. The Essex Structure Plan has policies which specify acceptable locations for open air and sports/recreation facilities, seek to safeguard existing features and encourage the provision of new, such as footpaths and cycle ways.

6.63 Policies in the Castle Point Local Plan on open space and sport and recreational facilities are found in chapters on Green Belt, Environment and Conservation and Recreation. These policies also seek to protect existing facilities and provide new ones. At the time of preparing the Local Plan, an assessment of recreation, sport and open space facilities in 1994 revealed certain deficiencies in provision of both indoor and outdoor facilities. The Adopted Local Plan, however, does not set any standard of provision. Policies in the Council's Core Strategy and Generic Development Control Policies Preferred Options Report seeks to protect existing open spaces and enhance their quality and ensure new recreational developments are inclusive to all residents. The only standard of provision is for sites over 1 hectare in size.

6.64 PPG17 advises that planning obligations should be used as a means to remedy local deficiencies in the quantity or quality of open space, sports and recreational provision. It further states that local authorities will be justified in seeking planning obligations where the quantity or quality of provision is inadequate or under threat, or where new development increases local needs. This advice is repeated in Assessing Needs & Opportunities: A Companion Guide to PPG17, which suggests that even when quantitative standards in an area will not be exceeded after a new development has taken place, if the quality of facilities will still be below standard, then developer contributions may be sought. However, PPG17 states it is essential that local authorities have undertaken detailed assessments of needs and audits of facilities, and set appropriate local standards in order to justify planning obligations.

6.65 In February 2006 consultants appointed by Castle Point Borough Council published an Open Space Appraisal, based on methodology set out in PPG17. This appraisal included an audit of local provision on all existing public open spaces (over 0.2 hectares) with public access, ranging from natural areas like woodland to playgrounds and designated outdoor sports facilities. Whilst PPG17 advises that only sites over 0.2 hectares should be audited, all children's play areas were included in the Castle Point appraisal, irrespective of size. The appraisal also included the results of a public consultation exercise undertaken to review the open space needs of the local communities. It concluded that the Borough is well provided for in terms of the quantity and range of available public open space but deficient in civic spaces, urban parks and gardens. The perceived quality of all the sites ranged from very good to very poor; almost two thirds of play equipment for example was rated poor or very poor. Access to facilities was rated average or poor.

6.66 The information collected from this audit was used to indicate where open space deficiencies and surpluses lay and from this quantity and accessibility standards for each applicable open space type were set out.

6.67 The appraisal also assessed indoor sports facilities in the Borough. Those surveyed included swimming pools; sports halls; squash facilities; indoor tennis centres; indoor skating facilities and indoor bowls centres and demand modelling for sports halls and swimming pools were undertaken to demonstrate under or over supply.

6.68 The appraisal recommended that the open space standards identified, and included as Appendix G to this SPD, should be applied to any new developments within the Borough.

6.69 The Council considers that the provision of recreational facilities plays an important role in providing a good standard of living for local residents, employees and people who visit the Borough. Its provision is an essential element of achieving two objectives of the Council's Community Strategy – “becoming healthier” and “having fun”.

6.70 Castle Point is developing a Leisure Strategy in conjunction with outside consultants and has an approved Action Plan for its development. This emerging strategy is intended to enhance Castle Point as an enjoyable place to live and work; to increase participation levels in the borough and improve access to sport opportunities and foster positive and effective partnerships with the health and education sectors. It intends to carry out a playing pitch assessment and strategy in 2009/2010.

6.71 The Council will generally require all new residential development schemes to contribute towards improving and enhancing local spaces for the benefit of residents and employees rather than providing new local spaces. Where larger developments generate a need for additional localized open spaces, particularly for use by young children, developers will be required to make on-site provision. Due to additional costs of having to maintain these new recreational or open space areas, developers will be expected to contribute towards the longer term costs of maintaining such spaces in order not to place any additional financial burdens on the Council. A financial contribution towards facilities that cater for Borough wide sports and recreational needs like swimming pools will also be sought.

6.72 Where new sports or recreational developments are proposed the Council will, where appropriate, seek a legal agreement or developer's contributions to secure affordable access for young, old and people with disabilities and other groups with lower disposable incomes. In exceptional circumstances it may be necessary to make provision over and above the required standards; for example, by providing structural or shelter planting to reduce noise, incorporating measures to protect and promote bio diversity and promote nature conservation or the introduction of sustainable drainage to control ground water run-off.

6.73 The process for assessing whether new residential developments should provide for new open space, sport or recreational facilities on site will be determined by the nature and location of the proposal. Early discussions with officers is essential in order to determine, if needed, the likely open space, sport and recreational requirements of the proposed scheme.

6.74 For many smaller housing developments, it is unlikely that the necessary provision could be made on site. In these cases a financial contribution towards the improvement, or provision of new, nearby open space/ recreational/sports facilities to bring them up to standard to cater for increased usage will be required, together with a contribution to improving and enhancing Borough wide facilities. In such cases the money will be placed in a ring-fenced account until such time as additional funding can be secured to provide new or improved open space/recreational facilities.

6.75 Appendix H sets out the capital and maintenance costs of the provision of improved and new sports and recreational facilities identified as required by Castle Point Borough Council. These include the upgrading of existing facilities, such as children's playgrounds, amenity open spaces, parks and swimming pools and the provision of new identified facilities arising out of the Council's Open Space appraisal and its Leisure Strategy, such as a new indoor bowls centre.



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6.76 The methodology for assessing contributions for off site provision is also set out in Appendix H. It will apply to all new dwelling units created, with exemptions for certain types of developments/occupiers. These include schemes for very sheltered accommodation or old persons homes whose occupiers would not be expected to place demands on existing or require additional open space or recreational facilities. Where development results in the demolition of the existing residential accommodation it will be the net increase of units on the site that will form the basis of the calculation, not the total number created. In applying this formula it is assumed that half the capital and maintenance costs can be secured from alternative forms of funding.



Education

6.77 Education infrastructure is an integral part of new residential development and is an important element in achieving sustainable communities. Essex County Council is the local education authority responsible for education provision. Developments likely to generate demand for more school places will be expected to contribute towards enhancing education facilities where these are insufficient to support the development. This may include contributions and/or the allocation of land to enable schools to be built or extended.

6.78 The Essex School Organization Plan, published each year, sets out the current availability of places at primary and secondary schools in each area and also includes a five-year prediction, based on various factors that are likely to affect admissions to particular schools. Generally a financial contribution for a new school or upgrading of off-site education facilities will be sought from residential development that fills a school to over 95% of its permanent net capacity, which is assessed in line with the Department of Education & Skills (DfES) Schools Circular 0739/2001. It is generally accepted that schools should not operate at 100% of their capacity and some flexibility is needed to cater for unexpected increases in demand and parental preference. The County Council, in assessing the local supply of places, restrict consideration to primary schools situated within a safe walking distance of two miles of new development and secondary schools to within three miles.

6.79 Under the Schools Standards & Framework Act 1998 and the Government's Ten Year Childcare Strategy the County Council also has a duty to ensure sufficient childcare (0-2 year old) and Early Years (3-4 year) places are available. The Early Years and Children Service will only require developer contributions where there is a current or forecast lack of facilities. Provision is made through a number of providers and in a range of settings, including primary schools and children's centres.

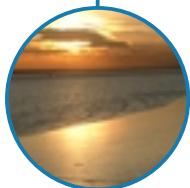
6.80 Currently there is generally spare capacity at the majority of Castle Point primary and secondary schools, but this may change over time. Surplus capacity is, however, limited at other schools in the Borough. In line with the County Council's SPG on Schools Contributions from Residential Developments published in July 2004 and its more recent Developers Guide for Community and Transport Infrastructure Contributions, it is not proposed to seek contributions for schemes where there is a net increase of less than 12 dwelling units, defined as "small sites" in the Structure Plan when there is known spare capacity at local schools and in their relative catchment areas. However, where smaller developments in a location would cumulatively contribute in excess of this figure, they will be required to contribute on a pro rata basis.

6.81 The precise number of residential units that will necessitate a new primary or secondary classroom or school cannot be easily defined. The County Council, however, indicates that a development of less than 100 units is unlikely to require a specific provision as it will equate to less than one class (approximately 30 pupils at either primary or secondary level). A development of 700 units for example either in one location or on a series of closely related sites would, however, be expected to produce sufficient pupils to fill a one form entry primary school and require 1.1 hectares of land and a new building.

6.82 For childcare and early years again no precise quantum of development can be easily defined. In isolation the County Council indicate that a development of less than 500 houses is unlikely to require new on site provision.

6.83 Contributions will not be sought from developments that include one-bed dwellings, developments exclusively for students or for sheltered/elderly housing and other specialist housing developments where children will not be resident. Only primary schools within two miles and secondary schools within three miles safe walking distance are considered when assessing local supply. Faith and selective schools may also be excluded

6.84 Where sufficient space exists to increase the capacity of an existing school or building, contributions will only be sought for construction and establishment costs, not the cost of land. The cost of providing a school place will be based on the current DfES cost multiplier and reflect the density of the development.



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6.85 The Learning Skills Council are responsible for post sixteen education provision and the majority of Essex Secondary Schools have a sixth form. As such expanding secondary school numbers could lead to an increase in demand for sixth form spaces. One hundred houses would generate the need for four additional sixth form places.

6.86 Calculations of contributions towards new or extended schools will be based on multiplying the number of units proposed by a weighted factor reflecting likely pupil yield from a development and whether it is a house or a flat in a 'standard' density development (built at 49 units per hectare or less) or a house or flat in a high density development (built at 50 units per hectare or more). The resulting figure is then multiplied by the cost per pupil of providing such extensions. The cost per pupil is based upon the Basic Need Cost Multipliers published by DfES. Worked examples of Education Contributions are attached as Appendix I. The figures for each element of this formula will be reviewed regularly to ensure updated figures from the DfES are incorporated and in response to new information on pupil yields. For clarification primary schools also incorporate the 'rising fives'. It is acknowledged that educational benefits can be secured through creative and locally based initiatives as well as a formula based approach.

6.87 There are two sixth form colleges and two Special Education Needs schools in the borough. For developments larger than 100 dwellings, or the cumulative effects of several developments in the same area, the need to contribute towards more accommodation at these educational establishments will be assessed separately through a feasibility study.

6.88 Where education needs cannot be met by extending existing schools, developers will be required to provide suitable land for a new school and full funding to construct it. The costs of providing and equipping a new school will be calculated using the County Council's and Government advice. A feasibility study may be required for a new school, the cost of which should be borne by the developer. Again, early discussions with the County Council are a pre-requisite of such a study and should form part of the pre-application process.

6.89 Where it is not possible to provide additional school places within a reasonable walking distance of the new development or via a safe route, an additional contribution towards school transport will be required. This will usually relate to the pro-rata cost of providing transport for the additional pupils for a minimum of 5 years. The provision and new walking and cycling routes between sites and local schools will be looked at to see if any are needed or improvements to existing are required to make them safer. Financial contributions and/or offsite works may therefore be required, both secured by way of a legal obligation.

6.90 The County Council has a statutory duty under the Education and Inspections Act 2006 to develop a school Travel Plan with all existing schools by 2010 and for all new schools as they are built to promote sustainable methods of transport for all educational and training related journeys. Developers proposing new or extended schools will be required to develop School Travel Plans

6.91 Essex County Council finances and runs Adult Community Learning Services. There are centres based in schools in Canvey Island, Benfleet and Thundersley. The County Council considers all residential planning applications and assesses the current capacity and future requirements for adult learning across the whole of the Borough. It factors the number of enrolments in Essex and converts them into full-time equivalent students, using a Further Education Funding Council model, takes a requirement of 70 square metres for 30 full-time students, based on the DfES Standard for a general teaching classroom, plus circulation and non-public areas, building costs based upon RICS BCIS Tender Price Index and new building prices and fitting out costs for Essex to arrive at requirement per new dwelling (at 2006 prices of £113.78 – a worked example of this calculation is given at Appendix I).

6.92 Castle Point Borough Council will have regard to requests from the County Council for financial contributions towards education when processing planning applications.

Libraries

6.93 Essex County Council, as a public library authority, has a statutory duty under the Libraries and Museums Act 1964 to provide an efficient, comprehensive and modern library service to those who live, work or study within Essex. The nature of public libraries and their services has evolved substantially in recent years and modern libraries provide not only traditional book stock but are now required to provide public access to computers and the internet and be equipped to meet required national standards. The Disability Discrimination Act has also imposed new requirements for physical access and adaptive technology has become a standard requirement.

6.94 The impact of new development generates extra demands for library services and therefore the County Council seek a financial contribution towards maintaining and improving the service. The context for the developer contributions proposed by the County Council has been informed by the South East Museum, Library and Archive Council (SEMLAC) publication 'The South East Public Library Tariff' (January 2006). The formula for developers' contributions is based on the National Public Library standard of a service requirement of 23m² net of public library space per 1000 population, plus circulation and non-public areas. This factor is then multiplied by the amount of building and fitting out costs and an average library stock item price to give a cost per dwelling. The current April 2006 cost per dwelling is £198.63.

6.95 The County Council formula is set out in detail in Appendix J. As with all contributions it will be reviewed annually to reflect any changes in build costs. Land acquisition costs are not included in the rate per dwelling. On substantial development site of 300+ units a new site and premises may also be required at no cost to the County Council. The Essex Standard for a new stand-alone library is that it should serve a community of at least 7000 people.

6.96 In considering the impact of a new development on a particular library, the number of planning permissions within its catchment area granted over the preceding two years will be taken into account. Where a number of large and/or small applications are received within a designated area within a similar time period these may not lead individually to the requirement for a new library, but the cumulative effect of the total numbers of developments might. In this scenario, joint negotiations would need to take place between the Council and respective developers to ensure that suitable land is provided and funding made available to enable a new library to be built and stocked.

6.97 Castle Point will have regard to requests for financial contributions from the County Library Services when processing planning applications.



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Public Realm, Public Art and Community Safety

6.98 It is Government policy that planning should seek to maintain and improve the local environment and help mitigate the effects of declining environmental quality through positive policies on design, conservation and the provision of public spaces. PPS1: Delivering Sustainable Development states that planning authorities should seek to enhance the environment as part of development proposals. Significant adverse impacts on the environment should be avoided and alternative options which reduce or eliminate those impacts investigated. Where adverse impacts are unavoidable, planning authorities and developers should consider possible mitigation or compensatory measures. In addition the Crime & Disorder Act 1998 imposes a duty on planning authorities to do all it reasonably can to prevent crime and disorder. Circular 5/94: Planning Out Crime states that crime prevention can be a material consideration when planning applications are being determined.

6.99 Policies of the Castle Point Local Plan seek to ensure that development proposals do not have an adverse impact on the environment, incorporate a high standard of design that also minimizes the risk of crime and seeks to protect and provide additional areas of public open space.

6.100 The Council's vision for Castle Point is for a community where everyone can prosper, be safe and live in a high quality environment. To this end the strategic aims of the Core Strategy in the Council's Development Plan Document seek to, amongst other things, improve the quality of life for people, living, working or visiting the borough, enhance the built environment and improve community safety by addressing the issues of crime.

6.101 As requirements for public realm and community safety measures will vary and be dependent on such factors as the nature and scale of the development proposed, its location within the Borough and the existing environment of the area, no single methodology is applicable to identifying levels of financial contributions sought from developers. However, developments meeting the thresholds identified in paragraph 6.105 of this SPD may be required to make some contribution to improving the public realm. For large scale developments, some or all of the requirements will be expected to be met on site, but in smaller developments a financial contribution is likely to be sought which would be pooled with others to meet the particular requirements of the area.

Improving the Public Realm

6.102 Whilst all development should seek to improve the environmental quality of the area in which it is located, there may be circumstances (due, say, to the scale or impact of the development) where it is appropriate for it to contribute to wider environmental improvements. In addition there are particular areas, like the Town Centres, in which more comprehensive environmental improvements are being sought or needed and developments in these areas will be expected to contribute to them. Funding is in place to prepare master plans for Hadleigh Town Centre and Canvey Town Centre in order to encourage their sustainable regeneration and improve their daytime and evening vitality. These master plans may identify a programme of projects necessary to improve the public realm.

6.103 The nature of public realm improvements may include planting of street trees, works to control movements of traffic through streets, improvements to footways, street furniture and lighting. In some cases contributions from planning obligations will only form part of the funding for improvement projects. The contributions will be calculated dependent on any public funding allocated to the project and the scale and direct impact of the development. Financial contributions will be pooled with those from other developments wherever necessary.

Public Art

6.104 Public art can form a key part of a public realm strategy, as well as adding to the cultural heritage of an area and enhancing and enlivening the local environment. It can include such features as sculptures, water features, lighting schemes, mosaics and murals and can be inside or outside a building, incorporated within the development site or close by. Castle Point support the provision of public art to improve the public realm. Essex County Council also has a long standing commitment to the commissioning of public

art as part of its Capital Development Programme and endorses the use of financial contributions, as set out in its Urban Place Supplement.

6.105 There are three procedures for securing public art:

- As part of the design process and incorporated into the submitted planning application, where it would be secured by condition;
- A planning obligation to provide it on site;
- A planning obligation to make a financial contribution towards a work of art on or in the immediate vicinity of the site.

6.106 'Percent for Arts' is an internationally used funding mechanism for commissioning public art and is endorsed by the Arts Council of England. In accordance with normal practice under this scheme, at least 1% of the capital costs of residential schemes over 20 dwellings or 2000m² floorspace for non-residential schemes in Castle Point will be required to be allocated for public art. The contribution would cover the commissioning, design costs, artists' fees, fabrication costs, installation and maintenance. It is recommended the artist's early involvement in the design process of any scheme so that the artwork can be an integrated feature and act as a focal point or directional feature within the layout.

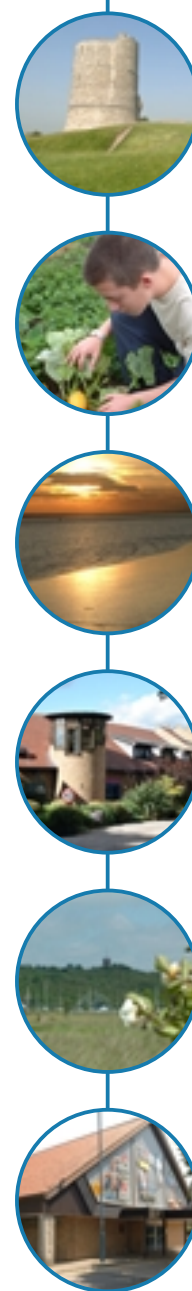
Community Safety

6.107 There are a number of design objectives which can ensure that new developments contribute to attractive, well used and therefore more secure and safer public spaces and street environments. Some matters, like CCTV cameras for individual buildings, can be secured through negotiation prior to determination of the application or by relevant conditions attached to planning permissions. Where uses and developments have perceived impacts beyond their immediate site area as a result, for example, of increased visitor numbers and traffic movements or late night activity, noise and other environmental effects, it is reasonable to look to developers to contribute to community safety schemes. These could include the provision of lighting for footpaths and cycle routes serving the development, enhanced bus services to major new facilities and leisure uses and environmental improvements towards safer public areas. The type and level of contribution will be determined by the location, nature and scale of the proposal, the cost of implementation and the subsequent operation and monitoring of any particular initiative to which the contribution will be directed and will be assessed and appraised on an application by application basis.

6.108 In respect of community safety measures, contributions will normally be sought from:

- Proposals of 500m² or more for leisure and entertainment facilities;
- Cafes/restaurants/take-aways, public houses and nightclubs operating beyond 10.30pm;
- Town centre developments of 2500m² or more that will generate significant increases in visitor numbers and trip movements;
- Late night operations like supermarkets and petrol filling stations;
- Non-residential development of 2500m² or more that will result in intensification of uses and activity in isolated areas like industrial estates.

6.109 The provision of adequate policing resources has an essential role to play in the delivery of safe, healthy and attractive places to live, a key policy requirement in Planning Policy Statement 1. Section 17 of the Crime and Disorder Act 1998 requires local authorities, police authorities and other agencies to consider crime and disorder reductions and community safety in the exercise of all their duties and activities. The local Crime and Disorder Reduction Partnership bridges the key organisations involved in reducing crime and disorder in Castle Point and are responsible for implementing a range of projects in this regard. Castle Point will have regard to requests for financial contributions from the Police Authority and/or the Crime and Disorder Reduction Partnership when processing planning applications.



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6.110 When seeking contributions from residential developments, the Council will have regard the formula developed by the Essex Police Authority in conjunction with the six police forces of the Eastern England region. The formula calculates the implications of residential development on the demand created for the forces' associated capital requirements. It is currently seeking a financial contribution of £410.15 per dwelling (plus VAT) in areas where the existing police staffing and the forces' facilities/resources do not have enough capacity to effectively police it. The context for these developers' contributions is set out in the document 'Policing Contributions from Development Schemes; published in August 2006 and can be viewed on www.essexcc.gov.uk/developercontributions. The formulaic calculation used is set out in Appendix L.



Waste Management and Recycling

6.111 In March 2005 the Government launched its new strategy for sustainable development - Securing the Future. To deliver services with lower environmental impact it proposed, as one thread, a review of the Country's waste strategy, with an increased emphasis on reducing waste at source and using it as a resource. Prior to this the Government had introduced, in 1999, a Landfill Directive, requiring Councils to divert increasing quantities of biodegradable waste away from landfill sites and set demanding targets for recycling and composting household rubbish. PPS 10: Planning for Sustainable Waste Management and PPS23: Planning & Pollution Control provides national guidance on waste management issues.

6.112 In 2003/4 Essex produced 720,000 tonnes of rubbish, 75% of this disposed of in the County's contracted landfill sites, with the rest recycled and composted. The landfill sites in Essex all have a limited capacity (the 720,000 tonnes of rubbish equates to filling the Royal Albert Hall 200 times over) and since the late 1990s the amount of rubbish generated has grown on average by 3% per annum, with each household producing approximately 1.2 tonnes of waste per annum.

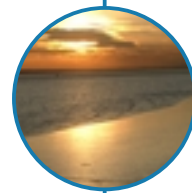
6.113 Castle Point, together with the other Essex Councils and the County Council, have set up an advisory board to examine how to deal with the growing amount of municipal waste in the County and have produced a Waste Management Strategy, which aims to recycle 60% of the County's waste; the current rate stands at 25%.

6.114 The County Council provides 23 civic amenity and recycling centres for household waste across the County. Castle Point has one, located on Canvey Island, which can accommodate the full range of recycling points from glass and cans through to engine oil, metal, household appliances and hardcore/soil. It is currently operating at or close to full capacity. There are also 11 recycling bank sites located throughout the Borough that collect glass and cans. Most sites also collect textiles.

6.115 Local Plan Policy CF17 supports the provision of waste recycling facilities. Core Strategy DC10 requires developers to manage waste arising from the construction of new developments, and Development Control Policy DC9 requires all new developments to design in sufficient external space for the segregated storage of domestic waste.

6.116 New development will, however, generate additional waste and put pressure on existing resources. The cost of a waste management network for Essex that is forecast to be required by 2011 is estimated at £170m and is likely to consist of two mechanical biological treatment plants, eight satellite transfer stations and 27 recycling centres (existing and new) for household waste. In order to raise sufficient capital to extend the existing network to meet waste management needs imposed by new developments, the Council considers it appropriate, on residential developments where there is a net increase of one or more dwellings, for developers to make a financial contribution. All commercial development will be required to contribute towards the cost of specialist waste collection and recycling facilities and this will be negotiated on a site by site basis depending on the land use proposed.

6.117 To supplement the existing site at Canvey Island with a new, modern, recycling centre for household waste would cost an estimated £1.7m in land and construction costs. The Borough Council will discuss with the County Council the need for an additional recycling centre in the Borough. If this is agreed with the County Council and a suitable site identified, the Council will seek contributions from developers for the provision of the new centre on the basis of a formula to be agreed.



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Healthcare

6.118 Government requires all local authorities to develop strong, vibrant and sustainable communities. The provision of adequate levels of health and social care is an essential part of any sustainable, inclusive community. However increased development, population levels and an ageing population will inequitably add to the pressures on such services. Draft policies in the East of England Plan seek to ensure that local strategies give due priority to health and social inclusion. The draft spatial vision of Castle Point states that identified locations for growth will make the best use of existing infrastructure and community facilities to enable funding and contributions to improve the quality of existing services and facilities.

6.119 The provision of primary healthcare in Castle Point is provided by South East Essex Primary Care Trust (PCT), created in October 2006 by the amalgamation of the former Castle Point and Rochford PCT with the Southend on Sea PCT. Primary Care Trusts look after around 80% of patients healthcare needs and support the development of services that patients receive from GP's, dentists, pharmacists and opticians. The new PCT also provides specialist services such as diabetes, speech and language therapy, community nursing and palliative care.

6.120 There are nine PCT-owned or leased clinics/health centres in Castle Point but they, like many GP surgeries, are cramped, do not offer full access for disabled people and have no room for expansion to provide training and extra services the PCT need and wish to provide. There is a need for refurbishment of existing premises, many of which are not fit for purpose. Through a process called LIFT (Local Improvement Finance Trust), a partnership between the PCT and the private sector, it is hoped to build up to 11 new primary care centres of varying sizes across South East Essex. A new company, South East Essex LIFT, was established in August 2007. Planning permission has recently been secured for the first new primary care centre on Canvey Island which is expected to be completed in 2008. A second one is programmed to be built and will enable all of Canvey Island's nine GP practices to move into the centres. The second centre will also house hospital outreach services, such as dermatology, cardiac care and neurology clinics. It is also hoped the island ambulance station will relocate to it. A third new centre is proposed for the mainland.

6.121 The number of people over the age of 65 in Castle Point is above the national average. In 2001 this stood at 16.8% and is expected to increase to 28.4% by 2021. 7000 households currently contain a person with a disability and with an ageing population this is likely to increase and put increasing demands on all PCT services.

6.122 Within major new developments, on site facilities for use by health and social care facilities may be required. On smaller residential site and where, collectively a series of individual application can be demonstrated to place demands on existing facilities, the need for full provision will be replaced by the requirement for contributions. The Council will consult with the PCT on all relevant applications with regard to the need for health care provision as a direct consequence of the development. On major development sites, where the need for health and social care facilities have been identified and are required to support the occupiers of that development, temporary accommodation may need to be provided until a permanent facility can be built.

6.123 Secondary Healthcare Provision in the Borough comes from Southend Hospital, an Associate Teaching Hospital which covers Castle Point, Rochford and Southend. With only a quarter of Castle Point's population able to reach this facility within 30 minutes by public transport, an increasing number of outreach services are being provided at health centres and clinics.

6.124 For the avoidance of doubt, in the absence of a formulaic approach to calculate obligations, negotiations with applicants will be on a case by case basis and will depend on the nature and size of the development proposed. The Council will, however, work with the PCT to assess existing and proposed facilities, its funding sources and whether a formulaic approach can be adopted. This information will be included in revision to this SPD.

Adult Social Care and Day Care Provision for Adults

6.125 The number of people over the age of 65 in Castle Point is above the national average. In 2001 it stood at 16.8% and it is expected to increase to 28.4% by 2021. 7000 households currently contain a person with a disability. Given increased longevity, improvements in medical interventions and inward migration, the proportion of the population in Castle Point needing care services is growing. This has implications for the delivery of suitable accommodation. The County Council Adult Social Care Service supports more than 18,000 older people and over 11,000 adults with disabilities. In 2007-2008 the Council plans to spend £438 million on caring for these people.

6.126 The type of service provided by the County Council and the way it is being delivered has been the subject of review. It is now looking to move away from segregated residential and day-care centres to community and home-based services. The Service's vision is to become one of working in partnership with other providers and to give more choice and control of services to those people who use them, with levels of care designed around the needs of the individual.

6.127 In line with the County Council, Castle Point would want developers to promote a sense of community, well being and safety, good mobility access to public places and 'Home for Life' properties adaptable for all needs. A draft Adult Social Care Housing Strategy has been prepared which is currently out to consultation. Amongst its aims is a reduction in the demand for social and health services through the provision of a good range of housing options by feeding into early discussions on new developments to ensure strategic aims are met.

6.128 Castle Point endorses this approach and is seeking to ensure in its delivery of 4000 dwellings by 2021 that 1000 are sheltered units for those aged over 55 years and at least 250 other units are designed for those with special needs. These later units should provide the level of support and accommodation required to enable inclusion within the local community.

6.129 In ensuring a housing mix that reflects the needs of elderly and those with special needs, it is envisaged these will be secured through planning obligations on residential schemes in town centres and along main public transport corridors, as well as working proactively with Housing Associations to secure their delivery.

6.130 With an increasingly ageing population profile to Castle Point the existing resource and day centres that provide a range of facilities for older people to enable them to live safely and independently in their own homes for as long as possible will play a greater role. Contributions towards improved provision of and transport to such facilities may be sought from residential proposals where it is expected that it would place an extra demand upon adult day-care provision that cannot be satisfactorily accommodated within existing centres.

6.131 An estimate of the demands likely to arise from residential development proposals upon adult resource and day-care facilities will normally be based on the average occupancy of that development by persons aged 65 years and older, with information obtained from surveys of people in new housing. Proposals incorporating designated elderly accommodation will be assessed separately. Any contribution would be negotiated on an application by application basis where extra demand can be demonstrated.



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Community Facilities

6.132 The provision of all forms of community facilities, including cultural facilities, is an essential feature of any sustainable, inclusive and vibrant community. Access to a wide range of such facilities provides opportunities for all who wish to be involved in community activities. Such involvement contributes to the enhancement of the general quality of life and if the community facilities are provided locally, they contribute towards the principle of sustainability by reducing the need to travel. As advised by PPS1: Delivering Sustainable Development, the promotion within development plans of policies that secure socially inclusive societies is essential.

6.133 The provision of facilities such as community centres and clubhouses are provided by a wide variety of authorities and many voluntary organizations and it is inevitable that no single methodology is applicable to identifying existing deficiencies and the needs generated by new development.

6.134 The need, therefore, for community facilities as part of major development proposals should be assessed with officers at the beginning of the planning process and, if they are required as part of the development, incorporated within the planning application and shown on the proposed layout. The specific use and function would be the subject of pre-application discussions with officers and public consultation to ensure that when they are provided they meet the recognized needs of the locality and local community groups. In some circumstances it may be more appropriate for the developer to provide a serviced site with an agreed financial sum for the facilities to be provided by the appropriate organization at a later date.

6.135 For smaller residential schemes the need for community facilities, like meeting places or clubhouses, may not be necessary but where collectively a series of new residential development schemes can be demonstrated to place a burden on existing facilities in the vicinity of the site, pro rata financial contributions will be sought to extend them or contribute towards new facilities.

6.136 The Council has identified the Paddocks Community Centre on Canvey Island and the Runnymede Hall Community Centre in Thundersley as key elements of community infrastructure. The Council will therefore seek contributions from developers for the improvement and renewal of these facilities as set out in Appendix H for developments where no on-site community centre provision is made.

Flood Risk Management

6.137 The Government's objectives for the planning system detail that planning should facilitate and promote sustainable patterns of development, avoiding flood risk and accommodate the impact of climate change. Planning Policy Statement 25: Development and Flood Risk (PPS25) sets out national policy on development and land use in relation to flood risk. It advises local planning authorities to take a sequential risk-based approach to the determination of suitability of land for development. This aims to steer new development to the areas at the lowest probability of flooding (Flood Zone 1).

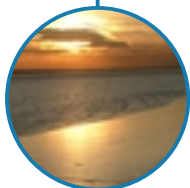
6.138 Exception Tests are a mechanism in PPS25 which makes provision for the future negative implications of development in a flood risk area to be balanced against potentially positive contributions to sustainable development that new proposals can bring. They are designed to be used when there are no reasonably available alternative sites in an area at lower risk of flooding for the type of development proposed. For the exception test to be passed the developer must, as well as demonstrate the wider sustainability benefits, locate any development on previously developed land, or show there are no reasonably alternative green field sites.

6.139 Due to the Thames Estuary location of Canvey Island and part of South Benfleet being adjacent to Benfleet Creek, there is severe risk of flooding. The South Essex area has suffered major floods in the past, the most recent in 1928 and 1953. The 1953 floods resulted in 307 people losing their lives in Eastern England, with 30,000 people being evacuated and 24,000 properties destroyed. Canvey Island especially was severely affected with 58 people losing their lives. As a result, sea and river defences protecting the Island have been substantially reinforced and upgraded providing a high level of protection to residents. However, due to the small potential of a breach occurring, combined with the risks posed by global warming, there remains a small residual risk that flooding on Canvey Island may occur in the future. Changing weather patterns also pose a risk to Canvey Island in the form of extreme rainfall events and surface water flooding. The Environment Agency has just completed a £5.3 million drainage scheme project on Canvey Island to increase protection from flooding from surface water and drainage dykes to around 3200 homes and commercial properties.

6.140 The whole of Canvey Island and part of South Benfleet lie within Flood Zone 3, as defined by PPS25: Development and Flood Risk, land with a high probability of flooding. This zone is split into two separate categories. Category 3a comprises land assessed as having a 1 in 100 or greater annual probability of river flooding or a 1 in 200 or greater annual probability of flooding from the sea. Category 3b is land that is regarded as the functional floodplain and comprises land where water has to flow or be stored in times of flood. It is assessed as land having a 1 in 20 or greater annual probability of flood or is designed to flood in extreme conditions.

6.141 Castle Point Borough Council is a member of the Thames Gateway South Essex Partnership, together with neighbouring councils, Essex County Council and other public and private sector partners. In January 2006 the Partnership commissioned consultants to undertake a Strategic Flood Risk Assessment (SFRA) of South Essex, a project carried out in collaboration with the Environment Agency. The primary objective of the study was to enable the participating local authorities to undertake sequential testing in line with Government flood risk and development policy guidance documents to inform the development of emerging Local Development Framework Documents.

6.142 The risk of flooding to urban Canvey Island is associated with a breach of the substantial sea defences that surround the island. At present these defences are in good order. Given that a significant proportion of the urban area may be inundated with water should a breach occur at high tide, it is imperative that the flood defences are maintained in their present good state. Areas at high risk of flooding like Canvey Island, in accordance with advice in PPS25: Development & Flood Risk, should not normally be the focus of new development. However, Canvey Island has a substantial population, is in need of regeneration and has been identified as a growth area for business in the Thames Gateway South Essex sub-region. For these reasons the Council proposes to prepare an Area Action Plan and Regeneration Framework for Canvey Island. To this end the Council has resolved to apply the sequential and exception tests set out in PPS25 which provides a method of managing flood risk while still allowing necessary development to occur. The SFRA broke down Flood Zone 3 into High, Medium and Low Hazard Zones



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to help facilitate land allocation. These Zones are based on the combined hazard posed by the potential depth and velocity of flood water during a flood event. Development will be concentrated in low and medium hazard flood zones, before considering development in the high hazard zone. The SRFA indicated that the level of hazard posed by the threat of climate change is low to medium for the majority of the flood zone in the Borough due to the substantial protection offered by the existing flood defences.

6.143 The Council have published a draft Supplementary Planning Document on Flood Risk Assessment Guidance to inform and raise awareness of the various requirements under national, regional and local planning policy in relation to mitigation and adaption to the risk of flooding.

6.144 The Council requires all planning applications for development within flood risk zones to be accompanied by a Flood Risk Assessment (FRA), taking into account the South Essex Strategic Flood Risk Assessment. These FRAs should outline measures that will be taken to mitigate the effects of a flood. For allocated development sites the Council, in liaison with the Environment Agency, will advise and set out in development briefs the possible types of mitigation measures that should be included. Provision of on-site measures will be at the developer's expense and secured by condition. Where off-site measures are required, these will be secured by legal obligation.

6.145 The Council is in discussions with the Environment Agency and Category 1 responders regarding the preparation of a project plan to ensure the flood defences are maintained in good order and that there are adequate procedures in place to respond to any exceptional flooding that may occur. The final details of how this would operate will be the subject of an amendment to this SPD in due course. Appendix K provides a formula which may be adopted but is not operational at this time.

Landscaping, Biodiversity and Ecology

6.146 National planning policy places a requirement on local authorities to ensure protection and enhancement of the natural landscape and environment. Within Castle Point a significant proportion of the natural environment falls within the Metropolitan Green Belt which affords these areas additional protection by prohibiting inappropriate development. National policy is supported by regional policy in the draft East of England Plan, with draft Policy ENV2 on Landscape Conservation requiring local authorities, amongst other things, to develop policies to ensure all development respects and enhances local landscape features. Castle Point is also within the area covered by the Thames Gateway South Essex Green Grid Strategy that aims to enhance the role of green spaces in regeneration, improve linkages between green spaces and the built environment and encourage better use of them by residents, workers and visitors.

6.147 Land subject of development proposals often has existing landscape features and associated wildlife within it which needs to be safeguarded because of the contribution the landscape makes to the quality of the environment and also to protect the habitats of its associated flora and fauna.

6.148 Landscaping is part of the infrastructure that is expected by occupants of new development and its distinctive and common features can enhance the character, environment, landscape and heritage of an area and contribute to the individual pattern of communities.

6.149 The Borough Council are committed to protecting, improving and enhancing the value of the natural landscape and biodiversity in Castle Point, in line with the requirements of Section 40 of the Natural Environment and Rural Communities Act 2006. In all planning applications the Council expect landscape features of note that contribute to the character of the site and the immediate surrounding area to be retained and, where possible or appropriate, enhanced. On larger sites special landscape measures may be required – the strengthening of boundaries or natural features within the site by new trees and hedgerows for example.

6.150 In all such cases, irrespective of the size of the site, where it is considered necessary to protect important landscapes and biodiversity features, detailed site and landscape surveys will be sought to establish the quantity and quality of the existing natural features to better inform decisions on the preservation and conservation of the local environment. Such surveys will be expected to accompany any application, together with a landscape master plan for the proposed development.

6.151 Any natural landscape, existing or new, requires management and maintenance and on larger sites the Council would require details of both regimes as part of any application. When not provided they would be the subject of conditions that require their submission and approval prior to commencement of development.

6.152 In exceptional circumstances the Council may agree to a certain amount of landscaping being provided off-site, but in proximity to the development, preferably on land owned by the Council. This is only likely to occur where, for example, the development site is polluted or landscaping, when established, would adversely impact on neighbouring development. The off-site landscaping must be of a suitable species, size and density to the local context and character. Where this is agreed the Council will require the applicants to provide the land, if Council land is not available or suitable, landscape it and committed maintenance sums for management and maintenance.

6.153 Planning Policy Statement 9: Biodiversity and Geological Conservation requires planning policies and planning decisions to maintain, enhance, restore or add to biodiversity and geological conservation interests. The enhancement of biodiversity in green spaces and amongst developments so they are used by wildlife and valued by people can contribute to a better quality of life and to people's sense of well-being.

6.154 Castle Point has an extensive natural environment that supports a rich and extensive system of biodiversity that will be protected. The retention of ancient grazing meadows, ancient woodlands, ponds and ditches are essential not only to preserve the diverse landscape that is distinctive in the Borough but in the management of flood risk.



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6.155 All development has the potential to impact upon the biodiversity of the site and surrounding area. Wherever possible this would be avoided or mitigated. Where this is not possible, any identified adverse impact on habitats or species should be compensated by the enhancement and/or creation of features of a comparable scale and nature to that which is lost or adversely affected. PPS 9: Biodiversity and Geological Conservation sets out a hierarchy of sites of biodiversity and geological conservation value. For protected and endangered species whose presence is known or suspected on any proposed development site, an appropriate and recognized ecological survey should be carried out and the appropriate mitigation strategy submitted with the application. On site provision, protection or management will be sought where there are found to be features or areas of wildlife or landscape value within the site. Where development is permitted that could result in a degree or loss or harm to a site of nature conservation interest, deemed acceptable after consultation with the relevant agencies and greater sustainability issues override those of biodiversity, the Council will require a compensatory provision of habitat to be provided locally. If provision cannot be made on site then the habitat lost should be recreated in another appropriate location and adequately and suitably maintained. This provision and a financial contribution to its continued maintenance or an agreed maintenance schedule will be secured through a planning obligation.



Archaeology

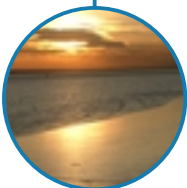
6.156 The Borough contains a rich variety of archaeological remains, including Scheduled Monuments, Sites of Archaeological Importance and general historic environments. The Council informs the County Council's Archaeological Officer on all applications, especially those in areas of known archaeological significance, as well as English Heritage on development proposals likely to affect the site of a Scheduled Monument. Those proposals involving ground disturbance will be assessed for their likely impact on known or suspected archaeological remains.

6.157 PPG16: Archaeology and Planning advises that prospective developers should include, as part of their research into the development potential of a site and prior to submission of a planning application, an initial assessment of whether the site is known or likely to contain archaeological remains or other significant historic environmental assets.

6.158 On certain applications the Archaeology Officer will identify any archaeological considerations and advise on the need for appropriate planning conditions, evaluations and, if necessary, legal agreements. When it is considered that there may be important archaeological remains within an application site, the applicant will be required to commission either a desktop assessment or evaluation as to the likely character and extent of remains in the area or a field assessment prior to either determination of the application or commencement of development. This work will be required to be undertaken by an appropriately qualified archaeological contractor and carried out at the applicant's expense.

6.159 Following any predetermined evaluation, recommendations may be made by the Council's archaeological advisor for a scheme of further fieldwork secured by either a planning condition, modification of the proposed scheme in order to preserve archaeological deposits in situ or in rare instances where archaeological deposits of national importance are identified for refusal of the planning application. On those sites where pre-determination evaluation is not considered appropriate, archaeological work may be secured by the use of a PPG16 archaeological condition attached to the planning consent. All archaeological work will need to be undertaken by an appropriate professional archaeological contractor and carried out at the applicants expense.

6.160 With regards to any archaeological finds that are made, these should normally be donated to the Central Museum, Southend.



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Fire and Rescue

6.161 The County Council, as the Fire Authority, has a duty to ensure an adequate supply of water for fire fighting. Water supply works may be required to meet this duty and the County Council may require planning obligations for financial contributions to fix enough fire hydrants to water mains and carry out other off-site works to ensure adequate water supplies in terms of volume and pressure, including the upgrading of water mains.

6.162 It is anticipated however that such infrastructure improvements will generally only be required on larger sites for which a development brief will have been prepared. The need for additional works or upgrading of infrastructure will have been identified in the preparation of such briefs and the developer will therefore be aware of the improvements necessary and have costed these in and negotiated direct with the Fire Authority for such upgrading prior to submission of the application. Planning conditions will therefore be used in most instances to ensure that adequate infrastructure is provided.

6.163 Fire Authorities have duties placed upon them under various legislation, including the Crime & Disorder Act, to protect people, life and property and to consider crime and disorder issues. New development places additional demands on the Fire Services, in terms of the need for capital investment in new facilities and equipment and increased revenue funding for new staff. Whilst the incorporation of safe design into new developments and a range of effective fire-fighting installations may minimize risk factors, there may be certain developments that would necessitate additional specialized equipment, whose cost the Fire Services would look to be funded by the developer. Each application or preliminary proposal will, however, be considered on its merits and early discussions with the Fire Services is recommended to resolve any infrastructure and manpower issues.

Appendix A relevant saved local plan policies

Appendix A Relevant Saved Local Plan Policies

Policy H7 – Affordable Housing

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

In order to facilitate the provision of affordable housing the Council's normal requirement of 9.1m (30') frontages for all dwellings may be dispensed with in respect of affordable housing only. The Council will seek the achievement of all other standards, including car parking provision, as set out in Supplementary Planning Guidance in Appendix 4 and Appendix 12 of this Plan.

Policy CF1 – Social & Physical Infrastructure & New Developments

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

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

Policy RE4 – Provision of Children's Playspace & Parks

The Council will seek to provide and facilitate the provision of additional children's playspace and parks in areas of identified need. Where possible and appropriate, such provision shall be made in association with new development.

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Appendix B relevant core strategy policies

Appendix B Relevant Core Strategy Policies

The following draft policies, as contained within the emerging Core Strategy, are relevant to this guidance on developer contributions.

- Policy SS1: Spatial Strategy
- Policy CP1: Community Infrastructure
- Policy CP2: Green Infrastructure
- Policy CP3: Transport Infrastructure
- Policy CP4: Sustainable and Inclusive Communities
- Policy CP5: Managing Local Flood Risk
- Policy CP6: Creating Employment Opportunities
- Policy CP7: Improving the Vitality of Town Centres
- Policy CP8: Meeting Local Housing Needs
- Policy DC16: Open Space

Appendix C financial viability assessments

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Appendix C Financial Viability Assessments

Where an applicant considers that the required financial contributions for a particular development makes it economically unviable, they will need to provide financial information to enable the Council to assess the nature, extent and impact of the economic restraints.

As a guide, the following schedule highlights the main economic factors the Council would expect to assess and the information required to carry out the financial viability assessment. The list is not exhaustive and further information may be required. The information provided will only be made available to the Council officers and any independent valuation assessor appointed by the Council in assisting in validating the assessment.

- i. **Site Acquisition Costs:**
 - How much paid for the land or building(s)
 - Date of purchase
 - Agent's fees
 - Legal fees
 - Stamp Duty
 - Other acquisition costs
- ii. **Finance Costs:**
 - Arrangement Fee
 - Interest rate payable on loan and length of loan
 - Miscellaneous fees
- iii. **Site Preparation Works:**
 - Demolition costs
 - Remediation of contaminated land
- iv. **Construction Costs:**
 - Building costs (expressed in £ per square metre of gross internal/external square metre)
 - External works – car parking/highways/landscaping, boundary treatment etc
- v. **Professional Fees:**
 - Architect
 - Quantity Surveyor
 - Planning Consultant etc
- vi. **Contingencies/Preliminaries**
- vii. **Section 106 Contributions** – financial contributions towards affordable housing, infrastructure, public transport, community facilities, public realm and environment
- viii. **Marketing Costs:**
 - Advertising fees
 - Sales fees
 - Legal fees
- ix. **Developer's Profit**
- x. **Residual Land Value**
- xi. **Existing & Alternative Use Site Value**

Where it can be demonstrated that it is not financially viable to carry out the development, given the financial contribution(s) required, the Council may reduce or, in exceptional circumstances, waive the requirement. As development costs are usually reflected in the residual land value, the purchase price of a particular site will not, on its own, be a reason for reducing or waiving any requirement.



Appendix C financial viability assessments

If agreement cannot be reached on the validation, a second opinion will be sought. In instances where the developer does not provide sufficient or adequate information the Council will inform the developer what further information is required. If this is not forthcoming the application will be recommended for refusal.

Castle Point has adopted, as a Supplementary Planning Document, the County Council's Urban Places Supplement (UPS) to the Essex Design Guide. It provides a design framework for the delivery of compact, mixed use sustainable urban development. The UPS emphasises design quality while ensuring the improvement of infrastructure and the sustainability of existing urban places. An accompanying document The Urban Place Supplement Costing Exercise highlights the uplifted costs that can result from compliance with the requirements of the UPS. Castle Point will have regard to and take into account any uplifted costs arising from proposed sustainable developments when assessing economic viability issues.

If, in proposals where the provision of on-site affordable housing is shown to affect the overall viability of the scheme, the total viability shortfall (the additional sum required to make the scheme viable for the developer with on-site affordable housing provided) will be calculated. The Council will then contact the Housing Corporation with a view to securing Social Housing Grant Subsidy (SHG) for a Registered Social Landlord (RSL) to enable the RSL to purchase the properties at a price that does not affect the viability of the scheme. The amount of SHG required will be the difference between the amount the RSL can borrow against the rents and the amount per unit required to make the scheme viable for the developer.

If the Housing Corporation agrees to provide SHG subsidy to assist with the purchase then the Council will put these details to the developer and invite them to negotiate the details with the RSL. Where agreement cannot be reached on a transfer price and the application does not include the required number of affordable homes, it will be recommended for refusal.

If the Housing Corporation is unable to provide additional subsidy to assist the delivery of affordable housing, the Council will seek to negotiate a lower number of affordable housing on the site that will not affect the viability of the proposal.

Appendix D average house prices for castle point 2001 - october 2006

Appendix D Average House Prices for Castle Point 2001 - October 2006

Table D.1 Average House Prices for Castle Point

Property Type	CASTLE POINT BOROUGH						
	2001		2004		2006		Average Price Increase 2001-2006 %
	Land Registry Average Price £	Sales	Land Registry Average Price £	Sales	Land Registry Average Price £	Sales	
Terraced	91,596	53	154,072	51	162,472	56	77.4
Semi-detached	103,870	213	178,967	211	189,620	190	82.6
Detached	153,040	219	216,417	204	255,758	203	67.1
Flat/maisonette	64,412	55	128,924	76	142,917	64	121.9
All properties	118,587	540	183,702	542	207,001	513	74.6

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Appendix E transport policy extracts

Appendix E Transport Policy Extracts

ESSEX LOCAL TRANSPORT PLAN –

BASILDON & THAMES GATEWAY PROPOSALS: 2006-2011

Table E.1 Essex Local Transport Plan: Basildon and Thames Gateway Proposals 2006 - 2011

Proposal	Funding Source	Cost £000	Delivery Body
Major Schemes			
South Essex Rapid Transit	LTP Major/RFA	85,000	ECC
A13/A130 Sadlers Farm Intersection	LTP Major/RFA	77,000	ECC
A127 and A1159 Route Management Strategy and major maintenance	LTP Major	22,300	ECC SBC
M25 Widening junction 26 to 31	HA TPI	HA Funded	HA
Gardiners Lane South Access Improvements A132/A176/A127	Dev	Dev	Dev ECC
C ₂ C Line Capacity 12 car platforms	CIF	12,200	Network Rail
Roscommon Way Regeneration	TG CIF	24,000	ECC/Dev
Fryerns/Craylands Regeneration Access	TG CIF	5,900	ECC EP/Dev
A13 Passenger Transport corridor	LTP/RFA	4,000	ECC
Delivering Accessibility			
Access to education in Thames Gateway	LTP/Dev	125	ECC
Community Rail Partnership Station Enhancements	LTP	13	ECC
Community Transport Interchange Pilot	LTP		ECC
Public Rights of Way	LTP/Dev	15	ECC
Walking and Cycling	LTP/Dev	1,296	ECC
Bus and Rail Interchange Enhancements	LTP/Dev	550	ECC
Rural Transport Hubs	LTP	40	ECC
Tackling Congestion			
Driver Telematics & Incident & Parking Management	LTP/Dev	280	ECC
Providing Safer Crossings	LTP/Dev	899	ECC
Quality Bus Partnership	LTP/Dev	1,473	ECC
Short term congestion relief in the RICs and towns	LTP/Dev	1,015	ECC
Traffic Management Strategy	LTP/Dev	1,100	ECC
Countrywide Programme			
Countrywide schemes	LTP/Dev	8,630	ECC

In addition to the transport schemes listed above, the draft **East of England Plan** also sets out other transport infrastructure requirements for achieving regeneration up to 2021 including:

Appendix E transport policy extracts

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- The creation of a Benfleet-Wickford passenger link; and
- A new or improved access to Canvey Island.

In addition to schemes proposed at the County and Regional level, the **Canvey Island Sustainable Regeneration Report** has also revealed other local schemes with the potential to ease congestion. These include:

- Improved interchange facilities at the Station; and
- Improved opportunities for walking and cycling.

Specific contributions will also be required to support and manage the impact of large development sites identified in the Core Strategy. For example, the County Highways Authority has indicated that any development that would have an impact on the **Woodman's Arms Junction** on the Rayleigh Road would need to make contributions towards its improved capacity. Likewise, the **Waterside Farm Junction** on Canvey Island has issues associated with peak time capacity that need to be addressed through larger development proposals on the Island in order to accommodate additional growth. Traffic Impact Assessments will be used as a tool in assessing the expected contributions from such developments.



Appendix F draft core strategy policy on transport infrastructure

Appendix F Draft Core Strategy Policy on Transport Infrastructure

Draft Policy CP 3

Delivering Sustainable Transport Infrastructure

The Council will seek the delivery of the following transport infrastructure with the aim of reducing transport deficiencies, accommodating growth and improving sustainability in Castle Point by 2021, whilst ensuring the integrity of the natural environment:

1. Improvements to public transport provision in Castle Point including:
 - Delivery of the A13 Passenger Transport corridor through Castle Point by 2011;
 - Extension of similar Passenger Transport corridor features from the A13 to Canvey Island by 2016;
 - The delivery of the South Essex Rapid Transit project with connections to the Borough by 2021.
2. Improvements to opportunities for walking and cycling in Castle Point including:
 - Delivery of Greenway Routes identified in the Thames Gateway South Essex Green Grid Strategy; and
 - Work with ECC to identify and deliver, or improve existing footpaths and cycle routes, and make roads safer for pedestrians and cyclists.
3. Improvements to the strategic road network in Castle Point including:
 - Junction improvements at Sadlers Farm by 2011;
 - Route Management improvements on A127 and A13 by 2011;
 - Capacity improvements between Sadlers Farm and Tarpots Corner by 2011;
 - Capacity improvements along Somnes Avenue between Waterside Farm and Elsinor Avenue by 2011;
 - Junction improvements at Waterside Farm, in association with development on Canvey;
 - Junction improvements along the Rayleigh Road between the Rayleigh Weir and Woodman Arms junctions, in association with development to the west of Rayleigh Road;
 - The extension of Roscommon Way from Northwick Road to Haven Road, with access into the South of Charfleets Industrial Estate by 2011;
 - The further extension of Roscommon Way from Haven Road to Western Esplanade by 2021; and
 - A new or improved access onto Canvey Island by 2021.

In order to support the aims of this policy the Council will expect all cycle routes/pathways and road proposals to take into account ecological assessment. Further to this new developments will be expected to make contributions directly towards the schemes set out above or wider improvements to the local highways network, as appropriate to the size and location of the development proposed. New developments will also be subject to the effective implementation of development control policies in order to reduce their impact on the road network and the natural and built environments through the use of private vehicles.

Appendix G castle point open space appraisal: provision standards

Appendix G Castle Point Open Space Appraisal: Provision Standards

Table G.1 Urban Parks and Gardens

Standards	0.103 hectares per 1000 people/ 720 metres or 15 min walk
Existing provision	Only one – Dutch Cottage, Canvey Island
Shortfall	10 hectares
Recommendations	Improve local access to existing and their settings/identity; develop and improve two other sites as urban parks (St James Churchyard and Labworth Park)

Table G.2 Country Parks

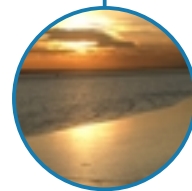
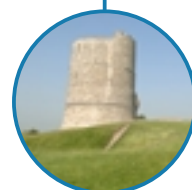
Standards	2.936 hectares per 1000 people/ 2400 metres or 10 min drive
Existing provision	Hadleigh Castle Country Park – consisting of Two Tree Island, Hadleigh Castle, Bolton Hills, Hadleigh Marsh/Benfleet Downs Canvey Heights Country Park
Shortfall	None
Recommendations	Enhance existing, upgrade access for disabled and improve signage

Table G.3 Natural and Semi-natural Places

Standards	2.377 hectares per 1000 people/ 720 metres or 15 min walk	
Existing provision	Arthur Stevens Open Space	Tile Wood
	The Glen, Thundersley	Wyburn Wood
	St Michael's Church	Pound Wood
	Shipwrights Wood	Great Wood Nature Reserve
	Thundersley Great Common	Dodds Grove
	North Benfleet Hall Wood	Great Wood Golf Course
	Coombe Wood	West Wood
	Starvelarks Wood	Fane Wood
	Little Common	Tewkes Creek
Shortfall	None	
Recommendations	Protect and enhance current level of provision, accessibility and connections to wider footpath network; maintain and improve management techniques to promote biodiversity and wildlife habitats	

Table G.4 Green Corridors

Standards	None
Existing provision	The Lake and Southwick Dyke Inland Esplanade



Appendix G castle point open space appraisal: provision standards

Shortfall	Difficult to quantify
Recommendations	Opportunity led to improve footpath and cycleway connections to existing open spaces and general street furniture

Table G.5 Outdoor Sports Facilities

Standards	<p>3.217 hectares per 1000 people. New provision however should be based upon the distribution of existing specific sports facilities and the likely demand for new facilities used to inform new development.</p> <p>2400 metres or 10 min drive.</p>	
Existing provision	<p>Woodside Park Playing Fields</p> <p>Canvey FC</p> <p>Smallgains Recreation Ground</p> <p>Tewkes Creek Recreation Ground</p> <p>Waterside Farm Recreation Ground</p> <p>Northwick Playing Fields</p> <p>The Chase Playing Fields</p> <p>Hadleigh Tennis Club</p> <p>Haven Road Recreation Ground</p> <p>Castle Point Golf Course</p> <p>Boyce Hill Golf Course</p> <p>Kingston Primary School</p> <p>Thundersley Infant and Junior Schools</p> <p>Cedar Hall School</p> <p>King John Senior School</p> <p>The Deanes School</p> <p>Appleton School</p> <p>Kents Hill Infant and Junior Schools</p> <p>Jotmans Hall Primary Schools</p> <p>Robert Drake Primary School</p> <p>South Benfleet Playing Fields</p>	<p>Montgomerie Junior and Infant School</p> <p>Glenwood School</p> <p>Hadleigh Junior School</p> <p>Westwood Primary School</p> <p>South Benfleet Primary School</p> <p>St Katherine's Primary School</p> <p>St Joseph's Primary School</p> <p>Leigh Back Nursery, Infant and Junior Schools</p> <p>Lubbins Park Primary Schools</p> <p>Northwick Park Nursery, Infant and Junior Schools</p> <p>Concord Rovers pitch</p> <p>William Read Primary School</p> <p>Canvey Infant & Junior Schools</p> <p>Castle View School</p> <p>Cornelius Vermuyden School</p> <p>Furtherwick Park School</p> <p>John H Burrows Recreation Ground</p> <p>King George V Playing Fields (Canvey)</p> <p>Thundersley Great Common Recreation Ground</p> <p>South Benfleet Playing Fields</p>
Shortfall	Minimum level of provision set at current level but protect and enhance existing	
Recommendations	New provision should be based upon distribution of specific sports facilities that would be identified by conducting a playing pitch strategy and informed by the accessibility standard. Upgrade existing facilities and improve access. Work with local schools to open up sports facilities to community use.	

Appendix G castle point open space appraisal: provision standards

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Indoor Sports Facilities

Standards are based on specific demand modelling undertaken based on parameters recommended by Sports England.

Table G.6 Sports Hall

Existing provision	Waterside Farm	The Appleton School
	The Deanes School School	The Cornelius Vermuyden
	Furtherwick Park School	The King John School
	SEEVIC College	Castle View School
Shortfall	Only one sports hall is publicly available but three schools have dual use arrangements	
Recommendations	If other school sites allowed public use, unmet demand all but met	

Table G.7 Swimming Pools

Existing provision	Waterside Farm
	Runnymede Swimming Pool
	Furtherwick Park School
	The Appleton School
	Virgin Active
Shortfall	Current demand shows there is an undersupply
Recommendations	If two schools allow dual use of their facilities outside of school hours then oversupply would result

Table G.8 Indoor Bowls

Existing provision	None in Borough
Shortfall/ Recommendations	Demand indicates need for bowls centre of 6 rinks by 2015

Table G.9 Indoor Tennis

Existing provision	One existing centre in Borough at The Deanes School
Shortfall/ Recommendations	No short to medium term need to provide any additional provision

Table G.10 Squash

Existing provision	More courts at present than currently needed at Waterside Farm. Only location to provide facilities
Shortfall/ Recommendations	No further provision needed

Table G.11 Other Facilities

Existing provision	X-treme indoor skate/BMX facility at South Benfleet
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Appendix G castle point open space appraisal: provision standards

Shortfall/ Recommendations	Investigate possibilities of providing secondary facility on Canvey Island
-------------------------------	--

Table G.12 Amenity Green Spaces (Informal recreation space and green space)

Standards	0.584 hectares per 1000 people/480 metres or 10 min walk	
Existing provision	The Crescent Recreation Ground King George V Playing Fields (Benfleet) Memorial Ground Runnymede Paddocks Swans Green Recreation Ground Tarpots Recreation Ground Woodside Park	Beveland Open Space The Gun Site Recreation Ground Kismet Park Labworth Park Leigh Beck Recreation Ground The Paddocks Dyke Crescent Russell Head Farm Villa Road Recreation Ground
Shortfall	Appears to be under provision but more important to retain current provision	
Recommendations	Concentrate on improving existing quality and access before increasing provision, especially in Benfleet	

Table G.13 Provision for Young People and Children

Standards	0.25 sites ⁱ per 1000 people/480 metre or 10 min walk	
Existing provision	The Crescent Play Area John H Burrows Play Area Memorial Ground Play Area (medium) King George V Play Area (Canvey) Memorial Play Area (small) South Benfleet Playing Fields Play Area Swans Green Play Area Tarpots Play Area Thundersley Common Recreation Ground Play Area Woodside Park Play Area (East) Waterside Farm Skate Ramp	Woodside Park Play Area (West) King George V Play Area (Benfleet) Kismet Park Play Area Thorney Bay Play Area Esplanade Paddling Pool Leigh Beck Play Area (large) Leigh Beck Play Area (small) The Paddocks Open Play Area The Paddocks Enclosed Play Area Villa Road Play Area Larup Gardens Waterside Farm Play Area
Shortfall	Poor provision	

i The measurement provision for young people and children has been arrived at as many of the existing play areas in Castle Point encompass a large area to run around in but do not contain many facilities or pieces of equipment. The consultants considered it was misleading to set a quantity standard based on an area per 1000 people; instead a measurement figure of sites per 1000 people has been recommended.

Appendix G castle point open space appraisal: provision standards

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Recommendations	Protect and improve existing sites and accessibility to them; seek new provision as appropriate through new residential developments; investigate opportunities for new play provision in suitable amenity green space and improve provision for youth activities and facilities along seafront
-----------------	---

Table G.14 Allotments and Community Gardens

Standards	0.058 hectares per 1000 people/2400 metres or 10 min drive	
Existing provision	Daws Heath Allotment	Waterside Farm Allotment
	London Road Allotment	Smallgains Allotment
	Jotmans Farm Allotment	Watlington Allotment
Shortfall	Currently good level of provision	
Recommendations	Concentrate on raising standard and access to existing; provide new long-term provision on Canvey Island, where appropriate	

Table G.15 Churchyards and Cemeteries

Standards	PPG17 guidance is that Borough should increase provision in relation to rises and falls in population
Existing provision	General provision within Borough good
Shortfall/Recommendations	Improve quality, accessibility and promote ecological value

Table G.16 Thames Estuary and Waterfront

Standards	This type of open space is not detailed in PPG17
Shortfall/Recommendations	Raise quality of infrastructure, provide biodiversity and accessibility

Where the Open Space Appraisal has identified a shortfall in provision the following space standards will be applied:

- **Urban Parks and Gardens.** Standard required: 0.103 hectares per 1000 population. 0.1 square metres per person
- **Outdoor Sports.** Standard required: 3.217 hectares per 1000 population. 30 metres per person
- **Amenity Green Spaces (Informal Open Space).** Standard required: 0.584 hectares per 1000 population. 0.6 square metres per person.
- **Children's Play Area.** Standard required: 0.25 sites per 1000 population. Maximum of 2.3 square metres per child, but depends on child occupation formula used to calculate Education Contributions.



Appendix H open space and recreation formula

Appendix H Open Space and Recreation Formula

Castle Point Open Space/Recreational Requirements

Table H.1 Open Space and Recreation Costings

Open Space/Outdoor Sports	Predicted Costs	Maintenance ⁽ⁱⁱ⁾	Total
Play grounds	£1,000,000	£300,000	£1,300,000
Amenity Green Space and Urban Parks	£1,195,200	£358,560	£1,553,760
Benfleet Rec. Ground	£298,800	£89,640	£388,440
Canvey Heights County Park	£1,053,000	£315,900	£1,368,900
Natural and Semi Natural Open Spaces	£124,200	£37,260	£161,460
Green Corridors and Seafront	unknown	unknown	unknown
Churchyards and Cemeteries	£158,900	£47,670	£206,570
Outdoor Sports	unknown	unknown	unknown
Sub Total	£3,830,100	£1,149,030	£4,979,130
Indoor Sports	Predicted Costs	Maintenance ⁽ⁱⁱⁱ⁾	Total
Runnymede Swimming Pool/Hall	£1,000,000	£ 50,000	£1,050,000
Waterside Replacement	£5,000,000	£250,000	£5,250,000
Indoor Bowls centre	£1,555,000	£ 77,750	£1,632,750
Paddocks Multi use hall	£3,000,000	£150,000	£3,150,000
Sub Total	£10,555,000	£527,750	£11,082,750
TOTAL	£14,385,100	£1,676,780	£16,061,880

Methodology

PPS3 requires Council's to identify a 15 year supply of dwellings and Castle Point is planning to 2026 to allow a degree in building flexibility. The emerging Regional Spatial Strategy requires it to provide 4000 dwellings up to 2021. Annualising that requirement means there is a need to supply 5000 new dwellings between 2001 and 2026. Currently 1,200 dwellings have been granted planning permission, meaning an additional 3,800 dwellings will be required to meet the 2026 target figure. The total financial sum required to meet current identified open space and recreational need is £16,061,880 of which it is assumed that 50% can be funded from alternative sources. Factorising this through equates to a requirement for £2133.41 per each new dwelling created, viz:

$$(\text{£16,061,880} / 50\% \text{ funding}) / 3,800 \text{ new dwellings} = \text{£2133.41 per dwelling}$$

Developments that would not need to pay a contribution, because of lack of demand to use any open space/recreational facility in Castle Point would include nursing homes and very sheltered accommodation. Bedsits, sheltered accommodation and student accommodation would be excluded from making contributions towards children's play areas.

Therefore for a development involving only bedsits, sheltered accommodation or student accommodation, the £1,300,000 capital/revenue sum for playgrounds would be excluded –

ii Estimated at 3% per annum for 10 years

iii Estimated at 2.5% per annum for 2 years only as Leisure Facilities should become self funding

Appendix H open space and recreation formula

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$(£16,061,880 - £1,300,000 / 50\% \text{ funding}) / 3,800 \text{ new dwellings} = \text{£1942.35 per dwelling}$



Appendix I education formula and worked examples

Appendix I Education Formula and Worked Examples

Primary and Secondary School Provision

When estimating the number of primary and secondary school pupils that a new housing development will generate (known as pupil yield), account is taken of the number of houses and flats that are considered suitable to house children. The County Council estimate the number of children who will generate demand for an additional place at a local school as 30 pupils per 100 dwellings (i.e. 0.3 pupils per dwelling) for primary schools and 20 pupils per 100 dwellings (i.e. 0.2 pupils per unit) for secondary in a standard development where the density of the development exceeds 50 units per hectare, flats are treated as producing half the normal pupil yield (i.e. 0.15 pupils for a primary school and 0.1 pupils for a secondary school).

The respective pupil yields are summarised below:

Table I.1 Pupil Yields for New Developments

Pupil Yields	Primary		Secondary	
	House	Flat	House	Flat
Standard Development	0.3	0.3	0.2	0.2
High Density Development ^(iv)	0.3	0.15	0.2	0.1

(These figures may be adjusted over time to reflect new information on pupil yields)

The DfES average cost per place (regionally adjusted for Essex for each additional child attending a primary school is £8,986 and at secondary school is £14,055 at April 2006 prices. These per place figures are adjusted annually in accordance with PUB SEC Index build cost inflation prices published by the DTI

Early Years and Child Care Provision

For Early Years and Childcare spaces when estimating the number of children that a new housing development will generate (known as child yield) account is again taken of the number of houses and flats that are considered suitable to house children. The County Council estimate that the number of children who will generate demand for an additional child care place as 4 children per 100 dwellings (0.04 children per dwelling) and for Early Years 5 children per 100 dwellings (0.05 children per dwelling). Where the density of the development exceeds 50 units per hectare flats are treated as producing half the normal child yield (i.e. 0.02 children for childcare and 0.025 children for early years).

The respective yields are again summarised below:

Table I.2 Child Yields for New Developments

Child Yields	Childcare		Early Years	
	House	Flat	House	Flat
Standard Development	0.04	0.04	0.05	0.05
High Density Development ^(v)	0.3	0.02	0.05	0.025

iv 50+ units per hectare

v 50+ units per hectare

Appendix I education formula and worked examples

(These figures may be adjusted over time to reflect new information on child yields)

The County Council estimate that each additional pre school place in an existing facility costs £12,100 at April 2006 prices.

Further Education Provision

For Sixth Form Provision the County Council estimate that a development of 100 houses can be forecast to generate the need for 4 additional Sixth Form places. At the applicable April 2006 DfES prices the cost per place is estimated to be £14,602.

Working Example

For a development consisting of 10 x 1 bedroom flats, 25 x 2 bedroom flats and 35 houses on a 'high' density development of over 50 units per hectare it would generate the following:

Table I.3 Yield for Childcare Contribution

Dwelling Type	Number of Dwellings	Factor	Child Yield
One bed	10	0	0
Flats	25	0.02 (high density)	0.5
Houses	35	0.04	1.4
Total Yield		1.9	

Table I.4 Yield for Early Years Contribution

Dwelling Type	Number of Dwellings	Factor	Child Yield
One bed	10	0	0
Flats	25	0.025 (high density)	0.6
Houses	35	0.05	1.7
Total Yield		2.3	

Table I.5 Yield for Primary Contribution

Dwelling Type	Number of Dwellings	Factor	Child Yield
One bed	10	0	0
Flats	25	0.15 (high density)	3.7
Houses	35	0.3	10.5
Total Yield		14.2	

Table I.6 Yield for Secondary Contribution

Dwelling Type	Number of Dwellings	Factor	Child Yield
One bed	10	0	0
Flats	25	0.1 (high density)	2.5
Houses	35	0.2	7.0
Total Yield		9.5	

Contribution Sought



Appendix I education formula and worked examples

Table I.7 Contribution Sought for all Provision Types

Age Range	Childs Yield (Rounded)	Cost per place	Total
Childcare	2	£12,100	£14,200
Early Years	2	£12,100	£14,200
Primary	19	£8,986	£125,804
Secondary	9	£14,055	£126,495
Total Contribution		£280,699	

Appendix I education formula and worked examples

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Adult Learning - Worked Example

Space requirement:

70 sq m per 30 F/T students – DfES standard for class teaching space = 2.33 sq m per F/T student

Building cost:

Construction cost = £1746 per sq m – based on RICS BCIS Tender Price Index

Fitting out costs = £1161 per sq m – based on current fitting out costs of new provision in Essex

TOTAL building cost = £2907 per sq m

Therefore; Cost per student = £6773 per sq m

Students as proportion of population:

Enrolments in Essex (2004/05 academic year – last audited accounts) = 59177

F/T equivalent = $59177 \times 0.158 = 9350$ F/T students

Essex population = 1,340,000 (mid year 2006)

Proportion of population = $1,340,000 / 9350 = 0.007$

Contribution per dwelling: (assuming all schemes /occupants are required to contribute)

Cost per F/T student/person = £6773 per sq m

Multiplied by proportion of Essex population who are F/T students $\times 0.007 = £47.41$ per person

Average number of persons per dwelling = 2.4 [*Regional average house occupancy*]

$$2.4 \times £47.41 = £113.78$$

Cost per dwelling = £113.78



Appendix J library formula

Appendix J Library Formula

Methodology

Space requirement:

23 sq m per 1000 population (net public floor space excluding circulation and services' space) – National Public Library Standard

Building cost:

Construction cost + £1,746 per sq m – based on RICS BCIS Tender Price Index and new build prices

Fitting out costs = £1.161 per sq m – based on current fitting out costs of new provision in Essex.

TOTAL building cost = £2,907 per sq m

Stock cost:

Stock items per 1,000 population = 1,532 – National Library Standard upper threshold

Average stock item price = £10.38 – based on Holt Jackson book price index (March 2006)

Cost per 1,000 population:

Building – Total cost x 23 sq m = £66,861

Stock – Items per 1,000 population x Average price per item = £15,902

Total = £82,763

Contribution per dwelling:

Cost per person = £82.673

Average number of persons per dwelling = 2.4 – [Regional average house occupancy]

Cost per dwelling = £198.63

Appendix K flood risk management formula

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Appendix K Flood Risk Management Formula

RESIDENTIAL DEVELOPMENT

The annual maintenance expenditure by the Environment Agency for Canvey Island flood defences for the previous two financial years has been:

2005/06 - £333,000
 2006/07 - £500,000
 Average: £416,500

(These figures include maintenance costs for the Fobbing, Easthaven and Benfleet Barriers which protect Canvey Island)

The population of Canvey Island, from the 2001 census, is 37,479

The average household size, for Castle Point, from the 2001 census is 2.4 persons

The average maintenance cost per household per year for Canvey Island is therefore:

$$37,479/2.4 = 15,616 \text{ households}$$

$$£416,500/15,616 = £26.67 \text{ per household}$$

Assuming an average 100 year lifespan for a dwelling as set out in PPS25:

$$£26.67 \times 100 = \textbf{£2667 per dwelling}$$

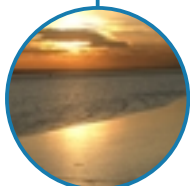
NON RESIDENTIAL DEVELOPMENT

The average floorspace of a new dwelling house on Canvey Island in 2007 was 122.09m².

The cost per square metre of floorspace is therefore:

$$£2667/122.09 = \textbf{£21.84 per m² of floorspace.}$$

This rate will be applied to non-residential developments in Flood Risk Zone 3 in excess of 75m².



Appendix L police service formula

Appendix L Police Service Formula

Space requirement:

General office accommodation (non-specialist)

Number of households per staff member – 123.64

14.88 sq m required per member of staff

Custody facilities (specialist)

Number of households per sq m of custody facility = 188.46

Costs:

General office accommodation (non-specialist) per sq m = £2820

Custody facilities (specialist) per sq m = £3670

Miscellaneous capital costs Police Officers (includes uniform and protective equipment, vehicles, recruitment, training, furniture, radio and IT equipment) = £8136

Miscellaneous capital costs Police support staff members (includes recruitment, training, furniture and IT equipment) = £3689

Cost per 1000 dwellings:

General office accommodation (non-specialist) = £339,447

Custody facilities (specialist) = £19474

Miscellaneous capital costs Police support staff members = £12091

Total = £410,149

Contribution per dwelling: excl VAT £410.15

Appendix M planning obligations by legal agreement questionnaire

Appendix M Planning Obligations by Legal Agreement Questionnaire

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Section 106 Town and Country Planning Act 1990 (as amended)
Developer contributions by way of Planning Obligations Legal Agreement
(Section 106 Agreement/Unilateral Undertaking)

QUESTIONNAIRE

Relating to¹:

Planning application reference: CPT²

Please complete the questions 1 to 6 below using block capitals and in black only

The information given may be held on public files, but for your protection us of this information is regulated by the Data Protection Act 1998 where it relates to personal information.

Completion of this questionnaire does not fetter the discretion of Castle Point Borough Council in their consideration of the planning application

1. Details of the Applicant	
1a Full name and address of the applicant/s <i>If a company please supply the full name of the company, whether Ltd or PLC, the company number, plus the company's registered office, which may be different from the address from which the company is operating</i>	
2. Legal or other representation	
2a Who will be acting for the applicant in approving or drawing up the	The Applicant ³ :

¹ Please insert the description of the property/development or site for identification purposes

² Please insert the planning reference if known

³ Please tick one of the options above

Agreement?	Solicitor ⁴ : Agent ⁵ :
2b If a solicitor or agent is acting for the applicant please supply their name and address	
3. Payment of the Local Authority's Legal Costs	
Costs may be incurred by either Castle Point Borough Council or Essex County Council or both depending on which functions are to be encompassed within the legal agreement. The applicant is required to cover these costs and will be invoiced.	
3a Castle Point Borough Council's costs: (i) If the applicant is acting for themselves or is being represented by a party other than a solicitor, an initial payment of £300 will need to be secured prior to commencing work on the draft agreement and further payment where necessary will be billed accordingly. These charges are subject to periodic review. <i>(Please make cheque payable to Castle Point Borough Council)</i> (ii) A costs undertaking will be required when the applicant	Cheque payment to Castle Point Borough Council attached: Yes ⁶ No ⁷ Costs undertaking supplied: Yes ⁸

⁴ Please tick one of the options above

⁵ Please tick one of the options above

⁶ Please tick one of the options above

⁷ Please tick one of the options above

⁸ Please tick one of the options above

is being represented by a solicitor.	No ⁹
<p>3b The County Council's costs:</p> <p>(i) If the applicant is acting for themselves or is being represented by a party other than a solicitor, an initial payment of £300 will need to be secured prior to commencing work on the draft agreement and further payment where necessary will be billed accordingly. <i>(Please make cheque payable to Castle Point Borough Council)</i></p> <p>(ii) A costs undertaking will be required when the applicant is being represented by a Solicitor</p>	<p>Cheque payment to Castle Point Borough Council attached:</p> <p>Yes¹⁰</p> <p>No¹¹</p> <p>Costs undertaking supplied:</p> <p>Yes¹²</p> <p>No¹³</p>
4. Applicant's Interest in the land	
<p>4a Is the land owned by the applicant as a freeholder or leaseholder?</p> <p><i>(This information is of great importance as both Castle Point Borough Council and Essex County</i></p>	<p>Freeholder¹⁴</p> <p>Leaseholder¹⁵</p> <p>neither¹⁶</p>

⁹ Please tick one of the options above

¹⁰ Please tick one of the options above

¹¹ Please tick one of the options above

¹² Please tick one of the options above

¹³ Please tick one of the options above

¹⁴ Please tick one of the options above

¹⁵ Please tick one of the options above

¹⁶ Please tick one of the options above

<i>Council must be able to enforce obligations against anyone with an interest in the land)</i>	
4b If the applicant is the leaseholder what is the term of the lease and when did the term commence?	
4c (i) if the applicant is neither the freeholder nor the leaseholder, please describe the applicant's interest in the land (ii) please supply the name and address of the freeholder and nay leaseholder	
5. Proof of title (ownership or legal interest)	
Please forward proof of title as soon as possible to help speed preparation of the first draft agreement, and ensure that the correct parties and their respective interests in the land are correctly documented.	
5a for unregistered land – a copy of the conveyance which is dated at least 15 years of age and including any subsequent devolution of title documents	Proof of title attached Yes ¹⁷ No ¹⁸
5b for registered land – office copy entries and plan from the Land Registry	Office copy entries attached Yes ¹⁹ no ²⁰ Plan of the land attached yes ²¹

¹⁷ Please tick one of the options above

¹⁸ Please tick one of the options above

¹⁹ Please tick one of the options above

²⁰ Please tick one of the options above

²¹ Please tick one of the options above

	No ²²
5c leases – please supply copies of all leases of the property; and where a lease is registered, office copy entries and plan from the Land Registry	Please list all documents
6. Mortgages	
6a Is there a mortgage on the Property? <i>(This is essential information as the mortgagee has to be party to any agreement)</i> Please supply a copy of the mortgage document if the land is not registered	Copy supplied? yes ²³ No ²⁴
6b When was the mortgage taken out?	
6c Please confirm that the mortgagee knows that a Section 106 Agreement/Unilateral Undertaking is proposed	Confirmed <i>(please tick)</i>
6d Please confirm that the mortgagee knows that they must be a party to the agreement and seal it to signify consent to the land being bound by the further charge albeit a local land charge rather than a legal charge	Confirmed <i>(please tick)</i>
6e Has the mortgagee agreed to seal the Agreement?	yes ²⁵ No ²⁶

²² Please tick one of the options above

²³ Please tick one of the options above

²⁴ Please tick one of the options above

²⁵ Please tick one of the options above

²⁶ Please tick one of the options above

Please return this questionnaire completed to:

The Head of Legal Services
Castle Point Borough Council
Council Offices, Kiln Road, Thundersley,
Benfleet, Essex SS7 1TF

Appendix N specimen section 106 legal agreement

Appendix N Specimen Section 106 Legal Agreement



Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to [the development of
on/at]

Dated : 200...

[Local Planning Authority] (1)
[Local Highway Authority] (2)
[Freeholder] (3)
[Other Interested Person] (4)
[Other Interested Person] (5)

1

1

GENERAL GUIDANCE NOTE

The objective is to provide a document which is concise, clear and comprehensive. Modern legal drafting no longer employs archaic legal terminology. Instead, it should be drafted so as to be readily understood by all interested parties.

The solicitors responsible for drafting the document need to receive clear and unambiguous instructions from their clients.

A Section 106 Planning Agreement is a legal document. It creates legal commitments which bind the original parties and their successors, and the land, and these commitments may continue for many years. It is important to remember that a Section 106 Planning Agreement will usually be negotiated in conjunction with the planning permission, which also normally runs with the land.

The document should follow a logical sequence, starting with the parties followed by an Introduction which explains the objective of the Planning Agreement, then the legal provisions that enable the local planning authority and any other public authority to enter into the planning obligations, and the operative provisions containing the obligations of the landowner and, if appropriate, the local authorities.

A Unilateral Obligation may be employed where the obligations are made by the Owner and/or the Developer without any reciprocal commitments by the local planning authority, provided that the local planning authority by whom the Planning Obligation is enforceable is identified within the Deed.

The parties negotiating the Agreement are encouraged to follow the broad format of this agreement. Where necessary, however, they may substitute the provisions (especially those in square brackets) in this standard agreement for wording specific to the development and authority. Authorities should make standard materials available to applicant.

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DATE 200...

PARTIES ²

- (1) [LOCAL PLANNING AUTHORITY] of [.....insert address.....]
("Council")
- (2) [LOCAL HIGHWAY AUTHORITY] of [.....insert address.....]
("County Council")³
- (3) [FREEHOLDER] of [.....insert address.....]
("Owner")
- (4) [OTHER INTERESTED PERSON] of [.....insert address.....]
("Developer")
- (5) [OTHER INTERESTED PERSON] of [.....insert address.....]
("Mortgagee")

INTRODUCTION⁴

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The County Council is the local highway authority, [and the county planning authority / the education authority] for the area in which the Site is situated.
- 3 The Owner is the freehold owner of the Site.⁵
- 4 The Developer is ⁶
- 5 The Mortgagee is ⁷

² These are the parties who should sign the document as being interested in the land, where, "interested" has a legal meaning. The parties usually include the freeholder, any lessee(s), and the purchaser of the development site with a contract conditional upon obtaining planning permission or an option for a period of time within which the developer may obtain planning permission and then decide whether or not to purchase the land.

Local Planning Authority – the local authority for the area where the land is situated; this may be the District Council Unitary authority, London Borough, National Park Authority or Urban Regeneration Agency.

County Council – a County Council may also be joined as a party in its role as local highway authority and/or local education authority or local planning authority in relation to waste and minerals.

Mortgagee - In an event of a default by the mortgagor, the mortgagee may take possession of the land, and therefore be liable for the commitments in the planning obligation.

³ In unitary areas, the unitary authority will have eg the education and (for non-trunk roads) highway authority powers. Thus the agreement will need to be modified when used in such areas essentially to substitute the Council for the County, making it clear in the recitals that the Council has the County functions.

⁴ This section is also known as "Recitals", sets the scene for the obligations which appear later in the Agreement. The relevant role(s) of the County Council should be identified.

⁵ Recital of ownership – see s.106(9)(b) and (c) for what must be stated.

⁶ Recital of ownership – see s.106(9)(b) and (c) for what must be stated.

⁷ Recital of ownership – see s.106(9)(b) and (c) for what must be stated.

- 6 The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 7 The Council resolved on [...insert date....] to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART⁸

1 DEFINITIONS⁹

For the purposes of this Deed the following expressions shall have the following meanings:

“1980 Act”	the Highways Act 1980
“Act”	the Town and Country Planning Act 1990
“Application”	the application for outline [full] planning permission dated [] submitted to the Council for the Development and allocated reference number []
“Agreement”	an agreement with a transfer annexed in the form set out and completed in accordance with the Seventh Schedule
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.
“County Engineer”[“Director”]	the Director of Engineering or his appointed representative for the time being of the County Council.
“Development”	the Development of the Site with [...insert description of the development...] as set out in the Application
“Dwelling”	a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

⁸ *These are the provisions that follow the recitals and which set out:*

(a) *the method and means of performance of the obligations,*

(b) *the content of the obligations.*

⁹ *Modern draftsmen include their definitions at the beginning of the operative part of the Deed, unless the document is short. A defined term should be given a capital letter wherever it subsequently appears in the document. The purpose of definitions is to remove ambiguity, and to avoid unnecessary repetition. Other definitions can be added, depending upon the terms of the obligations.*

“Highways Agreement”	an agreement for [... <i>insert purposes...</i>] substantially in the form set out in the Eighth Schedule with such amendments as may be agreed between the parties thereto
“Index” ¹⁰	All Items Index of Retail Prices issued by the Office for National Statistics [All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation].
“Interest”	interest at [] per cent above the base lending rate of the [] Bank Plc from time to time.
“Occupation” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
“Plan”	the plan attached to this Deed
“Planning Permission”	the outline[full] planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Second Schedule.
“Property Transfer Trigger”	the restriction on occupation of more than [... <i>specify no. of dwellings/square metres as applicable...</i>] set out in paragraph [1] of the Third Schedule. ¹¹
“Site” ¹²	the land against which this Deed may be enforced as shown edged red on the Plan.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations,

¹⁰ *The choice of index will depend on what is being indexed. More than one index may need to be specified.*

¹¹ *Needed if property to be transferred.*

¹² *This will usually be the same as the Application site. It should be the land against which the obligations are to be enforced.*

permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and County Council the successors to their respective statutory functions.

3 LEGAL BASIS¹³

- 3.1 This Deed is made pursuant to Section 106 of the Act [Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000].

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.¹⁴

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of [Clauses 8.1, 15 and 16 legal costs clause jurisdiction and delivery clauses and any other relevant provisions] which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Third Schedule.
- 5.2 The Owner covenants with the County Council as set out in the Fourth Schedule.

6 THE COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fifth Schedule.

7 THE COUNTY COUNCIL'S COVENANTS

- 7.1 The County Council covenants with the Owner as set out in the Sixth Schedule.

8 MISCELLANEOUS

- 8.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

¹³ *The operative provisions should follow a logical sequence, commencing with a statement of the legal powers which are relied upon by the local planning authority when entering into this agreement. Obviously, the primary authority is Section 106 of the Town and Country Planning Act 1990, but the local planning authority may also wish to include Section 111 of the Local Government Act 1972, and Section 2 of the Local Government Act 2000. Sections 111 and 2 should be mentioned where the local planning authority is also committing to carrying out certain actions. These sections enable the local authority to deal with obligations required from the landowner, that are not within the powers of Section 106. However, unlike s.106, obligations under section 111 and 2 do not run with the land.*

¹⁴ *Standard Terms*
Formal requirement
It is necessary to state formally that the document is a planning obligation for the purposes of Section 106 of the Town and Country Planning Act 1990.

- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.3 This Deed shall be registrable as a local land charge by the Council.
- 8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of:
- (i) the Council by the Head of Development and Building Control;
 - (ii) the County Council by the County Director¹⁵
- And any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 8.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.¹⁶
- 8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

9 MORTGAGEE'S CONSENT

- 9.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

¹⁵ These references will need to be tailored to the authority and agreement, and the potential for job titles to change borne in mind.

¹⁶ Some parts of a planning agreement will need to be enforceable against owner occupiers or tenants, eg some affordable housing provisions. Consider whether this common exclusion is suitable for all parts of the agreement.

10 WAIVER

No waiver (whether expressed or implied) by the Council [(or the County Council or Owner)] of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council [(or the County Council or Owner)] from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 CHANGE IN OWNERSHIP

The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.¹⁷

12 INDEXATION

Any sum referred to in the Third [and Fourth] Schedule[s] shall be increased by an amount equivalent to the increase in the Index from the [date hereof]¹⁸ until the date on which such sum is payable.

13 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

14 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.¹⁹

15 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales.

16 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

¹⁷ Consider whether sales to owner occupier and business tenancies are to be notified. The purpose of this clause is to assist the LPA in practical monitoring. Consider also including a clause on service of notices.

¹⁸ Insert appropriate point.

¹⁹ Parties should take advice on the applicability of VAT and consequences of failure to collect if payable.

FIRST SCHEDULE²⁰

[Details of the Owner's Title, and description of the Site]

²⁰

Description of the title and the land to be bound by the Agreement. This is usually a description of the development site which is the subject of the application for planning permission.

SECOND SCHEDULE²¹

[Form of notice of planning permission]

²¹

Form of notice of planning permission. Whilst the notice of planning permission will only be issued upon the completion and exchange of the signed Section 106 Planning Obligation, good practice is to annex a draft to the document so that all terms and conditions are known.

THIRD SCHEDULE

The Owner's Covenants with the Council

Transfer of property/open space/play areas/public squares/amenity space²²

Definitions (to be included in Clause 1):

"Open Space Land"	means the land shown for identification purposes coloured [] on the Plan
"Open Space Works"	works to be carried out under paragraph [] to the Third Schedule in accordance with the Open Space Works Specification
"Open Space Works Specification"	a specification for the carrying out of Open Space Works and the maintenance specification to be agreed in writing between the Owner/Developer and the Council prior to Commencement of the Development
"Open Space Contribution"	means the sum of £..... towards the provision and/or improvement of open space facilities payable in accordance with paragraph 1 of the Third Schedule

22

Transfer of property

It is often necessary to provide for the transfer of property as a precondition of the grant of planning permission. For example, there may be play areas to be created in a residential development which the Council requires, or a community centre or public open space. Affordable housing usually also requires land to be transferred to a Registered Social Landlord. Section 106 does not expressly contemplate the transfer of land. Accordingly, either there must be a contract for the sale of land, which can be incorporated in the same document but made under other powers, or a restriction on the use or development of land must be imposed until the land has been transferred. In that case, the Owner will often wish to establish the terms for the transfer and have a commitment from the Council to acquire the land at the appropriate time, so as not to be prevented from continuing with the development should the Council fail to complete the transfer. Those provisions will constitute a contract for the sale of land and must therefore comply with s.2 of the Law of Property (Miscellaneous Provisions) Act 1989. The example clauses also address the situation where the transferee has yet to be identified.

LPAs may wish to secure areas of land to be retained for public use as amenity areas through a planning agreement. This model agreement cannot address drafting for all of them. They include:

- an area of Open Space to be dedicated for public use can be specified without identification of its exact location on the Site, but with a mechanism for its later determination*
- a specified area of the Development Site may be identified within the overall site and dedicated for public use with or without a financial contribution towards its subsequent maintenance*
- a specified area of the Development Site may be identified laid out as open space to a defined specification and dedicated for public use*
- a financial contribution may be payable to the local planning authority for provision of off-site open space, or improvement and maintenance of existing open space within a defined proximity to the Development Site, and with a positive obligation by the local planning authority to use the monies within a specified period of time, otherwise such monies or the balance of such monies should be returned to the Developer.*

In all cases care should be taken to ensure the obligations will run with the land.

A Where property to be transferred to Council

- 1 No more than [...specify no. of dwellings/square metres as applicable...] within the Development shall be Occupied unless the Owner shall have transferred to the Council the Open Space Land on the terms set out in the Seventh Schedule²³ and paid the Open Space Contribution to the Council
- 2 Prior to the transfer referred to in paragraph 1 the Owner shall carry out the Open Space Works to the satisfaction of the Council²⁴

B Alternative approach where property is to be transferred to the Council

- 1 The Owner and the Council hereby agree as follows:
 - 1.1 The Owner shall sell and the Council shall buy the Open Space Land on the terms set out in the Seventh Schedule²⁵
 - 1.2 Completion of the transfer of the Open Space Land referred to in paragraph 1.1 above shall take place on or before Occupation of [...specify no. of dwellings/square metres as applicable...] within the Development

C Where the transferee of land has not been identified; this is often the case for example where the land is for a nature reserve or affordable housing

- 1 No more than [...specify no. of dwellings/square metres as applicable...] within the Development shall be occupied unless prior thereto the Owner shall (by signing and sending the Agreement to the Transferee) offer to sell to the Transferee the Open Space Land which offer may be accepted by the Transferee signing and returning the Agreement to the Owner within [...specify appropriate period...] from the date of the offer in respect of which time shall be of the essence²⁶

²³ The Seventh Schedule should set out the conveyancing terms of the sale, title, price which (will usually be a nominal amount), any provisions needed for decontamination and environmental liability, any commuted sum to be paid to the Council and the terms of the transfer. It must comply with s.2 Law of Property (Miscellaneous Provisions) Act 1989. Under this approach the restriction in this paragraph is within section 106(2) with a contract for the purchase of land which can be protected by registration at the Land Registry. This contract in the Seventh Schedule should be made under s.2 Local Government Act 2000 and s.111 Local Government Act 1972.

²⁴ If B or C is adopted, similar wording for Open Space Works and Open Space Contribution may be included.

²⁵ Again, the Seventh Schedule should set out the terms and the transfer. Under this approach, an estate contract is created by paragraph 1 which can be protected by registration at the Land Registry. This approach is not within the powers of section 106 and should be made under s.2 Local Government Act 2000 and s.111 Local Government Act 1972.

²⁶ Under this approach, a restriction within s.106(2) is created. The Seventh Schedule will set out the contract and transfer.

Community Facilities²⁷

Definitions (to be included within clause 1):

“Community Facilities Land”	means the site of the Community Facilities shown for identification purposes only coloured [] on the Plan having an area of [] hectares and referred to in paragraph [] of the Third Schedule
“Community Facilities”	means the provision of a community hall/[health centre as shall be agreed with the local planning authority, as provided in paragraph [] of the Third Schedule
“Community Facilities Floorspace”	means not less than [] square metres of floorspace (gross external) to be provided within the Development for the purposes referred to in paragraph [] of the Third Schedule in accordance with the Specification
“Community Facilities Contribution”	means the sum of [] pounds (£[.....]) towards the provision of the Community Facilities
“Community Uses”	means [.....]
“Specification”	means the specification set out in the Ninth Schedule

2 The Owner [and/or the Developer] covenants and agrees:

- 2.1 to provide and lay out (including construction of buildings to at least a shell state) the Community Facilities Land in accordance with the Specification and to the Council's satisfaction for the purpose of accommodating the Community Facilities
- 2.2 to complete the works of provision and laying out on or before [...*specified number*...] Dwelling[s] [is/are] made available for occupation
- 2.3 The Community Facilities Land shall only be used for one or more of the Community Uses

OR

2.1 to provide the Community Facilities Floorspace in the following phases:

- (a) not to Occupy more than [...*specified number*...] Residential Units until [...*specified area*...] square metres of Community Facilities Floorspace has been provided

²⁷

Generally, where a large residential development is to be carried out, some social infrastructure may be necessary. If it is necessary to secure those by the planning agreement (remember that conditions should be considered first) standard clauses are provided. In this example, Community Facilities can include a community hall, a health centre or cultural facilities, such as a library. The Community Facilities can be provided in a number of ways, for example:

- (i) *identification of a site within the overall Development Site, with its subsequent transfer to the local planning authority, or other identified body;*
- (ii) *identification of site and construction at the Owner's expense of necessary buildings;*
- (iii) *financial contribution;*

Where the facilities are to be transferred to the LPA, use the provisions in paragraph 1.

- (b) not to Occupy [...*specified number*...] Residential Units until [...*specified number*...] square metres of Community Facilities Floorspace has been provided

2.2 The Community Facilities Floorspace shall only be used for one or more of the Community Uses

CCTV²⁸

Definitions (to be included in clause 1):

- “CCTV” means closed circuit television covering the [...*specify public areas...*] to be provided in accordance with paragraph [] of the Third Schedule
- “CCTV Contribution” means the sum of [...*specify amount...*] indexed to be paid by the Developer/the Owner to the Council and expended by the Council in accordance with paragraph [] of the Third Schedule
- “Public Realm” means the areas open to the public [*within the town centre*] which shall be subject to surveillance by CCTV

- 3 Prior to the Commencement of the Development the Developer shall agree with the Council a detailed scheme for the installation of CCTV to monitor the [...*specify areas...*] [the Public Realm] which scheme shall include details of:

- (a) the number and location of the CCTV cameras to be installed;
- (b) the specification of the CCTV cameras to be installed which shall be of similar standard to that of the Council's cameras
- (c) phasing of the installation

and shall thereafter install the CCTV in accordance with the agreed scheme [and connect it to the Council's existing CCTV system]²⁹

OR

- 3 Prior to the Commencement of the Development the Developer shall pay the CCTV Contribution to the Council which shall be used by the Council to increase the CCTV monitoring capacity within the Public Realm

²⁸ *With urban development sites it may be appropriate to seek a contribution towards street safety by means of the provision of CCTV.*

²⁹ *Developers may wish to have covenants from the Council to permit connection and to transfer ownership to the Council.*

Affordable Housing³⁰

Definitions (to be included in clause 1)

“Affordable Housing”	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market;
“Affordable Housing Units”	that part of the Development comprising [.....] residential units [... <i>describe mix of units</i> ...] together with [.....] car parking spaces shown on drawing numbers [<i>drawing references</i>]; or any one or more of them
“Chargee”	any mortgagee or chargee of the Registered Social Landlord or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 ³¹ ;
“Chargee’s Duty”	the tasks and duties set out in paragraph 4.4 to the [Affordable Housing] Part of the Third Schedule
“Market Housing Units”	that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;
“Practical Completion”	issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect;
“Protected Tenant”	any tenant who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing

³⁰ See also the Affordable Housing Drafting Notes.

³¹ This is a mortgagee of the RSL’s interest, not a mortgagee of an the interest of a shared owner of an Affordable Housing Unit

Unit

- (c) has been granted a shared ownership lease by the Registered Social Landlord in exercise of that persons' statutory right in respect of a particular Affordable Housing Unit;

"Registered Social Landlord"

a registered social landlord as defined in Part 1 of the Housing Act 1996 who is registered with the Housing Corporation pursuant to Section 3 of that Act and has not been removed from the register pursuant to Section 4 of that Act and who is approved by the Council (such approval not to be unreasonably withheld or delayed).

4 Affordable Housing

- 4.1 No more than [.....] of Market Housing Units shall be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of such has been received by the Council.
- 4.2 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
 - 4.2.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
 - 4.2.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty
 - 4.2.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 4.3 No more than [...insert %...] of the Market Housing shall be Occupied until the Affordable Housing Units have been transferred to the Registered Social Landlord on terms that accord with relevant Housing Corporation funding requirements current at the date of construction of the Affordable Housing Units.³²
- 4.4 the Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge shall give not less than [] months' prior notice to the Council of its intention to dispose and:
 - (a) in the event that the Council responds within [] months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in

³² See land transfer provisions if this clause is adopted.

such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours³³ to secure such transfer

- (b) if the Council does not serve its response to the notice served under paragraph 4.4.(a) within the [] months then the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Third Schedule
- (c) if the Council or any other person cannot within [] months of the date of service of its response under paragraph 4.4(a) secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 4.4(a) the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Third Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph 4.4 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

OR

Definition (to be included in Clause 1)

"Affordable Housing Land" means the land shown edged [green] on the Plan.

- 4.1 No more than [...insert %...] of the Market Housing Units shall be Occupied until the Affordable Housing Land has been transferred to the Registered Social Landlord for nil value with the benefit of the following:³⁴
 - 4.1.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;
 - 4.1.2 full and free rights to the passage of water soil electricity gas and other services through the pipes drains channels wires cables and conduits which shall be in the adjoining land up to and abutting the boundary to the Affordable Housing Land all such services to be connected to the mains.

³³ It is recognised that there can be room for negotiation on this standard. As with any property acquisition it will be necessary to consider whether any other easements and provisions will be necessary, for example obligations to maintain roads pending adoption

³⁴ See land transfer provisions if this clause is adopted.

Public Art

Definitions (to be included in clause 1):

“Public Art Contribution” means a financial contribution of [] pounds (£[.....]) towards the provision of public art such provision to be entirely at the discretion of the Council in terms of size nature artistic influence and geographical location within the [Council area, or specified area]

Alternative definition:

“Public Art Contribution” means a financial contribution of [] pounds (£[.....]) towards the provision of Public Art which will include where appropriate sculpture, street furniture, landscaping and/or architectural detailing within [specify area] [within or within the vicinity of the Development as the Owner and Council may agree]

“Public Art” means [.....]

5 To pay the Public Art Contribution within [...*insert number to be specified*...] days of the Commencement of Development

OR

5.1 To include as part of the Development a permanent work of Public Art to the value of the Public Art Contribution which is integral to the Development and permanently affixed to the Development Land the precise nature of the work of art and its precise location on the Development Land to be approved by the Council prior to Occupation of any part of the Development

5.2 The said work shall be provided on or before [...*specify date or event*...]

Highways Works³⁵

- 6 Not to Commence the Development prior to entering into the Highways Agreement with the County

³⁵ *New highways for both vehicular and/or pedestrian use, or improvements to existing public highways are frequently required as part of a development involving building operations, and whilst separate statutory powers to enter into agreements to secure either new highways which are subsequently adopted as maintainable by the public or to permit alterations to existing public highways exist in highways legislation, it is normal to include the principles of these highway obligations in a Section 106 Agreement. with the form of the necessary agreement under the highways legislation set out in a Schedule to the Section 106 Agreement. It may be desirable to include this covenant in the Fourth Schedule as a covenant with the County.*

Transport Contribution

Definitions (to be included in clause 1):

- “Transport Contribution” means the contribution of [] pounds (£[.....]) to be paid to the Council to provide the Transport Facilities
- “Transport Facilities” means [...describe any facilities required...]

- 7.1 To pay to the Council the Transport Contribution towards the provision of the Transport Facilities within [] days of the Commencement of Development
- 7.2 To undertake and complete the Transport Facilities prior to Occupation of [...insert number...] Residential Unit(s)³⁶

³⁶

If the facilities are off-site highway improvements a separate agreement with the highway authority under s.278 Highways Act 1980 will be necessary prior to execution of the works. Consider also dedication adoption and long term ownership and maintenance. Consider whether this should be a covenant with the County in the Fourth Schedule.

FOURTH SCHEDULE

The Owner's Covenants with the County Council

Education Contribution³⁷

Definitions (to be included in clause 1):

"Education Contribution" means the sum of [] pounds (£[.....]) to provide additional educational facilities within the [...specify Council area...] required as a consequence of the Development

OR

"Primary School Contribution" means the sum of [] pounds (£[.....]) towards the cost of providing additional places at existing primary schools within the [...specify local education within the [...specified area...]]

"Secondary School Contribution" means the sum of [] pounds (£[.....]) towards the cost of providing additional places at existing secondary schools serving the [...specify area...]

"School Contribution" means the total of the Primary School Contribution and the Secondary School Contribution towards the cost of providing other improvements to existing schools serving the [...specify area...]

Covenants

- 1 To pay the Education Contribution to the Council in its capacity as local education authority [to the County Council in its capacity as local education authority] prior to Occupation of [...specify number of units...] [or within [] months of the Commencement of Development]

³⁷ A contribution towards education facilities within the area may be required. The extent of such contribution will depend upon the number of residential units to be provided and the size and extent of the Development. Any financial contribution may also be made in kind by the transfer of land and/or the construction of a school building. If transfer of a site for a school is required use paragraph 1

FIFTH SCHEDULE

Council's Covenants

Corresponding covenant by Council where land transferred

- 1 The Council agrees to execute the transfer of the property on or before the Property Transfer Trigger on the terms set out in the Seventh Schedule failing which the restriction set out in paragraph 1 of the Third Schedule shall cease to have effect.

Repayment of contributions

- 2 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree.
- 3 The Council covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended in accordance with the provisions of this Deed within [five] years of the date of receipt by the Council of such payment together with interest at the [...insert name of bank...] base rate from time to time for the period from the date of payment to the date of refund.
- 4 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

Open Space Land³⁸

- 5 The Council [the Transferee] shall neither use nor permit to be used the Open Space Land other than as amenity areas for the use of the public without the prior written consent of the Owner.

Community Facilities

- 6 The Council shall neither use nor permit to be used the Community Facilities Land other than for the purposes referred to in paragraph [] of the [...] schedule.

Discharge of obligations

- 7 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

³⁸ These restrictive covenants may be moved to the Seventh Schedule (Contract and Land Transfer)

SIXTH SCHEDULE

County Council's Covenants³⁹

- 1 The County Council hereby authorises the Owner's approved contractor to carry out such parts of the Highway Works as are within the public highway at the date of this Deed in accordance with the terms and stipulations contained in this Deed.

³⁹ Consider whether any of the Council's covenants in the Fifth Schedule are applicable to the County Council and include accordingly.

SEVENTH SCHEDULE
Contract and Land Transfer

EIGHTH SCHEDULE
Highways Agreement⁴⁰

DATE

2005

PARTIES

- 1 [LOCAL HIGHWAY AUTHORITY] of [.....*insert address*.....]
("County Council")
- 2 [FREEHOLDER] of [.....*insert address*.....]
("Owner")
- 3 [DEVELOPER]⁴¹ of [.....*insert address*.....]
("Developer")
- 4 [OTHER INTERESTED PERSON] of [.....*insert address*.....]
("Mortgagee")

INTRODUCTION⁴²

- 1 The County Council is the local highway authority for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site.
- 3 The Developer intends to develop the Site pursuant to the Planning Permission and has entered into [an option with the Owner for the acquisition of the Site]
- 4 The Mortgagee is the mortgagee under a mortgage dated [] of the Owner's interest in the Site
- 5 The Highways Works are required by the Planning Agreement and the County Council has agreed to adopt them in accordance with this agreement
- 6 [Recite any other relevant background to assist understanding of the agreement]

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- "Bond" means a bond for securing the performance of its obligations (as to the Highway Works) in this Deed such bond to be in the form contained in the First Schedule and with a Bondsman approved by the County Council and in a sum equal to the sum estimated by the Director to be the reasonable cost to the County Council of carrying out the Highway Works
- "Completion Certificate" means the provisional certificate of completion issued by the Director when the Highway Works have been completed to his satisfaction

⁴⁰ Highway Authorities may wish to insert their own model agreement under s.38 Highways Act 1980. A sample is set out below.

⁴¹ Consider whether necessary to include Developer

⁴² This section is also known as "Recitals", sets the scene for the obligations which appear later in the Agreement.

“Director”	means the Director of Environment and Property Services from time to time of the County Council and in the event that the post is abolished the holder of the post responsible for the County Council's functions relevant to the particular context in this Deed to which the term relates or an officer duly authorised on his or her behalf
“Drawings”	means those drawings showing an outline indication of the Highway Works dated [] and referenced [.....].
“Highway Works”	means: <ul style="list-style-type: none"> (a) the works described in the [.....] Schedule (b) such other ancillary works as the County Council may reasonably require (c) any accommodation works and (d) works which may as a consequence of (a) (b) or (c) be necessary to statutory undertakers' and telecommunications apparatus and all other equipment under in or over the highway (e) any variation to (a) (b) (c) or (d) as agreed between the parties in writing
“Letter of Technical Approval”	means written confirmation from the County Council that all matters concerning the Highways Work have been agreed
“Liquidated Damages”	means a sum calculated and falling due in accordance with clause 4 being a sum arising from the Owner's delay and not a penalty
“Maintenance Certificate”	means the final certificate of completion issued by the Director after the Completion Certificate has been issued and the Highway Works have been maintained for the Maintenance Period to the satisfaction of the Director in accordance with clause 3.4
“Maintenance Period”	means the period of twelve months from the issue of the Completion Certificate
“Planning Agreement”	means the planning agreement dated [] made between [.....]
“Programme”	means a programme and method statement for carrying out the Highway Works
“Rate of Liquidated Damages”	means the sum of £.....per day/week such sum being a conclusive and agreed estimate between the parties of the damages likely to be suffered by the County Council if the whole of the Highway Works is not completed by the date prescribed in accordance with clause 3.1

Words and phrases defined in the Planning Agreement shall have the same meaning in this Agreement

2 The Owner covenants and agrees with the County Council:

2.1 to undertake and complete the Highway Works in accordance with clauses 2.2 and 2.4 prior to Occupation of [.....] Dwellings and not to allow more than [.....] Dwellings to be Occupied until the Highway Works are completed] [or within [] months of Commencement of Development and to shall notify the County Council in writing within seven days of completion of the same

- 2.2
- (a) to obtain a licence and approval from the County Council prior to commencing works on the highway
 - (b) at its expense to carry out the Highway Works
 - (c) before commencing any part of the Highway Works to submit to the County Council for approval:
 - (i) such additional detailed drawings plans and specifications as the Director may require
 - (ii) a plan showing existing/additional highways including the route of any drains
 - (iii) the name and address of the Contractor whom the Owner proposes to employ for carrying out the Highway Works and all insurance details of that Contractor that the County Council may require from time to time
 - (iv) the Programmeand not to commence any part of the Highway Works until he receives the Letter of Technical Approval
 - (d) not to permit any building constructed on the Site to be Occupied or used for trading until the matters contained in the Second Schedule have been carried out to permit vehicular traffic to enter and leave the Site safely
 - (e) not to permit any vehicular traffic to enter or leave the Site other than by way of the new access or egress route provided by the Highway Works once the same is brought into use save only that during construction of the Highway Works an alternative route agreed with the Director may be used and this alternative route shall be closed off and its use discontinued immediately once the use of the new access or egress route provided by the Highway Works is brought into use as aforesaid
 - (f) to complete the Highway Works in accordance with the Drawings the Programme the Letter of Technical Approval and any other plans drawings and specifications approved under clause 2.2(c) and any instructions as to the materials or method of working given by the Director to his reasonable satisfaction and obtain the Completion Certificate in accordance with clause 3.3 no later than the date set by him under clause 3.1 save only that if the completion by such date becomes impossible by reason of circumstances beyond the control of the Owner the date for completion shall be such later date as may be agreed having regard to the circumstances
 - (g) to employ the Contractor approved under clause 2.2(c)(iii) for carrying out the Highway Works and give to the County Council adequate contact details for the Contractor so as to enable the Contractor to be contacted at all hours of each day and each night
 - (h) to provide wheel-cleaning facilities of a nature approved by the County Council on the Site before commencing any part of the Highway Works and to ensure that during the period from the commencement of the Highway Works until the issue of the Completion Certificate under clause 3.3 or such later date as the County Council shall notify in writing to the Owner before leaving the Site the wheels of all vehicles are sufficiently cleaned to prevent mud from the Site being deposited on the highway PROVIDED THAT any later date notified by the County Council as aforesaid shall not be later than such date as it considers that a stage of development on the Site will have been reached when there will no longer be a risk of mud being deposited on the highway in consequence of construction work being carried out on the Site

- (i) if required by the County Council so to do to provide temporary traffic signal controls such controls to be of a type which meet Department of Transport requirements
- (j) to construct all drains and sewers to the current standards from time to time of the adopting authority
- (k) to comply with all other terms and conditions of this Agreement

2.3 Before any part of the Highway Works are begun the Owner shall:

- (a) serve on the County Council not less than two weeks notice subsequent to the issue of the Letter of Technical Approval of its intention to commence the Highway Works
- (b) enter into and complete the Bond not later than the date for commencement of the Highway Works the Bond to be cancelled when the Highway Works have become maintainable at the public expense in accordance with clause 3.5
- (c) pay to the County Council a sum equal to [%] of the sum estimated by the Director to be the cost of the Highway Works towards the administrative and technical expenses incurred by the County Council, including the cost of supervising and inspecting the Highway Works as they proceed and the issue of the Completion and Maintenance Certificates
- (d) make all necessary arrangements for carrying out the Highway Works including the service of any necessary notices under the provisions of the New Roads and Street Works Act 1991 and in particular in relation to statutory undertakers' and telecommunications apparatus and all other equipment over or under the highway and for enabling it to comply with the provisions of this Agreement

2.4 The Owner shall throughout the period from the commencement of the Highways Works until the issue of the Completion Certificate under clause 3.3 or such later date as the County Council shall notify in writing to the Owner ensure that:

- (a) adequate warning signs lights and cones are provided and maintained in good working order in accordance with chapter 8 of the Traffic Signs Manual published by her Majesty's Stationery Office
- (b) any mud from the Development or the Highway Works which may be deposited on the highway maintainable at the public expense by vehicles leaving the Development Land or the Highway Works is removed immediately
- (c) any temporary traffic signal controls required by the County Council under clause 2.2(i) are maintained in proper working order

2.5 (a) If at any time during the period specified in clause 2.4 the Owner fails to provide adequate warning signs lights or cones or any such provided are not in good working order or mud is deposited on the highway maintainable at the public expense and not immediately removed the County Council may take such action as it considers necessary to remedy the failure and shall deduct the full cost of so doing including materials plant transport and labour from the sum deposited by the Owner pursuant to clause 2.11(a)

- (b) On each and every occasion when the County Council takes action as provided in this clause 2.5 or responds to a justifiable complaint he shall be entitled to deduct from the sum deposited under clause 2.11 (a) the sum of fifty pounds or 15% of the cost of the action taken whichever is the greater in respect of his administrative costs in addition to the cost of any action taken in remedying the failure

- (c) If any deductions which shall be made under clause 2.5(a) and 2.5(b) exceed the sum deposited or any balance thereof the Developer [and/or the Owner] shall pay to the County Council the shortfall within 21 days of the County Council serving notice of the amount due
- 2.6 Until the issue of the Maintenance Certificate pursuant to clause 3.4 the Owner hereby grants to the County Council their servants and agents
- (a) free access to every part of the Highway Works for the purposes of inspecting the same as they proceed and inspecting and testing all materials used or intended to be used therein and the cost of reasonable analysis and test in connection therewith shall be at the expense of the Owner
- (b) the right to enter upon such parts of the Site as it is necessary so to do in furtherance of the terms of this Agreement
- 2.7 Without prejudice to any other remedy of the County Council in the event of any default by the Owner in preparing for or carrying out the Highway Works or any failure by the Owner to comply with any requirement of the County Council in relation to the Highway Works the County Council may do all such things including the preparation of plans drawings and specifications and the carrying out of or remedying defects in works as they may deem necessary to secure proper construction of the Highway Works and the Owner shall pay to the County Council the full cost of taking such action including all design supervision construction and administrative costs PROVIDED ALWAYS that before taking any such action as aforesaid the County Council shall give to the Owner written notice of the matter in default and shall take no action thereon until twenty-eight days from the date of such notice shall have elapsed without the Owner or its successors in title remedying fully the matter in respect of which the default has arisen
- 2.8 This Agreement does not authorise interference with statutory undertakers' apparatus or works without their consent nor the installation or use of telecommunication apparatus without the consent of the owner nor entry upon nor doing works to or on any land other than the highway
- 2.9 The Developer [and/or the Owner] hereby undertakes and agrees with the County Council that in the event of any claim for compensation or otherwise or costs or charges arising in connection with or incidental to or in consequence of the carrying out of the Highway Works including any such whether mandatory or discretionary which may be incurred by virtue of any enactment or statutory instrument and not otherwise hereby provided it will hold the County Council fully indemnified from and against all claims charges costs and expenses in connection therewith or arising thereout
- 2.10 (a) All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable in respect thereof
- (b) If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly
- 2.11 The Owner shall pay to the County Council immediately on demand
- (a) before any part of the Highway Works are begun the sum of [] pounds (£[.....]) in respect of costs which may be incurred by the County Council by virtue of clause 2.5
- (b) the County Council's full legal and administrative costs incurred in the preparation and/or making of temporary traffic regulation orders whether implemented or not to regulate traffic entering or leaving the Site or otherwise occasioned or necessitated by construction of the Development and the full cost of such traffic signs and markings

(including labour costs) as the County Council shall deem necessary to give effect to the same as and when any costs have been incurred and within 28 days of receipt by the Owner from the County Council of invoices therefor

(c) the Liquidated Damages

3 The County Council hereby covenants with the Owner as follows:

3.1 The County Council shall set the date for completion of the Highway Works having due regard to the Programme and shall confirm such date in writing to the Owner at the same time as issuing his Letter of Technical Approval

3.2 The County Council shall repay to the Owner no later than twenty-eight days following the date of the Completion Certificate issued pursuant to clause 3.3 or such later date as the County Council shall have notified under clause 3.1 the sum deposited under clause 2.11(a) or such part thereof as has not been expended pursuant to clause 2.5

3.3 When the Highway Works have been completed in accordance with clause 2.2 including all works described in the Second Schedule to his satisfaction the County Council shall issue the Completion Certificate and thereafter the Owner shall continue to maintain the Highway Works until the Maintenance Certificate is issued in accordance with clause 3.4

3.4 The Maintenance Certificate shall be issued by the County Council when the following conditions have been satisfied:

(a) the Maintenance Period has elapsed

(b) all defects that may have become apparent during the Maintenance Period have been remedied and made good by the Owner at its own expense and to the satisfaction of the County Council such defects to include damage or excessive wear caused to the Highway Works during the Maintenance Period

(c) the cleansing of all sewers gullies catchpits and manholes and the sweeping of the carriageway and footpaths and the cutting of grass to the reasonable satisfaction of the County Council

(d) the Highway Works have been directly connected to a carriageway which is a highway maintainable at the public expense

(e) the Highway Works have been provided with proper street lighting traffic signs road markings and street name plates and furniture to the reasonable satisfaction of the County Council

(f) that any damage to the Highway Works howsoever caused including (without limitation) acts of third parties has been remedied by the Owner at the Developer at the Owner's cost

(g) where the surface water sewers other than gullies and connections draining the Highway Works are to be vested in and under the control of the County Council or the Water Authority in accordance with the provisions of the Water Industry Act 1991 written confirmation has been received by the County Council from the appropriate authority that the sewers have been constructed to their satisfaction and have been adopted by that authority

(h) the Owner has delivered to the County Council drawings in a format as required by the County Council which the County Council agrees (such agreement not to be unreasonably withheld) show the Highway Works as constructed

- (i) the Owner has delivered to the County Council the Health and Safety file in relation to the Highway Works in accordance with the Construction (Design and Management) Regulations 1994
 - (j) the Owner has undertaken any remedial works as required by a Stage 3 Safety Audit
- 3.5 The County Council shall from the date of the Maintenance Certificate maintain that part of the Highway Works which constitute alterations and additions to the existing publicly maintainable highway and adopt the remaining Highway Works as part of the highway maintainable at the public expense
- 3.6 Upon the issue of the Completion Certificate the County Council agrees that the Bond shall be reduced by 90%
- 3.7 The County Council shall not settle or agree any amount of compensation to be paid by the County Council as Highway Authority in consequence of any claims made in respect of the Highway Works without first notifying the Owner of such claim, providing the Owner with details of such claim and taking into account any representations made by the Owner
- 3.8 Not to unreasonably withhold or delay any approval consent expression of satisfaction or agreement required under the terms of this Agreement⁴³
- 4 The Owner and the County Council agree as follows:
- 4.1 that in the event the Owner has not completed the Highway Works by the date prescribed by the County Council in accordance with clause 3.1 then Liquidated Damages shall become due at the Rate of Liquidated Damages
 - 4.2 that Liquidated Damages payable by the Owner to the County Council shall be the sum equivalent to the Rate of Liquidated Damages applied for each whole day/week for the period between the date prescribed in accordance with clause 3.1 and the date that the Highway Works are actually completed up to a maximum of £[.....]
 - 4.3 that the date of actual completion of the Highway Works (for the purposes of calculating Liquidated Damages under this clause 4 only) shall be the date that the County Council deems it appropriate that the Completion Certificate can be issued whether or not the Completion Certificate is actually issued on that date
- 5 [The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner].

FIRST SCHEDULE

BY THIS BOND (Company Registration Number) whose registered office is situate at ("the Owner")⁴⁴ and [...insert name of surety...] (Company Registration Number) whose registered office is situate at [...insert address...] ("the Surety") and their respective successors in title and

⁴³ Some Council's prefer to have absolute control in relation to some matters. They should be excepted from this clause.

⁴⁴ Add developer is a party to the Highways Agreement

SECOND SCHEDULE

Carry out the following highway improvement works and construction of new highway as generally indicated on the Drawings

- 1 Reshape existing carriageway
- 2 Provide highway drainage
- 3 Carry out alterations to existing street lights, provide and erect new as necessary
- 4 Provide road markings, signs and bollards as necessary
- 5 Re-grade and re-seed highway verge where necessary to the reasonable satisfaction of the Director
- 6 All highway drainage
- 7 All other drainage contained in the highway
- 8 All kerbing including kerb foundations and where appropriate including lowering at vehicle crossings and pram-ramps.
- 9 Carriageway sub-base road base and any supporting structures thereto, carriageway base course
- 10 Vision splays and verges
- 11 Pedestrian ways
- 12 Street lighting and street furniture
- 13 Temporary traffic management
- 14 Carriageway wearing course
- 15 Permanent road marking
- 16 Street name plates
- 17 Construction details of the road or roads
- 18 Provide to the Council:
 - (a) As built plans showing the position of services within the road or roads including connections up to the back of footway edging
 - (b) As built plans showing the surface water drainage for the road or roads
 - (c) Plans showing the position of street lighting columns and the associated service cables
 - (d) A method statement from the contractors
 - (e) Stage 1 2 and 3 safety audits

(Execution of Highways agreement)

THE COMMON SEAL of)
[...*insert name of owner*...])
was hereunto affixed in the presence of:)

Director

Secretary

THE COMMON SEAL of)
[...*insert name of developer*...])
was hereunto affixed in the presence of:)

Director

Secretary

THE COMMON SEAL OF)
[...*insert name of surety*...])
was hereunto affixed in the presence of:)

Director

Secretary

NINTH SCHEDULE

Specification for Community Facilities Floorspace

(Execution of s.106 agreement)

THE COMMON SEAL OF [Local Planning Authority])
was affixed in the presence of:)

Authorised Signatory:

THE COMMON SEAL OF [County Council])
was affixed in the presence of:)

Authorised Signatory:

EXECUTED AS A DEED by [...*insert name of owner*...])
in the presence of:)

Director:

Director/Secretary:

[...*add Developer, mortgagee and any other parties as appropriate*...]

Annex A: AFFORDABLE HOUSING DRAFTING NOTES

Simple straightforward affordable housing provisions have been included in this model. In practice there are many more elaborate arrangements sought by planning authorities and developers. Examples of the issue include

- 1.1 A mix of dwelling types
- 1.2 Restrictions on the types of occupiers (such as key workers)
- 1.3 Nomination rights in favour of a planning authority
- 1.4 Protection for the developer if an RSL cannot be found which is willing to take the affordable housing
- 1.5 A requirement for particular tenures

Ideas and requirements in affordable housing are developing and it has to be acknowledged that generally accepted drafting has not yet emerged. The following drafting principles and observations can however be stated.

- 1 Obligations should be drafted so as to fall within section 106 or they will not be enforceable against persons deriving title from the original covenantor and there may also be difficulties enforcing against the original covenantor.
- 2 There may be another consequence of drafting an obligation which falls outside section 106, as an unenforceable obligation may make the permission itself vulnerable to judicial review.
- 3 It should be borne in mind that obligations under section 106 last in perpetuity unless varied pursuant to section 106A or section 106B or unless drafted with some limitation.
- 4 A mix of dwelling types (e.g. two bedroom units or three bedroom units) can be achieved by an obligation requiring specified operations to be carried out over the land (section 106(1)(b)) or by a restriction on occupation unless the mix is achieved, pursuant to section 106(1)(a).
- 5 A requirement for occupation by types of occupiers can be achieved by a restriction on use by anyone other than those occupiers (section 106 (1)(a)).
- 6 A simple requirement that an RSL gives nomination rights to the local planning authority will not fall within section 106. However, a restriction on occupation other than by a person chosen pursuant to a nomination agreement in a form annexed to the agreement would fall within section 106 (1)(a).
- 7 A simple obligation that dwellings are only disposed for example by way of shared equity leases or assured tenancies will not fall within section 106. An approach linked to a restriction on occupation will fall within s.106 but in formulating any additional controls local authorities should be mindful of any genuine commercial or practical difficulties.
- 8 Mortgagees of affordable dwellings may have requirements for what is acceptable to them in order to protect their interests in securing the repayment of the loan. Restrictions on assignment which affect the value and realisability of an affordable dwelling may reduce the availability of mortgages. Reasonable time limits for exercise of nomination rights and fallback into the open market in the case of failure to nominate are among the potential solutions
- 9 It will often be possible to overcome mortgagee objections by providing that restrictions do not apply to mortgagees in possession of individual units or sales by them. Paragraph 4.2.3 of the affordable housing section of the Third Schedule addresses this.
- 10 Whilst it is common to exclude residential owner occupiers and lessees from some liabilities in planning agreements a rigid requirement by mortgagees (or any party to the agreement) that section 106 agreements do not apply at all to owner occupiers or lessees will undermine for example provisions restricting occupation to key workers and restrictions on occupation of more than a given number of houses pending provision of affordable housing or other facilities.
- 11 Section 27A of the Housing Act 1996 was introduced by the Housing Act 2004. It allows the Housing Corporation to make grants to persons other than Registered Social Landlords, such as developers with the intention of widening the pool of potential providers of social housing. The regulations and arrangements for implementing these powers have (as at January 2006) not yet been made. When they are, local authorities will need to consider how to adapt the affordable housing provisions for the wider range of bodies able to provide affordable housing.

Appendix O specimen unilateral undertaking

xxv

Appendix O Specimen Unilateral Undertaking



Notes for the applicant regarding the use of this Deed.

This Deed is a Unilateral Planning Obligation under section 106 of the Town and Country Planning Act 1990 and a specialty contract

This Deed is offered in a standard form by the Council, for the convenience of applicants for planning permission who are required to provide a planning obligation. Planning obligations may be unilateral, as in the case of this draft or bilateral where the local Planning Authority also executes the Deed.

The legal owner of the land to be developed must be a party to this Deed. If the land is subject to a mortgage the mortgage company must also be party to this Deed as the Planning Obligation shall be registered as a charge against the property on the Local Land Charges Register.

The Council will not normally accept any variations or additions to the standard wording of this document. If you wish to propose variations or additions, you will need to discuss a negotiated agreement with the Head of Legal Services for example the specific details contained in the Schedule.

Where works are required to the Highway, Essex County Council as Highway Authority shall also need to be party to this Deed. They are likely to require specific clauses to be added to the Deed therefore you should consult with the Highway Authority accordingly. You may do this via the Head of Legal Services.

You will be expected to pay the Council's legal costs and where appropriate the County Council's legal costs in preparing/approving this standard form of planning obligation, the costs connected with registering the same and in monitoring compliance with this agreement. Details of these costs are set out in clause 3.3.

Whilst the Council has sought to be fair and even-handed, you are advised to seek your own independent legal advice on the matter.

Neither these notes nor the footnotes form part of this agreement, but are printed here for guidance. The footnotes explain the details you must insert in this Deed.

Council officers will on request wherever possible try to explain the terms used or the effect of clauses but any such explanations will be given without responsibility on the part of either the officer personally or the Council.

You will need to evidence your ownership of the land to be developed by providing up to date Land Registry official copy entries of the title.

The Council reserve the right to insist that any other person with an interest in the property become a party to this Deed.

Where the Council has decided it is appropriate to grant the planning permission, subject to the prior completion of an acceptable planning obligation, the planning permission will be issued when the completed Deed has been checked and found acceptable, provided the costs and monitoring fee has been paid. Where no decision on the appropriateness of the application has been made, this Deed will be taken into consideration to the extent that the benefits offered are material to the application, together with all other material planning considerations and the development plan in reaching a decision on the application.

THIS DEED being a Unilateral Planning Obligation is made on the

200¹.

BY

(1)
.....
.....
.....(the **"Owner"**)² and

(2)
.....
.....
.....
.....
.....(the **"Applicant"**)³

(3) (the **"Mortgagee"**)⁴

WHEREAS:

(A) Castle Point Borough Council ("The Council") is the local planning authority for the Borough of Castle Point and Essex County Council ("the County Council") is the Highway Authority for the purpose of this Deed.

(B) The Owner is seized in fee simple absolute in possession of certain land and premises situate at and known as.....

.....
(**"the Property"**) shown for the purposes of identification only edged by a heavy black line on the plan annexed to this Deed⁵ and is registered at HM Land Registry with title absolute to the Property under title number EX⁶ and the Mortgagee is the proprietor of a registered charge to secure money lent on mortgage against the property

(C) An application has been submitted and given application number ⁷....., by the Council (**"the Application"**) for planning permission to develop the Property as described in the Application (**"the Development"**).

(D) The Council considers it necessary to the grant of planning permission to seek planning benefits and this unilateral planning obligation is submitted in support of the Application.

¹ Do not insert the date, leave it blank to be completed in due course by the Council

² Example: Mr Mark John Reginald Smith of Golden Gates, 33 The Lane, Guildford, GU1 2TY or Liongate Ltd a company incorporated in England and Wales (registered number 99875) whose registered office is at 1 Market Way, Guildford GU2 3GH

³ Only required if the applicant and the site owner are different.

⁴ Only required when advised by the Head of Legal Services

⁵ Attach a site plan showing the land to be developed outlined by a heavy black line

⁶ Insert full title number of the land to be developed or title numbers if more than one plot of land is involved. Where more than two plots are involved the Council may allow the obligation to be completed by a "Key plot" only, a "Key plot" being the access point without which it is impossible to carry out the development.

⁷ Insert the number allocated by the Council to the application, for example CPT/123/06/FUL

NOW THIS DEED is made in pursuance of this Agreement and the powers contained in Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") and is a unilateral planning obligation for the purposes of that section and in consideration of the covenants by the Owner and Applicant⁸ set out below WITNESSES as follows:

1. **OBLIGATIONS**

- 1.1 Subject to and conditional on the grant of planning permission ("**the Permission**") to develop the Property as described in the Application the Owner and the Applicant⁹ covenant with the Council and where appropriate the County Council to perform the obligations and observe the restrictions set out in Schedule/s¹⁰hereto and the Mortgagee consents to the Owner so covenanting.
- 1.2 The covenants in this Deed shall be enforceable in accordance with the provisions of section 106(3) of the Town and Country Planning Act 1990 and as between the Owner and the Applicant¹¹ and the Council as a specialty contract The expressions "**the Council**" "**the County Council**" "**the Mortgagee**" "**the Applicant**" and "**the Owner**" shall include their respective successors in title and assignees

2. **INTERPRETATION**

- 2.1 Words importing one gender include all other genders and words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 2.2 Any references to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute for the time being in force
- 2.3 References in this Deed to any clause or Schedule without further designation shall be construed as a reference to the clause or Schedule to this Deed so numbered.
- 2.4 The clause and Schedule headings notes and footnotes do not form part of this Deed and shall not be taken into account in its construction or interpretation.

3. **AGREEMENTS AND DECLARATIONS**

- 3.1 No person shall be liable for any breach of a covenant contained in this Deed occurring after he has parted with all interest in the Property or in that part of the Property in respect of which such breach occurs but without prejudice to any liability on his part for any breach of covenant subsisting prior to parting with such interest.
- 3.2 The covenants contained in this Deed (save for the covenant in clause 3.3) shall come into force only when the Development has begun as defined in section 56 of the Town and Country Planning Act 1990 but operations in

⁸ delete "Applicant" if the owner and applicant are the same

⁹ delete "Applicant" if the owner and applicant are the same

¹⁰ Insert relevant Schedule numbers.

¹¹ delete "Applicant" if the owner and applicant are the same

connection with archaeological or site investigations landscaping soil surveys the display of advertisements (including the erection of advertisement hoardings) diverting and laying of services and service media the erection of an enclosure for the purpose of site security investigation for the purposes of assessing contamination or of remedial action in respect of any contamination shall be disregarded for determining when the Development has begun.

- 3.3 The Owner or the Applicant¹² shall upon completion of this Deed pay to the Council (a) its reasonable and proper expenses in connection with the preparation and completion and registration of this Deed in the sum of £¹³) (excluding VAT) and (b) a monitoring fee of £.....¹⁴ in connection with the expense of monitoring and ensuring compliance with this Deed.
- 3.4 Nothing contained or implied in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as local planning authority or under any public or private statute bylaw or regulation.
- 3.5 Any notice or written communication to be served pursuant to this Deed shall be deemed to have been validly served if delivered by hand or sent by recorded delivery post to the Owner at its address herein or as appearing at the Land Registry any notice or other written communication to be given by the Council or County Council shall be deemed valid and effectual if on its face it is signed on behalf of the Council or County Council by duly authorised signatory thereof. In relation to legal proceedings a claim form issued relating to this contract by Deed may be served by post by either the Council or the court at the address of the Owner as appearing at H M Land Registry A claim form so served shall be deemed to be served irrespective of the actual knowledge of the Owner and no objection shall be taken to service nor application made to set aside a judgment based on a failure to serve when service has been effected by this contractually agreed method.
- 3.6 If the Permission is quashed or revoked or otherwise withdrawn or expires by effluxion of time before the Commencement of Development or is modified (other than by agreement with or at the request of the Owner) this Deed shall forthwith determine and cease to have effect and the Council will effect cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 3.7 Nothing in this Deed shall be construed as affecting prohibiting or limiting any rights to develop any part of the Property in accordance with any other planning permission granted whether before or after the date of this Deed by the Council or the First Secretary of State or any other competent authority but this Deed shall apply to any permission subsequently granted ("subsequent permission") under section 73 or 73A of the Town and Country Planning Act 1990 which permits non-compliance with any of the conditions attached to the Permission and 'Permission' shall be construed to include the development as stated in the subsequent permission..
- 3.8 If there is any conflict between the terms of this Deed and any conditions attached to the Permission the latter shall take precedence.

¹² Provide confirmation as to who will be responsible for the costs referred to
¹³ Minimum fee of £1000. The Council and County Council will both charge legal fees
¹⁴ to be advised when information from Essex County Council has been received

- 3.9 Where the approval agreement confirmation or consent of the Council or any officer of the Council is required or any matter has to be agreed for any purpose under or in connection with the terms of this Deed such approval agreement consent or matter to be agreed shall not be unreasonably withheld or delayed.
- 3.10 No person other than the Council may enforce any provision of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 3.11 The Applicant shall indemnify the Owner against all costs and expenses arising from this Deed¹⁵.
- 3.12 Where this Deed specifies any sum to be paid the sum payable shall be increased in accordance with this indexation provision calculated to the date of payment using the following formula.
Sum Payable = £ Sum in Schedule multiplied by the value of the U K Retail Price Index last published before the date on which the payment falls due divided by the value of the U K Retail Price Index last published before the date of this obligation.
- 3.13 Where a payment is not received within 7 days of the date on which it should have been received interest at 4% over the base rate of Co Operative Bank plc on the Sum Payable shall additionally be paid calculated from the date the payment should have been made until the date actual payment is received.
- 3.14 Where the performance of an obligation has become due but the obligation has not been fully performed or a restriction has arisen but has not been fully observed the Council or the County Council shall before seeking injunctive relief serve notice on the Owner specifying the breach and allowing the Owner a period of at least 28 days to remedy the breach if capable of remedy. If at the end of the notice period the Owner is still in breach of the obligation or restriction additionally to the requirement to comply with the obligation or restriction the Owner shall pay by way of liquidated and ascertained damages the sum of £500 being an estimate of the Council's costs of investigating the breach include staffing time and costs attributable to the breach other than the Council's legal costs in seeking injunctive relief.
- 3.15 The Owner and the Applicant warrants that:
- they have full authority to enter into this Deed
 - they have investigated as necessary such matters of title and know of no impediment to the validity of this Deed
 - all mortgage or charge payments are up to date and that there is no subsisting breach of the mortgage or charge
 - They shall make good any loss to the Council or the County Council as a result of a breach of this warranty within 7 days of a request to do so.

IN WITNESS WHEREOF the Applicant and Owner and Mortgagee¹⁶ have executed and delivered this document as a Deed the day and year first before written.

¹⁵ Applicable if the applicant is to be responsible for the costs

¹⁶ Delete parties as appropriate

SCHEDULES¹⁷

NOTIFICATION OF WHEN DEVELOPMENT BEGAN

Within 14 days after the development has begun the Owner shall notify that fact in writing to The Director of Environment, Castle Point Borough Council, Council Offices, Kiln Road, Thundersley, Benfleet, Essex SS11 8LT

SCHEDULE - OFF SITE RECREATIONAL FACILITIES.

That 14 days after the Development has begun the Owner shall pay to the Council the sum of £x as a contribution towards off site recreational facilities in accordance with policy x of the Castle Point Borough Council Local Plan 1998 and the adopted Open Space Supplementary Planning Guidance. Cheques shall be sent to The Director of Environment, Castle Point Borough Council, Council Offices, Kiln Road, Thundersley, Benfleet, Essex SS11 8LT

SUSTAINABILITY – v1

The Owner shall adhere to the best practice guidance in the BRE's sustainability checklist- guidance for developers so as to achieve at least a "very good" rating for the building as defined by the Building Research Establishment Environmental Assessment Method (BREEAM).

SUSTAINABILITY – v2

- 1. The Owner shall ensure that all heating air conditioning and refrigeration plant installed as part of the Development is energy efficient and is regularly and properly maintained so as to be kept efficient.*
- 2. Before engaging any contractor or sub-contractor in the construction of the Development the Owner shall incorporate in any tender documentation issued to prospective contractors or sub-contractors a requirement for such contractors or sub-contractors to include in any tender response proposals for the minimisation of vehicle trips.*
- 3. The Owner covenants in relation to the Development to adhere to the best practice guidance in the BRE's sustainability checklist- guidance for developers so as to achieve the highest practical rating as defined by the Building Research Establishment Environmental Assessment Method (BREEAM) at the time of the submission of the Building Regulations Application prevailing at the relevant time.*

¹⁷ Insert details of the obligations upon the Applicant and Owner. The examples in italics above are for your assistance and you may use one or more of the examples given above.

CONTRIBUTION FOR ART - v1

BY way of contribution to and in furtherance of Policy X of the Castle Borough Council Borough Local Plan 1998 the Owner shall

- (i) Working with the Arts Development Officer for the time being of the Council procure the design a work or works of art with a theme agreed by the said officer allowing a sum of not less than £x .for the design and construction and installation of the work or works of art.*
- (ii) Use reasonable endeavours to secure the completion and installation of the work or works of art in a public location within the Development before its first occupation.*

CONTRIBUTION FOR ART – v2

BY way of contribution to and in furtherance of Policy X of the Castle Point Borough Local Plan 1998 the Owner shall

- Working with the Arts Development Officer for the time being of the Council procure the design a work of art reflecting a theme suggested by the Owner and agreed by the said officer allowing a sum of not less than 1% of the total development costs for the design and construction of the said works of art and use reasonable endeavours to secure the completion and installation of the work of art in a public location within the Development before its first occupation.*
- Within 3 months of the first occupation of the Development submit to the Council a statement certified by a qualified practicing accountant as being correct confirming that the cost of the said works of art were not less than 1% of the total development costs or if the costs were less the shortfall in expenditure.*
- In the event that the statement certifies a shortfall in expenditure the Owner shall pay the amount of the shortfall to the Council which shall use the money for works of art in a public location.*

CONTRIBUTION FOR ART – v3

By way of contribution to and in furtherance of Policy X of the Castle Point Borough Local Plan 1998 the Owner shall Install bespoke railings ironmongery entrance gates feature glazing and landscaping on the front and rear elevations of the Development as works of art allowing a sum of £x for the design and construction of the said works of art

ENVIRONMENTAL IMPROVEMENTS

That two months after the Development has begun the Owner shall pay to the Council the sum of £x as a contribution towards improving the environment at X

AFFORDABLE HOUSING

1. X dwellings (comprising X one bedroom and X two bedroom flats) to be constructed under the Permission shall be “Affordable Housing” Units that is to say they shall comprise (a) housing for persons whose incomes (excluding Housing Benefit Income Support or other state funded financial support) do not permit them

and members of their family who reside with them to obtain similar accommodation within the Council area on the open market or (b) housing provision for persons having a special need for housing of a type not provided for on the open market in the Borough of Castle Point

2. For the avoidance of doubt housing provided and/or let by a Registered Social Landlord shall be Affordable Housing and for these purposes the term Registered Social Landlord shall mean a social landlord registered as such under the Housing Act 1996 with the Housing Corporation; or the Council

3. The Registered Social Landlord to who the affordable housing is transferred shall be approved by the Head of Housing

4. The Council shall have a right to nominate the occupiers of each unit of Affordable Housing in accordance with the nomination provisions appended hereto or such other nomination provisions as may be agreed and recorded in writing in substitution thereof between the Registered Social Landlord and the Council acting through Head of Housing

5 It is intended that the dwellings to be constructed under the Permission as Affordable Housing pursuant to Schedule One shall be used for Affordable Housing in perpetuity PROVIDED THAT the covenants and restrictions in this clause or to be imposed pursuant to it shall not be binding or enforceable against:-

5.1 any person or persons who shall at any time acquire any legal interest in any unit of Affordable Housing that shall be held on terms whereby the occupier or a previous occupier shall have purchased the freehold or have purchased or shall be able to purchase any proportion of the equity in an Affordable Housing unit in either case pursuant to any statutory or contractual right of acquisition from time to time in force and

5.2 any mortgagee or chargee which shall have the benefit of a legal mortgage or charge secured against any part or parts of the Affordable Housing nor any successor therefrom who shall derive title directly or indirectly from such mortgagee or chargee (other than another Registered Social Landlord) provided that the mortgagee chargee or a receiver appointed by the mortgagee or chargee shall first have notified the Council in writing that it wishes to exercise its statutory power of sale and within twenty eight (28) days of such written notice the mortgagee chargee or receiver (despite using all reasonable endeavours) is unable to enter into a contract of sale of the Affordable Housing to another Registered Social Landlord upon terms that on completion thereof the mortgagee chargee or receiver shall be repaid the amount secured on the relevant Affordable Housing

6 Not more than X of the non affordable housing units to be constructed on the site under the Permission (or any replacement or amendment thereof) shall be occupied until that part of the property designated for Affordable Housing units has been transferred by the Owner to a Registered Social Landlord and a building contract entered into to construct the Affordable Housing Units as previously defined

MAINTENANCE OF LAND

The Owner hereby covenants that the land hatched black on the attached plan shall at all times be retained as open space and maintained to a standard at least as good as Local Authority parkland and shall not at any time hereafter be built upon or have any other structures erected upon it

OPEN SPACE TRANSFER

1. No more than X Private Dwellings shall be Occupied before the Owner or Developer has laid out the Open Space in accordance with the specification and schedule of work attached hereto and shown on drawing __ dated __/__/__ in order that the Open Space shall be available and be used for recreational purposes only.
2. The Owner or Developer shall maintain the Open Space for a period of 12 months from the time it is first laid out as Open Space in accordance with the specification and schedule of work replacing any planting or equipment that dies or is faulty within the 12 month period.
- 3 The Owner or Developer shall serve notice on the Council on completion of the maintenance period in 2 above at that time and provided the Council are satisfied that the Open Space has been laid out in accordance with the specification and schedule of work and has been maintained the Council will take a transfer of the Open Space at the price of £1 if demanded and in that transfer the Council shall covenant with the Owner or Developer to thereafter maintain the open space.

MOBILITY UNIT

One Housing Unit shall be built as a Mobility Unit in accordance with the specification for the mobility unit attached hereto. Any transfer of the Mobility Unit shall contain covenants requiring (a) that the specification of the Mobility Unit shall not be changed without the prior written consent of the Council which may be withheld provided the Council believes that the demand for a Mobility Unit exists and (b) not to add to or extend or alter the Mobility unit.

ARCHAEOLOGICAL INVESTIGATION

The Owner shall at its own expense ensure that during the initial works where the ground of the Property is disturbed an Archaeologist is present throughout for the purpose of recording finds.

The Archaeologist shall be empowered to require that such part of the works cease for the purpose of Archaeological Investigation and shall be required to submit a written report to the Council detailing the days spent on the Property the works supervised and any finds made within 14 days of no longer being required at the Property.

The Council may require that any finds are made available by loan to the Council without any fee or expense or requirement to reimburse insurance premiums for public exhibition for a period of one year provided the request is made within 18 months of the submission of the report to the Council as required in 2 above.

GREEN APPROACHES CONTRIBUTION

That two months after the Development has begun the Owner shall pay to the Council a Green Approaches Contribution of £x which the Council shall use towards landscaping improvements in the Vicinity of the Development in furtherance of the "X Strategy" adopted by the Council in

PUBLIC TRANSPORT TRAVEL VOUCHERS

Before the occupation of the first Dwelling built under the Permission the Owner shall pay a public transport travel voucher contribution of £x to the County Council, which sum shall be used by the County Council to provide public travel vouchers of £x in value for each dwelling upon the first occupation of the dwelling as a means of encouraging the use of public transport by residents of the dwellings to be constructed at the Property.

SUSTAINABLE TRANSPORT

The Owner shall include with each dwelling sold or let for the first buyers or occupants as a means of encouraging the use cycling as a means of transport one bicycle per dwelling of a specification at least equivalent to the X ladies or Mens model and allocate secure storage to each dwelling to store the said bicycle and others that may reasonably be expected to be purchased by the occupants of the said dwellings..

TRAVEL PLAN v1

- 1.1 The Owner shall prior to first occupation of the Development prepare and submit for approval to the Council (in consultation with the County Council) a travel plan ("the Travel Plan") in order to promote sustainable travel patterns and achieve a reduction in the number of single occupancy vehicles used to travel to work in connection with the use of the Development provided that such measures shall take into account the practicality and commercial viability of the proposed measures*
- 1.2 Within 3 months of first occupation of the Development (save for the purposes of fitting out) the Owner shall carry out a survey of all staff employed at the Development to ascertain their mode of travel to work*
- 1.3 Within 2 months of completing the staff survey under paragraph 1.2 the Owner shall submit to the Council targets for the overall reduction in the use of single occupancy vehicles for travel to work and individual targets for each mode of transport to work for approval by the Council and for incorporation of these agreed targets in the Travel Plan*
- 1.4 Within 2 years of occupation of the whole of the Development and every two years following completion of the first monitoring survey carried out under the terms of this paragraph the Owner shall carry out a survey to monitor the progress achieved in meeting the overall reduction and modal split targets by instructing an independent transportation data collection company who shall use a survey designed to conform to a standardised multi-modal format that has been approved by the County Council*
- 1.5 The Travel Plan shall be reviewed at two yearly intervals and such review shall take account of the following:-*
 - 1.5.1. the Travel Plan's purpose to promote sustainable travel patterns and the overall reduction and modal split targets set out within it; and*
 - 1.5.2. the results of the monitoring survey; and*
 - 1.5.3. the practicality and commercial viability of proposed measures in the light of the Site's rural location*

and each review may result in appropriate amendments being made to the Travel Plan and specifically to the overall reduction and modal split targets set out within it

1.6 The Owner further covenants with the Council that prior to occupation of the whole of the Development it shall implement the Travel Plan as approved for the benefit of the Council and the County Council

1.7 The Owner shall pay to the Council prior to first occupation of the Development £X for the benefit of the County Council for the purposes of monitoring compliance with the Travel Plan

TRAVEL PLAN v2

On the completion of this deed the Owner shall pay to the County Council the sum of £X.

The County Council shall only use the contribution towards the costs of agreeing and monitoring any Green Travel Plan in accordance with this Schedule.

Within six months of the first Occupation of any part of the Development the occupier thereof as successor in title to the Owner shall submit to the Council for approval a Green Travel Plan and shall (following receipt of approval from the Council) implement and observe the terms of the approved plan.

Any subsequent occupiers of the Development or any part thereof as successors in title to the Owner shall either:

- 1. agree to comply with the terms of an existing Green Travel Plan approved by the Council in relation to the Development; or*
- 2. submit to the Council for approval a Green Travel Plan and (following receipt of approval from the Council) implement and observe the terms of the approved plan.*

The Owner shall notify the County Council of the date of Occupation of any part of the Development within seven days of such occupation.

The measures to be included in the Green Travel Plan are as follows:

- 3. The appointment of a Travel Co-ordinator to liaise with the County Council in relation to the monitoring of the Plan, to attend annual review meetings with the County Council and to report back to the occupier.*
- 4. The undertaking of an initial staff travel survey within three months of implementation of the Green Travel Plan using methodology to be agreed with the County Council.*
- 5. The monitoring of the means of transport used by employees to travel to the relevant part of the Development on an annual basis.*
- 6. An obligation to review revise and update the Plan annually and in consultation with the County Council.*
- 7. The provision of secure and weatherproof bicycle parking facilities.*
- 8. The provision of lockers and shower facilities for the use of staff or employees.*

S278 HIGHWAYS ACT 1980

The Owner at its own cost shall enter into an agreement under section 278 of the Highways Act 1980 unless the County Council notifies the Developer and the Council in writing that such agreement is not required before carrying out any works on the Highway.

The Developer shall pay the County Council's reasonable legal and other costs relating to any section 278 Agreement.

HIGHWAY IMPROVEMENT

Within two months of the Development having begun the Owner shall pay to the County Council the sum of £x as a highway improvement contribution which sum shall be used towards / infrastructure improvements to assist travel by Bus Cycle and Pedestrians in the vicinity / the cost of a pedestrian refuge on the X Road X /or such other highway improvement that the County Council as Highway Authority consider appropriate within the vicinity of the development.*

** Delete as appropriate*

PUBLIC TRANSPORT INFRASTRUCTURE IMPROVEMENTS

Before the occupation of the first Dwelling built under the Permission the Owner shall pay a public transport Infrastructure Contribution of £X to the County Council, which sum shall be used to provide bus lanes, improve bus waiting and passenger information facilities, improve the frequency and quality of bus services or such other infrastructure public transport improvements that in the reasonable opinion of the County Council will improve public transport to or from the Property.

FOOTWAY IMPROVEMENT

The Owner shall construct at his own expense a 2 metre footway to the X Road frontage of the Property in the position agreed to Highway Authority standards entering into any agreement required with the "Essex County Council" who are the Highway Authority and shall not allow any dwelling to be occupied prior to the completion of the footway and its dedication as a public highway and shall maintain and make good all defects in the footway for a period of 24 months following the said dedication.

VISIBILITY SPLAY.

At all times to keep the visibility splay as shown on plan X clear and unobstructed and without prejudice to the generality of the same not to permit or suffer the parking of any vehicle, the erection of any wall or fence higher than 600mm nor the growth of any hedge tree or other vegetation in excess of 600mm

DEMOLITION.

Before any other operations constituting the commencement of the Development are begun the Owner shall demolish the redundant agricultural buildings on the site marked as buildings B, C, D, E, F, the existing garage, the existing S___ Lodge, the

existing B____ Farmhouse and the existing B____ Cottage, all shown on plan X attached to this deed.

USE OF EXISTING BUILDINGS

The existing domestic outbuilding shall only be used for garaging vehicles for Plots 1 and 2 and for such domestic storage as may reasonably occur within a domestic garage provided that the function of garaging vehicles is not impaired or made less convenient by such storage, the existing stables shall be used for the stabling of horses only. The location of the existing buildings and Plot 1 and 2 is as shown on plan ____ attached to this deed.

COORDINATION OF DEVELOPMENTS

Not to commence the proposed developments before the owners have co-ordinated the building work involved ensuring that the commencement of both developments occurs within a two-week period.

To co-ordinate the building works so that so far as may be reasonably practical completion of the exterior of the proposed developments occurs within a 3 month period

Should practical completion of the exterior of one of the proposed developments not be completed within a three month period of the completion of the other in breach of clause 2 to take all steps required to ensure the building works are completed expeditiously and to provide the Council with a full written reason for the delay and the measures being taken to remedy the same.

Following commencement of the proposed development to ensure the building works proceed quickly and without undue delay until the practical completion of the exterior of the proposed developments

Not hereafter to make any alterations to or demolish the proposed development without the prior written consent of the Council which may be withheld if in the opinion of the Council the alterations or demolition would have an adverse planning impact.

RESTICTION ON USE OF GARAGE AND ACCOMODATION.

Not to use the double garage other than for the parking of vehicles ancillary to the Property except for such domestic storage as is usually found within a domestic garage, nor to use the accommodation created under the permission other than as accommodation occupied ancillary to the Property and without prejudice to the generality of the same not to rent the accommodation created under the permission nor allow it to be occupied by any person who does not also use the accommodation within the main structure on the Property for the purposes of normal domestic living activities such as taking meals washing or sleeping.

REQUIREMENT FOR DEMOLITION

That within six months of the first occupation of the dwelling constructed under the Permission, or two years from the commencement of construction of the dwelling, whichever occurs first, the owners shall cause the existing house, on the Property to be demolished the foundations dug up all resulting material being removed from the premises and lawfully disposed off.

RESTRICTION ON BUILDING OUT EXTANT PERMISSION

Not to implement that part of the planning permission granted under reference number 01/P/X that gives planning permission for a detached double garage being a planning permission for two storey and single storey side extensions rear conservatory and a detached double garage nor to build any form or type of extension detached double garage or structure within 5 metres of the exterior walls of the dwelling house as existing now or in the future other than following an express grant of planning permission.

The Common Seal of)
.....
.....)
was hereunto affixed in the presence of:)

Director

Director/Secretary

SIGNED as a DEED by the said)
.....)
.....)
in the presence of:-)