

**PLANNING
GUIDANCE**



castlepoint

benfleet | canvey | hadleigh | thundersley

Draft Revised Developer Contributions Guidance SPD

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1 Foreword

In October 2008, the Council adopted a Developer Contributions Guidance SPD in order to set out its expectations of developers with regards to the use of Section 106 Agreements and Unilateral Undertakings in order to make development proposals acceptable.

Since this time, the Community Infrastructure Levy has been developed with Regulations coming into force in 2010. This has changed the way in which Section 106 Agreements can be used to seek contributions towards improving local community facilities.

In addition to this, there has been an increased emphasis on development viability since 2008 as a result of the impacts of the global economic recession on the development industry.

As a result of these two key drivers, it is been necessary to review the Developer Contributions Guidance SPD and amend it to respond accordingly. This document is the outcome of that review.

2 Executive Summary

This Supplementary Planning Document has been produced to provide advice to developers on when and how the Council will expect to use Section 106 Agreements alongside the Community Infrastructure Levy to secure an acceptable development that is sustainable, contributes towards a high quality environment and is supported by the services, facilities and infrastructure required to make Castle Point a good place to live, work and visit. It is important that developers are made aware at the outset of what will be required by the Council in respect of Section 106 Agreements 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 secure an acceptable development. 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, some of which will be required to be released for development in the New Local Plan 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 legislation and national policy guidance on the use of Section 106 Agreements (planning obligations), and the relevant policies in the New Local Plan that set out how and when Section 106 Agreements will be used to secure affordable housing and other actions, services, facilities or infrastructure in order to make a development acceptable.

The document 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 detail the specific requirements of the Council, including where appropriate 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

Castle Point forms part of the Thames Gateway South Essex sub-region with the neighbouring boroughs of Basildon, Rochford, Southend-on-Sea and Thurrock. There is a strong relationship between Castle Point and these neighbouring boroughs with many residents of Castle Point commuting to Basildon and Southend in particular for employment. Basildon, Southend and Lakeside also provide key retail and leisure destinations for residents of Castle Point. London is also has an important influence on housing and employment needs in the borough. Demographic modelling, assessment of the housing market and assessment of employment potential have been undertaken in respect of Castle Point. It has been determined that in order to meet the future housing and employment needs of the borough, it is necessary to secure the provision of approximately 200 homes and 100 jobs per year in Castle Point in the period 2011 to 2031. These figures are set out in the borough's New Local Plan.

However, 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 environment, 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 facilities and environment improvements. These all combine to ensure that local people have access to affordable accommodation and safe access to services such as education, healthcare, leisure activities and open space, which enhances their quality of life.

When delivering sustainable communities in Castle Point, it is also important that new development does not cause further harm to the borough's unique natural environment, its landscape or its historic assets. Where possible, new development should contribute to improving the quality of the environment and creating new high quality environments.

A Supplementary Planning Document (SPD) is intended to expand upon policy or provide further detail to policies in the local Development Plan. It does not have the same status as the local Development Plan, 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 Local Development Plan, unless material considerations indicate otherwise. Where applications do not meet these requirements, they may be refused, but in some instances they may be made acceptable through the use of planning conditions and/or planning obligations. The imposition of a condition is normally the preferred approach; however planning obligations can be used where a condition would not be sufficient to achieve the requirements necessary to make a development acceptable.

If appropriate planning obligations cannot be negotiated or secured, then the adverse impact the proposal might have on the local environment, services, facilities and infrastructure is likely to result in a refusal of planning permission.

This document sets out the Borough Council's Developers' Contributions Guidance in the form of a Supplementary Planning Document (SPD), to underpin the delivery of the New Local Plan. Its purpose is to:

- Explain how the Council will seek planning obligations under Section 106 in conjunction with Community Infrastructure Levy;
- Explain how the Borough Council will seek to ensure speed, transparency and consistency in the implementation of planning policies through planning obligations;
- Explain how the Council will deal with issues related to the costs of development and development viability considerations;
- Indicate the instances in which planning obligations are likely to be needed to make the development acceptable;
- Allow developers to predict as accurately as possible the likely costs of planning obligations when considering the development potential of sites;
- Provide guidance on standard formulae for calculating the level of planning obligation that may be required;
- 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 and policy framework set out in the relevant Acts, Regulations, and Government Guidance documents.

This SPD does not cover every possible circumstance that may need to be taken into account in determining an application. Various requirements may be secured by condition or negotiated separately.

The Borough Council is the Local Authority responsible for deciding the range and level of planning obligations related to District Council functions and affordable housing and how both should be secured, together with enforcing any on-site or off-set measures. If planning obligations 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 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. The Council will seek planning obligations 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 Law.

4 Context for Planning Obligations

4.1 The Town and Country Planning Act

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.

4.2 The Community Infrastructure Levy Regulations

The Community Infrastructure Levy (CIL) Regulations were published in March 2010, and make substantial changes to the way in which planning obligations can be used to secure funding from developers for community infrastructure. Various amendments to these regulations have been made since their initial publication in order to improve its effectiveness.

The introduction of the CIL was a result of the findings of 2004 Barker Review of Housing Supply. This identified the lack of the timely delivery of infrastructure as a key barrier to delivering development. CIL is a new tool for local authorities to use to help them deliver the growth and housing set out in their Local Development Plans. As well as raising additional revenue for infrastructure, CIL provides greater transparency and certainty for the development industry on the level of contributions towards infrastructure that they are expected to make, reducing delays associated with negotiations that took place when local authorities sought to deliver infrastructure using Section 106 of the Town and Country Planning Act.

However, planning obligations may still be used, in accordance with the CIL Regulations to secure the provision of Affordable Housing, and also to secure specific site related requirements, where such requirements are not identified on the CIL Schedule of Infrastructure Projects. However, from April 2015, it will no longer be permissible to pool financial contributions from more than five planning obligations to pay for community infrastructure.

The CIL Regulations replace guidance previously set out in Circular 05/2005: Planning Obligations with regard to the tests that should be satisfied when seeking a planning obligation. The tests set out in the CIL Regulations are as follows:

- a. Necessary to make the development acceptable in planning terms;

- b. Directly related to the development; and
- c. Fair and reasonably related in scale and kind to the development.

The CIL Regulations ensure that 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 or 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 developer's 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.

The CIL Regulations set out the process for establishing a CIL for a local authority area. The CIL is subject to independent examination by the Planning Inspectorate to ensure that it has been set at a reasonable level. To this end, it has been prepared separately to this document. The CIL Regulations are clear that when setting the CIL rate, a balance should be struck between securing funding for infrastructure and ensuring the economic viability of development. This means that the rate of CIL set must be affordable to developers. CIL is chargeable on all developments, with the following exemptions:

- Non-residential developments and residential extensions less than 100m² in size;
- Social Housing;
- Charitable uses;
- Where a building is used to house equipment only, and is not used by people; or
- Where the CIL rate is set at Nil.

Unless a local authority has issued a notice of relief from CIL all eligible developments must pay it, and therefore it cannot easily be varied to make a development viable once it has been set. As a result, when viability issues emerge in respect of a development proposal, it will be necessary for the Council to consider whether planning obligation requirements can be reduced in order to make a development viable.

4.3 National Planning Policy Framework

The National Planning Policy Framework (NPPF) was published in March 2012 with the aim of securing sustainable patterns of development. It sets out national planning policies against which all local policies are measured for consistency.

The NPPF states at paragraph 203 that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through the use of a planning condition. The NPPF repeats the three tests for the use of planning obligations set out in the CIL Regulations.

The NPPF, at paragraph 205, places an emphasis on ensuring development viability. It states that where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planning development being stalled.

4.4 Castle Point New Local Plan

The New Local Plan sets out the Local Development Plan for Castle Point. This document has been prepared to be consistent with the NPPF. Within the New Local Plan, there are a number of policies that may require the use of planning obligations in order to be delivered, although in some instances the CIL Regulations restrictions on pooling contributions may require some infrastructure provision to be delivered via CIL. Policies which may give rise to planning obligations include:

E8: Promoting Higher Skilled Jobs – seeks to secure higher skilled jobs through restricting the use of buildings within employment developments where there is no defined user.

E11: Supporting the Local Construction Industry – seeks to encourage the involvement of developers in enhancing the local construction industry.

T1: Transport Strategy and T6: Congestion – seeks to maximise opportunities to secure investment in the transport network to bring about a reduction in congestion, a reduction in journey times for buses and increased opportunities for cycling.

H19: Securing More Affordable Housing – seeks the provision affordable housing on-site as part of residential development proposals.

HC2: Opportunities for Indoor Leisure and Sports – seeks the provision of additional, specified leisure facilities in order to ensure the health and well-being of local residents.

HC3: Opportunities for Outdoor Recreation – requires the provision of public open space within residential development sites of 5ha in size or greater.

HC4: Education, Skills and Learning – required additional provision of education facilities, as defined in their widest sense, where a development will result in local capacity being exceeded.

HC5: Health and Social Care Provision – requires additional health and social care provision where a development will result in local capacity being exceeded.

CC2: Canvey Coastal Change Management Area, CC5 South Benfleet Coastal Change Management Area and CC6: Fluvial and Surface Water Flood Management – seek the management of flood risk in order to reduce risk to people and property.

NE6: Local Wildlife Sites and NE8: Determining Applications affecting Ecologically Sensitive and Designated Sites – require mitigation, management and compensation in relation to impacts on biodiversity in order to achieve a net gain in biodiversity.

NE7: Southend Water Quality Zone – requires developments within the catchment area for the Southend Waste Water Treatment Works to off-set the generation of foul sewage with removal of surface water flows from the drainage network through the installation of SUDS.

NE10: Residential and Environmental Amenity and Pollution Control – exceptionally requires the use of a planning obligation to control disturbance and pollution.

There are also allocations policies contained within the New Local Plan which may require a planning obligation to be delivered. An example is policy E3: Extension to Manor Trading Estate, which is likely to require a planning obligation to secure the off-site ecological compensation required by the policy.

4.5 Essex Developer's Guide to Infrastructure Contributions

Essex County Council published a revised Developers' Guide for Infrastructure Contributions in 2010. This document sets out the scope and range of contributions that the County Council, within its statutory remit, may seek from developers. This document addresses the County Council's approach to seeking planning obligations for services for which it is responsible, and should be read in conjunction with this document.

5 General Approach to Planning Obligations

5.1 Planning Obligations and CIL

The Community Infrastructure Levy will be used as the primary means by which the Council will seek contributions from developers towards meeting the infrastructure demands of new growth. The Council will not seek a planning obligation for infrastructure that is already to be provided by CIL, and is identified in the CIL Infrastructure Schedule.

There will however be instances where a development is so large, or in such a location that it generates a need for infrastructure that is specifically required by that development. For example a development of 700+ new homes will generate the need for a primary school to specifically serve that development.

There will also be instances where a development will put specific pressures on a location that would not otherwise exist, for example a nightclub may create a need for new surveillance cameras, or a new housing development may have an adverse impact on a particular road junction.

Planning obligations will be used in addition to CIL to mitigate these types of direct impacts of development on infrastructure, in order to ensure that proposed developments do not reduce the capacity of existing infrastructure to serve existing residents.

Additionally, it should be recognised that planning obligations can be used to secure requirements that are not infrastructure related. For example, they may be used to secure affordable housing, on site open space provision, ecological mitigation, public realm improvements and local employment opportunities amongst other things. The role of planning obligations is to ensure that development is acceptable in all its facets, delivering sustainable developments that secure economic, social and environmental benefits for the community and manage the impacts of development on all aspects of the environment.

5.2 Planning Obligation Process

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 specific to their site, and the appropriate process for securing the mitigating infrastructure needed together with the parties likely to be involved in the obligation. An indication will also be given as to whether it is appropriate to use a Section 106 Agreement or a Unilateral Undertaking.

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 received and validated, will be given to the developer at the pre-application stage. A copy of this questionnaire is attached as Appendix A.

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.

To speed the processing of a planning obligation, the Council has prepared specimen Section 106 Agreements and Unilateral Undertakings. These are attached as Appendices B and C 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.essex.gov.uk) specimen legal obligations in connection with transport and education matters. Developers will be encouraged to use Unilateral Undertakings when the requirements related solely to Borough Council or County Council functions. For the purposes of a Unilateral undertaking developers need to evidence that they have title to the land to which it applies. The legal agreement questionnaire (at Appendix A) 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.

A single section 106 Agreement or Unilateral undertaking would normally be used to cover the full range of requirements for a particular development. However, some areas of community infrastructure, such as education, libraries, health facilities and most transport infrastructure are provided by the County Council and other outside agencies. Their requirements will often be the subject of separate agreements to those entered into by the Borough Council, although joint agreements will be used wherever possible.

5.3 Development Briefs

In the case of larger sites, the Council may well have prepared a development brief setting out, amongst other matters, all infrastructure requirements, including any necessary and related land requirements. Such development briefs will take account of the matters relating to thresholds, standard charges, and formulae, pooling of planning obligations within the site or with other sites nearby, and the phasing of development. If there is a development brief for a site, it should be read alongside this document.

5.4 Outline Applications

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

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

5.5 Using Thresholds, Standard Charges and Formulae

Over the past 5 years the Council and County Council have been developing means by which it is possible to calculate the impacts of new development on the need for community infrastructure. Both the previous version of this document, and the Essex Developers' Guide to Infrastructure Contributions set out standard charges per household for different types of infrastructure requirement such as open space provision, schools, libraries etc.

Given the scale of developments in Castle Point, most developments would contribute towards a pool for such infrastructure provision. Given the introduction of the CIL this is no longer appropriate, and contributions towards such infrastructure should be sought using the CIL rather than a planning obligation.

However, the calculations in these guides have proved a useful starting point for calculating CIL Infrastructure costs. They are also useful, when considering larger sites, for determining whether a planning obligation should be used to secure the on-site provision of community infrastructure to serve that development specifically. As examples, a development of 700 homes would generate sufficient pupils for a primary school, and a development of 1,200 homes would generate sufficient young people for a youth centre.

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

With regard to services provided by other organisations including the Borough Council, details of thresholds, standard charges and formulae are provided in this document. Details are also provided on requirements surrounding non-infrastructure related matters such as affordable housing, economic development, public art, ecology, open space and other environmental matters.

It should however be recognised that each development proposal is unique and may give rise to a matter that is less common and not addressed specifically by this SPD. In such cases, as with all planning obligations, it is necessary to refer back to the three tests in the CIL Regulations to check that a planning obligation is an appropriate means by which the matter can be addressed. The three tests are:

- a. Necessary to make the development acceptable in planning terms;
- b. Directly related to the development; and
- c. Fair and reasonably related in scale and kind to the development.

5.6 Calculating Change

When calculating the impact of development using thresholds, standard charges and formulae, it is important that the net change in the number of homes, or the amount of floorspace is considered. Replacement homes, where an old bungalow is replaced with a new house for example does not result in a net increase in the number of homes, and is not going to therefore have an impact on the need for service provision. Therefore, planning obligations will not be used to secure infrastructure or affordable housing in respect of that replacement home.

Equally, it should be recognised that a house converted into several flats, was already counted as one dwelling, and therefore the impact of growth emerging from that development is the total number of flats, minus one to account for the original house.

With regard to non-residential uses, net change will be considered on the basis of floorspace. When non-residential units are extended the impact of growth will be calculated using the difference between the original floorspace and the proposed new floorspace.

When a development proposes the conversion of an existing building from one type of use to another, then the gross number of homes or floorspace will be considered when calculating the impacts of growth from a proposed development. It should be noted that this applies in the case of the conversion of a residential institution into dwelling units, or visa versa, as well as more generally. The reason for this is that the impacts of the existing use compared to the proposed use may be somewhat different, and therefore the full impacts of the proposed development should be taken into account.

5.7 Pooled Contributions

As explained above, the introduction of the CIL prevents the Council from using planning obligations to pool developer contributions towards infrastructure. The CIL regulations are quite clear that planning obligations may be used to pool developer contributions from a maximum of five developments only.

In most circumstances, the Council will not therefore seek to use planning obligations to secure a pool of contributions for infrastructure provision. However, the Council can envisage that there are some instances where it will seek to pool contributions. Examples of these include:

- a. Where a large site, which when developed in its entirety will require a specific piece of infrastructure to meet the specific needs of its future residents, is brought forward in smaller parcels by separate developers, or over time.
- b. Where up to five sites in close proximity to one another will generate a specific requirement for a piece of infrastructure, or piece of work that would meet the specific needs of the future residents of those sites.
- c. Where between two and five applications are received by the Council at around the same time, and require similar planning obligations to meet the needs of development on that site, and where the costs of that solution can be shared between those

developments. An example of this may be the provision of a new bus service, whose route could pass through or adjacent to several development sites. The use of an obligation in this way may actually result in a saving for the developer, compared to a situation where each development deals with its own costs.

- d. Where a development of less than 10 units makes a financial contribution in lieu of on-site provision towards affordable housing, this may be pooled with similar contributions from up to four other developments in order to deliver affordable housing in Castle Point.

Again, the Council will not seek to create a pool of developer contributions through planning obligations for a piece of infrastructure that is included in the CIL Infrastructure Schedule.

In cases where the Borough or other agencies create a pool of developer contributions using planning obligations towards a specific infrastructure project, these contributions will be held in interest-bearing accounts, ring fenced to that particular infrastructure project until such time as all developer contributions have been received and the project can be delivered. 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 their share of the interest accumulated.

5.8 Phasing

The phasing of planning obligations is important for two reasons. The first is to ensure that the impacts of development are managed appropriately. The second is to ensure that the viability of development is not unduly affected by the planning obligation.

Some planning obligations will need to be delivered early on in a development. For example, a planning obligation related to ecology is likely to be required before a development commences to ensure that harm is limited. Sustainable transport requirements meanwhile will be required during an early phase in the development so that early occupiers of the site do not develop a reliance on car borne travel.

Planning obligations do however cost money, and will potentially increase the financing costs of a development when sought early on in a development scheme. Therefore, when appropriate, the Council will seek for planning obligations to be delivered later on in the development where possible. However, the Council is mindful that a developer may seek to avoid delivering a planning obligation by not delivering the last bit of a development. To this end, the following phasing limits will be applied in most cases:

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

5.9 Management Arrangements and Maintenance Contributions

Where development results in the need for new infrastructure for the benefit of the occupiers of the associated development, then the Council would normally expect the developer to put in place management arrangements which ensure the good maintenance of that infrastructure in perpetuity.

However, there will be cases where the Council, County Council or another service provider will agree for infrastructure to be transferred into their ownership. In such cases, the Council will require a maintenance contribution, usually as a one-off payment. This contribution would be to cover the physical upkeep of the infrastructure and will usually be equivalent to 10 years' maintenance costs. As any maintenance requirements will relate to a specific piece of infrastructure, and will therefore vary according to its type, size and location it is not possible to establish in this document a standard charge for ongoing maintenance. This will need to be agreed in relation to individual applications.

5.10 Development Viability

The costs of a development and fluctuations and differences in the local market can have a serious impact on development viability. Understanding these costs and the local market will help to ensure that a development remains viable whilst continuing to deliver CIL and planning obligations at an appropriate level.

In developing the CIL a series of assumptions were tested related to the costs of development in Castle Point, and the local market conditions. These were developed from evidence and regularly used national standards, and reviewed by the local development industry. It is these assumptions that the Council will consider when reviewing matters of development viability. These can be viewed online at: www.castlepoint.gov.uk

Applicants who cite non-viability as a reason for not delivering the required planning obligations must support their case with financial evidence, which they should ideally submit at the pre-planning application stage.

The Council will use its Economic Viability Assessment Tool, populated with the development costs and values set out in the assumptions document, to assess claims of non-viability.

Where a development is of a significant size, and the implications of not achieving the appropriate Section 106 requirements are more significant, the Council will require claims of non-viability to be assessed by the Council's external experts. If the Council is required to engage these experts the costs will be charged to the applicant. The Council would not normally expect to engage these experts on scheme of less than 50 dwelling units or 1,000 sqm floorspace in size, but reserves the right to do so if it considers it necessary.

Where it is clear from the use of the tool, or as a result of external assessment, that the development is unviable, the Council will expect the developer to meet with it to identify how viability issues may be addressed. This may include reducing the requirements under Section 106 where appropriate, however consideration will also be given to changing the phasing of planning obligation requirements, or the delivery mechanism for requirements in order to

reduce costs in other ways instead. As an example, it may be cheaper for a developer to carry out his own highways works under section 278 of the Highways Act, rather than pay for the Highways Authority to undertake such work under section 106 of the Planning and Compulsory Purchase Act.

The Council expects developers to have considered the financial implications of planning obligations and CIL 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 in excess of the values identified in the assumptions document will not be accepted as a reason for non-viability.

5.11 Index Linking

Where a planning obligation is in the form of a financial payment, then the value of the required payment will normally be index linked from the date of the completion of the Section 106 Agreement in order to ensure that the financial payment reflects the true costs of providing a specific piece of infrastructure at the time development occurs. The indices used will differ according to the type of infrastructure that the financial payment is required for. The Council will set out in the planning obligation the most appropriate indices to be applied in respect of the infrastructure required.

5.12 Late Payments/Compliance and Repayments

All planning obligations will include penalty clauses for the late payment or compliance with a requirement set out within.

All planning obligations will also include a period in which any financial payments need to be spent on the specified infrastructure. If financial payments form part of the planning obligation, and if the money is not spent on the purpose for which it was secured, and no provision has been made for an alternative use of the money to achieve the same objective, then the developers will be reimbursed on request for the relevant unexpended amount plus any interest accumulated.

5.13 Development Thresholds

Planning applications and pre-application proposals will be carefully scrutinised to ensure that they do not artificially fall below any given threshold so as to avoid planning obligations. If it is considered that a proposed development is not maximising the use of a site in order to avoid an obligation threshold, the application will not be considered favourably. Similarly, where it is considered that a potentially larger development site has been split into smaller applications in order to avoid any obligation thresholds, then the individual applications will not be considered favourably, or the individual applications will be treated collectively for the purpose of the planning obligation.

5.14 Elapse of Time

There will be instances where a substantial period of time elapses between the resolution to grant planning permission for a development subject to a planning obligation, and the completion of that planning obligation. In such circumstances planning policy requirements may change, or the need for a particular planning obligation may change. Should a period longer than 6 months elapse between the resolution and the signing of a planning obligation, the Council reserves the right to seek a new resolution from the Development Control Committee.

5.15 Monitoring of Planning Agreements

All planning obligations will be monitored by the Council to ensure they are complied with. Clauses will be inserted within obligations, as appropriate, to require the developer to notify the Council and other identified parties, in writing, on commencement of development, and at other stages within the development process as necessary to check whether this triggers any requirements of the planning obligation to be met.

5.16 Charges for Planning Obligations

Applicants must meet the costs of producing planning obligations, and associated work. Castle Point Borough Council charges the following set fees:

- S106 Agreement £3,800
- Unilateral Undertaking £1,240
- Amendment of an Existing Obligation £310
- Deed of Nomination Rights £1,240

It should be noted that Essex County Council charge an hourly rate in relation to the preparation of planning obligations. At present, this rate is £140 per hour. This charge is subject to periodic review and may change.

Once the planning obligation is signed, administrative costs are incurred on tasks such as ensuring on-site measures are provided, any financial payments are made, and that they are then spent according to the terms of the obligation. This requires compliance checks, monitoring, project management and implementation. The following charges will be applied to recoup these costs.

| | |
|--|-------------------------------------|
| Financial contributions | 1% of the value of the contribution |
| On-site measures or off-site measures within the applicants control (excluding affordable housing provision) | £700 per clause |
| On-site or off-site provision of affordable housing | £100 per unit |

Where the Borough and County Council are both party to a planning obligation, the costs of monitoring and administration should be paid separately according to the respective functions of the two authorities. For example, for an obligation involving the on-site provision of 15 affordable homes, a £55,000 transport contribution and the provision of a children's play space on site, the monitoring and administration charge payable to the Borough Council would be £2,200 (15 homes x £100, plus £700 for the on-site play space). The charge payable to the County Council would be £550 (1% of the value of the transport contribution).

5.17 Review of this Document

This document will be updated at least every five years, although more regularly if necessary, to ensure consistency with national legislation and policy. It should be noted however, that the assumptions document that underpins development viability considerations will be reviewed more regularly to account for fluctuations and changes in the cost of development and housing market conditions.

6 Affordable Housing

6.1 Context

Affordable Housing is the principle and most significant matter for which Section 106 Agreement are, and will continue to be, used for in Castle Point. The NPPF defines affordable housing as:

Social rented; affordable rented; and intermediate housing provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provision to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as “low cost market” housing, may not be considered as affordable housing for planning purposes.

The National Planning Policy Framework requires local planning authorities set policies for meeting the need for affordable housing on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities.

The Thames Gateway South Essex Strategic Housing Market Assessment 2013 indicates that at least 36% of homes across the sub-region should be affordable. This minimum requirement reflects a range of housing growth scenarios.

Development viability testing undertaken for the New Local Plan identified that 20% affordable housing provision would ensure economic viability and strike an appropriate balance between the provision of affordable housing and the collection of CIL for transport improvements, community infrastructure and green infrastructure provision.

As a result, the New Local Plan sets out the following policy in respect of affordable housing provision:

1. *In order to improve the affordability of accommodation in Castle Point, all proposals for housing development, and mixed use proposals that include an element of housing, resulting in 2 or more net additional homes will be required to make the following level of provision of affordable housing:*
 - a. *Canvey Island - 15%*
 - b. *Benfleet, Hadleigh and Thundersley - 25%*
2. *Affordable housing provision will normally be expected to be provided on-site, however the Council will also consider proposals for off-site provision where the provision of affordable housing is equivalent to the level of requirement set out under part 1 of this policy across both sites. Payments in lieu of on-site provision will be permitted for sites comprising between 2 and 10 net additional homes or less. Such payments should be equivalent to the cost of on-site provision.*
3. *At least 50% of the affordable housing units should be made available for affordable rent. The remaining affordable housing units should be made available for intermediate housing.*
4. *The mix of affordable housing units should comprise 11% 1 bedroom units, 32% 2 bedroom units and 57% 3 bedroom units. However, variations to this mix will be considered having regard to the overall mix of development proposed.*
5. *In order to ensure that any affordable housing provision is deliverable, affordable housing units must be:*
 - a. *Designed to the specifications of the HCA; and*
 - b. *Capable of freehold transfer to a Registered Provider.*
6. *Significant weight will be given to this policy when considering the suitability of applications for housing development, and mixed use proposals including a housing element.*

6.2 Approach to Section 106

6.2.1 Threshold

The New Local Plan sets a threshold of 2 or more net additional dwellings for the provision of affordable housing. Calculations prepared as part of the Economic Viability Assessment for the New Local Plan did not show a need for a threshold, with smaller forms of development being no less viable than larger forms of development. However, the Government has made it clear that self-build properties should be exempt from CIL, and therefore it seems appropriate that such schemes should be exempt from affordable housing requirements also. A threshold of 2 or more will ensure that self-builds are not affected.

6.2.2 Contribution On-site

The New Local Plan requires affordable housing provision to be made on-site. It is however recognised that in practicality, it is likely to be difficult to secure the interest of a Registered Provider in a very small schemes comprising just one or two affordable housing units. Therefore, schemes of between 2 and 10 units may make a financial contribution in lieu of on-site provision which will be spent by the Council to secure affordable housing on alternative sites within Castle Point. In accordance with NPPF this contribution should be broadly equivalent to the cost of on-site provision. Financial contributions will therefore be calculated as follows:

Assumptions:

The Development Viability Assessment identifies that Affordable Homes sell to registered providers at approximately 70% of the market sale value. Therefore, the cost to the developer of on-site provision is approximately 30% of the market sale value.

The level of contribution, consistent with the New Local Plan policy, is considered to be 25% in Benfleet, Hadleigh and Thundersley and 15% on Canvey Island. Should a different level of contribution be agreed, having regard to the section that follows, then the calculation should be adjusted accordingly.

Calculation:

$$25\% \text{ or } 15\% \quad \times \quad (30\% \times \text{Market Sale Value of Total Residential Development}) \quad = \quad \text{Financial Contribution in lieu of on-site provision}$$

Section 106 Agreements for the provision of affordable housing on-site will therefore be drawn up for most applications. However, where an application for between 2 and 10 net additional dwellings, a section 106 Agreement may be drawn up for the payment of a financial contribution towards affordable housing (using the calculation above). Such an agreement will:

- a. Require the payment of the financial contribution before the occupation of any of the homes on site; and
- b. Require the Council to spend the contribution on the provision of affordable housing in Castle Point within a specific period of no less than five years of the date of receipt of the payment, or else refund the money with interest.

6.2.3 Level of Contribution

The New Local Plan requires the provision of affordable housing to be at least 25% in Benfleet, Hadleigh and Thundersley or at least 15% on Canvey Island, of the total housing on a development site. This is significantly less than the requirement identified through the Thames Gateway South Essex Strategic Housing Market Assessment.

The Economic Viability Assessment indicated that these provision requirements will ensure viability in most development schemes and allow for CIL to be collected to provide other types of infrastructure whilst maintaining viability.

It is not therefore considered likely that development proposals in Castle Point will be made unviable by the requirements of the New Local Plan in respect of affordable housing. However, it is recognised that there will be exceptional instances where such issues may arise. If a developer seeks a reduction in the requirement for affordable housing it must be clearly evidenced that there are viability issues affecting the site. The developer must therefore provide to the Council a development viability assessment that has been signed by the developer's board of directors. This will be held in confidence and reviewed by the Council, and where appropriate its independent economic advisors.

The level of contribution will be set out in the Section 106 Agreement. Where an agreement is related to a Full Planning Application the precise number of affordable homes to be provided will be identified. Where the agreement related to an Outline Planning Application a percentage requirement will be included.

6.2.4 Affordable Housing Tenure Mix

The New Local Plan requires at least 50% of the affordable housing provision to be affordable rented accommodation. The Council has a significant housing register and a small social housing stock with low turnover rates. It will not therefore reduce this requirement below 50% unless the developer can produce evidence that five Registered Providers seek a lower level of affordable rented accommodation within the affordable housing mix for that particular site.

The agreed tenure mix will be identified within the Section 106 Agreement.

6.2.5 Affordable Housing Size Mix

The New Local Plan requires 11% of affordable homes to be 1 bedroom units, 32% to be 2 bedroom units and 57% to be 3 bedroom units. It recognises that the mix that may be secured on an individual development site may vary from this.

When applying this requirement consideration will be had to the scale of development proposed and its location. A large Greenfield site on the urban periphery will normally be expected to achieve this mix of affordable housing sizes. Meanwhile, a heavily constrained site within the urban area may be permitted to focus on the provision of one or two elements of this requirement. It is recommended that the developer engages early with the Council to determine the degree consistency with the affordable housing size mix requirements that will be sought.

The agreed mix of house sizes will be identified within the Section 106 Agreement.

6.2.6 Affordable Housing Quality

Affordable housing is normally transferred from the developer to a Registered Provider for ongoing ownership and management. In order that the Registered Providers can be satisfied that the properties they are acquiring are fit for purpose, they seek for them to be designed in accordance with the Home and Communities Agency's Design and Quality Standards. A link to these is provided below:

http://www.homesandcommunities.co.uk/sites/default/files/our-work/design_quality_standards.pdf

In order to ensure that only affordable homes of an acceptable standard are built, thereby acting to ensure their transfer to a Registered Provider, the Council will seek the wording of the Section 106 Agreement to require a contract between the developer and a Registered Provider for the transfer of the affordable housing units to exist before development on the site can commence. This will ensure that only affordable housing units capable of transfer to a Registered Provider are built, avoiding issues at a later date.

6.2.7 The Location of Affordable Housing On-site

It is assumed that the policies in the New Local Plan will be applied correctly, and any site permitted for housing is suitable in its entirety for the accommodation of housing. Bearing this in mind, the Council will not generally concern itself with the location of affordable housing within the site, although it would not normally agree to clusters of affordable housing provision exceeding 30 units in order to prevent "ghettos" developing.

In order to secure the transfer of the affordable housing provision to a Registered Provider, it is important that the location of the affordable housing within the development allows for freehold transfer, as Registered Providers are normally unwilling to enter into leasehold arrangements. As with quality issues, the Council will ensure that this is achieved through the wording of the Section 106 Agreement, requiring a contract between the developer and a Registered Provider before development can commence.

6.2.8 Nomination Rights

As stated previously, the Council has a significant housing register. Therefore, it is the intention of the Council to secure affordable housing provision for local people.

Therefore, the Council will seek through the section 106 Agreement, and associated Deed of Nomination Rights, 100% nomination for affordable rented accommodation in the first instance.

Where affordable rented properties are re-let, the Council will seek 100% nomination rights, provided that they can fill the property within 8 weeks from the date it is deemed to be in a suitable condition for re-let.

For all Intermediate Accommodation, the Section 106 Agreement will normally require the Registered Provider to seek tenants that meet the locality requirements of the Castle Point Tenancy Strategy both in the first instance, and during any re-sale / re-let. The Council will relax this requirement if a suitable tenant cannot be identified within 3 months of the property being completed / deemed to be in a suitable condition for re-sale / re-let.

6.2.9 Recycling Subsidy

The NPPF requires subsidy arising from the sale of affordable housing to be recycled for the provision of affordable housing. The Council will seek through section 106 Agreements for such subsidy to be recycled within Castle Point.

6.2.10 Development Phasing

With regard to affordable housing, the general position in respect of phasing will apply i.e. all affordable housing units on a site need to be completed and transferred to an RP before more than 80% of the market dwellings are occupied.

It is however recognised, that depending on the location of the affordable housing provision within a development scheme it may not be possible to deliver the affordable housing provision at the start of a scheme, and it may be necessary to deliver the affordable housing in phases as different sections of the development are completed. The phasing arrangements for each scheme will therefore be negotiated, having regard to the following requirements:

- a. No more than 30% of the market housing may be occupied before land serviced by a suitable access, mains water, drainage, electricity supply, gas supply and telecommunications has been transferred to an RSL in order for them to undertake their own development; or
- b. No more than 50% of the market housing may be occupied before 50% of the affordable housing units have been completed and transferred to an RSL.

On particularly large schemes, or where there are complex development requirements the Council may consider alternative phasing requirements. However, it will need to be certain that the developer will not avoid providing affordable housing as a result of such requirements.

The specific phasing arrangements for the provision of affordable housing will be set out in the Section 106 Agreement.

7 Open Spaces

7.1 Context

The NPPF expects local planning authorities to plan positively for the provision of open spaces due to the contribution they make to social wellbeing and health. Additionally, the provision of formal open spaces helps to prevent recreational activities having a negative impact on ecology in natural greenspaces including European sites and SSSIs. Natural England seeks 8ha of open space to be provided per 1,000 people in order to off-set the impacts of development on sites of nature conservation importance.

Policy HC3 of the New Local Plan requires sites in excess of 5ha to provide 200m² of high quality public open space per home. In order that these open spaces respond to the needs of the community as identified through the open space appraisal, opportunities will be sought on development sites to secure the following, where appropriate:

- Additional parks and gardens throughout the borough;
- Additional natural green space in Thundersley;
- Additional children's playspaces in West Canvey, East Canvey, Central Thundersley and Daws Heath;
- Outdoor bowls provision on Canvey;
- Tennis court provision and improvements on Canvey and in Thundersley;
- Basketball court provision and improvements in Benfleet and in Thundersley;
- Improved playing pitch provision, including the creation of additional pitches in less flood prone locations;
- Improved links within and between open spaces;
- Improved accessibility to open spaces;
- Improved facilities within open spaces; and
- Improved biodiversity within open spaces.

7.2 Approach to Section 106

7.2.1 Quantity and Layout

Where sufficient details have been provided in relation to the quantity and layout of open space through a Full Planning Application, it is not necessary to include these matters within a Section 106 Agreement as they can be secured through a planning condition.

However, where an outline application is submitted, the Council will seek to secure through the Section 106 Agreement a quantum of open space provision to be provided on site. This will be a minimum of 200m² per home on sites of 5ha in size or greater, unless an alternative, higher quantum has been agreed with Natural England.

Given that a Reserved Matters Application must be submitted in order to deliver a development with Outline Planning Permission, details of the layout of open space within a site must be submitted and subsequently agreed at a later date. It is not therefore necessary for the

Section 106 Agreement to require the location of open space provision to be agreed separately. Additionally, the location of open space provision on the site can be controlled via a planning condition.

7.2.2 Phasing of Open Space Provision

In order to ensure that the open space identified through the planning application is delivered in a timely manner, to accompany the provision of housing and support sustainable and healthy communities, a clause will be included within section 106 Agreements concerning the specific phasing of open space provision.

The general position in respect of phasing will apply i.e. all open space provision on a site must be completed before more than 80% of the market dwellings are occupied.

It is however recognised, that depending on the location of the open space provision within a development scheme it may not be possible to deliver the open space provision at the start of a scheme, and it may be necessary to deliver the open space in phases as different sections of the development are completed. The phasing arrangements for each scheme will therefore be negotiated, having regard to the requirement that **no** homes abutting an area of open space will be occupied until that area of open space is complete.

7.2.3 Ongoing Maintenance of Open Space Provision

In order that the open spaces provided within a development site offer benefits to the community in perpetuity, it is essential that they are maintained to a high standard. The Council will therefore seek through Section 106 Agreements for the developer to establish a mechanism by which open spaces within the development site will be maintained to a high standard in perpetuity. This must be agreed before development can commence, and must be operational before more than 80% of the market housing can be occupied.

Given restrictions on the resources of local authorities, it is unlikely that the Council will agree to the transfer of new open spaces into the Council's ownership.

8 Biodiversity and Ecology

8.1 Context

The NPPF requires local planning authorities to minimise impacts on biodiversity and provide for net gains in biodiversity where possible. When determining planning applications local planning authorities should aim to conserve and enhance biodiversity by avoiding significant harm, and where harm cannot be avoided ensuring adequate mitigation or, as a last resort compensating for harm. Where this cannot be achieved development should be refused planning permission.

Within Castle Point there is one European Site, six SSSIs and 40 Local Wildlife Sites. There are also known to be population of protected species in Castle Point including Great Crested Newts, Badgers and Bats. It is not therefore uncommon, particularly in relation to Greenfield sites and vacant brownfield sites for ecological impacts to be a consideration during the planning application process.

Given this context, policies within the Natural Environment section of the New Local Plan seek for compensation to bring about net gains in biodiversity, where sites of nature conservation interest may be harmed as a result of development and on site management and mitigation are insufficient.

On site management and mitigation of the harmful effects of development on ecology normally require a management plan to be instigated over a long-term period. Meanwhile, compensation may occur off-site and again requires a management plan to ensure long-term protection and enhancement of ecology. Therefore, it is not unusual for Section 106 Agreements to be used to secure ecological and biodiversity benefits.

8.2 Approach to Section 106

8.2.1 Preparation of Management Plans

Normally, ecology management plans are submitted as part of the planning application process in order to demonstrate that the harm to ecology and biodiversity upon a development site can be effectively managed.

However, exceptionally, it may be necessary to seek the preparation of additional ecology management plans when granting planning consent e.g. where more detail is required regarding the management of a particular species or habitat, or where a plan is required to cover an extended period of time. In such instances, the requirement to prepare such a plan will be incorporated into the Section 106 Agreement. Development will not normally be permitted to commence until such time as the required management plan has been prepared and agreed by the Council.

8.2.2 Phasing and Delivery of Management Plans

Ecology management plans will normally comprise actions that need to occur before and during the development process, and then an ongoing programme of work extending beyond the timescales of development. Additionally, such plans may require off-site work such as the trans-location of species. Given the extended timescales and potential for off-site work it is normal for the Council to seek to include the delivery of ecology management plans within a Section 106 Agreement.

In order to ensure that the ecology management plan is delivered in a way that ensures harm to biodiversity is minimised, phasing requirements will be included within the Section 106 Agreement. Typical phasing requirements are likely to include:

- Development will not be permitted to commence until such time as actions that need to occur before development have been completed, and the mechanisms are in place to ensure that the impacts of construction on ecology are minimised.
- Development abutting a proposed area of ecological management cannot be occupied until that area has been established, and no more than 80% of the market housing may be occupied until all on-site ecological management areas are established.
- A mechanism for the management of ecological areas on-site must be agreed and put in place to ensure their ongoing protection and enhancement in perpetuity. This mechanism must be agreed before development can commence, and must be operational before more than 80% of the market housing can be occupied.

8.2.3 Phasing and Delivery of Off-site Compensation

Off-site compensation will normally require a Section 106 Agreement because it involves land not the subject of the initial planning application.

Off-site compensation must bring about an improvement in the ecological status of land equivalent to that which is being lost, or greater. DEFRA have developed a metric to calculate biodiversity losses and gains, and the Council will use this to ensure that compensation is sufficient. A link to the metric is provided below:

<https://www.gov.uk/government/publications/technical-paper-the-metric-for-the-biodiversity-offsetting-pilot-in-england>

Where precise compensations sites are not identified by the planning application, the Section 106 Agreement will use the DEFRA metric to identify the quantum of compensation required to be provided.

In order to ensure that the required compensation is delivered, ensuring no net loss in biodiversity, the following phasing requirements will normally be set out in the Section 106 Agreement:

- Development cannot commence until the necessary compensation land has been acquired by the developer, or else the developer has entered into a legal agreement with a landowner to manage the necessary compensation land for ecological purposes for a minimum period of 25 years.

- Development cannot commence until such time as an ecology management plan has been prepared for the compensation site/s, and agreed by the Council.
- No more than 80% of the market housing may be occupied until works to establish the compensation site/s are complete, and mechanisms to ensure the ongoing management of the compensation site for a minimum period of 25 years for ecology purposes have been put in place.

9 Landscaping and Public Realm Works

9.1 Context

Landscaping and public realm works may be necessary to make a development acceptable. For example, landscaping may be used to screen a development reducing its impact on the Green Belt, or perhaps reducing the impact of noise from a busy road on the proposed development. Landscaping may also be necessary to support ecology management plans, to manage flood risk, or simply to improve the amenity of an area or quality of the environment. Public realm works meanwhile may be necessary to ensure that a development is properly integrated into the wider urban environment.

Whilst initial on-site works may be effectively controlled by a planning condition, schemes which require off-site works and those which require the ongoing maintenance of landscaping and public realm are most effectively controlled through the use of a Section 106 Agreement.

Policies DES2 and DES3 of the New Local Plan set out requirements in terms of public realm enhancements and landscaping respectively. Policies in the Economy and Town Centre sections highlight the importance of delivering public realm enhancements, whilst policies in the Green Belt section and Natural Environment section also highlight the importance of landscape improvements.

9.2 Approach to Section 106

9.2.1 Landscape and Public Realm Plans

Normally, the Council would expect landscape and public realm plans to be submitted as part of the planning application in order to meet the requirements of policies DES2 and DES3 of the New Local Plan.

However, exceptionally, the Council may require a developer to prepare a landscape and/or public realm plan when granting planning consent. This is likely to occur as a result of the need to screen development to off-set an impact or where better integration with the surrounding area is considered necessary.

In such instances, where it is considered that off-site works or ongoing maintenance of the scheme is necessary, the requirement to prepare such a plan will be incorporated into the Section 106 Agreement. Development will not normally be permitted to commence until such time as the required plan has been prepared and agreed by the Council.

9.2.2 Phasing and Delivering Landscape and Public Realm Plans

In terms of phasing landscape and public realm plans, the Council will normally seek to apply within the Section 106 Agreement the general rule of works to be completed before 80% of market housing in a residential scheme may be occupied, or before a non residential development may be used for the first time.

Variations on the standard phasing may be sought however if the landscaping is essential for screening out harm. For example, landscaping intended to screen out noise impacts on/of the proposed development must be provided before any affected element of the development is occupied/used for the first time.

In addition to phasing, the Section 106 Agreement will also seek to control other aspects of the delivery of landscape and public realm works in order to ensure that they result in high quality outcomes. This may include:

- Age / height of planting; and
- Agreement arrangements for the choice of materials.

9.2.3 Ongoing Management of Landscape and Public Realm Works

Where appropriate and necessary, the Council will seek to secure through the Section 106 Agreement the ongoing management of landscape and public realm works. Such management is likely to be necessary in prominent locations, where ecology may be affected, or where landscaping has been used to screen harmful impacts.

Where it is considered that ongoing management is necessary and appropriate, the Council will:

- Require the preparation of a long-term management plan for the landscaping or public realm in perpetuity, to be agreed by the Council.
- Require mechanisms to be put in place and to be operational before 80% of the market housing is occupied, or before a non-residential development is used for the first time.

10 Drainage and Flood Risk Management

10.1 Context

10.1.1 Flood Risk

The NPPF sets out a risk based approach to the management of flood risk which requires development proposals in locations at risk of flooding to pass both a sequential and exceptions test in order to be permitted. Where development is permitted in areas at risk of flooding paragraph 103 of the NPPF is clear that the risk of flooding should not be increased elsewhere, and that any residual risk is safely managed. In particular the use of sustainable urban drainage systems should be prioritised.

Significant areas of the borough are at risk of tidal flooding. This includes the populated area of Canvey Island. The Castle Point Strategic Flood Risk Assessment 2010 identifies the extent of tidal flood risk in Castle Point.

Additionally, there are parts of Benfleet, Hadleigh and Thundersley where surface water flooding poses a risk to the populated areas. The South Essex Surface Water Management Plan identifies Critical Drainage Areas for surface water flooding and potential surface water flooding hotspots.

Policies CC2 and CC5 seek amongst other things for the risk of flooding to prospective users of a site, and neighbouring properties to be managed and reduced where development is permitted in areas at risk of flooding. Meanwhile, policy CC6 requires development to demonstrate a reduction in the risk of fluvial and surface water flooding at the site and in the surrounding area.

10.1.2 Drainage

The NPPF seeks the prevention of new and existing development from contributing to unacceptable levels of soil, air, water or noise pollution. It also seeks for minimisation of impacts on biodiversity (para 109).

The South Essex Watercycle Study identifies risks associated with the capacity of Southend Waste Water Treatment Works to accommodate additional growth in the Southend Waste Water Treatment Works catchment area, including parts of Hadleigh and Thundersley, without exceeding discharge consents. This means that new development may result in poor water quality in the Thames and Crouch estuaries, and potentially impact on biodiversity in these habitats.

In order to address the potential impact of new development in the Southend Waste Water Treatment Works catchment area on pollution levels and biodiversity, the New Local Plan sets out policy NE6: Southend Water Quality Zone, which requires development in the catchment to seek reductions in the volume of surface water entering the drainage system in order to include the capacity for foul water arising from new development. This policy may require the provision of on-site and off-site sustainable urban drainage systems.

10.2 Approach to Section 106

10.2.1 Managing the direct impacts of Development

Major drainage and flood risk management infrastructure projects will be delivered by the Anglian Water, or via CIL and other infrastructure funding. Section 106 Agreements will not be used to seek funding for these projects. However, it is expected that developers will meet the costs of the direct impacts of their development on local drainage and flood risk management through appropriate planning obligations. Planning obligations will be sought where the development requires:

- Off site management of surface water to ameliorate the impact of the development on the capacity of the Southend Waste Water Treatment Works.
- Off site management of surface water to ameliorate the impact of the development on the risk of flooding to other properties nearby having regard to critical drainage area boundaries.
- Off site works to manage any potential increase in the risk of flooding from tidal or fluvial sources arising from the development proposed to properties nearby.

The Section 106 Agreement will require the nature of the works to be undertaken to be agreed by the Council, and appropriate contracts to be in place to secure the delivery of off-site work before the development can commence. This will involve securing the agreement of the relevant landowner/s as well as appropriate agreements from the local drainage company and/or relevant regulatory bodies.

On-site infrastructure may also be provided to alleviate the risk of flooding, and reduce impacts on drainage infrastructure. This will normally form part of the detailed matters submitted and agreed through the planning application process and the delivery can therefore be secured through a planning condition. However, as explained within section 10.2.3 below, the ongoing maintenance of on-site infrastructure may need to be subject to a Section 106 Agreement.

10.2.2 Phasing of Drainage and Flood Risk Management Planning Obligations

In order to ensure delivery of drainage and flood risk management infrastructure in line with the delivery of development, any financial planning obligations must be paid when development commences in order that there is sufficient time to deliver the required infrastructure to accommodate the impacts of the development.

If the developer is undertaking the physical work themselves then, this work must be completed before any part of the development is occupied or used for the first time.

The Section 106 Agreement will set out the phasing requirements for planning obligations related to drainage and flood risk management infrastructure.

10.2.3 Maintenance of flood risk management and drainage infrastructure

Off-site infrastructure will need to be maintained in order to ensure it continues to operate effectively.

Additionally, some developments will incorporate on-site flood risk management and drainage infrastructure which will require maintenance beyond the normal timeframe of development.

The developer may be able to get this infrastructure adopted by the local drainage company if it meets their specifications. Where this cannot be achieved, the developer will need to put in place mechanisms to ensure the ongoing maintenance and effective operation of the infrastructure in perpetuity.

Due to the time limited nature of planning conditions, it is considered appropriate for a clause within a Section 106 Agreement to be used to secure the ongoing maintenance of flood risk management and drainage infrastructure for both off- site and on-site provision. Normally the Section 106 Agreement will require either:

- a. The developer to enter into an agreement with the local drainage company to adopt the flood risk management or drainage infrastructure before any part of the development is occupied/used for the first time; or
- b. The developer to prepare a management plan for the flood risk management or drainage infrastructure, to be agreed by the Council; and to put in place the mechanisms to deliver ongoing management of the infrastructure before any part of the development is occupied/used for the first time.

Due to the unpredictable nature of flood risk and drainage issues which mean an incident of flooding could occur at any time, later implementation of such maintenance is not considered acceptable.

11 Public Art

11.1 Context

Section 7 of the NPPF requires good design to be employed in the delivery of new development in order to achieve better sustainability and to contribute positively to making places better for people. Included within this requirement is the need to establish a strong sense of place and the need to respond to local character and history (para 58).

Public art plays an important role in creating a sense of place by providing landmark features in the built environment. Additionally, public art can ensure that local character and history is reflected in the built environment as it evolves through the provision of new development.

As a result, policy DES7 requires the provision of public art within development proposals when certain criteria are met. These criteria are:

- Development that comprises 25 or more dwellings;
- 1,000 sqm or more floorspace;
- Has a significant impact on the public realm; or
- Has a high degree of public access.

Guidance on the provision of public art can be found in the Council's Residential Design Guidance.

11.2 Approach to Section 106

11.2.1 The location and design of public art

Normally, the location and design of public art provision within a development will be agreed as part of a full planning application, and the provision of the public art will be secured through the use of a planning condition.

However, where an outline application is made, or where the provision of public art is required to make a full application for development acceptable, a Section 106 Agreement may be used. The Section 106 Agreement in such instances would include:

1. A requirement to employ an artist local to the south Essex area in the development and production of the public art;
2. A requirement for community engagement to be undertaken on any public art proposals; and
3. A requirement for the Council to agree the final location and design of the public art provision.

Within a residential development, no development may commence until the location of public art provision has been agreed, and no properties may be occupied until the design of the public art has been agreed.

Within non-residential development, no development may commence until the location and design of the public art provision has been agreed.

The differences for residential and non-residential development reflect the different build rates that apply to such forms of development, and the need for public art to be designed to integrate with and enhance the development.

11.2.2 The phasing of public art provision

The normal phasing requirements apply to public art provision i.e. public art must be in place before more than 80% of any residential development may be occupied, or before a non-residential development may be used for the first time.

Where a development is phased, no more than 80% of any residential development within that phase may be occupied or any non-residential development used for the first time before the public art related to that phase of development is delivered.

11.2.3 The maintenance of public art provision

Where public art is provided in the private realm, the landowner will be responsible for the ongoing maintenance of the public art, and the Section 106 Agreement will require the landowner to maintain it to a high standard in perpetuity.

Where public art is provided within a part of the development site that will eventually form part of the public realm i.e. within a public open space, the developer will be required to include the maintenance of the public art to a high standard in perpetuity within the maintenance plan for the public open space.

Where public art is provided off-site within the public realm, the developer will be required to negotiate maintenance costs with the Council's street cleansing team. Maintenance costs in respect of public art will be payable for a period of at least 10 years.

The arrangements for maintenance (including any payments) must be in place before 80% of the development is occupied, or for non-residential uses, before the development is used for the first time.

12 CCTV

12.1 Context

The NPPF seeks for planning decision to aim to achieve, amongst other things, places which promote safe and accessible environments where crime and disorder, and the fear of crime do not undermine quality of life or community cohesion (para 69).

Community Safety is a priority for the Council. Essex Police have indicated to the Council that measures to prevent crime and anti-social behaviour from occurring in the first place are the best for creating a sense of safety within the community. Improved surveillance is a crime prevention measure supported by Essex Police.

12.2 Approach to Section 106

12.2.1 The Requirement for CCTV Provision

CCTV provision will not be sought in relation to every application for development. CCTV may be sought in the following instances:

- Major applications for development where there is the potential for crime and/or anti social behaviour in an area to increase; and
- Applications for development which are likely to increase the occurrence of crime and/or anti-social behaviour in an area including, but not limited to pubs, night clubs and amusement arcades.

Where a development meets one of these criteria, the Council will seek advice from the Police and the Council's Community Safety Officer as to the appropriateness of using CCTV to achieve community safety objectives in the area in which the site is located. A Section 106 Agreement will be sought where the Council is advised that CCTV would be an appropriate means of addressing increased risks to community safety arising from the proposed development. The Section 106 Agreement will specify the requirement for CCTV, and also specific the number of cameras needed to provide effective coverage of the development proposed.

12.2.2 The Approach to CCTV Provision

The applicant can pay the Council to install CCTV on the development site as part of its local CCTV network. The cost of this is £31,664 per camera, comprising £11,412 for the initial installation, and £20,252 for ongoing maintenance of the equipment and monitoring of the outputs for a period of 10 years. This payment will be secured through the use of a Section 106 Agreement.

Alternatively, the developer may install his own external CCTV equipment. This may occur in relation to requirements imposed by a Registered Provider for the affordable housing element of a scheme. In such instances, the external CCTV equipment should be of a

specification that provides images capable of use in a Police investigation. The Council will seek through the Section 106 Agreement for these cameras to be linked to the local CCTV network.

Where a developer makes his own external CCTV provision, the Section 106 Agreement will also seek to ensure that maintenance of the cameras is secured in perpetuity.

12.2.3 Phasing of CCTV Planning Obligations

Community safety is important from the point at which a development is occupied or used for the first time. Therefore, the phasing requirements for CCTV planning obligations will be as follows:

- a. Financial contributions towards CCTV will be required before any part of the development is occupied, or used for the first time. For phased developments, financial contributions for CCTV can be phased with no part of that phase of development being occupied or used for the first time before the payment for that phase is made.
- b. Where the developer is providing his own CCTV, no part of the development may be occupied or used for the first time until the CCTV equipment has been linked up to the local CCTV network, and a regime has been established to ensure the maintenance of the CCTV in perpetuity.

13 Littering and Recycling Bins

13.1 Context

The NPPF seeks planning policies and decisions which aim to achieve places with, amongst other things high quality public space (para 69). In particular, planning policies and decisions should ensure that shops, facilities and services are able to develop and modernise in a way that is sustainable (para 70).

Additionally, section 11 of the NPPF seeks to conserve and enhance the natural environment by amongst other things, minimising impacts on biodiversity and preventing adverse effects resulting from the pollution of soil, air, water or noise.

Littering can both undermine the quality of public spaces, and also pose a risk to biodiversity, and can cause pollution particularly where it is allowed to enter water courses. As a consequence, policy NE10 includes within it the requirement to consider the impacts of littering when considering applications for development.

13.2 Approach to Section 106

The provision of certain types of development can have a disproportionate impact on the cleanliness of the public realm. This can impact on the quality of both the urban and natural environment, and can have a significant influence on the attractiveness of places.

Types of development that normally generate issues for cleanliness in the public realm are takeaways, fast-food restaurants and mobile catering units.

Where a development that is likely to generate issues for cleanliness in the public realm is located over 200m from the nearest litter and recycling bins, the Council may seek the development to pay for the provision of new litter and recycling bins in the vicinity of their development. Additionally, the cost of emptying and maintaining that bin for a period of 10 years will also be payable. The cost of this is £1,550, and will be secured through a Section 106 Agreement. The payment for the litter and recycling bins will be required before the development can be used for the first time.

14 Employment

14.1 Context

14.1.1 Skills

The NPPF expects local planning authorities to proactively encourage sustainable economic growth and plan positively for the expansion of the knowledge based economy.

The Employment and Retail Needs Assessment indicates that the knowledge based economy is under-represented in Castle Point. Castle Point has a low skills base amongst its residents, and those with skills are often attracted to higher paying jobs in London. As a consequence, the pool of labour remaining to employers in Castle Point is typically lower skilled. This limits the economic productivity of the local economy meaning that local wages are low. This is not a sustainable position and leads to out-commuting to other parts of south Essex, creating congestion and causing harm to the environment.

Improvements have been made to the education facilities in Castle Point to promote higher skills levels. Changes need to occur in the local employment market if these skills are to benefit local businesses. The Employment and Retail Needs Assessment recommends the delivery of office space and more knowledge based activities in order to grow the local economy sustainably.

In response to this recommendation, policy E8 requires proposals for new employment developments to seek to deliver more jobs requiring at least NVQ level 3 qualifications. Where the end user of the proposal is not defined there is a specific requirement for the developer to enter into a section 106 Agreement to seek higher skilled job providers as occupiers of the site.

14.1.2 Construction Industry

The NPPF expects local planning authorities to support existing business sectors.

The Employment and Retail Needs Assessment indicates that the construction sector in Castle Point employs 20% more people than the average across the East of England.

Policy E11 of the Local Plan therefore encourages developers to support the local construction industry by making use of the local supply chain and local labour during the delivery of development proposals in order to support this sector of the local economy and also to develop the capacity and capability of local businesses through involvement in larger scale projects.

14.2 Approach to Section 106

14.2.1 Approach to seeking Higher Skilled Employment

For proposals for employment development (B1, B2 and B8), where there is no defined end-user of the site, the Council will encourage the developer to enter into a Section 106 Agreement that requires the developer to seek occupiers for the site that will provide a significant proportion (at least 50%) of jobs requiring higher skill levels (NVQ level 3 or higher).

It is recognised that commercial space can be difficult to let. It is common for commercial properties to sit vacant for up to one year following completion. Therefore, any requirement set out in a Section 106 Agreement will be time limited. In order to prevent extended vacancy periods, the requirement for the developer to specifically seek higher skilled employers will normally only remain in place until 3 months following the completion date of each commercial unit. At this time, the requirement will lapse, provided that the developer can demonstrate to the Council that they have made substantive efforts to attract higher skilled employers to the development, and no reasonable offers have been made by a higher skilled employer.

14.2.2 Approach to developing the Local Construction Industry

Developers submitting proposals for larger scale developments in Castle Point (50 units + residential or 1,000m² + non-residential) will be encouraged to enter into a Section 106 Agreement that requires one or more of the following:

- a. The provision of apprenticeships for local people on the development;
- b. The opportunity for local construction businesses to tender for elements of work on the development; and/or
- c. The provision of local training opportunities for those involved in the construction industry to promote the development of the supply chain and/or construction skills.

It is likely that these requirements will have the most effect when occurring early on in the construction process. Therefore, any requirement in relation to this matter will need to be phased early in the development process in order to have the most impact, although phasing will vary depending on the agreed requirements and scale and phasing of the development itself.

The Council will be able to discharge the requirements of the Section 106 Agreement through the provision of evidence that demonstrates that the agreed requirements have been met.

15 How to make Comments

You can make representations through the Council's online consultation portal at the following web address <http://castlepoint.limehouse.co.uk/portal/> or in writing to the postal/email address below.

Planning Policy
Castle Point Borough Council
Kiln Road
Benfleet
Essex
SS7 1TF

Email: planningpolicy@castlepoint.gov.uk

The closing date for representations is **23:59 on Friday 21st March 2014.**