

EXETER CITY COUNCIL

PLANNING MEMBER WORKING GROUP 1 APRIL 2014

EXECUTIVE 1 APRIL 2014

REVISED AFFORDABLE HOUSING AND PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENTS

1 PURPOSE OF REPORT

- 1.1 To seek Members' approval of the revised Affordable Housing SPD and Planning Obligations SPD at (Appendices A and C) for adoption. Main revisions to the existing, adopted documents respond to planning system changes and introduction of Exeter's Community Infrastructure Levy. Both documents were approved by Executive for public consultation in 2013.

2 BACKGROUND

- 2.1 The Council's current Planning Obligations Supplementary Planning Document (SPD) was adopted in November 2009. The SPD offers guidance to applicants for planning permission, and other interested parties, on the negotiation and agreement of Section 106 planning obligations.
- 2.2 The existing Affordable Housing SPD was adopted in February 2013 and provides guidance on how Policy CP7 of the Exeter Core Strategy will be applied. Whilst the Core Strategy seeks 35% affordable housing on development sites of 3 or more dwellings, the adopted document supported an interim 25% on sites of 15 or more for a time limited period of 3 years in response to the recent recession.
- 2.3 The Planning Obligations SPD has been amended to reflect a CIL Regulation restriction that funding for one infrastructure project may not come from five or more section 106 planning obligations. It also reflects National Planning Policy Framework guidance on the importance of considering the financial viability of development when securing section 106 planning obligations.
- 2.4 The Affordable Housing SPD has been amended principally in response to the comment of the CIL Examiner that 'policies in SPD must not conflict with the adopted development plan' and 'there is nothing in the Core Strategy to say that 25% affordable housing would be generally acceptable'. The SPD has been redrafted to reflect the Core Strategy and provide for 35% affordable housing on development sites of 3 or more dwellings. In accordance with a September 2013 Executive resolution, the consultation document was also adjusted to seek a 'representative mix' of affordable housing, whereby the types and sizes of affordable units should be proportionate to the market dwellings being delivered on a site. This superseded an approach that precisely specified the proportion of different sized affordable units.

3 PUBLIC CONSULTATION

- 3.1 Widespread public consultation was carried out for both documents in the four weeks to 14 February 2014. 11 responses were received in response to the Affordable Housing SPD and 5 to the Planning Obligations document. A full summary of comments and proposed responses is set out at Appendices B and D.

Affordable Housing SPD Responses

- 3.2 In relation to the Affordable Housing SPD, main comments were that:
- Introduction of the 35% requirement on sites of 3 dwellings or more is abrupt and could stifle development;
 - The SPD is overly prescriptive and should be more flexible in order to respond to site specific circumstances (e.g. regeneration or conversion of listed buildings).
- 3.3 With regard to the point on flexibility, it is considered that the SPD (which is a guide) makes it clear that the Council will respond to genuine 'exceptional circumstances', which might potentially include those associated with building conversions.
- 3.4 Objections to re-instating the Core Strategy policy requirement for 35% affordable housing on sites of 3 or more dwellings are more significant and more frequently made. However, this is the requirement of the Council's development plan and has now been considered at two public examinations (Core Strategy and CIL). In both cases it has been independently concluded that the policy requirement (which is subject to site-specific considerations of viability anyway) is ordinarily deliverable.
- 3.5 Regulations specifically guide against departure from the development plan through SPD, and the CIL Examiner has determined that accepting 25% provision through the February 2013 SPD would not accord with these regulations. As a result, Executive have already resolved to disregard the '25% on sites of 15 or more' provisions contained within the February 2013 document. Since then, several housing applicants (including IKEA, Devon County Council and Devon & Cornwall Police Authority) have since committed to 35% affordable housing.
- 3.6 On that basis, it is recommended that the Council adopt the revised draft Affordable Housing SPD at Appendix A, including more minor revisions as set out in the schedule at Appendix B. In addition, it is proposed that Appendix 3 of the SPD clarify that the build costs at Appendix 3 of the SPD should be indexed from February 2013 (the date that the current Affordable Housing SPD was adopted).

Planning Obligations SPD Responses

- 3.7 In response to the Planning Obligations SPD, the main issues raised were:
- The SPD should not be overly prescriptive as to specific requirements of Section 106 agreements;
 - Section 106 agreements should not incorporate requirements for developers to fund the Council's monitoring and compliance expenses; and
 - The SPD should specifically set out the importance of considering infrastructure costs in the negotiation of land purchase prices.
- 3.8 It is considered that each of these points is reasonable and that the draft can incorporate amendments in response to each. These changes and more modest/typographical alterations have been incorporated into the proposed adoption version of the SPD as set out in the schedule at Appendix D.

4 LEGAL ASPECTS

- 4.1 Planning application decisions and future Section 106 legal agreements should accord with the revised SPDs.

5 CONTRIBUTION TOWARDS CORPORATE PLAN

- 5.1 Preparing the Affordable Housing SPD, including the requirement for 35% affordable housing is a 'key action' of the Corporate Plan.

6 IMPACT ON EQUALITY, HEALTH AND WELLBEING AND THE ENVIRONMENT

6.1 Equalities Impact and Sustainability Appraisal Screening assessments have already been undertaken. In the case of both SPD's, impacts are considered to be positive. Both documents provide guidance on the implementation of planning policies, which have been adopted following considerable consultation, examination and sustainability appraisal.

7 RISKS

7.1 The revised Planning Obligations SPD updates the 2009 version and is not considered likely to present new risks. The Affordable Housing SPD formalises the Council's 35% affordable housing requirement on sites of 3 or more. There is a risk that this requirement could undermine the overall quantum of housing delivery but:

- the decision to do so was already made by Executive in September 2013;
- the Council's affordable housing policy incorporates flexibilities to account for exceptional circumstances; and
- new development proposals have, to date, continued to come forward with a commitment to 35% affordable housing

8 ADVICE SOUGHT / RECOMMENDATION

8.1 Planning Member Working Group is asked to note and support this report and adoption of the revised Planning Obligations and Affordable Housing Supplementary Planning Documents at Appendices A and C.

8.2 Executive is asked to approve the revised Planning Obligations and Affordable Housing Supplementary Planning Documents at Appendices A and C for adoption, with authority delegated to the Assistant Director City Development to make any minor modifications as may be necessary.

RICHARD SHORT
ASSISTANT DIRECTOR CITY DEVELOPMENT

Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling this report: None

Affordable Housing Supplementary Planning Document

April 2014



Exeter City Council

www.exeter.gov.uk

Exeter Local Development Framework

1.0 INTRODUCTION

Purpose of the Supplementary Planning Document

- 1.1 It is important that everyone living in Exeter has the opportunity of a decent and affordable home. One of the nine themes of the Sustainable Community Strategy¹ is ‘a *City with homes for everyone*’, reflecting the Council’s commitment to helping local people who cannot afford to buy or rent a home on the open market in Exeter.
- 1.2 Where there is an assessed need for affordable housing, the Government allows local authorities to deliver affordable homes by requiring developers to provide them within new housing schemes. Policy CP7 of the *Core Strategy*² sets out the Council’s approach towards achieving this.
- 1.3 This SPD provides more detailed guidance on how Policy CP7 will be implemented, in order to deliver affordable homes and to help promote mixed and sustainable communities. The SPD forms part of the Exeter Local Development Framework and is a material consideration in the determination of planning applications. Its contents will need to be taken into consideration from the earliest stages of the development process, including in the purchase of sites and the negotiation and preparation of residential schemes.
- 1.4.1 Applicants for planning permission are expected to consider the overall cost of development, including affordable housing and all other requirements of the development plan, prior to negotiating the purchase of land or an option. The Council wishes to avoid situations where developers purchase land without taking the requirement to provide affordable housing into account. Developers should not expect that the requirement will be waived where this has not been accounted for in the land purchase price.

The Policy Context

- 1.5 Government policy on planning for affordable housing is set out in paragraphs 47 and 50 of the *National Planning Policy Framework (NPPF)*³. Annex 2 of the *NPPF* defines affordable housing as comprising social rented, affordable rented and intermediate housing (see Appendix 1 of this SPD for more detail). For the purposes of planning policy, the *Core Strategy* and this SPD use the *NPPF*’s definition of affordable housing.
- 1.6 Policy CP7 of the *Core Strategy* reflects the provisions of the *NPPF* at a local level and is set out below:

Policy CP7: On sites capable of providing 3 or more additional dwellings (irrespective of the number of dwellings proposed) 35% of the total housing provision should be made available as affordable housing for households whose housing needs are not met by the market. At least 70% of the affordable housing should be provided as social rented housing. The overall percentage of affordable housing and the tenure split will be subject to considerations of viability and feasibility. Where it is not possible for viability reasons to provide the full requirement of social rented housing, affordable rent provision would be considered, let as far as possible at social rented levels. The remaining balance of the affordable housing should be delivered as intermediate affordable housing.

¹ *Exeter Vision*, Exeter Vision Partnership. www.exeter.gov.uk/visionstrategy

² *Core Strategy (adopted February 2012)*, Exeter City Council (2012). www.exeter.gov.uk/corestrategy

³ *National Planning Policy Framework (2012)*, Department for Communities and Local Government. <http://www.communities.gov.uk/publications/planningandbuilding/nppf>

2.0 AFFORDABLE HOUSING NEED IN EXETER

Strategic Housing Market Assessment

- 2.1 In 2007, Exeter City Council and neighbouring authorities⁴ commissioned a *Strategic Housing Market Assessment (SHMA)*⁵ to assess the need for both market and affordable housing across the Exeter and Torbay Strategic Housing Market Area. An update to the *SHMA* was produced in 2010, specifically for Exeter (*2010 SHMA*)⁶. A new SHMA is currently in preparation.
- 2.2 To meet housing needs in Exeter between 2010 and 2015, the *2010 SHMA* identifies a requirement for 5,294 additional dwellings to be provided, of which 3,165 dwellings (nearly 60%) should be affordable. This demonstrates a significant need for affordable housing in the City. Of the 3,165 affordable dwellings, the *2010 SHMA* concludes that around 70% need to be provided as social rented housing.

Housing Register

- 2.3 The Housing Register for Exeter provides more detail about the level of affordable housing need experienced by households in Exeter. The Housing Register currently shows a high overall requirement for small affordable dwellings. However, the Register also shows that larger households tend to have a more acute degree of affordable housing need.

⁴ Devon County Council, East Devon District Council, Mid Devon District Council, Teignbridge District Council, Torbay Council and Dartmoor National Park Authority.

⁵ *Exeter & Torbay Strategic Housing Market Assessment (2007)*, ORS.

⁶ *Exeter Strategic Housing Market Assessment (2010)*, ORS.

3.0 AFFORDABLE HOUSING PLANNING POLICY

3.1 The following section explains in more detail how Policy CP7 will be applied. Appendix 2 summarises the process as an ordered series of questions that the planning officer and applicant will need to address when considering/preparing a proposed scheme of development.

Applying the policy

3.2 The requirement to provide affordable housing will apply to all proposals for residential development, including:

- new build, conversions and mixed use schemes;
- phased developments (whether the result of one or more than one planning application) where the threshold of 3 dwellings will be exceeded by cumulative totals;
- developments by Registered Providers (RPs);
- schemes providing housing for people receiving care or support, including supported housing developments;
- schemes involving non-self contained dwellings and the sharing of amenities, including houses in multiple occupation.

3.3 Proposals for, and limited to, purpose built student accommodation will not be subject to affordable housing requirements.

Amount of affordable housing

3.4 Policy CP7 sets out the Council's intention to negotiate 35% affordable housing on all sites capable of providing 3 or more new dwellings (net), subject to considerations of viability and feasibility.

3.5 In some cases, the percentage of affordable housing required will not equate to a whole number of dwellings⁷. In order to make up the balance, the Council will require a financial contribution to provide 'part' of an affordable home, based on the formula provided in Table 1 of Appendix 3. A worked example is provided in the same Appendix (Worked Example 1).

3.6 Where the Council considers that the number of new dwellings proposed is inappropriate for the site area or the building to be converted, a revised scheme will be negotiated at the more appropriate density. This may alter the affordable housing requirement under Policy CP7.

Size Mix

3.7 The Council will require the mix of new affordable housing on each development site, to be representative of the mix of market dwelling types and sizes (including number of bedrooms) being provided. Exeter Core Strategy Policy CP5 sets out the Council's approach to housing mix.

3.8 Appendix 3 includes a worked example showing how the mix would apply to a scheme incorporating 25 affordable homes (Worked Example 1)

⁷ For example, 35% of a 90 dwelling scheme equates to 31.5 affordable homes. In addition to 31 affordable homes, the Council would seek a financial contribution equivalent to half (0.5) of an affordable home.

Tenure Mix

- 3.9 As set out in paragraph 2.2 above, the *2010 SHMA* shows that around 70% of households in need of affordable homes can only afford social rented housing provided by RPs or the Council. On each qualifying site the Council will therefore expect at least 70% of the the 35% affordable housing requirement to be social rented housing. The remaining balance of the affordable housing should be provided as intermediate affordable housing.
- 3.10 Worked Example 1 in Appendix 3 shows how the tenure mix would be applied to a scheme incorporating 25 affordable homes.
- 3.11 If the applicant can demonstrate that this balance is not viable, the Council will require 35% affordable housing with an element affordable rent as part of the mix. The affordable rented units should be let as near as possible, to social rent levels.

Supported and Wheelchair Accessible Housing

- 3.12 The supporting text to Policy CP7 states that the affordable housing mix should include specialist housing, where there is an evidenced need. Where an evidenced need exists, the Council may therefore seek an element of affordable specialist / supported housing in its negotiations.
- 3.13 The Council's Housing Register demonstrates that there is also a clear need in the City for affordable housing that is wheelchair accessible. To help meet this need, on qualifying sites, 5% of the affordable housing should be wheelchair accessible.
- 3.14 The wheelchair accessible housing will be those sizes and types of dwellings that most effectively meet the greatest need (at the time of reserved matters or full application) of those on the Council's Housing Register at that time. Wheelchair accessible housing is to be built in accordance with the Council's Wheelchair Accessible Housing Design Standards 2011⁸ or any amended version in force at the time of reserved matters of full application submission.

Distribution and Design

- 3.15 Affordable housing should conform to the design standards normally required by any funding bodies (e.g. the Homes and Communities Agency (HCA)) in order to qualify for grant. These standards may be higher than those applicable to market housing, reflecting the needs of the occupants and the implications of the difference in tenure.
- 3.16 Innovative design of affordable homes and their environment will be encouraged, within the context of overall planning policies (and guidance from the Exeter Residential Design Guide SPD). To promote inclusive communities, it should not be possible to ascertain the difference between market and affordable housing in any one scheme - the affordable housing must integrate seamlessly into the layout of the development. To help create more varied patterns of house types and ownership in the City, the affordable housing should be distributed amongst the market housing in clusters of no more than 10 units and spread across the site.

Timing of provision

- 3.17 The timing of the delivery of affordable housing is a key issue in securing mixed and balanced communities. This is particularly important on larger schemes, where poor timing can result in isolated pockets of development and cause problems with infrastructure

⁸ *Exeter Wheelchair Accessible Housing Design Standards 2011*, (2011), Exeter City Council.
www.exeter.gov.uk/index.aspx?articleid=12340

delivery, leading in the short term to a poor living environment for new residents. On all development schemes, the affordable housing must be completed proportionately with the market housing.

Commuted provision

- 3.18 Where affordable housing is required under Policy CP7, the Council will expect it to be provided on the development site.
- 3.19 Commuted provision will only be agreed in exceptional circumstances and at the Council's discretion, in the following order of priority:

Off-site provision

- 3.20 The first priority will be to seek provision on an alternative site in Exeter. The 35% affordable housing target will be applied across both sites to ensure a pro-rata contribution. However, it is unlikely that the Council will accept a proposal that results in an inappropriate mix of tenures or excessive dominance of affordable housing within a particular location.
- 3.21 The Council must also be satisfied that there is a suitable and available alternative site to accommodate the affordable housing. The site should be identified by the applicant during pre-application discussions and either:
- already have planning permission for housing, in which case the Council will need to be satisfied that the site can, in principle, accommodate the off-site provision; or
 - be acceptable to the Council for housing in principle. In this case, the site will need to be the subject of a concurrent planning application. The two planning permissions will be tied together by means of a Section 106 Agreement, to ensure delivery of the affordable housing.
- 3.22 Worked Example 2 in Appendix 3 shows how the Council would calculate the level of off-site provision arising from a scheme of 50 market dwellings.

Off-site purchase

- 3.23 If the applicant is unable to provide the affordable housing off-site, as a second priority they may buy dwellings of an equivalent number and size on the open market for use as affordable housing. The dwellings should be in a location agreed by the Council at the pre-application stage and have the potential to meet all required standards. The applicant will be required to sell each dwelling to the Council or one of the Council preferred RPs for £1.

Financial contribution

- 3.24 Finally, the Council may agree to the provision of affordable housing by way of a financial contribution, calculated using the formula set out in Table 1 of Appendix 3. The 35% financial contribution will be calculated on the basis that the proposed dwellings on the application site represent 65% of the total number of dwellings to be provided. The contribution will be spent on the provision of affordable housing in the City.
- 3.25 Worked Example 3 of Appendix 3 shows how the Council would calculate the financial contribution arising from a scheme of 40 market dwellings.

Section 106 Agreement

- 3.26 On qualifying sites, a draft Section 106 Agreement to secure the affordable housing will need to be addressed as part of the process of determining the planning application. The application will be refused if the Section 106 Agreement is not signed within a certain period of time (usually within 3 to 6 months of the application being considered by Planning Committee).
- 3.27 The Council will be pleased to supply a draft agreement to the applicant once the relevant details have been provisionally agreed. A specimen agreement and sample clauses are displayed on the Council website at www.exeter.gov.uk/planningobligations, but note that these are liable to change from time to time. Further details of the matters likely to be covered by the Agreement are also contained in Appendix 5.

4.0 MANAGEMENT AND OCCUPANCY

Management

- 4.1 The Council's preference is for affordable housing to be transferred to either the Council's Housing Department or an RP, once it has been built. It will then be managed as affordable housing in accordance with HCA guidelines. A list of the Council's preferred RPs is provided at Appendix 6.
- 4.2 In certain circumstances, developers may choose to retain ownership of the affordable housing and manage it directly. In such cases, the Council will ensure that appropriate management arrangements are in place.

Control of occupancy

- 4.3 The Council will ensure that occupancy of affordable housing provided under Policy CP7 is restricted to eligible households in housing need. The eligibility of any household will be based firstly on its ability to afford suitable market housing and secondly on its level of housing need relative to other households. To assess this and to fulfil its statutory obligations, the Council jointly operates the Devon Home Choice (DHC) choice-based letting system, which not only allows for the registration of need and waiting time, but also gives applicants greater opportunity to choose which home they live in when they reach the front of the waiting list.
- 4.4 All RPs in Exeter contribute to the costs of running Devon Home Choice. If an applicant wishes to let or sell affordable homes without involving an RP, the Council will ensure that they are available to successive occupiers nominated by the Council through DHC, and in these circumstances the applicant will be required to bear a fair share of the running costs of the DHC scheme.

Affordability

- 4.5 Before granting planning permission, the Council will need to be satisfied that rental levels, service charges and shared ownership costs will be affordable both initially and in the long term to occupants.
- 4.6 For social rented housing, rents should be in line with the HCA calculation for 'target rents', as set out in the HCA's latest Capital Funding Guide⁹. Increases should be limited annually according to the HCA's requirements on annual rent and service charge increases.
- 4.7 Affordable rented housing is not subject to the national rent regime, but requires a rent no greater than 80% of the local market rent. This figure will be inclusive of service charges and based on the Royal Institute of Chartered Surveyors' approved valuation methods. A guidance note can be found on the Homes and Communities Agency website¹⁰.
- 4.8 Outgoings on intermediate low cost home ownership should in no case exceed the average market rent for comparable properties. The mortgage element of the outgoings should be assessed on the basis that there is a 30 year repayment mortgage at standard variable rates (i.e. ignoring any introductory discounts). The initial share of the equity in shared equity dwellings will not exceed an average of 40% of the Open Market Value of the affordable dwelling, with the opportunity (but no obligation) for the purchaser to acquire

⁹ E.g. *Affordable Housing capital funding guide 2013-14 (2013)*, Homes and Communities Agency.
http://www.homesandcommunities.co.uk/cfg?page_id=&page=1

¹⁰ www.homesandcommunities.co.uk/ourwork/affordable-rent

additional equity shares. Any rents payable on low cost home ownership homes will be dependent upon the viability of an individual site, but should not exceed 2.75% of the retained equity. This is to ensure that as much income as possible is available to occupants to pay off mortgage costs.

- 4.9 For intermediate rented housing, rents should be set at 80% of local market rents and not exceeding Local Housing Allowance Rates. In every case, rents must fall within any relevant ceiling set within the Housing Benefit system (e.g. Local Reference Rents or Local Housing Allowance).
- 4.10 Schemes should be designed to ensure that service charges applicable to any affordable housing are kept as low as reasonably possible. Failure to take affordability issues into account within the scheme design could be grounds for refusing planning permission. In any event, service charges should not exceed the maximum amount an eligible household would be entitled to claim under the housing benefit regulations in force at the time.

Perpetuity

- 4.11 In accordance with the *NPPF* definition of affordable housing, the Council will ensure that affordable homes delivered under Policy CP7 either remain available at affordable rents in perpetuity, or their value is recycled to provide other forms of affordable housing to meet an identified local need.
- 4.12 All money received as a result of occupants purchasing either their property (e.g. through the 'right to acquire') or a further equity share (e.g. through 'staircasing') will, subject to any statutory restrictions, be used to provide affordable housing within the City. If dwellings that have benefitted from City Council housing grant are purchased, the grant should be paid back to the Council's Housing Department. Recovered HCA grant must either be paid back to the Agency or recycled to provide affordable housing in the same market area, in accordance with the HCA's guidance on recycled capital grant funding¹¹.

¹¹ *Affordable Housing Capital Funding Guide 2013-14 (2013)*, Homes and Communities Agency. http://www.homesandcommunities.co.uk/cfg?page_id=&page=1

APPENDIX 1

(Para refs. 1.5, 3.9-3.11, 4.6-4.9)

WHAT IS AFFORDABLE HOUSING?

The following text is extracted from Annex 2 of the *NPPF*.

Affordable housing: *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 provisions 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 not 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.

APPENDIX 2

Affordable Housing Policy made simple: 10 Questions to ask

1. Is the policy applicable to this proposal? (paras 3,2-3.3)
2. How much affordable housing is required? (paras 3.4-3.6)
 - a. What happens when the affordable housing requirement does not equate to a whole unit? (para. 3.7, Appendix 3)
3. What mix of affordable housing is required? (paras 3.7-3.8)
4. What is the required tenure? (paras 3.9-3.11)
5. Is there a requirement for any specialist affordable housing (paras 3.12-3.14)
6. What are the design requirements for affordable housing? (paras 3.15 – 3.16)
7. When is the affordable housing required to be developed? (para 3.17)
8. Is there an exceptional reason to justify commuted provision of the affordable housing? (para. 3.19). If the answer to this question is yes then:
 - a. Firstly, can the affordable housing be provided on an alternative site? (paras 3.20– 3.22);
 - b. Secondly, can the affordable housing be provided via off-site purchase? (para 3.23)
 - c. Finally, can the affordable housing be provided via a financial contribution? (para 3.27-3.28, Appendix 3)
9. Who will manage the affordable housing? (para. 4.1–4.4, Appendix 5)
10. Will the affordable homes 'be affordable'? (paras 4.5-4.10)
 - a. Will services charges be affordable? (para 4.10)

In addition to the above questions which the Planning officer will need to clarify, the developer may want to know the answer to the following questions.

11. What is affordable housing? (Appendix 1)
12. What is the Council's policy basis for requiring affordable housing? (para 1.5-1.6)
13. What is a wheelchair accessible unit? (paras 3.12-3.14 and ref. 8)
14. What is the legal mechanism for securing the affordable housing? (para 3.26-3.27, Appendix 5)
15. Who will occupy the affordable housing? (para 4.3 – 4.4)
16. What rent can I charge? (paras 4.5-4.10)
17. Do I need to provide the affordable housing in perpetuity? (paras 4.11-4.12)

APPENDIX 3

(Para refs 3.7, 3.10, 3.13.12, 3.25, 3.27-3.28)

CALCULATING FINANCIAL CONTRIBUTIONS

Financial contributions sought by the Council in lieu of the provision of affordable housing will be calculated based on the financial contribution per dwelling figures contained in column D of the table below. The table below shows how the sum has been calculated.

Table 1	A	B	C	D
	Average Size m2	Typical Build Costs m2	Average Plot Value	Financial Contribution per dwelling
1 Bed Flat	55	£1,247	£22,217	£90,802
2 Bed Flat	72	£1,247	£22,217	£112,001
2 Bed House	83	£1,247	£22,217	£125,718
3 Bed House	91	£1,247	£22,217	£135,694
4 Bed House	103	£1,247	£22,217	£150,658
5 Bed House	114	£1,247	£22,217	£164,375

The Breakdown

Average Size – These are average sizes (+10% for communal space for flats) taken from the *Residential Design Guide SPD*, page 60.

Typical Build Costs – Based on the analysis of a number of schemes taken from BCIS online and co-ordinated by a local Chartered Quantity Surveyors practice. The schemes are typical estate type housing schemes in similar city locations to Exeter. The figure of £1,247 per m2 is an average of the schemes investigated and includes building works, external works, preliminaries and design fees. It is a figure that was first used by the Council in February 2013 and should be indexed from that date.

Plot Value – An average per acre figure derived from recent land sales in and around Exeter during 2011-2012, as investigated by an external development consultant. This per acre figures is then divided by an average density figure of 26.5 dwellings per acre, based on the midpoint of per acre densities listed in the Strategic Housing Land Availability Assessment Methodology (August 2011)¹². – 12 to 41 = midpoint of 26.5. Detail in table below.

Build costs are index linked to BCIS online, which is updated quarterly. The Council will accordingly update the financial contribution set out above on a quarterly basis. Applicants are advised to ascertain the current sum from the Council during pre-application discussions.

¹² ETHMA Authorities, *Methodology for SHLAAs: Exeter Housing Market Area (2013)*.

WORKED EXAMPLES

1. **A developer proposes to build 73 dwellings comprising 24 one bed, 27 two bed, 9 three bed and 13 four bed. This results in an on-site affordable housing requirement of 25.55 dwellings (73 x 35%).**

The Council requires provision of 25 affordable homes, plus a financial contribution to provide 0.55 of a dwelling.

The size mix and tenure split of the 25 affordable homes would be calculated as follows:

Dwelling size	Housing mix proportion	Step 1: calculate the no. of affordable dwellings	Step 2: round up/down to the nearest whole no. of dwellings	Step 3: calculate the tenure split		Step 4: round the tenure split up/down to the nearest whole no. of dwellings	
				Social rented (70%)	Intermediate (30%)	Social rented (70%)	Intermediate (30%)
1 bed dwelling	24/73 = 0.33	25 x 0.33 = 8.25	8	8 x 70% = 5.6	8 x 30% = 2.4	6	2
2 bed dwelling	0.37	25 x 0.37 = 9.25	9	10 x 70% = 7	10 x 30% = 3	7	3
3 bed dwelling	0.12	25 x 0.12 = 3.0	3	3 x 70% = 2.1	3 x 30% = 0.9	2	1
4 bed dwelling	0.18	25 x 0.18 = 4.5	5	4 x 70% = 2.8	4 x 30% = 1.2	3	1
Total		-	25			18	7

The financial contribution would be calculated as follows:

$$\begin{aligned}
 & 0.55 \times ((0.33 \times \pounds 90,802) + (0.37 \times \pounds 125,718) + (0.12 \times \pounds 135,694) + (0.18 \times \pounds 150,658)) \\
 = & 0.55 \times \pounds 119,882 \\
 = & \pounds 65,935
 \end{aligned}$$

2. A developer proposes to build 50 dwellings. There are exceptional reasons to justify commuted provision of the affordable housing. The Council requires off-site provision of the affordable housing (see paragraphs 3.22-3.23).

The number of affordable homes is calculated on the basis that 50 dwellings represent 65% of the total number of dwellings to be built.

- 50 dwellings = 65% of the total number of dwellings required
- $(50 \text{ dwellings} / 65) \times 35 = 26.92 \text{ dwellings}$

The Council will require 26 affordable homes to be provided off-site, plus a financial contribution to provide 0.92 of an affordable home.

The financial contribution will be calculated by the same method as Example 1 (i.e. with reference to the mix of market dwellings being built)

3. A developer proposes to build 40 dwellings (15 one-bed, 15 two-bed, 5 three-bed and 5 four-bed). There are exceptional reasons to justify commuted provision of the affordable housing. Off-site provision and off-site purchase are not possible. Therefore, a financial contribution towards the provision of affordable housing elsewhere in the City is required.

The 35% financial contribution is calculated on the basis that 40 dwellings represent 65% of the total number of dwellings to be built.

- 40 dwellings = 65% of the total number of dwellings required
- $(40 \text{ dwellings} / 65) \times 35 = 21.54 \text{ dwellings}$

Dwelling size	Housing mix proportion	Step 1: calculate the no. of affordable dwellings	Step 2: calculate financial contribution per dwelling type
1 bed dwelling	$15/40 = 0.375$	$21.54 \times 0.375 = 8.078$	8.078 x £90,802
2 bed dwelling	0.375	$21.54 \times 0.375 = 8.078$	8.078 x £125,718
3 bed dwelling	0.125	$21.54 \times 0.125 = 2.692$	2.692 x £135,694
4 bed dwelling	0.125	$21.54 \times 0.125 = 2.692$	2.692 x £150,658
Total		-	£2,519,908

The contribution is again calculated with reference to the mix of market dwellings being built and a financial contribution of £2,519,908 towards affordable housing provision is therefore required.

APPENDIX 4

(Para ref 3.27)

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APPENDIX 5

(Para ref 3.27)

SECTION 106 AGREEMENT – MODEL HEADS OF TERMS

- A The Section 106 Agreement will contain some or all of these terms, subject to site by site negotiations:
- define the amount of affordable housing or, in the case of full permission, specify specific units and detail the breakdown between different tenures and amount of wheelchair accessible housing, all in accordance with Policy CP7;
 - require the affordable housing to comprise a representative mixture of dwelling types and sizes, to be integrated with and indistinguishable from market housing;
 - set a timescale for the affordable housing to be provided, usually that it shall be available for occupation by the time a percentage of the market housing is available;
 - include a mechanism for selecting an RP, unless another approach has been agreed;
 - limit the rent and outgoings which can be charged to occupants and the price at which an initial share can be sold under a shared ownership arrangement;
 - include a mechanism for limiting and selecting the occupants of the affordable housing, which will require supplementary agreements to be entered into as follows:
 - where the Council provides grant aid, the RP or other provider will be required to enter into a nomination agreement;
 - in the case of a provider that is not an RP, or in other special cases (e.g. an unusually large grant payment), the Council will require additional security for repayment of grant on disposal of the land;
 - where the provider is not an RP, the S106 Agreement will include provisions governing letting and management arrangements.
 - provide for the housing to remain affordable in perpetuity, subject to:
 - any statutory right to acquire, buy or 'staircase';
 - a mortgagee in possession clause, where the affordable housing is transferred to an RP.
- B The applicant will be required to pay the Council's reasonable legal costs in connection with the Agreement. The Council's costs in connection with any related Agreement (e.g. a nomination agreement) shall be paid by the applicant, RP or other provider, depending upon which of those parties is involved in negotiating the terms of that Agreement.
- C Where the Council has refused an application which, if allowed, would have been subject to a requirement for affordable housing, it will endeavour to negotiate a Section 106 Agreement on a 'without prejudice' basis, to take effect in the event that an appeal is allowed.
- D In the case of an outline application, the Section 106 Agreement will require the applicant to agree with the Assistant Director of Housing and Contracts (in practice, delegated to the Housing Development Manager), prior to the commencement of development, the physical locations, type, layout and tenure of the affordable dwellings.
- E The agreement will require the applicant to notify the Assistant Director of Housing and Contracts of the anticipated date(s) when the affordable housing will be available for occupation, a specified period(s) in advance.
- F Section 106 Agreements will include mechanisms to record when key stages are reached in the development and requirements are triggered.
- G The Council will use its enforcement powers if a Section 106 Agreement is not complied with. In addition, the fact that a development is taking place despite non-compliance with a Section 106 Agreement will be included as a standard response to searches from prospective purchasers.

APPENDIX 6

(Para ref 4.1)

LIST OF PREFERRED REGISTERED PROVIDERS (RPs)

- Cornerstone Housing Ltd
- Aster
- DCH
- Home Group
- YMCA
- Sovereign
- Guinness
- Sanctuary
- Spectrum

The above RPs and Exeter City Council form the Exeter Homes Housing Partnership. The partnership works together to maximise the delivery of good quality affordable homes, deliver innovative development opportunities that meet local housing priorities and create sustainable communities in the City of Exeter.

GLOSSARY

Affordability

A measure of whether housing may be afforded by certain groups of households.

Affordable Rent

This refers to rented housing let by RPs of social housing to households who are eligible for social rented housing. Affordable Rent is not subject to the national rent regime, but is subject to other rent controls that require rent of no more than 80 per cent of the local market rent.

Affordable housing

Affordable housing includes social rented, affordable rented and intermediate housing, provided to specified eligible households whose needs are not met by the market.

Community Infrastructure Levy (CIL)

A charge that allows local authorities to raise funds from developers undertaking new building projects in their area. The money collected can be used to help provide a wide range of infrastructure that is needed as a result of development.

Homes and Communities Agency (HCA)

The non-departmental public body that funds new affordable housing in England.

Intermediate affordable housing

Housing at prices and rents above those of social rent, but below market prices or rents. It can include shared equity products (e.g. New Build HomeBuy), other low cost homes and intermediate rent, but does not include affordable rented housing.

Local Development Framework

The name for the portfolio of Local Development Documents (LDDs) that provide the planning policy framework for a local authority area. It comprises of the Core Strategy, Development Plan Documents (DPDs), Supplementary Planning Documents (SPDs), a Statement of Community Involvement (SCI), the Local Development Scheme (LDS) and Monitoring Reports.

Market housing

Private housing for rent or for sale, where the price is set in the open market.

National Planning Policy Framework (NPPF)

Sets out the Government's planning policies for England and how these are expected to be applied.

Registered Provider (RP)

An independent, registered, non-profit making organisation to build, improve and manage affordable housing for sale or rent. An RP must be registered with and regulated by the current government regulating authority.

Section 106 Agreement

Planning obligations are agreements entered into between the Council and developers, usually in conjunction with the granting of planning permission. Planning obligations apply to land, binding it and whoever owns it. They are made using powers under section 106 of the Town and Country Planning Act 1990, which is why they are also called "section 106 agreements".

Social Rented Housing

Rented housing owned and managed by local authorities and RPs, for which guideline target rents are determined through the national rent regime. It may also include rented housing owned or managed by other persons and provided under the same rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency as a condition of grant.

Strategic Housing Land Availability Assessment (SHLAA)

An assessment of sites across a local authority area, to determine whether or not they have the potential to be developed for housing. Production of a SHLAA by the local authority is a requirement of the NPPF.

Strategic Housing Market Assessment (SHMA)

A cross-boundary study of the operation of a Housing Market Area. Planning Policy Guidance Note 3: Housing, which has been superseded by the NPPF, required local authorities to prepare SHMA as part of the evidence base to inform LDFs and the development of planning and housing policy.

Supplementary Planning Documents (SPD)

These provide amplification in respect of policies in the LDF Core Strategy and other DPDs. They are not subject to independent examination.

Sustainable Communities Strategy

A document prepared by a Local Strategic Partnership - a collection of organisations and representatives working voluntarily to represent key interests in an area's economy, society and environment. The Strategy should set out a sustainable 'vision' for an area and highlight measures to achieve it.

Appendix B

Summary of Consultation Comments on Affordable Housing SPD and Proposed Responses

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
1	Barton Willmore	The abrupt introduction of the requirement at such a low level will be counterproductive because it will prevent smaller residential schemes from coming forward. Suggest the threshold be raised to 10 as an interim measure.	The threshold is a requirement of Policy CP7 of the Exeter Core Strategy. The Council is clear that the policy must be applied as adopted.	None
		The sudden jump to 35% affordable housing is too much too soon. The proposals in East Devon's West End (adjacent Exeter) are for 25% affordable housing.	The 35% requirement is a requirement of Policy CP7 of the Exeter Core Strategy. The Council is clear that the policy must be applied as adopted.	None
		It is unclear whether the financial contribution where a fraction of an affordable housing is required would apply only where the part is equal or greater than 0.5. Rounding up or down would be simpler and even out over time.	Rounding would be unreasonable, particularly in relation to smaller development sites. The financial contribution applies to any fraction (greater or smaller than 0.5).	None
2	Tetlow King for SW HARP Planning Consortium	Pleased to see reinstatement of the 35% affordable housing target, which brings the document in line with the adopted Core Strategy.	Welcome	None
		The CIL Examiner conceded that the 25% would be uplifted to 35% in due course taking on board Council claims that 'higher levels of affordable housing in the middle and later years of the Core Strategy should be possible, as by then the market would hopefully have improved to deliver 35% over the full plan period'.	This is not the case, nor the argument made by Tetlow King during CIL examination. The Council had made the case at CIL Examination that 25% would be 'uplifted' to 35% in due course but the Examiner made it clear that 'policies in a SPD must not conflict with the adopted development plan'	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		There is no evidence set out in the consultation document or any underpinning reports that conditions have improved in Exeter to bring forward 35% affordable housing alongside the £80sqm residential CIL.	The CIL Examination considered this matter thoroughly and it was accepted that there is ordinarily 'sufficient development value to support 35% affordable housing and a residential CIL rate of £80psm across Exeter, as well as s106 contributions'.	None
		With financial contributions applicable in 'exceptional circumstances' we hope it will be clear to developers that off site and alternative forms of provision are not considered a first option.	The Council considers the SPD to be clear on this point.	None
		Devon and Cornwall Housing is now known as DCH.	Noted	Amend Appendix 6 accordingly.
		The draft Planning Obligations SPD [also consulted on] places a caveat of a "limited 3 year period" against the affordable housing contribution. What is the lifespan of the amended Affordable Housing SPD?	There is an error in the Planning Obligations SPD that will be amended. The affordable housing requirements are not limited by a 3 year period.	None
3	Yelverton Properties	The temporary adjustment to a percentage of 25% and a threshold of 15 was a sensible and pragmatic move. I think the recent change therefore is a bad thing because it will result in fewer houses being built because fewer sites will be viable.	Understood but the Council is clear that it must adhere to the policy (CP7) contained in the Exeter Core Strategy	None
4	Natural England	No comment	Noted	None
5	Persimmon Homes South West	The adopted Affordable Housing SPD [2013] states that the Council will seek 25% affordable housing on sites of 15 or more dwellings for three years from adoption of the CIL.	Understood but the Council is clear that it must adhere to the policy (CP7) contained in the Exeter Core Strategy	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		<p>The Council's own CIL evidence indicated that, even at £0 CIL, the most viable development would fall short of the benchmark land value with 35% affordable housing.</p>	<p>The CIL Examination considered this matter thoroughly. On the basis of further evidence, particularly related to land values and recent planning permissions in Exeter, it was accepted that there is ordinarily 'sufficient development value to support 35% affordable housing and a residential CIL rate of £80psm across Exeter, as well as s106 contributions'.</p>	None
		<p>In December 2011, the Core Strategy Inspector advised that "if the Council wishes to achieve its affordable housing target in the emerging Core Strategy (at 35%) in current market conditions it will not be able to obtain the levels of CIL modelled for this exercise".</p>	<p>This was not the advice of the CIL Examiner but rather the 'Evidence Base' document that was prepared on behalf of the Council. The Council (and CIL Examiner) have since drawn on further evidence of development viability to demonstrate that 35% affordable housing and £80 CIL are ordinarily viable.</p>	None
		<p>At a time when the economy is in a very fragile period of recovery, both locally and nationally, and with the house building industry still heavily reliant upon the Government's house building initiatives, the Council's proposal to withdraw and replace the adopted Affordable Housing SPD would appear to be entirely out of kilter and out of touch with the prevailing market conditions, particularly here in the South West (growth within the house building sector and the housing market more generally has been largely confined to London and the South East).</p>	<p>The CIL Examination considered this matter thoroughly. On the basis of further evidence, particularly related to land values and recent planning permissions in Exeter, it was accepted that there is ordinarily 'sufficient development value to support 35% affordable housing and a residential CIL rate of £80psm across Exeter, as well as s106 contributions'. The NHBC's Annual New Home Statistics Review 2013 indicates considerable house building growth (2013 on 2012) in all regions of England.</p>	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		The adopted Affordable Housing SPD explicitly states that its contents should be taken into consideration from the earliest stages of the development process. Developers and house builders will have acquired sites within the City on the strength of the current adopted Affordable Housing SPD and the provisions contained therein for 25% affordable housing on sites of 15 or more.	Disagree. On behalf of a number of major house builders active in the Exeter area, it was stated, during CIL Examination, that 'bank lending and development finance calculations would be made with reference to the development plan target [35%] and not the [February 2013] SPD [25%].	None
		The National Planning Policy Framework states that SPD should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add to the financial burdens of development. The revised draft is considered to add significantly to the financial burdens on development.	The revised draft supplements adopted Core Strategy policy and therefore adds no burdens to the Development Plan.	None
6	Sovereign	At paragraph 4.11 'perpetuity' should relate specifically to rented properties only. Shared ownership properties will have the ability to staircase to full ownership and therefore cannot be kept affordable in perpetuity.	Agree	Remove '/prices' from first sentence of 4.11.
		At appendix 1 paragraph 3 it should be made clear that Affordable Rent housing is eligible for all those on the waiting list - not limited to those who do not qualify for social rent housing.	Disagree. Appendix 1 is an extract from the NPPF, which it would be inappropriate to amend.	None
7	Network Rail	Any planning application which may increase the level of pedestrian and/or vehicular usage at a level crossing should be supported by a full transport assessment and the	Not relevant	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		developer required to fund any required qualitative improvements to the level crossing.		
		We would appreciate the Council providing Network Rail with an opportunity to comment on any future planning applications should they be submitted for sites adjoining the railway.	Not relevant but this is the Council's current practice.	None
8	Cornerstone Housing	Para 1.6: Policy CP7 - to the end sentence in the box add 'or in exceptions affordable rented housing	Disagree - this is a direct quote from adopted policy CP7 and cannot be amended. It is, in any case, considered that these provisions are already contained within the policy.	None
		Para 2.3: It should be made clearer that 'housing register' refers to Devon Home Choice. Also, where it says the register shows 'a high overall requirement for small affordable dwellings' this is quite vague and more information should be given	Agree para 2.3 is confusing and should be clearer that references to the Register are associated with need arising in Exeter.	Rephrase paragraph 2.3 to make it clear that references to the Housing Register are associated with need arising in Exeter
		Para 3.2: A definition of 'development by RPs' could be provided.	Disagree. The requirement will apply to all residential development by Registered Providers. If Registered Providers are providing more affordable housing than required through policy, they will have satisfied Policy CP7.	None
		Para 3.17 2nd sentence: delete "and cause problems with" in its place add "and lack of".	Whilst an absolute lack of infrastructure is a risk, problems could be more subtle (for instance, infrequent public transport services).	None
		Para 3.17: add the following to the last sentence "along with the relevant infrastructure and open spaces for that part of the development.	The point is understood and noted but it is considered that the Planning Obligations SPD sufficiently addresses this issue.	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		Para 3.23 last sentence: After 'preferred RPs' add "from the Exeter Housing Partnership".	By referring to the Council's 'preferred RPs', it is considered that paragraph 3.23 already addresses this point.	None
		Para 4.7 2nd sentence: "this figure will be net of service charges" - this is incorrect and I think you mean gross of service charges, rather than net. However, it may be clearer to just put "inclusive of service charges".	Net' was the intended wording but (for the avoidance of doubt) 'inclusive' is equally appropriate.	Replace 'net' with 'inclusive'
		Para 4.9 change "80% of Local Housing Allowance" to "80% of local market rents and not exceeding LHA".	Agree.	Change "80% of Local Housing Allowance" to "80% of local market rents and not exceeding Local Housing Allowance"
		Para 4.10 1st sentence: After "reasonably possible" add "service charges should reflect the size of the units (with exception that smaller affordable units should not be charged at the same rate as larger open market units".	Disagree. It is considered already that requiring service charges to be kept as low as 'reasonably possible' addresses this point.	None
		Para 4.12: to the end of the 1st sentence add "where possible".	Disagree. It is considered that there are adequate opportunities for 'recycled' receipts to be used to provide other forms of affordable housing within the city.	None
		Add 4.13 - "commuted sums will be reinvested in Exeter City for the provision of new or improved affordable housing by either Exeter City Council or by their preferred Housing Associations (see appendix 6)".	It is considered that paragraph 4.12 already adequately addresses this matter.	None
		Appendix 6: Change "Cornerstone" to "Cornerstone Housing Ltd" please.	Agree	Change "Cornerstone" to "Cornerstone Housing Ltd"

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
9	PCL Planning for Wadderton Park	The requirement for 35% affordable housing provision 70% social rented are considered to be set too high to enable these levels to be achieved frequently. In the vast majority of cases the applicant/developer will be forced to then demonstrate through viability analysis (and at their expense) why the sought levels of provision cannot be achieved. To address this matter it is proposed that the Council pursue a partial review of the Core Strategy with the view to establishing realistic and achievable affordable housing requirements.	The CIL Examination considered this matter thoroughly. On the basis of further evidence, particularly related to land values and recent planning permissions in Exeter, it was accepted that there is ordinarily 'sufficient development value to support 35% affordable housing and a residential CIL rate of £80psm across Exeter, as well as s106 contributions'.	None
10	Devon County Council	At present the SPD does not refer to forms of social care housing, such as close care and extra care units. It is considered that these contribute towards addressing housing need in the city and as such, provision should be made for their delivery as part of developments within the city.	It is considered that paragraph 3.7 on 'size mix' equally applies to care housing.	None
		The SPD should include provisions for when scheme viability prohibits the developer from achieving the affordable housing policy. As with the Draft Planning Obligations SPD, this should refer to an open book assessment.	It is considered that the Planning Obligations SPD adequately addresses this point.	None
		Para 1.4: it would be helpful if this paragraph referred specifically to the need to consider infrastructure costs and the provision of CIL and s106 contributions when negotiating land options. This is an inherent principle	Agree.	After 'overall cost of development' insert 'including affordable housing and all other requirements of the development

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		of the CIL concept.		plan'.
		Para 3.2: It may be helpful to explain in more detail the definition of 'phased development', specifically whether this relates to separate planning applications for development on contiguous parcels of land, or a single planning application delivered in a phased manner, or both.	Agree	After 'phased developments' insert '(whether the result of one or more than one planning application)'.
		Para 3.16: It may be helpful to signpost the City Council's design guidance here, specifically the residential design SPD or successive documents.	Agree	After first sentence insert '(and guidance from the Exeter Residential Design Guide SPD)'.
11	Bell Cornwell on behalf of Grenadier Estates	As a general observation it is likely that an unduly rigid approach with regard affordable housing delivery will damage opportunities for regenerating existing urban areas.	Disagree. Policy CP7 of the Exeter Core Strategy on affordable housing already includes 'flexibilities' where they are necessary.	None
		We would suggest that elements of the SPD be amended to provide for greater flexibility in the form and location of affordable housing required in order that important new development is allowed to be brought forward.	The SPD already includes such flexibilities in the case of exceptional circumstances.	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		<p>We note that paragraph 3.2 of the draft SPD indicates that the affordable housing policy will apply to schemes providing care or support but not to purpose built student accommodation. The wording of this section should make it clear that affordable housing will only be sought for developments that fall clearly within Use Class C3.</p>	<p>There is an identified need for affordable housing as part of schemes providing housing for people receiving care or support, whether or not within Use Class C3.</p>	<p>None</p>
		<p>Including care related uses but excluding student housing is inconsistent, particularly given that both forms of accommodation help to meet an identifiable and significant housing need and occupy sites that would otherwise be suitable for more conventional forms of residential use. We would suggest that the exclusion proposed for student accommodation be extended to include care accommodation.</p>	<p>This is not considered reasonable. There is an identified need for affordable housing as part of schemes providing housing for people receiving care or support, as there is in the case of 'more conventional forms of residential use'.</p>	<p>None</p>
		<p>The key determinants in designing the mix of affordable housing units should be the nature of affordable housing demand and also the requirements of Registered Providers in the area and not the need to slavishly mirror the mixture of market housing.</p>	<p>Policy CP5 of the Exeter Core Strategy ordinarily requires housing delivery that reflects the most up to date Housing Market Assessment. The proposals of the SPD are consistent with this approach.</p>	<p>None</p>

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		<p>Where the SPD seeks that Affordable Rent dwellings 'should be let as near as possible, to social rent levels' it appears to seek to peg affordable rent back to social rent levels. The SPD should be revised to allow the inclusion of affordable rent as necessary and where required to provide a viable development and without wording which seeks to force it back to the social rented level. Delete the final sentence of paragraph 3.11.</p>	<p>The SPD does allow affordable rent units where required to provide a viable development the Council seeking to (as far as possible) 'peg affordable rent back to social rent levels' is not consistent with this approach. Affordable rent levels only need to be sufficient to make a development viable; they needn't automatically be set at 80% of market rents.</p>	None
		<p>It will be noted that the availability of grant funding is now almost nil and the requirement for affordable housing to be designed to meet the standards necessary to qualify for grant funding is an over imposition that will inevitably increase overall development cost. Propose additional wording of paragraph 3.15: 'Where funding from such sources [HCA] is unavailable, it should be built to meet the requirements of relevant RPs.'</p>	<p>Disagree. The purpose of meeting the grant design standards (as stated) is to reflect the needs of potential occupants.</p>	None
		<p>The one size fits all approach to the use of commuted provision is not appropriate. Replace the first two sentences of paragraph 3.20, with the following: "The first priority will be to seek provision on an alternative site in Exeter. The 35% affordable housing target will <i>normally</i> be applied across both sites to ensure pro-rata contribution <i>except where there is clear justification to the contrary, for example due to the site's size or specific technical or</i></p>	<p>It is considered that the SPD already addresses these issues. The SPD generally accepts 'exceptional circumstances' and even paragraph 3.20 explains that it is '<u>unlikely</u> that the Council will accept...an inappropriate mix of tenures'.</p>	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		<i>design constraints. Such circumstances are likely to be limited but where they do occur the Council will adopt a more flexible approach".</i>		
		In terms of off-site purchase developers are required to pay the full cost of new housing i.e. both the land and build costs and then hand that housing to organisations that will then benefit from the income stream.	It is considered reasonable that the SPD requires that developers meet the full costs of delivering affordable housing. Off site purchase is only to be made in exceptional circumstances, when to do so will be to the benefit of the developer.	None



Exeter City Council

Supplementary Planning Document

Planning Obligations



April 2014

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Summary of Planning Obligations Sought

This summary table provides an indication on the types of planning obligations that are often agreed in relation to new development in Exeter. The table is a guide.

Obligations		When Due
Affordable Housing	35% on-site housing (as a proportion of the total number of units built) to be affordable on sites capable of accommodating 3 or more units. At least 70% social rented . See the Affordable Housing Supplementary Planning Document.	In phase with the delivery of market dwellings
CCTV	Contributions will be sought towards the cost of installing CCTV equipment where the development has the potential to generate anti-social behaviour. These will be negotiated on a case-by-case basis.	Before development commences
Environmental Enhancements	Environmental enhancement contributions are negotiated on a case-by-case basis. Any contributions sought will be site specific. However, normally, these will relate to improvements to the public realm. They may be required, for example, for works to accommodate footfall growth in a particular area or to improve local shopping centres when large retail applications are involved.	Before development commences
Housing for Disabled People	5% of the total number of affordable dwellings on a given site must be wheelchair accessible. See Policy H7 of the Exeter Local Plan First Review 1995-2011 and the Draft Affordable Housing Supplementary Planning Document.	In phase with the delivery of market dwellings
Parks, Leisure and Open Spaces	The provision and maintenance of open spaces and play facilities is often secured by Section 106 agreement. See the Public Open Space Supplementary Planning Document for further details.	In-kind: In phase with development Financial: Before commencement
Public Art	Public art or contributions are most frequently sought when new development occurs in the form of major schemes that occupy prominent locations.	Before development commences
Student Accommodation	Obligations are sought to ensure occupation of student accommodation by students, provide for continued site management and to prohibit residents of the development (other than Disabled Badge Holders) keeping vehicles on site.	Ongoing
Highways and transport	Site specific highway and transport requirements are determined on a case-by-case basis. Obligations include traffic orders (around £3,000), highway and junction improvements, bus stops and walking and cycling facilities.	Before development commences
Skills and Employment	Local employment and skills obligations will be sought in promoting access to the jobs that new development creates amongst residents of the city and its travel to work area, particularly those that have difficulty entering or returning to the labour market.	Ongoing
Other Site Specifics	Other planning obligations may be negotiated on the basis of the individual circumstances of a development site. They could address site specific matters including flooding and on site green infrastructure, storage and display of archaeological finds and impacts of new retail development on existing centres.	Depends on the nature of the obligation

The table does not include strategic infrastructure such as education facilities, strategic transport improvements, strategic flood defences and mitigation of impacts on European protected habitats. It will be for the **Community Infrastructure Levy** to contribute towards such investments in order to help secure sustainable development.

1. Background

1.1 Purpose of this Supplementary Planning Document

- 1.1.1 Development often creates the need for additional facilities and mitigation. Without such provision, there could be negative implications for local amenity and the environment. Planning obligations provide the mechanism through which the impact of development is accommodated. In the form of a legal agreement, planning obligations are secured to ensure that development mitigates the impacts of, and provides for the requirements arising from, development in a sustainable way.
- 1.1.2 This document offers guidance to applicants for planning permission, developers, and others on the planning obligations that may be required to satisfy planning policies and ensure that development results in sustainable outcomes. It also forms a material consideration in the determination of planning applications and achieving a consistent approach to mitigating the impact of development. A **Glossary of Terms** that offers a brief description of some of the words and acronyms that appear within this document is available towards the end.

1.2 Status of this Document

- 1.2.1 Supplementary Planning Documents (SPDs) amplify and provide a detailed explanation of existing planning policies. They are material considerations that are given substantial weight when planning decisions are made.

1.3 Community Infrastructure Levy (CIL)

- 1.3.1 The Community Infrastructure Levy is the Government's intended mechanism for new development to contribute towards investment in a wide range of infrastructure that is needed as a result of growth including transport facilities, flood defences, schools, sports facilities and open spaces.
- 1.3.2 This draft document has been prepared in response to the Council introducing a Community Infrastructure Levy 'Charging Schedule' for Exeter in December 2013. The Levy's introduction has the effect of limiting the future use of planning obligations in respect of the provision of infrastructure that is not development specific.
- 1.3.3 Further information on the Community Infrastructure Levy is available at www.exeter.gov.uk/cil.

2. National Legislative and Policy Context

2.1 Town and Country Planning Act 1990

2.1.1 In accordance with Section 106 of the Town and Country Planning Act 1990¹ (as amended by Section 12(1) of the Planning and Compensation Act 1991²), planning obligations may:

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

2.1.2 Planning obligations are usually entered into in the context of planning applications to ensure that developers address additional community and infrastructure needs and mitigate the social, environmental and economic impacts of new development. Unless it is agreed otherwise, planning obligations run with the land in perpetuity and may be enforced against the original covenantor, and anyone else that acquires an interest in the land, until such time as they are discharged or otherwise modified. Planning obligations can be secured by:

- (a) Section 106 Agreements** between local planning authorities, persons with a legal interest in a piece of land and any other interested parties.
- (b) Unilateral undertakings** signed solely by parties with a legal interest in the land. These are appropriate when only the developer (and not the Council) needs to be bound by the agreement.

2.2 Community Infrastructure Levy Regulations

2.2.1 Further legislation is set out in the Planning Act 2008³ (as amended) and Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010⁴ (as amended).

2.2.2 Regulation 122 includes the following tests that must be satisfied in order for obligations to be secured in respect of development proposals. A planning obligation must be:

- (a) necessary to make the development acceptable in planning terms;**
- (b) directly related to the development;**
- (c) fairly and reasonably related in scale and kind to the development**

2.2.3 CIL is the Government's intended mechanism for new development to contribute towards investment in a wide range of infrastructure that is needed as a result of growth including strategic transport facilities, flood defences, schools, sports facilities and open spaces. Accordingly, from the point of Council adoption of a CIL 'Charging Schedule', the regulations prevent the pooling of section 106 contributions from more than five developments for the provision of a single item of infrastructure.

2.2.4 Exeter City Council has adopted a CIL 'Charging Schedule' for the city. The use of planning obligations therefore needs to be scaled back to cover only the provision of affordable housing and site specific measures required to mitigate

the impact of development, including those indicated on page 4 of this document (where applicable). This draft document has been prepared on that basis.

2.3 National Planning Policy Framework⁵

- 2.3.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It explains that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

2.4 Planning Obligations Practice Guidance⁶

- 2.4.1 Published in July 2006, this deals with issues including types of planning obligation, standard charges and formulae, standard agreements and undertakings and the implementation process.

3. Local Policy Context

3.1 Exeter Core Strategy⁷

- 3.1.1 The City Council adopted its Core Strategy in 2012 which sets out the vision, objectives and strategy for spatial development of Exeter. This SPD partly builds upon policy CP18 of the Core Strategy in describing the Council's approach to securing planning obligations.

CP18: New development must be supported by appropriate infrastructure provided in a timely manner. The City Council will continue to work in partnership with infrastructure providers and other delivery agencies to keep an up to date infrastructure delivery plan that will enable proposals, in accordance with the spatial strategy, to be brought forward.

Developer contributions will be sought to ensure that the necessary physical, social, economic and green infrastructure is in place to deliver development. Contributions will be used to mitigate the adverse impacts of development (including any cumulative impact). Where appropriate, contributions will be used to facilitate the infrastructure needed to support sustainable development.

Exeter Core Strategy Policy CP18

3.2 Exeter Local Plan⁸

- 3.2.1 The Exeter Local Plan First Review 1995-2011 acknowledges the role of planning obligations in delivering sustainable development. It contains specific policies that are amplified by SPDs where necessary and offers guidance on the negotiation of Section 106 Agreements.
- 3.2.2 A Site Allocations and Development Management DPD is emerging. Until it does, policies contained within the Core Strategy and Exeter Local Plan First Review provide the policy basis that will inform all local planning decisions.

3.3 Affordable Housing SPD⁹

- 3.3.1 Where there is an assessed need for affordable housing, the Government allows local authorities to deliver affordable homes by requiring developers to provide them within new housing schemes. Policy CP7 of the Core Strategy sets out the Council's overall approach towards achieving this. The draft Affordable Housing SPD provides more detailed guidance on how Policy CP7 will be applied.

3.4 Open Space SPD¹⁰

- 3.4.1 In accordance with Local Plan policies L4 and DG5, development that creates additional demand for open space should ordinarily accommodate that demand on-site, or provide for new facilities and their maintenance nearby. Similarly, where development would lead to the loss of open space or leisure facilities, the provision of assets at suitable alternative locations will be sought.

3.5 Sustainable Transport SPD¹¹

- 3.5.1 Offers guidance to applicants for planning permission, developers, and others on the design features and contributions that may be required to satisfy

planning policies and ensure that development results in sustainable travel outcomes

3.6 Trees in Relation to Development SPD¹²

- 3.6.1 Where planting or landscaping schemes form part of a development, planning obligations may be secured to ensure that a nominated officer from the Council and a representative of the developer visit an agreed plant nursery and select trees as the scheme is implemented.

3.7 Archaeology and Development SPG¹³

- 3.7.1 On some schemes, developers may be expected to provide for archaeological recording and publication, permanent public storage of records and finds and occasional display of special discoveries.

4. Development Management

4.0.1 In dealing with planning applications, Exeter City Council, as the Local Planning Authority (LPA) has regard to the provisions of the development plan (see Section 3), so far as material to the application, and to any other material considerations

4.1 Planning Conditions vs. Planning Obligations

4.1.1 Whenever a development proposal would otherwise be refused, planning conditions should be attached to a grant of planning permission. The NPPF explains that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. The Council would not grant permission subject to a condition that the developer enters into a planning obligation as it would regard such a condition to be insufficiently precise. Additionally, a condition cannot require works to land outside the control of the applicant nor payment of financial contributions whereas a planning obligation can be applied for either purpose and, unless discharged, removed or altered, will remain binding indefinitely.

4.2 Identifying Planning Obligations

4.2.1 During pre-application discussions with developers, planning officers will, where necessary, identify a list of issues relevant to the development site to be considered in respect of planning obligations. The scope of this list will be informed by comments from formal consultees, local and national planning policy, and the location and characteristics of the site concerned.

4.2.2 With reference to each of the issues identified by the LPA, developers should assess the impact of their proposals and identify what mitigation measures might be taken to ensure the development's sustainability. Where necessary, planning officers will seek further guidance from the appropriate organisations and agencies in order to appraise the developer's assessments and agree the nature and extent of the obligations sought.

4.2.3 Developers will be expected to submit draft section 106 Agreement 'Heads of Terms' in an electronic format at the same time as applying for planning permission and only once informal agreement on their content has been reached with the LPA. The Heads of Terms should explain what kind of and how much provision should be contained in resulting planning obligations.

4.3 Site Requirements

4.3.1 Site-specific circumstances often need to be addressed before, during and as a result of development. Where planning conditions cannot control issues that include flood risk, land contamination, long term storage and public display of important archaeological finds and disruption caused by construction works, planning obligations are likely to be sought. Failure to address such issues is liable to result in planning permission being refused.

4.4 Policy Requirements

4.4.1 Planning obligations may be required in order to ensure compliance with the local and national planning policies identified in Sections 2 and 3. Development should be sustainable and the City Council will negotiate planning obligations that help to secure this.

4.5 Financial Contributions

- 4.5.1 The Community Infrastructure Levy will be the usual mechanism for supporting growth through financial contributions from development that will be used to deliver infrastructure improvements. The Community Infrastructure Levy Regulations⁴ significantly limit the Council's ability to secure financial planning obligations but there remain limited site-specific forms of provision where these will remain relevant. Note that, subject to the limitations referred to in paragraph 2.2.3 above, infrastructure (such as a junction improvement) can be site-specific while being necessary as a result of more than one development.
- 4.5.2 Planning obligations for such things as the maintenance of open space that has been provided on-site are usually agreed in the form of financial contributions. This is with provision for transfer of the open space to the Council where it is agreed that the Council, rather than the developer or a management company, is to be responsible for its long-term maintenance. Nearby open space improvements and maintenance might otherwise be contributed towards through a planning obligation.
- 4.5.3 The Planning Obligations Practice Guide⁷ explains that Section 106 agreements, rather than unilateral undertakings, are more likely to be appropriate where financial planning obligations are necessary because a commitment from the Council to spend the money on specified infrastructure or services is usually required.

4.6 Addressing Threshold Avoidance and Site Sub-division

- 4.6.1 Planning obligations for affordable housing will be sought from sites considered capable of accommodating 3 or more dwellings. This is to prevent planning obligation avoidance associated with reducing the scale of development proposals. In view of this, and based on a requirement for 35% of new housing to be affordable on sites with the potential to accommodate 3 or more units, the developers of a site with capacity for 4 houses will be expected to deliver 1.4 as affordable housing even when only 2 are proposed.
- 4.6.2 Where a site is divided into smaller parcels, the Council will require that for the purposes of a planning obligation, the individual parcels are treated as a whole. Normally this means that one Section 106 legal agreement will be negotiated for the entire site concerned. Where separate agreements are negotiated, the same planning obligations will be sought in aggregate as if only one agreement were involved and then divided to reflect the proportionate impact of development on each parcel of land. For example, 35% affordable housing will be sought where a site is split and two adjacent but separate planning applications, each for the construction of 2 houses.
- 4.6.3 Further guidance on the application of Exeter Core Strategy policy CP7 on affordable housing is available from the Council's Affordable Housing SPD.

4.7 Viability

- 4.7.1 Developers should take all costs (including potential planning obligations, and any identifiable exceptional site development costs) into account when acquiring land for development. If, during the identification of Heads of Terms, it is claimed that the economic cost of fulfilling certain planning obligations would prevent development from occurring, it is expected that developers will also submit detailed 'open book' information about the scheme's economics to the Council prior to the formal submission of a planning application. Before reviewing the nature of the planning obligations sought, the City Council may

seek valuation advice from an independent third party. All costs incurred by the Council in validating viability claims will have to be met by the developer.

- 4.7.2 Where viability claims are upheld, planning applications will only be approved if the benefits resulting from the proposed development will outweigh the negative impact of reduced planning obligations. These costs and benefits will be measured against planning policy and site specific sustainability objectives. Planning applications are likely to be refused, for example, where it would not be possible to meet requirements associated with contaminated land.

5. Finalising Planning Obligations

5.1 Before a Section 106 Agreement can be drafted

5.1.1 Before planning obligations can be agreed, the Council will require the following:

- (a) **Agreed heads of terms** supplied in electronic form for ease of circulation.
- (b) **Land Registry title documents** for the application site and any other land that needs to be bound by a planning obligation (for example where the use of adjoining land is to be restricted).
- (c) **A solicitor's undertaking to meet Exeter City Council's legal costs** in preparing and completing an agreement. The Council will be able to provide an estimate of costs once the heads of terms have been broadly agreed. Where Devon County Council will be party to an agreement, its legal costs will also need to be paid. The Councils' costs are to be paid whether or not the agreement is actually completed.

5.2 Agreement Timetable (see also annex 1)

5.2.1 Developers are advised to enter into pre-application discussions in order to agree planning obligation heads of terms early and avoid an unnecessary refusal of planning permission. The Council is ordinarily required to determine major planning applications within 13 weeks and all others within 8 weeks¹⁴.

5.2.2 Major applications are defined as follows:

- **Residential - 10 or more units or a site of 0.5 hectares or more**
- **All other uses - the creation or change of use of 1000m² or more of gross floorspace.**

5.2.3 Where a planning obligation is required, the Council may refuse an application for planning permission if a legal agreement has not been completed by (or after) the date that the application is due for determination and the developer is responsible for agreement delays.

5.3 Covenanting Parties

5.3.1 The signatories of a Section 106 agreement will be those with a legal interest in the land, Exeter City Council and, when planning obligations associated with the provision of County Council administrated services are required, Devon County Council. Other agencies or parties, such as the providers of car club facilities, may also be included in the agreement where appropriate.

5.4 Model Agreements

5.4.1 The Council has prepared model Section 106 agreements that are available from its website¹⁵. These cover the types of obligations most commonly encountered but may not be appropriate in all cases, and it should be noted that these documents are liable to change from time to time.

5.4.2 It is not necessary for the developer's solicitor to prepare a draft agreement as it is usual for the Council to do so. Developers that do instruct their solicitor to draft a Section 106 Agreement are strongly encouraged to use the Council's standard templates. Production of a draft in a different form is likely to result in

additional costs being borne by the developer, and may result in a refusal of planning permission if the agreement's completion is subsequently delayed.

5.5 Planning Obligations, Planning Committee, Application Decisions and Appeals

- 5.5.1 Once heads of terms have been agreed and an undertaking given for costs, the Council is willing to start work on the s106 agreement as soon as other commitments allow, including prior to the application being reported to Planning Committee. However, negotiation of a Section 106 agreement does not indicate that the Council is minded to approve a planning application. When a planning application is referred to the Council's Planning Committee, the nature of the negotiated planning obligations will be explained in the Committee report. If the Committee decides that planning permission should be granted, a decision notice will not be issued until the agreement has been completed.
- 5.5.2 In the event that a planning application is refused and the developer appeals, the Council will encourage the developer to complete the Section 106 agreement in a form that is conditional upon the appeal being allowed. This is without prejudice to the Council's position in respect of those refusal reasons which are unrelated to the contents of the section 106 agreement. Templates for this type of agreement are also available from the Council's website¹⁷.

5.6 Completing the Agreement

- 5.6.1 Upon the completion of a Section 106 agreement, the Council's legal fees associated with the agreement's preparation will be payable. The Council will register the agreement as a Local Land Charge and the developer may, if covenanted within the agreement, be required to register the agreement as a charge against the Title of the land. The Council will also update the statutory registers and send a copy of the completed agreement to all relevant parties including Council officers.

6. Implementing Planning Obligations

6.0.1 Having entered into the terms of planning obligations, developers are legally bound to observe them. It is expected that, having agreed to their terms, developers will perform their planning obligations without dispute. Where planning obligations are not adhered to, the Council is able to pursue enforcement action and, in accordance with the provisions of the Town and Country Planning Act 1990¹, recoup the associated costs of doing so.

6.1 Monitoring Planning Obligations

6.1.1 The Council has the procedures and a database in place to ensure that all planning obligations are adhered to by all parties. In the case of financial planning obligations, the database also ensures that developer contributions are spent by the Council in an efficient and timely manner, and for their agreed purpose.

6.2 Triggers for the Payment of Financial Planning Obligations

6.2.1 Beside the Council's legal costs, which are payable on the completion of a Section 106 agreement, other financial developer contributions will be 'triggered' for payment in accordance with the terms of the planning obligations contained in the agreement. These triggers will depend on the development concerned. Financial payments may be phased but should always be co-ordinated to ensure that facilities and amenities can be provided when they are required and in a sustainable way. Contributions towards the provision of play facilities, for example, will often be triggered prior to the commencement of development or, in the case of larger developments, upon the commencement of different phases of development. Meanwhile, maintenance payments for the same facilities will be sought prior to first occupation. In this way, the Council should be able to provide the play facilities that serve a development from the time that they are needed and the development first comes into use.

6.3 Price Index

6.3.1 Where financial contributions are not payable on the date of agreement, an inflation index will usually be applied. The index will normally be calculated monthly and based on the Building Costs Information Service Index of the Royal Institution of Chartered Surveyors (BCIS) or the Retail Price Index (RPI) published by the Office of National Statistics.

6.4 Council Expenditure of Financial Contributions

6.4.1 The purpose of planning obligations is to make acceptable development proposals that would otherwise be unacceptable. If development did not occur, the Council would not need to facilitate the expenditure of financial developer contributions; neither would it incur the costs of doing so.

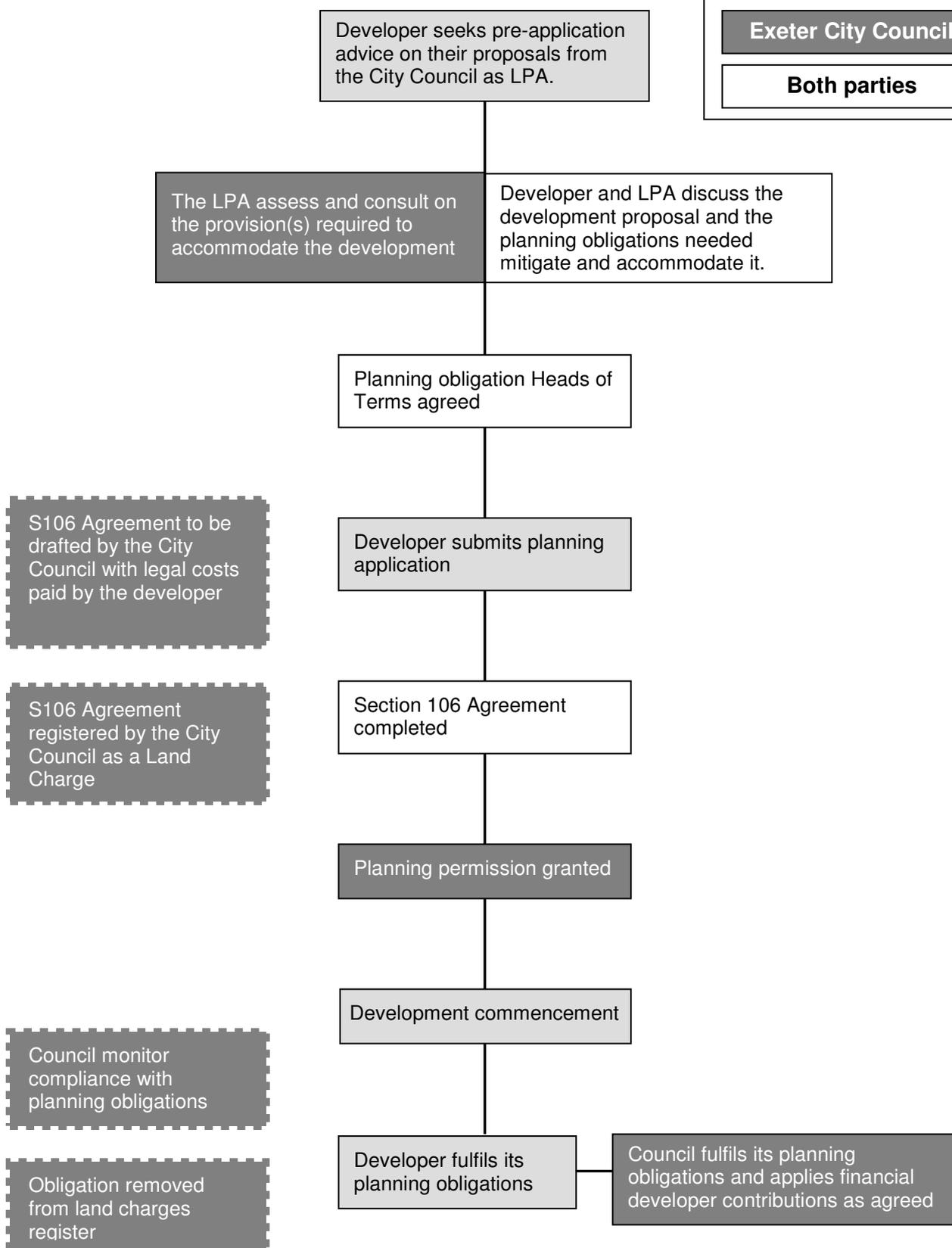
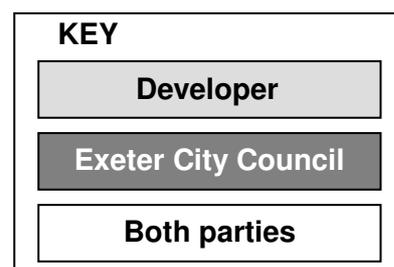
6.4.2 Planning obligations that require financial developer contributions imply the use of Exeter City Council resources to enable the money's expenditure. Where, for example, contributions towards the provision of a piece of public art are received, Council officers will need to engage in public consultation and design work before the piece is commissioned. Because of this, where planning obligations require that financial contributions are payable to the Council, the amount will include an element for administration, including the work involved in spending the money.

6.4.3 Annex 2 contains a table that indicates the maximum portion of individual financial contributions that the Council will retain for its part in administrating the conversion of money into certain facilities and services. Its figures have been determined and broken down to reflect the outcomes of a long-term assessment of costs for the various Council services in relation to which planning obligations are commonly negotiated.

References

1. Town and Country Planning Act 1990	HMSO www.legislation.gov.uk	May 1990
2. Planning and Compensation Act 1991	HMSO www.legislation.gov.uk	Jul 1991
3. The Planning Act 2008	HMSO www.legislation.gov.uk	Nov 2008
4. Community Infrastructure Levy Regulations 2010	HMSO www.legislation.gov.uk	Apr 2010
5. National Planning Policy Framework	DCLG www.communities.gov.uk	Mar 2012
6. Planning Obligations: Practice Guidance	DCLG www.communities.gov.uk	Aug 2006
7. Exeter Core Strategy	Exeter City Council www.exeter.gov.uk	Feb 2012
8. Exeter Local Plan First Review 1995-2011	Exeter City Council www.exeter.gov.uk	Mar 2005
9. Affordable Housing SPD	Exeter City Council www.exeter.gov.uk	Apr 2014
10. Public Open Space SPD	Exeter City Council www.exeter.gov.uk	Sep 2005
11. Sustainable Transport SPD	Exeter City Council www.exeter.gov.uk	Sep 2012
12. Trees in Relation to Development SPD	Exeter City Council www.exeter.gov.uk	May 2009
13. Archaeology and Development SPD	Exeter City Council www.exeter.gov.uk	Nov 2004
15. The Town and Country Planning (Development Management Procedure) (England) Order 2010	HMSO www.legislation.gov.uk	Oct 2010
16. Exeter City Council planning obligations webpages	Exeter City Council www.exeter.gov.uk/planningobligations	Mar 2009

Annex 1: Planning Obligations (Section 106) Procedure



Annex 2: Maximum Element of Financial Contributions Retained for Directly Related Professional Costs

Affordable Housing	- Designing, consulting on and commissioning works	10% of total sum agreed
CCTV	- Designing, consulting on and commissioning works	10% of total sum agreed
Environmental Enhancements	- Designing, consulting on and commissioning works	10% of first £40,000 5% of £40,000 - £100,000
Parks, Leisure and Open Spaces	- Designing, consulting on and commissioning works	10% of total sum agreed
Public Art	- Designing, consulting on and commissioning works	10% of first £40,000 5% of £40,000 - £100,000

For an explanation of this table's basis please see paragraphs 6.4.1 - 6.4.3

Annex 3: Glossary of Terms

Acronym	Term	Description
	Affordable Housing	As defined in the NPPF but, specifically, housing for local people within Exeter that cannot afford to buy or rent within the open housing market.
BCIS	Building Costs Information Service Index	A data source that provides a quarterly measure of construction industry costs.
	Car Club	Arrangements that offer access to a pool of cars for flexible periods of time (as little as an hour or up to 2-3 days), as and when required and on a pay as you drive basis.
	Circular	Government guidance on the implementation of national legislation.
CCTV	Closed Circuit Television	A video camera system that records everyday life. Primarily, it is used to deter people from, or record incidents of, criminal and anti-social behaviour.
CIL	Community Infrastructure Levy	A charge that allows local authorities to raise funds from developers undertaking new building projects in their area. The money collected can be used to help provide a wide range of infrastructure that is needed as a result of development.
	Consultee	In the case of planning obligations, this is a person, body or group consulted by the LPA to help determine heads of terms for planning obligations. These might include the Highways Authority and the Environment Agency.
	Core Strategy	A DPD that sets out the vision and strategic objectives for the spatial development of the city.
	Developer	In the case of planning obligations, and for the purposes of this SPD, the Developer is the proprietor of a piece of land. Planning obligations that apply to a developer run with the land and apply to successive proprietors unless otherwise agreed.
	Development	The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land (Town and Country Planning Act 1990, Section 55)
DPD	Development Plan Document	Local policy documents that form the policy basis upon which planning decisions are made.
	Enforcement action	The LPA may enforce a planning obligation by injunction or, where the developer is required to carry out works on the land and 21 days notice has been given, by entering the land, doing the works itself and recovering all reasonable expenses.
	Exeter Local Plan 1995-2011	Together with the Exeter Core Strategy, provides policies that inform land-use planning decisions in

Acronym	Term	Description
		Exeter.
	Heads of Terms	The key issues identified during the initial assessment of a development proposal that will need to be addressed through planning obligations.
	Infrastructure	Publicly accessible assets, systems and networks including roads, electricity, sewers, water and education services.
LDF	Local Development Framework	A portfolio of documents, including DPDs and SPDs, which set out the planning proposals for the area.
	Local Land Charge	A prohibition or restriction on the use of land, or a financial charge affecting the land, which is usually imposed by the Local Authority and binding on the successive owners of the land.
LPA	Local Planning Authority	Exeter City Council is the statutory provider of planning services in Exeter except in the case of development on land controlled by Devon County Council (highway, minerals, waste, and education).
	Material Consideration	Any issue that should be taken into account when deciding a planning application or an appeal against a planning decision. Planning policies will guide planning application decisions unless other material considerations associated with need, impact and local circumstance are considered to carry greater weight.
	Mitigate	In the case of planning obligations, actions to correct for the negative impacts and effects of a development.
NPPF	National Planning Policy Framework	Sets out the Government's planning policies for England and how these are expected to be applied through local planning policy and decision making.
	Perpetuity	Continuing indefinitely (in practice usually limited by law to 80 years).
	Planning Condition	Guided by Circular 11/95, planning conditions impose restrictions on the grant of planning permission. Planning obligations should only be agreed where planning conditions are not sufficient.
	Planning Obligation	In the form of a legal agreement, planning obligations apply to an area of land and are secured to ensure that developers mitigate for the impacts of, and provide for the infrastructural requirements arising from, development.
RPI	Retail Price Index	The most familiar measure of inflation in the UK.
	Spatial Planning	Addresses not only the physical development of land but its use and the activities undertaken on it.
SPD	Supplementary Planning Document	Amplify and provide more detail on the policies contained within DPDs. SPDs are subject to public consultation and are a material consideration in determining planning applications.
	Trigger	The point (in terms of time or the extent of development) at which a planning obligation should be completed.



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Appendix D

Summary of Consultation Comments on Planning Obligations SPD and Proposed Responses

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
1	Barton Willmore	Welcome clear references to national, legislative and policy context	Support welcomed	None
		Support for acceptance of open book viability assessment.	Support welcomed	None
		The SPD should allow for adoption and maintenance by the Council or an open space maintenance company.	Agree - the draft SPD is not intended to be prescriptive in this regard.	Amend summary table to make it clear that the potential obligations identified are only a guide
		The SPD should allow for high quality landscaping of public realm to negate the need for public art in some instances	Agree - the draft SPD is not intended to be prescriptive in this regard.	Amend summary table to make it clear that the potential obligations identified are only a guide
		The Council's proposals to charge for management of planning obligations is not compliant with the CIL regulations and should be removed from the SPD.	Agree, on the understanding that this comment relates to monitoring of planning obligations as opposed to Council work to implement them (e.g. design works).	Remove references to £180 at Annex 2 and remove 'receiving, managing and' from the final sentence of section 6.4.2
2	Network Rail	The SPD should require developer contributions towards rail infrastructure in response to increased patronage.	A strategy is already in place and contributions from new development are already being used as part of funding for rail infrastructure within Exeter	None
		Rail infrastructure should be exempt from CIL	The Council's CIL Charging Schedule does not levy a charge on railways.	None
		Railways should be included on the Council's CIL Regulation 123 list.	Specific railway projects are included in the list	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		Transport Assessments should take cognisance of impacts to existing rail infrastructure.	Noted. The City Council is working with Devon County Council, Network Rail and other rail industry partners to help implement the 'Devon Metro' programme. Rail infrastructure investments are coming forward (including stations at Newcourt and Marsh Barton) that will help to address the City's development strategy.	None
3	Natural England	In the absence of a CIL approach to enhancing the natural environment, we would be concerned that the only enhancements to the natural environment would be ad hoc, and not deliver a strategic approach, and that as such the local plan may not be consistent with the NPPF.	The City Council is working with partners including neighbouring authorities and Natural England to implement the Exeter and East Devon Green Infrastructure Strategy. Green infrastructure investments form part of the CIL regulation 123 list but the Council is also pursuing other mechanisms (including planning policy) to secure natural environment enhancements.	None
4	Sport England	All new dwellings in Exeter in the local plan period should provide for new or enhance existing sport and recreation facilities to help create opportunities for physical activity whilst having a major positive impact on health and mental wellbeing.	The Council is securing new and enhanced sport and recreation facilities through new development but, in accordance with the CIL regulations, will not use planning obligations to secure strategic facilities.	None
5	Devon County Council	At para 2.2.3, reference should be made to strategic transport facilities.	Agree that this change would make the paragraph more accurate.	Replace 'transport facilities' with 'strategic transport facilities'.
		Paragraph 2.2.4 should state that planning obligations should be focussed on meeting the tests as set out in regulation 122 of the	Disagree. Paragraph 2.2.2 already covers this point.	None

ID No.	Respondent	Summary of Representation	ECC Response	Changes to Draft SPD
		CIL regulation rather than referring to 'scaling back planning obligations'.		
		Paragraphs 4.6.1 and 4.6.2 do not seem to be consistent with the draft Affordable Housing SPD.	Agree. These paragraphs should reflect the requirement for 35% affordable housing on sites of 3 or more dwellings.	Change paragraphs 4.6.1 and 4.6.2 to reflect the requirement for 35% affordable housing on sites of 3 or more dwellings.
		It would be helpful if paragraph 4.7.1 could specifically set out the importance of considering infrastructure costs in the negotiation of land purchase prices.	Agree. Paragraph 4.7.1 is intended to make it clear that all costs should be taken into account when negotiating land purchase prices.	Rephrase the first sentence of 4.7.1 to read: 'Developers should take all costs (including potential planning obligations, and any identifiable exceptional site development costs) into account when acquiring land for development'
		The requirement for applicants to submit land registry documents needs to be reflected in the Council's 'validation checklist'.	Disagree, land registry documents are not always necessary and will be sought by Council officers on a case-by-case basis.	None