



Exeter City Council

## Supplementary Planning Document

# Planning Obligations



November 2009



|   |           |
|---|-----------|
| <b>Summary of Planning Obligations Sought .....</b>                                   | <b>6</b>  |
| <b>1. Background .....</b>  | <b>8</b>  |
| 1.1 Purpose of this Supplementary Planning Document .....                             | 8         |
| 1.2 Local Development Framework .....   | 8         |
| 1.3 Status of this Document.....  | 8         |
| 1.4 Community Infrastructure Levy .....   | 8         |
| <b>2. National Legislative and Policy Context .....</b>                               | <b>9</b>  |
| 2.1 Town and Country Planning Act 1990 .....  | 9         |
| 2.2 ODPM Circular 05/2005.....  | 9         |
| 2.3 Planning Obligations Practice Guidance .....                                      | 9         |
| 2.4 Planning Policy Statement 1 .....   | 9         |
| <b>3. Local Policy Context.....</b>   | <b>10</b> |
| 3.1 Regional and County Guidance .....  | 10        |
| 3.2 Exeter Local Plan.....  | 10        |
| 3.3 Affordable Housing SPD (draft) .....  | 10        |
| 3.4 Open Space SPD.....   | 10        |
| 3.5 Car Clubs SPG .....   | 10        |
| 3.6 Trees in Relation to Development SPD .....  | 10        |
| 3.7 Archaeology and Development SPG .....   | 10        |
| <b>4. Development Management.....</b>   | <b>11</b> |
| 4.1 Planning Conditions vs. Planning Obligations .....                                | 11        |
| 4.2 Identifying Planning Obligations .....  | 11        |
| 4.3 Site Requirements .....   | 11        |
| 4.4 Policy Requirements .....   | 11        |
| 4.5 Financial Contributions and Standard Charges.....                                 | 12        |
| 4.6 Addressing Threshold Avoidance and Site Sub-division .....                        | 12        |
| 4.7 Viability.....  | 12        |
| <b>5. Finalising Planning Obligations .....</b>                                       | <b>14</b> |
| 5.1 Before a Section 106 Agreement can be Drafted .....                               | 14        |
| 5.2 Agreement Timetable (see also annex 1).....                                       | 14        |
| 5.3 Covenanted Parties.....   | 14        |
| 5.4 Model Agreements.....   | 14        |
| 5.5 Planning Obligations, Planning Committee, Application Decisions and Appeals ..... | 15        |
| 5.6 Completing the Agreement .....  | 15        |
| <b>6. Implementing Planning Obligations.....</b>                                      | <b>16</b> |
| 6.1 Monitoring Planning Obligations .....   | 16        |
| 6.2 Triggers for the Payment of Financial Planning Obligations.....                   | 16        |
| 6.3 Price Index .....   | 16        |
| 6.4 Council Expenditure of Financial Contributions .....                              | 16        |
| 6.5 Modifying and Discharging Planning Obligations .....                              | 17        |
| <b>References .....</b>   | <b>18</b> |
| <b>Annex 1: Planning Obligations (Section 106) Procedure..</b>                        | <b>19</b> |

|   |           |
|---|-----------|
| <b>Annex 2: Maximum Element of Financial Contributions<br/>Retained for Directly Related Professional Costs .....</b> | <b>20</b> |
| <b>Annex 3: Glossary of Terms .....</b>   | <b>21</b> |

## Summary of Planning Obligations Sought

This summary table below applies to development proposal where planning obligations are necessary to accommodate their impact. **Its contents, including financial figures, will be subject to review in line with policy changes and inflation.**

| Obligations to <a href="#">Exeter City Council</a> |  | When Due   |
|--|--|--|
| Affordable Housing                                 | <b>25% on-site housing</b> (as a proportion of the total number of units built) to be affordable on sites of more than 0.5ha or capable of accommodating 15 or more units. A minimum of <b>85% social rented</b> and a maximum of <b>15% intermediate housing</b> . See the <a href="#">Draft Affordable Housing Supplementary Planning Document</a> .   | In phase with the delivery of market dwellings                       |
| Car Clubs  | Contributions to a car club are one option in addressing the transport implications of a development, particularly when there is limited or reduced parking provision (e.g. in the city centre). <b>£450 per dwelling and, ideally, on-site space provision</b> . See <a href="#">Car Club Supplementary Planning Guidance</a> for information.  | Prior to first occupation  |
| 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   |
| Community Facilities                               | Requirements for a contribution towards the provision of community facilities including community halls and related services are determined 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-scale retail applications are involved.                       | Before development commences   |
| Housing for Disabled People                        | Through Section 106 agreements on outline applications, the Council may seek to ensure that 5% of the total number of dwellings on a given site can be adapted easily for occupation by disabled people. Suitably qualifying sites, depending on location, would include those of 0.5 hectares or more or sites capable of yielding 15 or more dwellings. See Policy H7 of the Exeter Local Plan First Review 1995-2011. | No financial implications  |
| Parks, Leisure and Open Spaces                     | The provision of sports pitches, open spaces and play facilities is secured by Section 106 agreement in accordance with the Council's <a href="#">Public Open Space Supplementary Planning Document</a> .  | In-kind: In phase with development<br>Financial: Before commencement |

|  |   |   |
|--|---|---|
| Public Art   | Public art provision contributions are most frequently sought when new development occurs in the form of major schemes that occupy prominent locations.   | Before development commences            |
| Site Specific  | Where they are necessary, planning obligations will be negotiated on the basis of the individual circumstances of a development site. They may be sought to address issues including flooding, contamination, storage and display of archaeological finds and loss or damage created by a development or the development's use.   | Depends on the nature of the obligation |
| Student Accommodation                                      | Contributions 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                                 |
| <b>Obligations to <a href="#">Devon County Council</a></b> |   |   |
| Education  | Contributions are sought where there will be a shortfall in provision. On the date this Supplementary Planning Document was adopted, the figures were as follows:<br>Primary - <b>£2768.75 per dwelling</b> > 1 bed<br>Secondary - <b>£2518.65 per dwelling</b> > 1 bed<br>These will be updated annually.<br>If a new school is required, Devon County Council uses a different method of calculation. | Before development commences            |
| Highways   | Traffic orders - around <b>£1,500</b><br>Highway requirements are determined on a case-by-case basis. Obligations include highway and junction improvements, pedestrian crossings, and walking and cycling facilities.  | Before development commences            |
| Public Transport   | Transport obligations are negotiated and based on transport assessment and circumstance. They are often agreed for the provision of bus stops, real-time bus information and transport services.  | Before development commences            |

# **1. Background**

## **1.1 Purpose of this Supplementary Planning Document**

1.1.1 Development often creates the need for additional infrastructure, services and facilities. If these are not provided, there could be negative implications for local amenity and the environment. Planning obligations provide the mechanism through which the social impact of development is accommodated. In the form of a legal agreement, planning obligations are secured to ensure that developers mitigate the impacts of, and provide for the infrastructural 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.

1.1.3 A **Glossary of Terms** that offers a brief description of some of the words and acronyms that appear hereafter is available towards the end of this document.

## **1.2 Local Development Framework**

1.2.1 The Council is currently preparing a Local Development Framework (LDF). Divided into Development Plan Documents (DPDs), and amplified by Supplementary Planning Documents (SPDs), the LDF will provide the policy basis that will inform all local planning decisions.

1.2.2 In the interim, and in accordance with the Office of the Deputy Prime Minister Circular 05/2005 on Planning Obligations<sup>1</sup>, this SPD describes the Council's approach in securing planning obligations as outlined in the 'saved' policies of the Exeter Local Plan First Review 1995-2011<sup>2</sup>. It should be noted that once the Council's Core Strategy (a DPD forming part of the emerging LDF) has been adopted, this SPD may need to be adapted.

## **1.3 Status of this Document**

1.3.1 Supplementary Planning Documents (SPDs), which are replacing Supplementary Planning Guidance (SPG), amplify and provide a detailed explanation of existing planning policies. They are material considerations that are given substantial weight when planning decisions are made.

## **1.4 Community Infrastructure Levy**

1.4.1 The Planning Act 2008<sup>3</sup> made provision for the imposition of a Community Infrastructure Levy (CIL) to ensure the costs incurred in providing infrastructure to support the development of an area can be funded by owners or developers of land. The levy would not replace the need for all planning obligations but, if introduced by the Council, would probably limit their scope and result in amendments to this SPD.

## **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 1990<sup>4</sup> (as amended by Section 12(1) of the Planning and Compensation Act 1991<sup>5</sup>), 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 the 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 ODPM Circular 05/2005**

2.2.1 Office of the Deputy Prime Minister Circular 05/2005<sup>1</sup> offers guidance on the use of planning obligations. It states that while they will not be applicable to all development, they should be used whenever appropriate so long as they meet all of the following tests. A planning obligation must be:

- (a) **relevant to planning;**
- (b) **necessary to make the proposed development acceptable in planning terms;**
- (c) **directly related to the proposed development;**
- (d) **fairly and reasonably related in scale and kind to the proposed development;**
- and
- (e) **reasonable in all other respects.**

### **2.3 Planning Obligations Practice Guidance**

2.3.1 Circular 2005/05<sup>1</sup> has been supplemented by a Planning Obligations Practice Guidance<sup>6</sup>. 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.

### **2.4 Planning Policy Statement 1**

2.4.1 The fundamental principles of the planning system are to achieve sustainable development through community-led spatial plans. These objectives are expressed through Planning Policy Statements (PPS), which are replacing Planning Policy Guidance Notes (PPG). Planning Policy Statement 1<sup>7</sup> (PPS1) highlights the need to practise positive and proactive planning to achieve objectives of sustainable development. It also recognises the need to ensure that infrastructure and services are provided to accommodate the impact of new development.

### **3. Local Policy Context**

#### **3.1 Regional and County Guidance**

3.1.1 Regional Planning Guidance 10<sup>8</sup> sets the context for providing infrastructure and services to support new development. The Devon Structure Plan 2001-2016<sup>9</sup> and the Regional Spatial Strategy<sup>10</sup> (that, when adopted, will replace both of the above) each stipulate that development should only occur where the infrastructure required to service it is already in place or can be provided in a sustainable manner before, or at the same time as, development occurs.

#### **3.2 Exeter Local Plan**

3.2.1 The Exeter Local Plan First Review 1995-2011<sup>2</sup>, that will be replaced by Exeter's Local Development Framework when it is adopted, explains that development will be expected to provide the physical and social infrastructure needed to service it and to mitigate for its environmental impact. The Local Plan acknowledges the role of planning obligations in delivering sustainable development. It contains specific policies that are amplified by SPGs/SPDs where necessary and offers guidance during the negotiation of Section 106 Agreements.

#### **3.3 Affordable Housing SPD (draft)<sup>11</sup>**

3.3.1 Local Plan policy H6 states that planning obligations for the provision of 25% affordable housing on-site, as a proportion of the total number of units built, will be sought on housing schemes on sites capable of accommodating 15 or more dwellings or on sites of 0.5ha or more. During the preparation of the LDF Core Strategy, this requirement will be reviewed. Within this overall context, the draft SPD offers more detail explaining that 85% of the affordable housing provided should be social rented and a maximum of 15% should be intermediate housing.

#### **3.4 Open Space SPD<sup>12</sup>**

3.4.1 In accordance with Local Plan policies L4 and DG5, development that creates additional demand for open space and leisure facilities should either accommodate that demand on-site, or make contributions towards the provision and maintenance of nearby facilities. 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 Car Clubs SPG<sup>13</sup>**

3.5.1 Developers may be expected to create or support car clubs as part of the promotion of sustainable transport proposals for a development.

#### **3.6 Trees in Relation to Development SPD<sup>14</sup>**

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 SPG**

3.7.1 On some schemes, developers may be expected to make contributions towards 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), considers each on its merits and, unless material considerations suggest otherwise, makes a determination based on local, regional and national planning policies (see also Exeter City Council's Major Application Protocol<sup>15</sup>).

### **4.1 Planning Conditions vs. Planning Obligations**

4.1.1 Department of the Environment Circular 11/1995<sup>16</sup> requires that whenever a development proposal would otherwise be refused, planning conditions should be attached to a grant of planning permission. Circular 05/2005<sup>1</sup> stipulates that only where the scope of a planning condition is exceeded will a planning obligation be appropriate. Both circulars make it clear that permission cannot be granted subject to a condition that the developer enters into a planning obligation. Additionally, a condition cannot require payment of financial contributions nor works to land outside the control of the applicant 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, regional 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 and secured through 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, protected species, 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, regional and national planning policies identified in Section 3. It is intended that developers should provide for all infrastructure and services necessary to achieve sustainability from their proposals. The City Council's normal position will be to secure planning obligations on this basis.

## **4.5 Financial Contributions and Standard Charges**

- 4.5.1 In-kind planning obligations are not always practical for the provision of some infrastructure and services or in cases of development on small or high density sites. Planning obligations that provide for education services, highway works or open space maintenance are, for instance, usually agreed in the form of financial developer contributions. Financial contributions can offer an approach that is both fair and equitable. They offer the additional prospect of being pooled to deliver strategic facilities, such as new play equipment, that will be required as a result of several developments in an area.
- 4.5.2 In line with Circular 05/2005<sup>1</sup>, and the Planning Obligations Practice Guidance<sup>6</sup>, standard charges and formulae are used to calculate financial planning obligations where possible. This approach should provide developers with greater certainty and allow for planning obligations to be agreed, and planning applications to be determined, more quickly. The Summary of Planning Obligations Sought, located at the front of this SPD, includes an explanation of the standard charges that are usually applied to Section 106 agreements relating to developments in Exeter. Its contents will be subject to Retail Price Indexation (RPI) and review.
- 4.5.3 The Planning Obligations Practice Guide<sup>6</sup> 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 will be sought from sites considered capable of yielding 15 or more dwellings. This is to prevent developers from avoiding a planning obligation by reducing the scale of their proposals. In view of this, and based on a policy that requires 25% of new housing to be affordable on sites with the potential to accommodate 15 or more units<sup>11</sup>, the developers of a site with capacity for 16 houses will be expected to deliver 4 as affordable housing even when only 14 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. On this basis, 25% affordable housing will be sought where a site is split and two adjacent but separate planning applications, each for the construction of 10 houses, are received.

## **4.7 Viability**

- 4.7.1 Developers should take 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 costs incurred by moderating 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 site specific requirements associated with remediating 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) **A certificate of title** completed and signed by a solicitor. This should relate to 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's Planning Solicitor 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 required to determine major planning applications within 13 weeks and all others within 8 weeks<sup>17</sup>.

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 1000m<sup>2</sup> 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 the date that the application is due for determination and the developer is responsible for agreement delays.

### **5.3 Covenantee 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 infrastructure or 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 website<sup>18</sup>. These contain standard clauses that can be applied to an agreed list of planning obligation heads of terms. The use of standard clauses should reduce the time taken for the Council's Planning Solicitor to correspond with the developer's agent or solicitor and conclude the terms of the agreement.

5.4.2 It is not necessary for the developer's solicitor to prepare a draft agreement as it is usual for the Council's Planning Solicitor 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, to be 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 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. 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 website<sup>18</sup>.

## **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 covenanted on 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 1990<sup>4</sup>, 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. In some instances financial payments may be phased but should always be co-ordinated to ensure that infrastructure and services 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.

6.2.2 Divided into services commonly provided through financial planning obligations, the Summary of Planning Obligations Sought, located at the front of this SPD, explains when developer contributions are usually made payable.

### **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 Institute 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 Circular 05/2005<sup>1</sup> explains that 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 receiving, managing and spending the money.

- 6.4.3 Annex 2 contains a table that explains the maximum portion of individual financial contributions that the Council will retain for its part in administering the conversion of money into infrastructure 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. For example, a figure for receiving and ensuring that moneys are spent as agreed has been determined with reference to the average costs that the Council has incurred in this respect over the past 5 years. The table will be subject to Retail Price Indexation (RPI) and review.

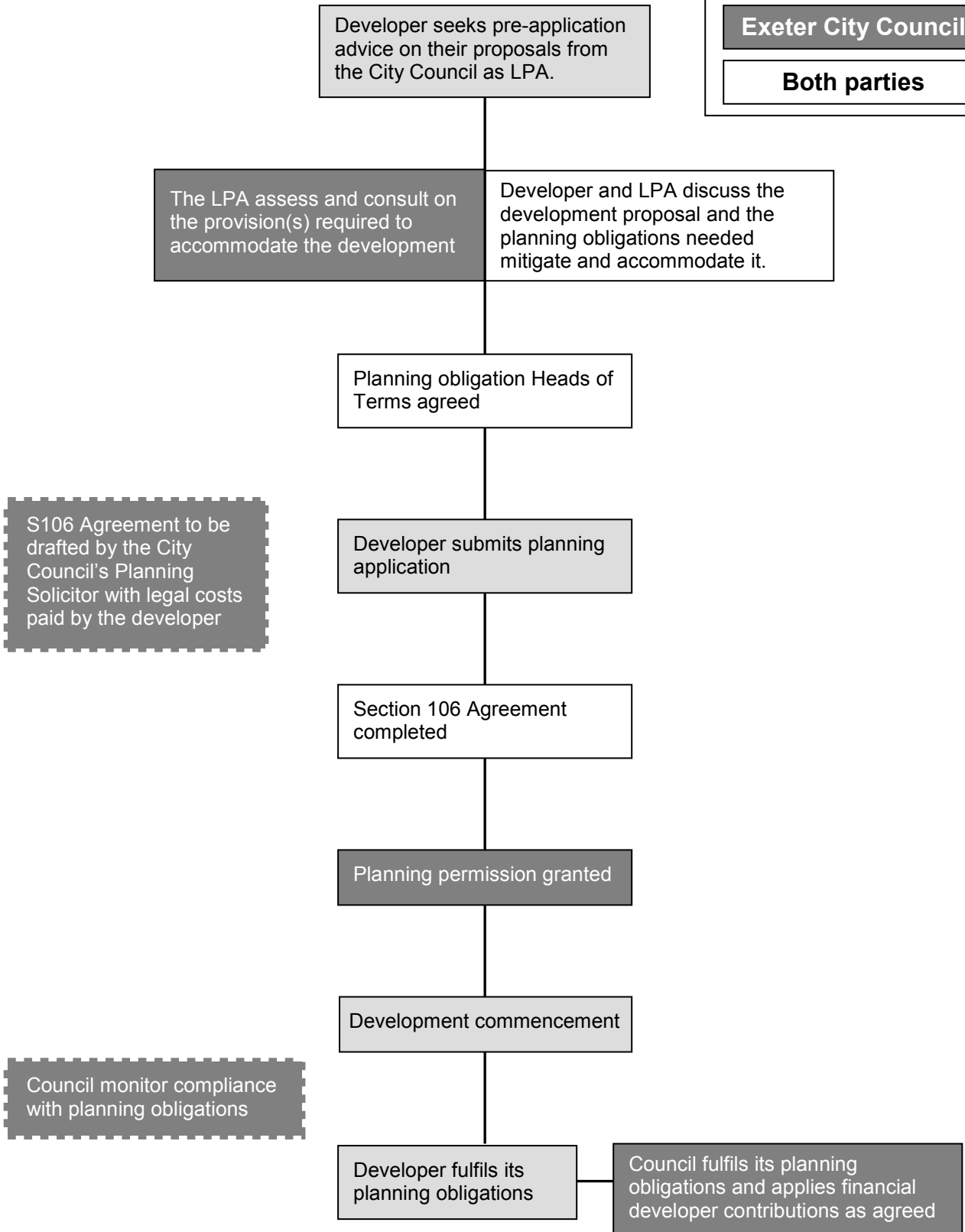
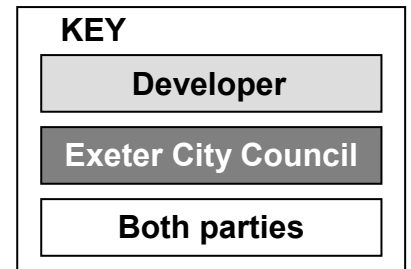
## **6.5 Modifying and Discharging Planning Obligations**

- 6.5.1 In accordance with Section 106A of the Town and Country Planning Act 1990<sup>4</sup> (as amended<sup>5</sup>), a planning obligation may not be modified or discharged except by agreement with the Council acting in its power as LPA. 5 years after the obligation was entered into, a formal application may be made to the authority for its modification or discharge. If this is refused Section 106B provides for the right of appeal against the decision to the Secretary of State.
- 6.5.2 Further detail is provided by the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992<sup>19</sup>.

## References

|     |  |   |          |
|-----|--|---|----------|
| 1.  | Circular 05/2005: Planning Obligations   | Office of the Deputy Prime Minister (ODPM)<br><a href="http://www.communities.gov.uk">www.communities.gov.uk</a>            | Jul 2005 |
| 2.  | Exeter Local Plan First Review 1995-2011   | Exeter City Council<br><a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>   | Mar 2005 |
| 3.  | The Planning Act 2008  | Her Majesty's Stationery Office (HMSO) <a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a>                                 | Nov 2008 |
| 4.  | Town and Country Planning Act 1990   | HMSO <a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a>   | May 1990 |
| 5.  | Planning and Compensation Act 1991   | HMSO <a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a>   | Jul 1991 |
| 6.  | Planning Obligations: Practice Guidance  | Department for Communities and Local Government (CLG)<br><a href="http://www.communities.gov.uk">www.communities.gov.uk</a> | Aug 2006 |
| 7.  | Planning Policy Statement 1  | ODPM <a href="http://www.communities.gov.uk">www.communities.gov.uk</a>   | Jan 2005 |
| 8.  | Regional Planning Guidance 10  | Government Office for the South West <a href="http://www.gos.gov.uk">www.gos.gov.uk</a>                                     | Sep 2001 |
| 9.  | Devon Structure Plan 2001 - 2016   | Devon County Council<br><a href="http://www.devon.gov.uk">www.devon.gov.uk</a>  | Oct 2004 |
| 10. | Draft Regional Spatial Strategy for the South West 2006 - 2026                                     | South West Regional Assembly<br><a href="http://www.southwest-ra.gov.uk">www.southwest-ra.gov.uk</a>                        | Jun 2006 |
| 11. | Draft Affordable Housing SPD   | Exeter City Council<br><a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>   | Sep 2007 |
| 12. | Public Open Space SPD  | Exeter City Council<br><a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>   | Sep 2005 |
| 13. | Car Clubs SPG  | Exeter City Council<br><a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>   | Sep 2005 |
| 14. | Draft Trees in Relation to Development SPD   | Exeter City Council<br><a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>   | May 2009 |
| 15. | Exeter City Council Planning Services Major Applications Protocol                                  | Exeter City Council<br><a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>   | Nov 2008 |
| 16. | Circular 11/1995: Use of Conditions in Planning Permission   | Department of the Environment<br><a href="http://www.communities.gov.uk">www.communities.gov.uk</a>                         | Jul 1995 |
| 17. | The Town and Country Planning (General Development)  | HMSO <a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a>   | Jun 1995 |
| 18. | <a href="http://www.exeter.gov.uk/planning-obligations">www.exeter.gov.uk/planning-obligations</a> | Exeter City Council<br><a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>   | Mar 2009 |
| 19. | Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992    | HMSO <a href="http://www.opsi.gov.uk">www.opsi.gov.uk</a>   | Dec 1992 |
| 20. | Planning Policy Statement 3  | CLG <a href="http://www.communities.gov.uk">www.communities.gov.uk</a>  | Nov 2006 |
| 21. | Bruntland, G H (ed.); Our Common Future  | Oxford University Press   | Mar 1987 |

# Annex 1: Planning Obligations (Section 106) Procedure



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

|                                |  |  |
|--------------------------------|--|--|
| Affordable Housing             | <ul style="list-style-type: none"> <li>- Receiving and ensuring that money is used for its agreed purpose</li> <li>- Designing, consulting on and commissioning works</li> </ul> | + £162<br>10% of total sum agreed                            |
| Car Clubs                      | - Contributions will ordinarily be paid directly to a car club provider.   | NA   |
| CCTV                           | <ul style="list-style-type: none"> <li>- Receiving and ensuring that money is used for its agreed purpose</li> <li>- Designing, consulting on and commissioning works</li> </ul> | + £162<br>10% of total sum agreed                            |
| Community Facilities           | <ul style="list-style-type: none"> <li>- Receiving and ensuring that money is used for its agreed purpose</li> <li>- Designing, consulting on and commissioning works</li> </ul> | + £162<br>10% of total sum agreed                            |
| Environmental Enhancements     | <ul style="list-style-type: none"> <li>- Receiving and ensuring that money is used for its agreed purpose</li> <li>- Designing, consulting on and commissioning works</li> </ul> | + £162<br>+ 10% of first £40,000<br>5% of £40,000 - £100,000 |
| Parks, Leisure and Open Spaces | <ul style="list-style-type: none"> <li>- Receiving and ensuring that money is used for its agreed purpose</li> <li>- Designing, consulting on and commissioning works</li> </ul> | + £162<br>10% of total sum agreed                            |
| Public Art                     | <ul style="list-style-type: none"> <li>- Receiving and ensuring that money is used for its agreed purpose</li> <li>- Designing, consulting on and commissioning works</li> </ul> | + £162<br>+ 10% of first £40,000<br>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**

| <b>Acronym</b> | <b>Term</b>                              | <b>Description</b>  |
|----------------|--|---|
|                | Affordable Housing                       | As defined in PPS3 <sup>20</sup> but, specifically, housing for local people within Exeter that cannot afford to buy or rent within the open housing market.  |
|                | Amenity                                  | The pleasure or enjoyment (or lack of) created by the presence of a development, facility or service.   |
| 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. Circular 05/2005 offers guidance on Section 106 of the Town and Country Planning Act 1990 (as amended).  |
| 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            | Enacted by the paving legislation of The Planning Act 2008, regulations on the use of CIL are being prepared. Rather than securing infrastructure related planning obligations, LPAs will be able to charge a financial CIL, using on evidence based local policies, to provide the local and regional strategic infrastructure required to accommodate new development. CIL will not remove the need for site specific planning obligations. |
|                | 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 spatial 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)   |

| Acronym | Term                           | Description   |
|---------|--------------------------------|---|
| DPD     | Development Plan Document      | Local policy documents that, when combined with the RSS, will form the basis, once adopted, upon which all planning decisions are made.   |
|         | Devon Structure Plan 2001-2016 | Sets out strategic planning policies for development and other land uses and provides the strategic basis for the Exeter Local Plan 1995-2011 and the determination of planning applications.   |
|         | 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 Devon Structure Plan 2001-2016 provides the basis for land-use planning decisions in 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.  |
|         | 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.  |

| Acronym | Term                            | Description   |
|---------|---------------------------------|---|
| PPG     | Planning Policy Guidance Notes  | A series of Government guidance notes that set out national policy on various planning issues. PPGs are in the process of being replaced by PPSs.   |
| PPS     | Planning Policy Statement       | An updated series of Government guidance notes that set out national policy on various planning issues.   |
| RPG     | Regional Planning Guidance      | Published by the Secretary of State for Transport, Local Government and the Regions, RPG 10 provides development and spatial strategies for the South West from 2001-2016. RPG10 and the Devon Structure Plan 2001-2016 will be replaced by the South West RSS. |
| RSS     | Regional Spatial Strategy       | Presently in draft form, the South West RSS will replace RPG10 and the Devon Structure Plan 2001-2016 to provide a strategic development plan for the South West that guides the policies of Exeter's LDF.  |
| 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.   |
| SPG     | Supplementary Planning Guidance | Amplify the policies of the Local Plan. With the completion of an LDF, SPGs will be superseded by SPDs.   |
|         | Sustainable Development         | Considered in social, economic and environmental terms, sustainable development 'meets the needs of the present without compromising the ability of future generations to meet their own needs' <sup>21</sup> .   |
|         | Trigger                         | The point (in terms of time or the extent of development) at which a planning obligation should be completed.   |



## **Exeter City Council**

**PLANNING SERVICES  
EXETER CITY COUNCIL  
CIVIC CENTRE  
PARIS STREET  
EXETER  
EX1 1NN**

**TEL: 01392 265223**

**FAX: 01392 265431**

**WEBSITE: [www.exeter.gov.uk/planning](http://www.exeter.gov.uk/planning)**

**E-MAIL: [planning@exeter.gov.uk](mailto:planning@exeter.gov.uk)**

This document is available in large print.  
Please contact Planning Services on 01392 265223 or email  
[planning@exeter.gov.uk](mailto:planning@exeter.gov.uk)