

## EXETER CITY COUNCIL

### PLANNING MEMBER WORKING GROUP 20 NOVEMBER 2012

#### EXECUTIVE 20 NOVEMBER 2012

### DRAFT REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

#### 1 PURPOSE OF REPORT

- 1.1 To seek Members' approval for the draft revised Planning Obligations SPD at Appendix 1 to be published for public consultation. Main revisions to the existing, adopted, planning obligations document respond to planning system changes and anticipate a Community Infrastructure Levy for Exeter.

#### 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 Since the current Planning Obligations SPD was published, the planning system has changed:

The **National Planning Policy Framework (NPPF)** has been introduced and provides up to date guidance on the importance of financially viable sustainable development to the application of section 106 planning obligations.

The **Community Infrastructure Levy (CIL) Regulations** explain that funding for one infrastructure project may not come from five or more Section 106 planning obligations upon the adoption of a CIL Charging Schedule or from April 2014 (whichever comes soonest).

A **Ministerial Statement on Housing and Growth** paves the way for earlier renegotiation of Section 106 planning obligations where circumstances (including financial) have changed.

#### 3 MAIN UPDATES TO THE DOCUMENT

- 3.1 The draft revised Planning Obligations SPD at Appendix 1 accounts for these recent changes to the planning system and anticipates the adoption of CIL.
- 3.2 The limited role of planning obligations in securing strategic infrastructure in the future is made clear. The document explains that CIL is the intended mechanism for new development to contribute towards strategic infrastructure. This leaves only affordable housing and matters that are site specific to be accounted for through Section 106 agreements.
- 3.3 In response to consultation on the draft CIL Charging Schedule, there have been requests for greater certainty over planning matters that the Council will continue to address through Section 106 planning obligations, rather than CIL. The summary table on page four of the draft revised SPD has been reviewed and responds to this request as far as possible. However, the site specific nature of planning obligations in ensuring sustainable development means that it is not always feasible to assess, list and cost likely individual Section 106 agreement terms for prospective individual development sites across the city.

- 3.4 Naturally, the SPD also updates the local planning policy position. Whilst planning obligations may arise in response to other material considerations like access to adjoining sites (and the document makes this clear), local planning policy provides the backdrop to the most frequently agreed Section 106 terms. The SPD highlights emerging documents including the updated Affordable Housing SPD and Sustainable Transport SPD and underlines Core Strategy Policy CP18 on securing developer contributions.

#### **4 IMPLEMENTING PLANNING OBLIGATIONS**

- 4.1 The revised draft Planning Obligations SPD offers important guidance on the negotiation, agreement, implementation and enforcement of Section 106 terms. But on its own, the value of the document is limited - it is only guidance. At each stage of the process, dedicated resource is essential to ensuring sustainable development.
- 4.2 One strand of the Systems Review of City Development concerns the Council's approach to agreeing and applying Section 106 planning obligations. Whether current procedures are efficient and deliver good development is being assessed. The review could result in new procedures and a restructuring of resources to ensure that things like Council adoption of public open space (a common Section 106 obligation) can be delivered more expediently.

#### **5 TIMETABLE AND CONSULTATION ARRANGEMENTS**

- 5.1 Subject to consultation and future Executive approval, it is proposed that the SPD will be adopted at the same time as the emerging Exeter Community Infrastructure Levy Charging Schedule, which is anticipated around April 2013. Failure to adopt CIL would necessitate further changes to the appended version of this document.
- 5.2 It is now anticipated that the draft CIL Charging Schedule will be submitted to an independent person for public examination in December. It is proposed that advertisement and the start of consultation on the draft revised SPD should coincide with submission of the draft Charging Schedule.
- 5.3 If approved by Executive, the SPD will be made available to the public and interested organisations. The minimum regulatory timescale for SPD consultation is four weeks. Consultation on this SPD is intended to run over the Christmas period, so a consultation period of six weeks is proposed in this case. Representations received during that period will be considered and a further report presented to Planning Member Working Group and Executive.

#### **6 ADVICE SOUGHT/RECOMMENDATION**

- 6.1 Planning Member Working Group is asked to note and support this report and the draft revised Planning Obligations SPD at Appendix 1.
- 6.2 Executive is asked to approved the proposed draft revised Planning Obligations SPD at Appendix 1 for public consultation.

**RICHARD SHORT**  
**ASSISTANT DIRECTOR CITY DEVELOPMENT**

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

**Background papers used in compiling this report:**

None

APPENDIX 1



Exeter City Council

Supplementary  
Planning Document

# Planning Obligations



September 2012

Draft for Consultation

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## Summary of Planning Obligations Sought

This summary table below applies to development proposal where planning obligations are necessary to accommodate their impact. Its contents will be subject to review.

Obligations		When Due
Affordable Housing (limited 3 year period)	<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. At least <b>70% social rented</b> . See the <a href="#">Draft Affordable Housing Supplementary Planning Document</a> .	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	The Council may seek to ensure that 5% of the total number of dwellings on a given site are wheelchair accessible, with 10% of the affordable housing element being wheelchair accessible. See Policy H7 of the Exeter Local Plan First Review 1995-2011 and the <a href="#">Draft Affordable Housing Supplementary Planning Document</a> .	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 <a href="#">Public Open Space Supplementary Planning Document</a> for further details.	In-kind: In phase with development Financial: Before commencement
Public Art	Public art 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 support 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 developers mitigate the impacts of, and provide 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 hereafter is available towards the end of this document.

## **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 anticipation of the introduction of a Community Infrastructure Levy 'Charging Schedule' for Exeter, which will have 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](http://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 1990<sup>1</sup> (as amended by Section 12(1) of the Planning and Compensation Act 1991<sup>2</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 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 2008<sup>3</sup> (as amended) and Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010<sup>4</sup>, and the CIL (Amendment) Regulations 2011<sup>5</sup>.

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 transport facilities, flood defences, schools, sports facilities and open spaces. Accordingly, from the point of Council adoption of a CIL 'Charging Schedule' or from April 2014 (whichever is sooner), 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 is progressing towards the adoption of a CIL 'Charging Schedule' for the city. Upon doing so, the use of planning obligations will 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 Framework<sup>6</sup>**

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 Guidance<sup>7</sup>**

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.

## **2.5 Ministerial Statement: Housing and Growth**

The Secretary of State for Communities and Local Government has announced proposals that would allow developers to renegotiate non-viable Section 106 agreements entered into prior to April 2010. These have been subject to public consultation. The Minister has also announced that Government will introduce legislation, to be effective in early 2013, which will allow any developer of sites which are unviable because of the number of affordable homes, to appeal with immediate effect. The Council will accord with these changes but will need to be clear that any renegotiated planning obligations continue to ensure that development is acceptable in planning terms.



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

#### **3.1 Exeter Core Strategy<sup>9</sup>**

- 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 Plan<sup>10</sup>**

- 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 SPD (draft)<sup>11</sup>**

- 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 implemented.

#### **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 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 SPD (Draft)<sup>13</sup>**

- 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 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<sup>15</sup>**

- 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 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. 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

Regulations<sup>4,5</sup> 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 Guide<sup>7</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 for affordable housing will be sought from sites considered capable of accommodating 15 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 25% of new housing to be affordable on sites with the potential to accommodate 15 or more units, 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. For example, 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.
- 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 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'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 ordinarily 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 (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 website<sup>18</sup>. 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'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 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 Planning Solicitor 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 website<sup>17</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 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 1990<sup>1</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. 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 receiving, managing and 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 administering 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. 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.

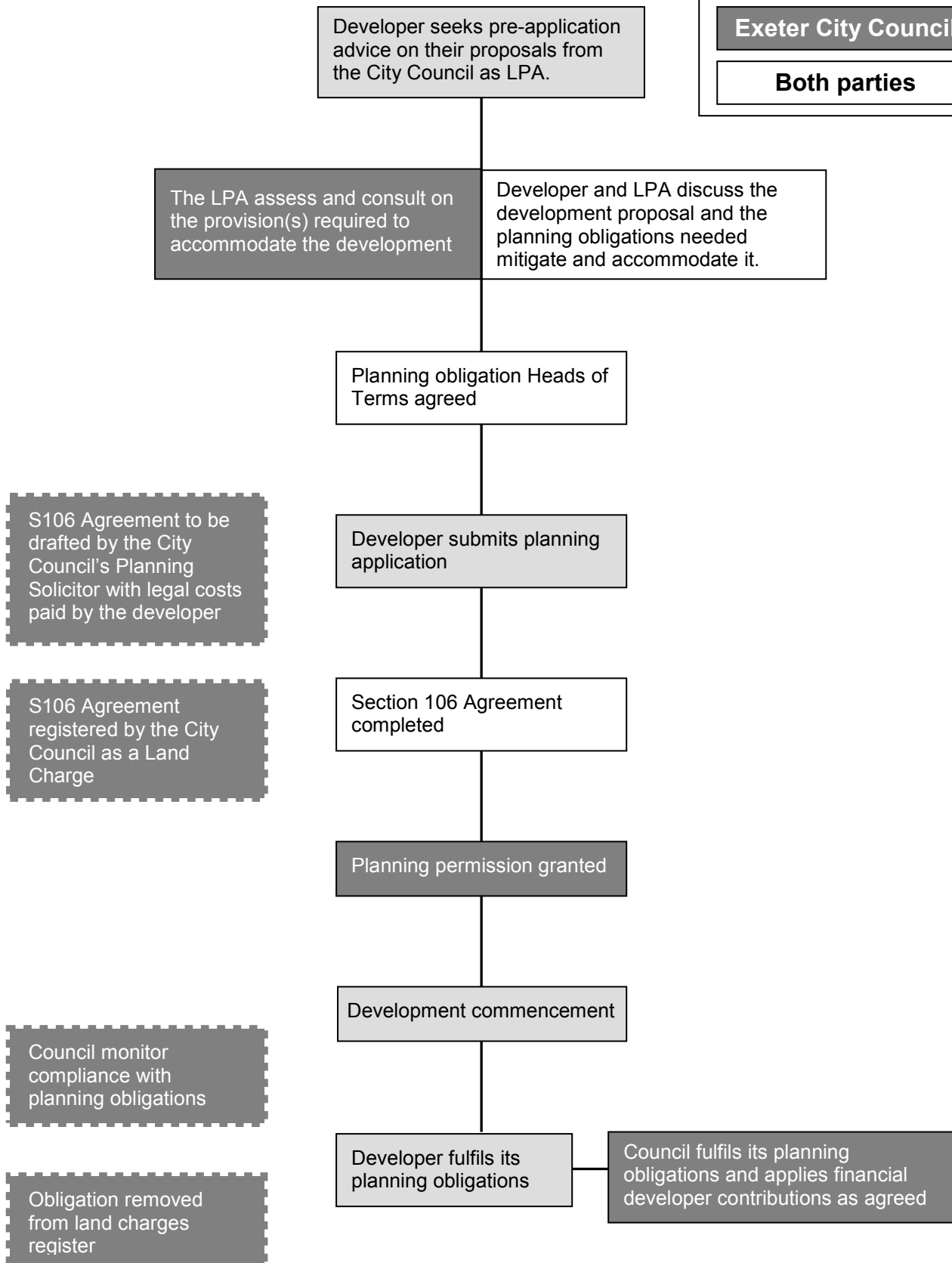
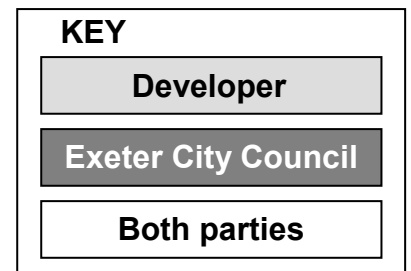
## **6.5 Modifying and Discharging Planning Obligations**

- 6.5.1 In accordance with Section 106A of the Town and Country Planning Act 1990<sup>1</sup> (as amended<sup>2</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>.
- 6.5.3 Local planning authorities are encouraged to renegotiate planning obligations where circumstances may have changed. The Government is currently consulting on proposals to remove the 5 year modification timescale for planning obligations agreed before 6 April 2010.

## References

1. Town and Country Planning Act 1990	HMSO <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	May 1990
2. Planning and Compensation Act 1991	HMSO <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	Jul 1991
3. The Planning Act 2008	HMSO <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	Nov 2008
4. Community Infrastructure Levy Regulations 2010	HMSO <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	Apr 2010
5. Community Infrastructure Levy (Amendment) Regulations 2011	HMSO <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	Apr 2011
6. National Planning Policy Framework	DCLG <a href="http://www.communities.gov.uk">www.communities.gov.uk</a>	Mar 2012
7. Planning Obligations: Practice Guidance	DCLG <a href="http://www.communities.gov.uk">www.communities.gov.uk</a>	Aug 2006
8. Written Ministerial Statement: Housing and Growth	DCLG <a href="http://www.communities.gov.uk">www.communities.gov.uk</a>	Sep 2012
9. Exeter Core Strategy	Exeter City Council <a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>	Feb 2012
10. Exeter Local Plan First Review 1995-2011	Exeter City Council <a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>	Mar 2005
11. Draft Affordable Housing SPD	Exeter City Council <a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>	Sep 2012
12. Public Open Space SPD	Exeter City Council <a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>	Sep 2005
13. Draft Sustainable Transport SPD	Exeter City Council <a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>	Sep 2012
14. Trees in Relation to Development SPD	Exeter City Council <a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>	May 2009
15. Archaeology and Development SPD	Exeter City Council <a href="http://www.exeter.gov.uk">www.exeter.gov.uk</a>	Nov 2004
16. Circular 11/1995: Use of Conditions in Planning Permission	Department of the Environment <a href="http://www.communities.gov.uk">www.communities.gov.uk</a>	Jul 1995
17. The Town and Country Planning (Development Management Procedure) (England) Order 2010	HMSO <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	Oct 2010
18. Exeter City Council planning obligations webpages	Exeter City Council <a href="http://www.exeter.gov.uk/planningobligations">www.exeter.gov.uk/planningobligations</a>	Mar 2009
19. Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992	HMSO <a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	Dec 1992

# 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>	+ £180 10% of total sum agreed
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>	+ £180 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>	+ £180 + 10% of first £40,000 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>	+ £180 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>	+ £180 + 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**

<b>Acronym</b>	<b>Term</b>	<b>Description</b>
	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 Exeter.

Acronym	Term	Description
	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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