



**REVISED DRAFT PLANNING OBLIGATIONS  
SUPPLEMENTARY PLANNING DOCUMENT**

**October 2013**

**DRAFT**

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# Overview

## Introduction

Tower Hamlets Council will be introducing its own Community Infrastructure Levy (CIL). This has significant implications for how the Council plans for the delivery of infrastructure and how Planning Obligations are secured from new development. This [Draft] Supplementary Planning Document (SPD) sets out Tower Hamlets Council's proposed policy for securing planning obligations in respect of new developments that require planning permission.

This Revised SPD provides additional guidance on matters covered in Tower Hamlets Core Strategy (2011) and the Managing Development Document (2013). It is not part of the statutory Development Plan; however it is an important consideration in determining planning applications.

## Relationship with other Planning Documents

The Planning Obligations SPD operates on a borough-wide scale where the Council acts as Local Planning Authority (LPA). It sits within the portfolio of Local Plan documents to support and add detail to the relevant Development Plan Documents (DPDs), particularly Spatial Policy 13 of the Core Strategy. It replaces the Planning Obligations Supplementary Planning Document adopted in January 2012.

As the leading Local Plan document, the Core Strategy (adopted 2010) sets out the spatial strategy for the borough until 2025.

The relevant policies of the London Plan and the Mayor's planning guidance will continue to apply to development in the borough.

## Purpose of the Planning Obligations SPD

The purpose of this SPD is to:

- Explain the Council's approach to using planning obligations to local residents, developers and the wider community;
- Explain the relationship between the Community Infrastructure Levy (CIL) and S106 Planning Obligations
- Explain the circumstances under which the Council will secure planning obligations to mitigate the impacts of a development on the borough's infrastructure;
- Improve transparency in the priority and calculation of planning obligations;
- Provide applicants with greater certainty on when planning obligations will be sought;
- Provide a consistent methodology for calculating obligations required to mitigate site specific impact of major development proposals across the borough; and
- Take into account the cumulative impact of development in the borough and explain how this will be dealt with through the use of planning obligations and CIL.

## **Who is it for?**

This SPD has been prepared for use by the Council, developers, the general public and other stakeholders as a guide to the Borough's position on the use of S106 planning obligations.

## **How should it be used?**

This SPD should be used as a framework for calculating S106 planning obligations associated with developments in the London borough of Tower Hamlets (LBTH). In areas of the borough where the Council does not act as Local Planning Authority, such as parts of the borough within the London Legacy Development Corporation (LLDC), the relevant authority's guidance should be followed. As a whole, the document should provide more certainty to all parties involved in the development process.

It will be utilised by the Council as a material consideration when assessing planning applications and will be reviewed and updated as and when necessary. Developers should draw on the document to assist in their costing and inclusion of S106 planning obligations in their financial planning and to help reduce time required negotiating and agreeing obligations with the Council.

In some instances, for example in areas of intense redevelopment and regeneration, or in certain site specific locations, additional planning obligations outside the scope of this SPD may be sought.

This SPD should be read in tandem with the CIL Draft Charging Schedule, or subsequent publications.

## **Structure of the Supplementary Planning Document**

This document considers the role S106 planning obligations have in Tower Hamlets by setting out the national, regional and local policy context, including emerging government guidance on the Community Infrastructure Levy. The negotiating process for planning obligations is then outlined and those planning obligations to be sought by the Council are detailed. Finally, the procedure and management processes for planning obligations are explained.

# 1. Introduction

1.1 This section sets out how Section 106 planning obligations, CIL, planning conditions and Highways Section 278 (S278) agreements work together as a set of tools to help achieve sustainable development. The Council will consider the combined impact of all these tools on development when considering any planning decision.

## Planning Conditions

1.2 Planning conditions are requirements made by the Local Planning Authority for actions that are needed in order to make a development acceptable in planning terms. They cannot be used to secure financial contributions but can be used to ensure that certain elements related to the development proposal enhance the quality of development and enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. In Tower Hamlets such conditions are likely to cover, amongst other things, the requirement to:

- undertake archaeological investigations
- implement necessary local site-related transport improvement
- undertake appropriate flood risk solutions
- submit details of materials to be used in the development
- control the opening hours of environmentally unfriendly but necessary uses

## Highway Improvements – Section 278 Agreements

1.3 A Section 278 Agreement (of the Highways Act 1980) is an agreement between the highway authority and a developer for the costs of modifications to the existing public highway network to facilitate or service a proposed development to be met by the developer. Examples of works covered by this type of agreement could include road safety improvements -such as traffic calming, street lighting, improved facilities for pedestrians and cyclists - roundabouts, signalised junctions, priority junctions, new accesses to development sites and footway and carriageway resurfacing.

## Planning Obligations (S106)

1.4 Planning obligations secured pursuant to Section 106 of the Town and Country Planning Act 1990 are entered into as legal agreements between the local planning authority and parties with a relevant land interest. They can impose financial and non-financial obligations on a person or persons with an interest in the land and become binding on that parcel of land.

1.5 In Tower Hamlets, planning obligations will be used to mitigate the impact of a development, which without that mitigation, would render the development unacceptable in planning terms.

## **Community Infrastructure Levy (CIL)**

1.6 The Council, as Local Planning Authority, is entitled to charge a 'Community Infrastructure Levy' (CIL) on new developments. The CIL applies to most new developments, and charges are based on the size and type of the new development. The basis for the CIL charge for each development type is detailed in the Council's Community Infrastructure Levy Draft Charging Schedule or successor documents. The Council already acts as the collecting authority for the London Mayor's Community Infrastructure Levy. This is a standard charge of £35 per square metre on most types of development in Tower Hamlets to contribute towards the cost of delivering Crossrail. Further details can be found in the Mayor of London's Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy, Supplementary Planning Guidance 2013).

1.7 The CIL will generate funding to deliver a range of borough-wide and local infrastructure projects that support residential and economic growth, provide certainty for future development, and benefit local communities. It provides a more predictable funding stream than pooled contributions and will help enable the delivery of infrastructure projects to be planned for more effectively. The Council will work with infrastructure providers and communities to set priorities for what funds collected under the levy should be spent on.

1.8 The CIL is designed to give developers and investors greater confidence because there will be more certainty about the value of contributions they will be expected to contribute towards community infrastructure. Equally, the wider community and developers alike will be better able to understand how new development is contributing towards infrastructure provision across the borough.

## **2. LBTH Approach to Planning Obligations and CIL**

### **The Interaction between Planning Obligations & CIL**

2.1 Following the adoption of a Charging Schedule, CIL will replace S106 as the primary tool to mitigate the impacts of development and will secure some, or all, of the funds necessary to provide infrastructure to support the sustainable development of the borough. Further details of the CIL rates proposed can be found in the Revised Draft Charging Schedule, October 2013.

2.2 The Draft Regulation 123 List of Infrastructure Projects, October 2013 identifies types of infrastructure projects that Tower Hamlets Council intends will, or may, be wholly or partly funded by CIL. The Council will not seek planning obligations (Section 106) for infrastructure included in the list unless the need for specific infrastructure contributions is required to make the development acceptable in planning terms and accords with the statutory requirements. CIL is an appropriate delivery mechanism for infrastructure which can be attributed to general pressure resulting from development, rather than infrastructure necessitated by a specific scheme which could not have been foreseen.

2.3 The provision of affordable housing lies outside of the remit of CIL and will continue to be secured through Section 106 Agreements. Section 106 Agreements and planning conditions will also continue to be used for site specific development mitigation, such as site specific provision of amenity / open space and connection to utility services (as required by legislation) and other site specific requirements. Most developments will be required to pay CIL, and where appropriate, contribute to any site specific requirements to be secured through Section 106 Agreements.

2.4 A number of the strategic sites identified in the Tower Hamlets Managing Development DPD (2013) are required to provide one or more specific pieces of infrastructure. The Council may accept CIL payment 'in-kind' in line with the CIL Regulations 2010 (as amended).

### **Approach to Development Mitigation and Infrastructure Delivery**

2.5 The sections below summarise the approach that the Council intends to take to the relationship between S106 Planning Obligations and CIL, once the Community Infrastructure Levy is introduced. They also address the intended approach to be taken to the strategic sites identified in the Managing Development DPD (2013), where there is a requirement to provide one or more specific pieces of infrastructure.

2.6 The tick box tables below are intended as an indicative reference guide. The Council

may seek to mitigate site-specific impacts of development through the Section 106 process where the necessary mitigation measures cannot be addressed through CIL. The policy approach to the particular types of obligations and charges that will be required in connection with certain types of development are discussed further in chapter 6.

**Affordable Housing:**

2.7 The Council will continue to secure affordable housing through Section 106 Agreements. For full details of the Council’s approach to affordable housing provision this SPD should be read in tandem with the [Draft] Affordable Housing SPD (2013), Core Strategy (2011) and Managing Development DPD (2013).

| Infrastructure            |  | Delivery Mechanism  |     |
|---------------------------|--|---------------------|-----|
| Infrastructure Theme      | Specific Requirement   | Planning Obligation | CIL |
| <b>Affordable Housing</b> | See [Draft] Affordable Housing SPD (2013), Core Strategy (2011) and Managing Development Document (2013) | ✓                   | X   |

**Employment, Skills Training and Enterprise:**

2.8 The Council will continue to secure local employment, skills training and enterprise benefits commensurate with the scale of all new major developments through S106 Agreements. The Council may use CIL receipts to fund facilities for the strategic delivery of benefits relating to employment, skills training and enterprise.

| Infrastructure                   |   | Delivery Mechanism  |     |
|----------------------------------|---|---------------------|-----|
| Infrastructure Theme             | Specific Requirement                                      | Planning Obligation | CIL |
| <b>Employment and Enterprise</b> | Job brokerage   | ✓                   | X   |
|                                  | Construction phase skills training                        | ✓                   | X   |
|                                  | End user skills training                                  | ✓                   | X   |
|                                  | Apprenticeships and work placements                       | ✓                   | X   |
|                                  | Local enterprise - supply-chain commitments               | ✓                   | X   |
|                                  | Employment and enterprise training and support facilities | X                   | ✓   |

### **Community Facilities:**

2.9 Following the introduction of CIL, the intention is that the Council will cease to mitigate the impact of development on the borough's community facilities through S106 Agreements; the delivery, improvement, operation, and maintenance of such facilities will be mitigated using CIL receipts.

2.10 On sites allocated to deliver community facilities in the Managing Development DPD (2013) the Council may accept payments in-kind, in the form of land, in lieu of a CIL payment to deliver identified community facilities.

| <b>Infrastructure</b>       |                                      | <b>Delivery Mechanism</b>  |            |
|-----------------------------|--------------------------------------|----------------------------|------------|
| <b>Infrastructure Theme</b> | <b>Specific Requirement</b>          | <b>Planning Obligation</b> | <b>CIL</b> |
| <b>Community Facilities</b> | Multi-Use Community Facilities       | <b>X</b>                   | ✓          |
|                             | Youth Centres                        | <b>X</b>                   | ✓          |
|                             | Idea Stores, Libraries, and Archives | <b>X</b>                   | ✓          |
|                             | Leisure Centres                      | <b>X</b>                   | ✓          |

### **Education:**

2.11 Following the introduction of CIL, the Council will cease to mitigate the impact of development on the borough's education facilities through S106 Agreements. Education facilities will instead be delivered through CIL receipts;

2.12 On sites allocated to deliver education facilities the Council may accept payments in-kind, in the form of land, in lieu of a CIL payment to deliver identified education facilities.

| <b>Infrastructure</b>       |                             | <b>Delivery Mechanism</b>  |            |
|-----------------------------|-----------------------------|----------------------------|------------|
| <b>Infrastructure Theme</b> | <b>Specific Requirement</b> | <b>Planning Obligation</b> | <b>CIL</b> |
| <b>Education</b>            | Primary School              | <b>X</b>                   | ✓          |
|                             | Secondary School            | <b>X</b>                   | ✓          |

### **Health:**

2.13 Following the introduction of CIL, the Council will cease to mitigate the impact of development on the borough's health facilities through S106 Agreements. Health facilities will instead be delivered through CIL receipts;

2.14 On sites allocated to deliver health facilities the Council may accept payments in-kind, in the form of land, in lieu of a CIL payment, to deliver identified health facilities.

| Infrastructure       |                         | Delivery Mechanism  |     |
|----------------------|-------------------------|---------------------|-----|
| Infrastructure Theme | Specific Requirement    | Planning Obligation | CIL |
| Health               | Primary Care Facilities | X                   | ✓   |

### Transport and Highways:

2.15 Following the introduction of CIL the Council will mitigate the cumulative impacts of development on the borough's transport and highways network using CIL receipts to fund projects as identified in the borough's Regulation 123 List. However, all site-specific impacts of development on transport and highways will be mitigated using S278 Agreements, and where these are insufficient, S106 Agreements.

2.16 In areas of the borough identified in the Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy, Supplementary Planning Guidance 2013, a contribution toward Crossrail will be sought for certain types of commercial development. This is in addition to the mandatory London Mayor's CIL; however, the London Mayor's CIL discounts the level of Crossrail contributions that will be sought through planning obligations.

| Infrastructure         |   | Delivery Mechanism  |     |
|------------------------|---|---------------------|-----|
| Infrastructure Theme   | Specific Requirement  | Planning Obligation | CIL |
| Transport and Highways | Strategic/ borough-wide transport improvements  | X                   | ✓   |
|                        | Site-specific highway works such as localised safety improvements and reinstatement of highways                         | S278 and S106       | X   |
|                        | Site-specific works to amenity land, access roads etc.  | S278 and S106       | X   |
|                        | Crossrail   | ✓                   | ✓   |
|                        | Transportation measures, including: Car Clubs, Electric Vehicle Charging, Travel Plans, Car and Permit Free Agreements. | ✓                   | X   |

### Public Realm:

2.17 Following the introduction of CIL, the Council will mitigate the impacts of development on the borough's public realm using a combination of CIL and S106 Agreements.

2.18 New public open space will be funded through CIL receipts, and land for new open space may be accepted as an in-kind CIL payment on sites allocated to provide new Local

Parks were identified in the Managing Development Document. Strategic projects to improve the streetscene and built environment will also be funded through CIL.

| Infrastructure       |   | Delivery Mechanism  |     |
|----------------------|---|---------------------|-----|
| Infrastructure Theme | Specific Requirement  | Planning Obligation | CIL |
| Public Realm         | Public Open Space/public parks such as those identified in the Managing Development DPD | X                   | ✓   |
|                      | Borough-wide improvements to streetscene and built environment                          | X                   | ✓   |
|                      | Site-specific public realm improvements   | ✓                   | X   |
|                      | Infrastructure dedicated to public safety (e.g. wider CCTV coverage)                    | X                   | ✓   |
|                      | Safeguarding or securing access to public open spaces and walkways                      | ✓                   | X   |

### **Public Art:**

2.19 Following the introduction of CIL the Council will cease to secure provision of public art through Section 106 Agreements. Strategic public art will be funded through CIL receipts.

| Infrastructure       |                      | Delivery Mechanism  |     |
|----------------------|----------------------|---------------------|-----|
| Infrastructure Theme | Specific Requirement | Planning Obligation | CIL |
| Public Art           | Public Art           | X                   | ✓   |

### **Environmental Sustainability:**

2.20 Following the introduction of CIL the Council will continue to seek to secure environmental sustainability measures, in terms of carbon reduction and biodiversity, through S106 agreements where mitigation measures cannot be provided as part of a development. Strategic environmental sustainability projects, such as decentralised energy facilities, air quality initiatives, waste and water infrastructure, as well as flood defences will be delivered using CIL receipts.

2.21 Where a site has been identified to accommodate a decentralised energy facility the Council may accept an in-kind payment, in the form of land, in lieu of a CIL payment, to facilitate delivery of decentralised energy facilities.

| Infrastructure                      |  | Delivery Mechanism  |     |
|-------------------------------------|--|---------------------|-----|
| Infrastructure Theme                | Specific Requirement                               | Planning Obligation | CIL |
| <b>Environmental Sustainability</b> | Carbon reduction measures/initiatives              | ✓                   | X   |
|                                     | Decentralised energy facilities                    | X                   | ✓   |
|                                     | Biodiversity Measures/Initiatives                  | ✓                   | X   |
|                                     | Flood defences                                     | X                   | ✓   |
|                                     | Strategic energy and sustainability infrastructure | X                   | ✓   |

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## 3. Legislative and Policy Context

3.1 This SPD provides guidance on the use of planning obligations in Tower Hamlets. It is based on the principles established across a range of planning policies included in legislation as well as national, regional and local planning guidance. The SPD reflects the Mayor of Tower Hamlets' Priorities for the borough. The strategic basis for this SPD is the Core Strategy document of the Local Plan. The Core Strategy builds on the themes of the Community Plan, particularly the physical delivery of the vision of 'One Tower Hamlets'. Other documents relevant to the policy background and evidence base in support of this SPD are addressed here and referenced in the document where relevant.

### National Level

#### **The Town and Country Planning Act 1990**

3.2 The Town and Country Planning Act 1990, amended by the Planning and Compensation Act 1991, set out measures under section 106 that allow developers to enter into a planning obligation to provide services and facilities connected with the proposed development. The 2004 Planning and Compulsory Purchase Act included replacement clauses for section 106, 106A and 106B, providing a statutory basis for the inclusion of new mechanisms for contributions to be sought through negotiation alongside the standard charges set out by the Local Planning Authority (LPA).

#### **Community Infrastructure Levy Regulations**

3.3 The Community Infrastructure Levy (CIL) Regulations came into force on 6<sup>th</sup> April 2010. Regulation 122 limits the use of planning obligations to cases where three tests can be successfully applied:

"A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

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

3.4 These three requirements for planning obligations determine when planning obligations should be used. The statutory tests clarify the purpose of planning obligations in light of CIL and provide a stronger basis to ensure that planning obligations meet these criteria.

#### **National Planning Policy Framework (2012)**

3.5 The National Planning Policy Framework (NPPF) sets out the Government's

economic, environmental and social planning policies for England. Taken together, these policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations.

## **Regional Level**

### **London Plan (2011)**

3.6 The Mayor's London Plan 2011 outlines the Mayor's approach to dealing with issues of strategic importance across London. There are three policies of the plan specifically addressing planning contributions: 8.1, 8.2 and 8.3.

3.7 Policy 8.1 - 'Implementation' states that, with regard to enabling development, the Mayor of London will work with boroughs and other key stakeholders to ensure the effective development and implementation of the proposed Community Infrastructure Levy.

3.8 Policy 8.2 - 'Planning Obligations' sets out that the Mayor of London will provide guidance on the preparation of frameworks for negotiating obligations in DPD's and the wish that there is a voluntary system of pooling contributions for the provision of facilities related to proposed developments. The policy also sets out that development proposals should address strategic as well as local priorities in planning obligations and that the areas of highest importance are Affordable Housing, funding of Crossrail and other public transport improvements. Climate change, learning and skills, health facilities, childcare provisions and the provision of small shops are also raised as high-importance areas to be addressed in planning obligations. The Mayor has adopted specific Supplementary Planning Guidance on 'Use of Planning Obligations in the funding of Crossrail' (2010)

3.9 Policy 8.3 - 'Community Infrastructure Levy' sets out that the Mayor of London will work with Government and other stakeholders to ensure effective development and implementation of CIL and will prepare guidance for boroughs setting out a clear framework for its application. The focus of this is to ensure that the necessary infrastructure to deliver the policies of the plan – in particular Crossrail and public transport initiatives – can be delivered.

## **Local Level**

### **Community Plan 2011**

3.10 The Community Plan provides the long-term vision for Tower Hamlets. The plan was informed by a number of key plans and strategies, such as the '*Health and Wellbeing Strategy*' and '*Children and Young People's Plan*', and was developed alongside the Local Plan, the vehicle for the physical delivery of the plan's vision.

3.11 The main themes of the Community Plan are:

- A great place to live;
- A prosperous community;
- A safe and supportive community; and
- A healthy community.

3.12 These are the themes that contribute to 'One Tower Hamlets', the goals being to reduce inequality and poverty, to strengthen social cohesion and to make sure communities continue to live well together. This SPD recognises the role planning obligations have in facilitating 'One Tower Hamlets'.

### **Core Strategy (2010)**

3.13 The Core Strategy 'Delivery and Monitoring' section sets out the Council's strategic objective to secure planning obligations between the LPA and developers to mitigate, compensate and prescribe matters relating to development in order to facilitate the granting of planning permission. The strategy also states that the Council may pool contributions relating to significant infrastructure, including transport, education and health, reflecting the regional policy direction.

3.14 Policy SP13 of the Core Strategy further sets out the Council's priorities for planning obligations. These are: Affordable Housing; sustainable transport; open space; education; health; training employment and enterprise; biodiversity; community facilities; highway works and public realm.

### **Managing Development Document (2013)**

3.15 The Managing Development Document sits under the Core Strategy as part of the borough's Local Plan and has the same status in terms of the determination of planning applications.

3.16 A summary of the key aims and objectives of the DPD is provided below.

- Identifies sites for important services – primary and secondary schools, Idea Stores, Leisure Centres, waste management facilities and open space – and sites capable of accommodating 500+ homes;
- Defines boundaries for planning policy areas including town centres and employment areas; and
- Includes detailed development management policies against which planning applications will be assessed.

## 5. Negotiating Planning Obligations

5.1 The process for negotiating and securing planning obligations is set within the framework of national, regional and local policy guidance and legislation. When carrying out these negotiations for planning obligations, the Council must meet the statutory tests set out in the 2010 CIL Regulations.

### Pre-application Stage

5.2 Applicants, agents and developers are encouraged to seek pre-application advice prior to the formal submission of major development proposals within the borough. The pre-application process offers a valuable service for proposed schemes and allows dialogue to resolve any initial concerns which officers envisage may arise during the formal application stage. Pre-application meetings can deter applications with little or no prospect of success. The pre-application stage also offers an opportunity for officers to discuss the financial contributions expected on any given development site.

5.3 Applicants should use this SPD alongside an analysis of their proposed works to consider the impacts of the proposed scheme and any planning obligations likely to be required to mitigate the impacts of development. These details should be submitted as a draft 'Heads of Terms' document alongside the pre-application submission documentation, to allow officers sufficient time to consider the details contained within the draft 'Heads of Terms'.

5.4 During the course of pre-application discussions, where negotiations fail to result in agreement on the draft 'Heads of Terms', the applicant is invited to provide alternative proposals and related justification which will be taken into consideration during the assessment of any future application.

### Application Stage

5.5 Applicants are advised in the Council's Development Control Advice Note 2009 (required to validate a planning application) to submit details of planning obligations within their Impact Statement.

5.6 In some cases, such as for strategic applications, it may be more appropriate that this information is submitted as a separate Planning Obligations Statement alongside a draft 'Heads of Terms' document. The Planning Obligations Statement should evaluate how the impacts of the development are to be addressed within the context of this SPD as well as other local, regional and national guidance.

5.7 Applications which are submitted without a Planning Obligations Statement/Draft Heads of Terms will not be validated until this information is provided.

5.8 Details of the applicant's solicitor must be submitted at the time an application is

made. The following solicitor details should be provided;

- Name of company
- Postal address
- Contact name
- Telephone number (preferably direct dial)
- Email address
- Website

5.9 Details of the land title should also be provided alongside details of all parties (including chargees) with an interest in the land as they will also be required to enter into the agreement. Should details of other parties not be available before an application is submitted, it should be identified early on in the process to avoid a delay in completion of the agreement. Any charges on the property should also be identified.

5.10 During the planning application process, initial advice provided with regard to contribution requirements may be subject to alterations. This is often due to changes following formal consultation and any issues which may arise during the course of an application. 'Heads of Terms' must be agreed prior to planning committee meetings and within an appropriate timescale of delegated applications to allow them to be determined and decisions issued by officers within the statutory target periods.

5.11 If the obligations required by the Council are not agreed to, officers will prepare a recommendation for refusal of the planning application.

5.12 In the case of delegated applications, if the 'Heads of Terms' are agreed between the LPA and the applicant/agent where the application is considered acceptable on all other grounds, a draft decision notice will be prepared by officers. The applicant/ landowner must enter into and complete the S106 agreement prior to the LPA issuing the decision notice for any delegated application.

5.13 In the case of an application referred to a Tower Hamlets planning committee, the 'Heads of Terms', which have been agreed, will be included within the committee report for information. Should members recommend approval of the planning application with planning obligations, this approval will be subject to the completion of the S106 agreement. Following the planning committee, the applicant/agent must complete the S106 agreement in order for the decision notice to be issued.

## **Viability**

5.14 In certain circumstances, it may be considered that the viability of a scheme is jeopardised due to site constraints or other factors. It is recommended in such cases that applicants seek pre-application advice from the LPA prior to the formal submission of a planning application.

5.15 It is essential that all proposals where viability is considered to be a concern are

submitted with a full Viability Assessment which contains sufficient evidence to enable officers to properly assess a scheme.

5.16 A Viability Assessment must be completed in accordance with the guidelines set out in the GLA 'Affordable Housing Development Control Toolkit' 2010 or an alternative Toolkit as approved by the Council.

5.17 The applicant will be required to meet the Council's cost of evaluating any appraisals which will include the appointment of qualified independent assessors.

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## 6. Standard Obligations and Charges

6.1 This section sets out how the Council will use S106 planning obligations necessary to make development acceptable. A variety of planning obligations may be necessary, therefore the topics covered below are not exhaustive and each development will be considered on a case by case basis and in line with relevant, available evidence, guidance, or policies.

6.2 For each obligation, the threshold and contribution requirements are provided. In line with the CIL regulations 2010, these are taken into consideration when determining where a proposed development should be subject to planning obligations and to estimate those obligations likely to be required by the Council.

### **Affordable Housing and Wheelchair Accessible Housing**

6.3 The Council will secure affordable housing through planning obligations, in accordance with the approach outlined in the Core Strategy. The Revised Planning Obligations SPD should be read in tandem with the emerging Affordable Housing SPD (2013) which provides detailed guidance on the Council's proposed approach to securing affordable housing on major residential developments.

6.4 In line with Core Strategy requirements, 10% of all new housing must be wheelchair accessible, or easily adaptable, as defined in the Managing Development Document. In exceptional circumstances, and where it can be demonstrated that this is not achievable, the Council will require a financial contribution from the developer to adapt appropriately located homes elsewhere in the borough to wheelchair accessible standard. The level of any such contribution will be determined on a case by case basis.

#### **Threshold and Contribution Requirements**

Planning obligations relating to Affordable Housing will be sought for:

- All major residential developments Planning obligations relating to wheelchair accessible housing may be sought for
- All major residential developments

### **Employment, Skills, Training and Enterprise**

6.5 Tower Hamlets is in a unique position with regards to its economy. The borough hosts a significant financial services sector and also a large number of small and medium enterprises (SMEs). The employment opportunities arising from local development should be accessible to local residents to combat issues of social exclusion and skills mismatch. To ensure a healthy economy for Tower Hamlets, a wide mix of enterprise and commercial spaces must be supported and retained.

## Employment and Skills Training

6.6 Tower Hamlets has an above average unemployment level within Greater London, with a very low proportion of Tower Hamlets' residents finding employment within the borough. Currently, only 15% of jobs within Tower Hamlets are taken up by local people. There is also a skills mismatch, with new employment opportunities requiring skills which are not widely available within the borough's current residential population. Employment opportunities should be provided through new development to local residents, with training made available to up-skill residents to compete for jobs within the borough.

6.7 For all new development in the borough the construction phase provides opportunities for local employment, apprenticeships and work experience placements. Commercial developments within the borough bring new employment, apprenticeship and work-experience opportunities for residents during the end-user phase. This adds increased pressure on the Council to provide access for residents to appropriate employment and skills training. Apprenticeships and work experience placements will enable residents to develop an appropriate skill-set for existing and future employment opportunities within the borough, from an early age.

6.8 The Council will seek to ensure that jobs are provided for local people, both in the construction phase of development and by the end-users, where appropriate. To enable local people to benefit from development growth the Council, with partners, has introduced a number of programmes to support job brokerage, employer-led training, construction skill training and apprenticeships and work experience placements.



### **Threshold and Contribution Requirements**

Planning obligations relating to Employment and Skills Training will be sought for:

- All major residential developments
- All major commercial development

### **Job-brokerage**

The Council will seek to secure a minimum of 20% of jobs (to be defined as non-technical placements), created by the construction and end-user phases of new development above the set threshold, to be advertised exclusively to local residents through the Council's job-brokerage service for a minimum period. It is expected that all reasonable endeavours be used to ensure that a target of 20% employment of local residents is achieved in both the construction and end-user phases.

### **Construction Phase Skills and Training**

For all major developments the Council will also seek to secure training opportunities for residents. A financial contribution will be sought to support and provide the training and skills needs of local residents in accessing the new job opportunities in the construction phase of all new development. This contribution will be used by the Council to provide and procure the support necessary for local people who have been out of employment and/or do not have the skills set required for the jobs created.

Cost of Construction Training Placement (£2,605)(1)

X

(Gross Internal Area of Development/ 1000sqm)

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= Required Financial Contribution

Where appropriate the Council may consider whether a developer's in-house training programme can be utilised in lieu of the construction phase skills and training contribution, on the basis that the local residents achieve a minimum requirement as secured through an in-kind obligation. The appropriateness of the in-house training will be assessed by the Council on a case by case basis.

### **End-user Phase Skills and Training**

For the end-user phase of commercial developments the Council will also seek to secure a financial contribution to support and provide the training and skills needs of local residents in accessing the new job opportunities created by the development. This contribution will be used by the Council to provide and procure the support necessary for local people who have been out of employment and/or do not have the skills set required for the jobs created.

Employee yield of the development(2)

X

Employees resident in Tower Hamlets (14%)(3)

X

Employees in Tower Hamlets requiring training & support (38%)(4)

X

Cost of training and support per person (£2,700)(5)

---

= Required Financial Contribution

### **Apprenticeships and Work Placements**

For the construction phase of all new development and the end-user phase of commercial development, the Council will seek to ensure a proportion of the jobs secured for local residents provide apprenticeships where appropriate. Work experience placements for local residents, for a minimum of two weeks per placement, will also be secured from these developments where appropriate.

| Specific Policy Framework                                      |   |
|--|---|
| <b>Regional</b>  | <b>Local</b>  |
| The London Plan 2011 - 4.12<br>Improving Opportunities for All | LBTH Core Strategy 2010 – Policies SO15, SO16, SP06, S017 and SP07<br><br>LBTH Managing Development Document 2013 - Policy DM 15<br><br>LBTH Employment Strategy 2011 |

**Footnotes:**

1. Cost of a construction placement based on Skillsmatch Construction Service per unit training cost: includes CSCS card, as standard, and programmes that include: Abrasive Wheels, First Aid, and Working at Heights to more skilled plant training such as Forward Tipping Dumper and 360 excavator.
2. Calculated using the HCA Employment Densities Guide. 2nd Edition 2010.
3. The percentage of working age residents in Tower Hamlets employed within the borough according to the 2001 Census.
4. The percentage of residents in Tower Hamlets not currently in employment. Office for National Statistics, 2010.
5. Cost per unit of Skillsmatch training into employment.

## Local Enterprise

6.9 In order to support local businesses to benefit from new development within the borough, the Council will require a commitment from developments to engage local businesses through the supply chain. This will allow local businesses to compete in the local market and also encourage sustainable supply systems.

### Threshold and Contribution Requirements

Planning obligations relating to Local Enterprise will be sought for:

- All major residential developments
- All major commercial development

The Council will seek to secure 20% of the total value of contracts, which procure goods and services during the construction phase of the development, to be achieved using firms located within the borough. This will be subject to competition rules. The developer will be expected to work with Council nominated organisations, such as Construction Line and East London Business Place (ELBP), in order to maximise the opportunities for local firms to win contracts through established procurement procedures.

The Council will seek to secure the provision of flexible workspace within commercial developments, to mitigate the loss of such space through the development process and to support new and existing SMEs within the borough.

## **Transport and Highways**

6.10 The provision of a safe, accessible, efficient, sustainable and integrated transport network is important to ensuring everyone has access to services within and outside the borough. The Council is committed to promoting high quality public transport services and delivering an attractive, well-designed street network that reduces the need for travel by private modes of transport.

6.11 New development in the borough will place additional stress on the borough's transport and highway networks including public transport infrastructure, bus services and local cycle routes. New development also increases the need for pedestrian and cycle safety education and training, travel awareness publicity, sustainable freight activities and interchange accessibility improvements.

6.12 CIL funds will be used to address the cumulative impacts of development on the sustainable transport network. However, individual developments may cause a site-specific impact which should be directly addressed through the development itself, or where that cannot be achieved the Council will use S278 agreements or S106 Planning Obligations.

6.13 Developments in the borough should provide the necessary additional transport/highway improvements to mitigate the impact of the travel demand they generate. Any necessary alterations to the transport/highway network within or in the vicinity of new development will be expected to be incorporated within proposals, and permission will be refused if the developer is unwilling or unable to provide the necessary solutions. The scope of any off site works required to mitigate site specific impacts of a development will be secured under a S278 agreement and will be carried out by the Council with the developer responsible for meeting all costs associated with the design and implementation of schemes. Where a S278 agreement is insufficient, mitigation will be secured through a S106 agreement. This will be particularly relevant to developments that are larger in scale or are associated with intensive or increased travel demand.

6.14 The Council may also seek to secure non-financial obligations to mitigate the impact of a development proposal, proportionate to the scale and impact of the development.

6.15 In addition planning contributions to fund Crossrail will be negotiated in line with the Mayor of London's requirements as set out in the Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy (2013) and policy 6.5 of the London Plan 2011

## **Threshold and Contribution Requirements**

In instances where a Transport Assessment is required for the development, in accordance with Managing Development Document policy DM20, the site-specific highway and transport works required will be informed by that assessment.

The Council may also seek to secure non-financial obligations to mitigate the impact of a development proposal. Non-financial obligations will include:

- Car and Permit Free Agreements - which restrict residents from applying for on-street car parking permits. Car and Permit Free Agreements will be sought for all residential development, creating one or more units.
- Car Clubs - provide on-site car parks for car club use, providing marketing about the availability of the car club and free membership for a period of years for residents of the development.
- Electric Vehicle Charging – provision of electric charging points.
- Travel Plan - preparation, submission and subsequent monitoring to ensure compliance

## **Public Realm**

6.16 The quality of the Public Realm has an impact upon the way in which an area is perceived and experienced. High quality Public Realm offers many benefits to people, communities, the environment and local economy and functions as an important place for community cohesion and leisure activities. It also has direct benefits for local people by improving safety, wellbeing, legibility of the built environment, and links between key services such as schools, health services, town centres and places of employment.

### **Public Open Space and Publicly Accessible Open Space**

6.17 The borough, as a whole, is deficient in public open space and publicly accessible open space. New and improved space is required to continue serve the growing population in Tower Hamlets. In accordance with the Core Strategy, the Council will seek to deliver a network of open space through maximising opportunities for new publicly accessible open space and connection to the Green Grid.

6.18 The Tower Hamlets Open Space Strategy 2006 established a local minimum standard for open space provision of 1.2 hectares per 1,000 population (developed from National Playing Fields Association (NPFSA) benchmark standards) and resists any net loss of open space. An increase in population caused by new development will result in additional pressure being placed upon the existing areas of public open space, and publicly accessible open space, and new development will be required to ensure the impact of any increase in population on the existing open space is minimised.

## **Threshold and Contribution Requirements**

On all sites not allocated to provide new Local Parks, the Council will look to ensure provision of open space as part of a development proposal in accordance with Core Strategy and Managing Development Document policy. Site specific public realm improvements, including safeguarded public access will also be secured through S106 Agreement.

Where open space suitable for public access has been identified and can be provided within a proposed development, an agreement to safeguard the area's on-going use as publically accessible open space and future maintenance to an appropriate standard will be required. In some instances, if the Council agrees to manage the space, the ownership of the land should be transferred to the Council at no cost. A land transfer arrangement will normally only be considered, however, for areas of open space larger than one hectare.

## **Environmental Sustainability**

6.19 The promotion of renewable, sustainable forms of energy and enhancements to wildlife biodiversity within Tower Hamlets is important to ensuring the borough is environmentally sustainable.

### **Energy**

6.20 To ensure that the ability of future generations to enjoy the borough is not compromised by the energy requirements of today, it is essential to ensure that new developments are as energy efficient as they can be and contribute to reducing energy demands and pollution.

6.21 New development increases the demand for energy supply and requires solutions and innovation to reduce consumption and thereby promote and provide new renewable energy sources and sustainable development.

6.22 The Council strongly supports the development of energy efficient buildings and ensuring all new homes are built to zero carbon standards (as defined by CLG) by 2016 and all new non-domestic developments are built to zero carbon standards by 2019.

### **Threshold and Contribution Requirements**

Planning obligations relating to Energy will be sought for:

All major residential developments  
All major commercial development

The Council will seek contributions towards Energy initiatives for all new development, above the set threshold.

### **CO2 Reduction**

Where officers consider it is not possible to meet Policy DM29 of the Managing Development Document, contributions to delivering carbon reduction projects will be sought to meet the shortfall.

Reflecting relevant Government and London Plan policies and guidance as appropriate, (including any further relevant guidance produced by the LBTH), the remaining carbon emissions will be offset through securing obligations to provide new and additional opportunities to reduce carbon emissions from existing housing in the Borough or community energy saving programmes or other initiatives.

## **Biodiversity**

6.23 The quality of the physical environment is under increasing pressure in Tower Hamlets with a growing population and significant development demands. The Council recognises the importance of responding to the impacts of climate change and an increasingly dense cityscape by maintaining and encouraging biodiversity within the Borough.

6.24 Tower Hamlets has a number of strategies and studies in place that present clear options to help mitigate the impacts of development on biodiversity.

### **Threshold and Contribution Requirements**

Planning Obligations relating to Biodiversity will be sought for:

All major residential development  
All major commercial development

Where it is considered unfeasible for a development to provide adequate on-site biodiversity enhancements, or where projects in nearby open spaces, or enhancements to nearby rivers or water bodies, offer better opportunities to enhance biodiversity and/or access to nature, the Council will seek an equivalent financial contribution to off-site projects which will be secured for enhancements which help to deliver the Tower Hamlets Biodiversity Action Plan.

## Monitoring and Implementation

6.25 The requirement on the Council to monitor all aspects of S106 agreements carries a financial cost that constitutes an impact from new development. Accordingly, the Council will include a monitoring fee as a financial contribution for each S106 agreement. All planning obligations, whether financial or in-kind, require monitoring to ensure the obligation is fully complied with and in line with the trigger date as well as the relevant legal requirements.

6.26 This monitoring fee excludes all legal costs associated with the preparation of S106 agreements.

### Threshold and Contribution Requirements

Planning Obligations relating to Monitoring and Implementation will be sought for:

- All developments requiring a S106 agreement.

The Council will require a contribution of £500 per principal clause within a S106 Agreement.

For exceptionally detailed agreements, (for example, variations to existing agreements or those that are complex to monitor and implement) the Council may request a contribution above the standard charge.

## **7. Procedure & Management**

7.1 The Council starts managing and monitoring each S106 agreement from the moment it is signed. This is a complex process which covers over a thousand legal documents, all with multiple trigger points and obligations. Tower Hamlets Council employs S106 officers dedicated to overseeing this complex programme and ensuring the successful delivery of the obligations secured through S106 agreements.

7.2 An internal, cross-directorate panel, chaired by the Corporate Director of Development and Renewal, oversees the process of determining and approving S106 funding. This panel was established by the LBTH Cabinet in 2004 and granted delegated authority to undertake this role.

### **Trigger Points**

7.3 During the negotiation process, trigger points for each obligation will be agreed upon between the developer and the Council. There are established trigger points which are suitable for S106 agreements and triggers selected in each case will be based on the nature of the obligation and the stage at which the mitigation is required. The established trigger points are:

- Upon the date that the agreement is signed;
- Upon or prior to commencement of the development;
- Upon or prior to practical completion of the development; and,
- Upon or prior to occupation of the development

7.4 The Council will encourage the use of these four identified triggers in negotiations, with the commencement of the development being the preferred point for an obligation to be delivered upon.

### **Interest Bearing Accounts**

7.5 When a financial contribution is received it will be placed within an interest bearing account from the date of its receipt. The interest accrued will be applied by the Council to the related S106 project(s).

### **Penalty Clause and Enforcement of Obligations**

7.6 Trigger points will vary for each individual obligation within the S106 agreement. The developer is bound within each S106 agreement to notify the Council upon commencement of the development. Where the Council is not notified and obligations become overdue the Council will seek to enforce the obligation and will activate the penalty clause.

7.7 A clause included in the S106 agreement will ensure prompt payment by inserting a financial penalty where payments are overdue. As a final recourse, where obligations are not

subsequently enforced, the Council will take legal action against those in breach of a S106 agreement. Non-financial obligations are also legally binding and where not provided according to the terms of the S106 agreement may be legally enforced by the Council.

## **Complying with Planning Obligations – the Developer’s Role**

### **Complying with Financial Obligations**

7.8 Where a S106 agreement contains a financial obligation, details of how to make the payment to the Council are provided. A payment form as standard will be appended to the agreement and any payments should be made using this form, following the instructions provided. The payment can be made through BACS/CHAPS, cheque or postal order. Once received, the payment will be logged onto the Council’s systems. A breakdown of received financial contributions is published on the Planning Obligations Webpage (found at [www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)) on a quarterly basis.

### **Index-Linking Payments**

7.9 Financial contributions will be index-linked in order to allow for the fluctuation of prices between the date the agreement is signed and the date the payment is made. This is calculated based on the indexation adjustment of the relevant index, from the date the S106 agreement is signed to the expected date of payment. The additional amount paid on top of the financial contribution adjusts the contribution in accordance with inflation.

7.10 The method of indexation should be specified within the legal agreement and will usually either be the Retail Price Index (RPI) published by the Department of Trade and Industry (DTI) or the Building Cost Information Service Index (BCIS) published by the Royal Institution of Chartered Surveyors (RICS), depending on the nature of the contribution. In the event that the index shall decrease, the contribution shall not fall below the figure set out in the S106 agreement.

7.11 The Council will endeavour to provide updated costs for the standard charges provided throughout the Document as and when necessary.

### **Complying with In-kind Contributions**

7.12 Where an in-kind obligation is required through a S106 agreement the developer should provide evidence of compliance with the obligation to the Council, as outlined in the terms of the specific clauses. This evidence should be provided to the Council’s Planning Obligations Officer. If approval is required from the Council on an element of the in-kind obligation, the Planning Obligations Officer should be the first point of contact.

## **Monitoring and Delivery of Planning Obligations – the Council’s Role**

### **Non-Financial Obligations**

7.13 The delivery of non-financial contributions, or in-kind obligations, will be monitored by the appropriate service areas responsible for project delivery. For example, where there is an Affordable Housing element to a legal agreement, the Affordable Housing Team will monitor this section of the agreement to ensure that it is complied with.

### **Financial Contributions**

7.14 Once a financial contribution is received by the Council the service area or organisation with the responsibility for delivery of the S106 project will be informed. Projects funded through planning contributions will be selected through strategic objectives, which identify the infrastructure needed within the borough through public consultation and work undertaken by the individual service areas in the Council.

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# Glossary of Terms

## **Affordable Housing**

As defined in The London Plan (2011) in Chapter 3 at Policy 3.10 and paragraph 3.61.

## **Community Infrastructure Levy (CIL) – Tower Hamlets**

A Levy charged on new development in the Borough, by the London Borough Of Tower Hamlets in order to fund infrastructure that is needed to support growth in the area.

## **Community Infrastructure Levy (CIL) – London**

A Levy charged on new development in London by the Mayor of London since the 1<sup>st</sup> April 2012 for strategic transport. This Levy is in addition to the LBTH Borough's CIL.

## **Community Infrastructure Levy Regulations**

Regulations approved by the House of Commons in accordance with section 222(2)(b) of the Planning Act 2008.

## **Community Plan**

A document prepared by the Tower Hamlets Partnership setting out how the quality of life in the borough will be improved in the period to 2020 and in accordance with four overarching themes.

## **Core Strategy**

The primary document of the Local Plan, the Core Strategy sets out the long-term spatial strategy to deliver the aspirations set out in the Community Plan 2020 through broad areas and principles of where, how and when development should be delivered across the borough to 2025.

## **Development Plan Document (DPD)**

A document which is part of the Local Plan and sets planning policy in local authority areas.

## **Green Grid**

A network of interlinked, high-quality and multi-functional open spaces, waterways and other corridors (see Tower Hamlets Green Grid Strategy).

## **Habitable Room**

A room within a dwelling, the main purpose of which is for sleeping, living or dining. It is any room with a window that could be used to sleep in, regardless of how it is used. It excludes toilets, landings, halls, lobby areas and kitchens with an overall floor area of less than 11m<sup>2</sup>.

## **Heads of Term**

The different topic areas under which planning obligations might be identified in a Section 106 Agreement, for example Affordable Housing or Employment and Enterprise.

## **Idea Store**

A strategic facility in Tower Hamlets which provides library facilities, a wide range of adult learning courses, computer access and activities and events.

## **Infrastructure Delivery Plan (IDP)**

A schedule listing the key pieces of infrastructure required by the Core Strategy over the lifetime of the plan.

**Local Implementation Plan (LIP)**

Statutory transport plans produced by London Boroughs bringing together transport proposals to implement the Mayor of London's Transport Strategy at the local level.

**Local Plan**

Is the term for the Council's Development Plan Documents comprising the adopted Core Strategy and the Managing Development Document and Fish Island Area Action Plan.

**Major Commercial Development**

Any commercial development, including hotels, creating 1,000sqm or more of commercial floorspace.

**Major Residential Development**

Any residential development, including student housing, creating 10 or more units.

**Managing Development Document**

The Managing Development Document forms part of Tower Hamlets Local Plan. The document is the planning tool to help meet the policies and objectives identified in the Core Strategy.

**Material Consideration**

A legal term describing a matter or subject which is relevant (i.e. material) for a local authority to consider in assessing development proposals and when using its powers under planning law.

**Public Realm**

Any publicly owned streets, pathways, right of ways, parks, publicly accessible open spaces and any public facilities.

**Regulation 123 List**

Under Regulation 123 of the CIL Regulations 2010 (as amended), a Charging Authority is required to provide a Regulation 123 list, which sets those projects or types of infrastructure that it intends to fund through the Levy.

**Section 278 Agreement**

A legal agreement completed between the developer and the Local Planning Authority, under section 278 of the Highways Act 1980, where a development requires works to be carried out on the existing adopted highway. These agreements provide a financial mechanism for ensuring delivery of mitigation works identified and determined as necessary for planning permission to be granted.

**Transport Assessment (TA)**

A document which accompanies a planning application, and is used by planning authorities and highways authorities to determine whether the impact of a new development on the transport network is acceptable. It should identify what measures may be required to deal with the predicted transport impacts and to improve accessibility and safety, especially for pedestrians, cyclists and public transport users.

**Viability Assessment**

An assessment of the financial viability of a development, taking into account a range of different factors such as location, type of site, size of scheme and scale of contributions to infrastructure and facilities.

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