



supplementary planning document 2

planning obligations: a guide to  
section 106 and developer contributions  
2010

local development framework  
delivering regeneration and growth

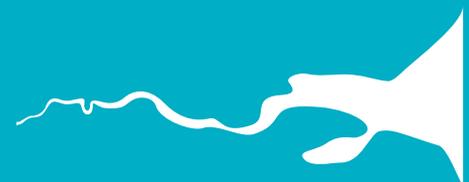
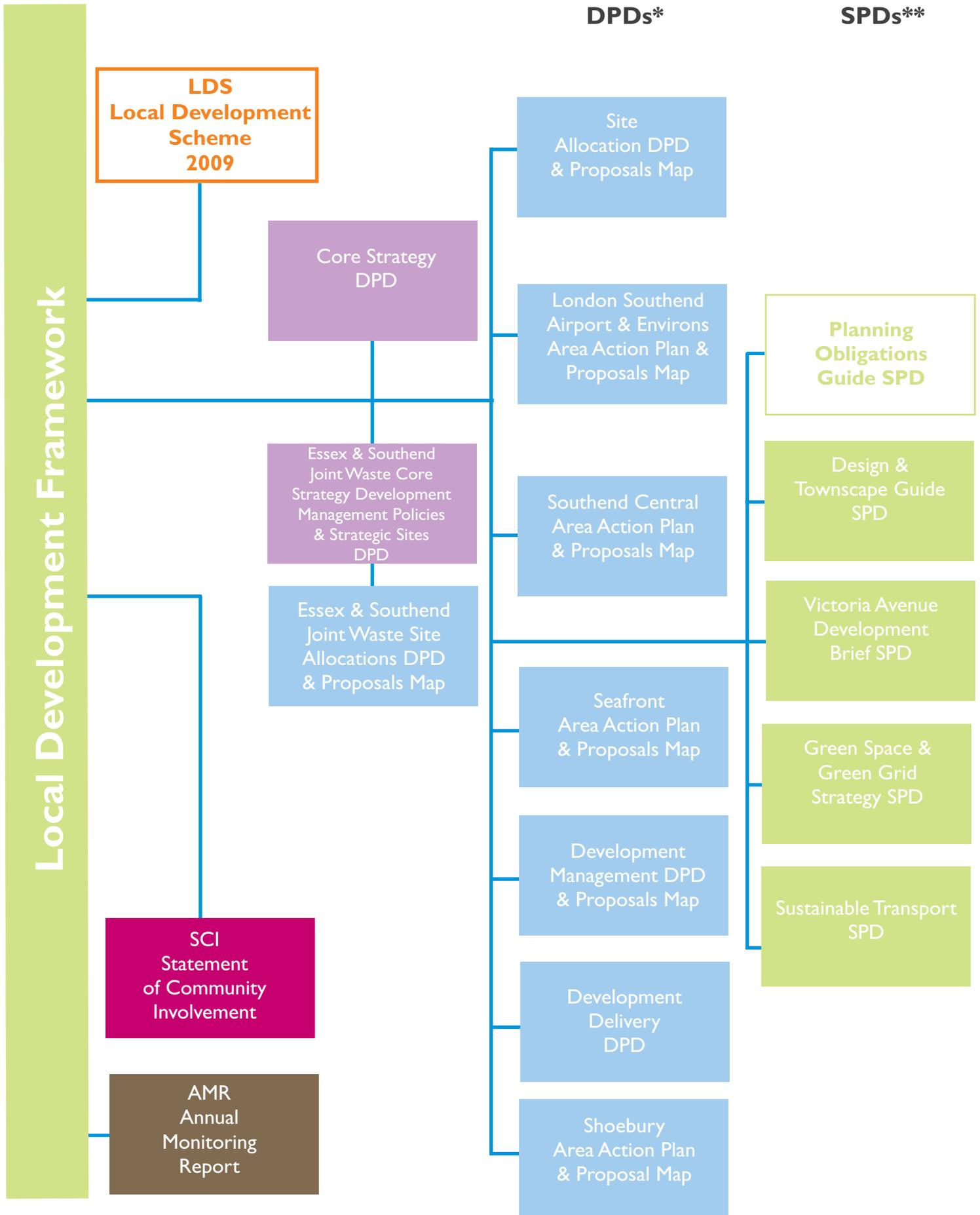


Figure 1: Southend on Sea Local Development Framework - Content



\*Development Plan Document

\*\* Supplementary Planning Document

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section one



**ARGYLL HOUSE**

# 1. Introduction

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## The Status of this Guide

- 1.1 This guide is a Supplementary Planning Document (SPD) and is part of the Southend on Sea Local Development Framework (LDF). The LDF is a set of development plan documents (DPDs) and supplementary planning documents (SPDs) that together form the planning policy framework for the Borough. Supplementary Planning Documents, which are subject to a public consultation process, provide guidance and further clarification of planning policy that is included in Development Plan Documents, which go through a formal statutory examination in public conducted by an independent planning inspector prior to adoption.

## The Statutory Basis of Section 106 Agreements

- 1.2 The statutory basis allowing anyone interested in land to enter into planning obligations (or "S106 Agreements") is Section 106 of The Town and Country Planning Act 1990 as substituted by the Planning and Compensation Act 1991. Government guidance contained within Circular 05/2005 'Planning Obligations' expands upon the basic legal definition in the Act. **Planning obligations** are private agreements negotiated, usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or "developers"), and **intended to make acceptable development which would otherwise be unacceptable in planning terms**. Obligations can also be secured through unilateral undertakings by developers. For example, planning obligations might be used to **prescribe** the nature of a development (e.g. by requiring that a given proportion of housing is affordable); or to secure a contribution from a developer to **compensate** for loss or damage created by a development (e.g. loss of open space); or to **mitigate** a development's impact (e.g. through increased public transport provision). The outcome of all three of these uses of planning obligations should be that the proposed development concerned is made to accord with published local, regional or national planning policies. The planning obligations contained in the agreement or undertaking affect all those with an interest in the land being developed and will continue to affect subsequent owners of the property if the obligations are still capable of being complied with or carried out.
- 1.3 As stated in Circular 05/2005, the principal objective of the planning system is to deliver sustainable development, through which key Government social, environmental and economic objectives are achieved. The delivery of these goals is provided for in a framework of development documents, in which local communities are positively involved, and through a transparent system of decision-making on individual applications.

- 1.4 In dealing with planning applications, local planning authorities consider each on its merits and reach a decision based on whether the application accords with the relevant development plan, unless material considerations indicate otherwise. Where applications do not meet these requirements, they may be refused. However, in some instances, it may be possible to make acceptable development proposals which might otherwise be unacceptable, through the use of planning conditions (see Department of the Environment Circular 11/95) or, where this is not possible, through planning obligations.
- 1.5 This SPD adheres to a fundamental principle that planning permission may not be bought or sold and that planning obligations must only be sought to make acceptable development which would otherwise be unacceptable in planning terms. The Community Infrastructure Levy Regulations 2010 came into force on 6 April 2010 and under regulation 122 planning obligations must meet the following statutory tests:
- a) necessary to make the development acceptable in planning terms; **and**
  - b) directly related to the development; **and**
  - c) fairly and reasonably related in scale and kind to the development

In addition, Circular 05/2005 outlines the guiding principles for planning obligations i.e. to make applications acceptable when conditions cannot achieve the benefits required and states that obligations can 'prescribe' (e.g. require the provision of affordable housing), 'compensate' (e.g. loss of open space) or 'mitigate' (e.g. through increased public transport provision).

## Policy Framework

- 1.6 In accordance with Office of the Deputy Prime Minister Circular 05/2005 on Planning Obligations, this SPD amplifies the Circular and describes the Council's approach in securing planning obligations as outlined in the Core Strategy DPD (adopted December 2007), Southend on Sea Design & Townscape Guide SPD (adopted November 2009) and 'saved' policies of the Southend-on-Sea Borough Local Plan (1994). It is likely that this SPD will need to be adapted as other Local Development Documents emerge to reflect any new national, regional and local policies relating to planning obligations.
- 1.7 All national, regional and local planning policies and other guidance that are relevant to this SPD are listed in Appendix 1 for reference purposes.

## Regional and Sub-Regional Policy Framework

- 1.8 The Council and its partners are active participants in the Government's Thames Gateway regeneration initiative, a national and regional priority for regeneration and growth, as set out in existing and emerging national and regional policy. The East of

England Plan 2008 contains specific guidance for the Thames Gateway South Essex sub-region to deliver regeneration in a manner specific to the needs and requirements of the local area. The overall spatial vision of the East of England Plan is that “By 2021 the East of England will be realising its economic potential and providing a high quality of life for its people including by meeting their housing needs in sustainable inclusive communities”.

- 1.9 For implementation and delivery of its policies for the region, the East of England Plan states that it requires significant investment in social, environmental and physical infrastructure to achieve its desired outcomes. The Plan identifies the need to secure a ‘step-change’ in critical areas such as affordable housing, job provision and infrastructure investment, and that coordination between development and infrastructure delivery will need to be significantly improved. Many of the growth and regeneration proposals are highly infrastructure dependent, and may be difficult to deliver in a sustainable manner if infrastructure (social, health, education, leisure as well as transport and jobs) is not delivered in close co-ordination. Remedying deficiencies will be critical if the high growth rates and regeneration priorities, which the region needs to pursue, are to be achieved. Major public funding together with developer contributions will be needed to provide the necessary finance for transport and other community infrastructure to support the amount of growth being proposed in the sub-region up to 2021.

### Local Policy Framework

- 1.10 All Council activities are guided by, and should be consistent with, the objectives and priorities set out in a Corporate Plan and a Community Strategy. Southend Borough Council’s Corporate Plan 2009-2012 aims to create a safer, cleaner, healthier and more prosperous town and the Sustainable Community Strategy 2007-2017 provides an agenda to improve the quality of life of the population of Southend. The Community Strategy aims to create a thriving regional centre which celebrates and enriches our community ensuring that the Borough develops in a sustainable manner. The ambitions are as follows:
- a) To provide visionary leadership and enable inclusive, active and effective participation by individuals and organisations;
  - b) To create a safer community for all;
  - c) To be recognised as the cultural capital of the East of England;
  - d) To create a thriving and sustainable local economy, which extends opportunity for local residents and promotes prosperity throughout the borough;
  - e) To continue improving outcomes for all children and young people;
  - f) To protect the borough for current and future generations and to remain an attractive place for residents, businesses and visitors;
  - g) To provide opportunities, support and information to people of all ages and abilities to enable them to take responsibility for their health and choose a healthy lifestyle;

- h) To be a borough with decent housing, in safe and attractive residential areas, that meets the needs of those who want to live here;
- i) To be a borough that has a safer, more accessible, and affordable means of getting about, which supports the potential for regeneration and growth.

1.11 These themes provide a long term framework for the town and developer contributions will be essential to their implementation and delivery. Planning obligations will, therefore, be required to ensure that development proposals are proactively assisting the community in its efforts to achieve the priorities and targets outlined in the Community Strategy.

1.12 The Core Strategy Development Plan Document (adopted December 2007) sets out a clear aim and set of strategic objectives for the spatial planning policies that will guide development in the Borough to 2021. Improving the quality of the built and natural environment and minimising the impact on climate change are key to achieving national and local priorities in Southend. The aim of the Core Strategy is as follows:

“To secure a major refocus of function and the long term sustainability of Southend as a significant urban area which serves local people and the Thames Gateway.

To do this there is a need to release the potential of Southend’s land and buildings to achieve measurable improvements in the town’s economic prosperity, transportation networks, infrastructure and facilities; and the quality of life for all its citizens. This will include safeguarding and improving the standards of the town’s amenities and improving the quality of the natural and built environment.”

1.13 The current local policy basis for planning obligations is found in Core Strategy DPD policy KP3 ‘Implementation and Resources’, which states that the Council will:

“require developers to enter into planning obligations to carry out works or contribute towards the provision of infrastructure and transportation measures required as a consequence of the development proposed. This includes provisions such as;

- a) roads , sewers, servicing facilities and car parking,
- b) improvements to cycling, walking and passenger transport facilities and services,
- c) off-site flood protection or mitigation measures, including sustainable drainage systems (SUDS),
- d) affordable housing,
- e) educational facilities,
- f) open space, ‘green grid’, recreational, sport or other community development and environmental enhancements, including the provision of public art where appropriate,
- g) any other works, measures or actions required as a consequence of the proposed development, and

- h) on-going maintenance requirements”.
- 1.14 More detailed guidance is provided in Policies CP3 (Transport and Accessibility), Policy CP6 (Community Infrastructure), Policy CP7 (Sport, Recreation and Green Space) and Policy CP8 (Dwelling Provision). Policy CP8 ‘Dwelling Provision’ makes specific reference to the provision of affordable housing (including key worker housing). It states that residential development will be expected to contribute to local housing needs; including special needs provision and sustainable use of land and resources. The policy describes the specific provision required by developers for various development thresholds and site areas. It also declares that tariffs and/or a commuted sum will be collected for sites under 10 dwellings or qualifying sites where it will not be possible to cater for affordable housing on site.
- 1.15 The Southend on Sea Borough Local Plan (BLP), adopted in 1994, also provides policy guidance relating to the contribution of new and additional developments towards infrastructure, facilities and services. The following saved policies are relevant:
- a) Policy C11 – encourages the provision of new works of public art as part of a development;
  - b) Policy L5 – encourages the provision of new entertainment, cultural and arts facilities in support of local arts organisations;
  - c) Policy R1 – encourages the provision of additional outdoor sports facilities, both public and private;
  - d) Policy R2 – encourages the provision of additional indoor sports facilities, both public and private;
  - e) Policy R5 – encourages the provision of new open space facilities; and
  - f) Policy U1 – states that in assessing development proposals the Borough Council will have regard to the need for additional infrastructure provision, such as roads, sewerage, schools and community facilities, and that applicants may need to enter into a legal agreement to ensure the provision of such facilities to enable the development to proceed.
- 1.16 Southend Borough Council, together with 281 other local authorities to date, has also signed up to The Nottingham Declaration on Climate Change, which requires local authorities to work with the community to develop an action plan to tackle climate change at a local level. By signing the declaration, the Borough Council committed itself to move towards environmental sustainability by cutting carbon emissions. In accordance with the commitments of the Declaration the Council will encourage developers to reduce their environmental impact.

### Community Infrastructure Levy

- 1.17 The Planning Act 2008 made provision for the imposition of a Community Infrastructure Levy (CIL) to ensure that the costs incurred in providing infrastructure to support the development of an area can be funded by owners or developers of land.

A CIL will not replace the need for all planning obligations but, if it is introduced by the Council, will require amendments to this SPD. In parallel to any emerging national legislation in relation to a CIL the Council will be preparing a Development Delivery DPD and a revised Planning Obligations SPD, which will contain more detailed policies in relation to planning obligations and will eventually replace this document.

## Consultation

- 1.18 In November 2006 the Council drafted a Development Plan Document relating to Planning Obligations & Vehicle Parking Standards, which was drafted as a 'preferred options' document for the purpose of wide public participation under Regulation 26 of the Town and Country Planning (Local Development) (England) Regulations 2004. The draft DPD was subject to extensive public consultation including targeted consultation with local and national specialist organisations and interest groups and local residents and businesses. This SPD has been drafted so that it is broadly consistent with this document, taking into account the comments received from consultation.
- 1.19 The Planning and Compulsory Purchase Act 2004 requires that a Sustainability Appraisal be undertaken alongside the preparation of an SPD. The Sustainability Appraisal is also required to incorporate the requirements of the European Union Directive 2001/42/EC on Strategic Environmental Assessment. The aim of this is to better integrate the sustainability objectives into plan preparation. A Sustainability Appraisal was drafted by a specialist consultant in association with the 'Planning Obligations & Vehicle Parking Standards DPD' preferred options document and was the subject of public consultation as detailed above. The previously drafted Sustainability Appraisal and comments received in response to the document have been taken into consideration in the drafting of this document. In addition, a Sustainability Appraisal has been drafted specifically in relation to this Planning Obligations SPD and both documents will now be the subject of a further 6 week public consultation period.

## The Strategic Importance of Planning Obligations

- 1.20 Development often creates the need for additional infrastructure, services and facilities. If these are not provided, there could be negative implications for local amenity and the environment. Planning obligations provide the mechanism through which the impact of development is accommodated and they are secured to ensure that developers mitigate this impact and provide for the infrastructural requirements arising from development in a sustainable way.
- 1.21 Occasionally other nearby authorities will be affected by a development proposal and will therefore need to be involved in the planning application process and the negotiation of planning obligations e.g. there may be cross-boundary infrastructure

implications. On these occasions and in other instances it may also be appropriate to pool financial contributions for various types of planning obligations where a number of developments will share facilities e.g. environmental or highways improvements and community facilities that are of strategic importance. Circular 05/2005 and the related best practice guidance currently encourages pooled contributions whilst emphasising the need for a clear audit trail for these contributions, which will be facilitated by the S106 monitoring database that the Council has developed. However, it is noted that The Community Infrastructure Levy Regulations, which came into force on 6 April 2010, limit opportunities for pooling contributions secured through planning obligations. The means of delivering infrastructure of strategic importance will be further explored in the forthcoming Development Delivery DPD.

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

- 1.22 The purpose of this document is to set out Southend Borough Council's approach towards seeking planning obligations when considering planning applications. It sets out the priorities for planning obligations and identifies the ways in which those priorities can be applied in the case of individual development proposals. This SPD includes a summary of the relevant national, regional and local planning policies with which it is consistent. In addition, this document includes procedural information and contact details to assist in the negotiation of legal agreements.
- 1.23 Where there is a choice between imposing conditions and securing a planning obligation through a legal agreement, it is noted that the Government considers the imposition of a condition as preferable. When considering applications, Southend Borough Council will therefore consider whether planning conditions can adequately control all the direct and indirect impacts of the development and secure the desired planning obligations, before it decides that a legal agreement is necessary.
- 1.24 Southend Borough Council supports the central government objectives of transparency, certainty and speed in the S106 process, hence the production of this SPD and the publication of a model S106 agreement as endorsed by Circular 05/2005 'Planning Obligations'. However, to provide even greater clarity in the future and to maximise the potential of planning obligations in meeting sustainability objectives it is likely that Southend Borough Council will further explore the use of formulae in seeking contributions together with the pooling of funds as endorsed by the Circular. This approach will be developed as part of the forthcoming Development Delivery DPD, which will be subject to public consultation and an examination in public, unless this approach is retracted by the Government should the Community Infrastructure Levy be pursued.
- 1.25 A glossary of terms including a brief description of some of the words and acronyms that appear in this document is available in Appendix 5.





section two



## 2. Southend Borough Council's Approach to Planning Obligations

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### How Planning Obligations will be applied Across Southend

- 2.1 The Council will normally require a planning obligation where it is felt that a proposed development of whatever nature or scale, will in itself or cumulatively give rise to unacceptable pressure on public infrastructure or where the development is of such a nature or scale that it is considered that it should contribute to the supply of affordable housing in the Borough. The Council may also seek an obligation in pursuit of adopted policy, such as the provision of public art, which seeks to provide for quality natural and built environments and sustainable communities. In all instances, planning obligations will only be sought where they satisfy the tests set out in The Community Infrastructure Levy Regulations 2010 as outlined in Section 1 paragraph 1.5.
- 2.2 The precise scale and scope of a planning obligation will be determined, by negotiation, in relation to the specific circumstances of the development, including viability. In terms of priorities for planning obligations, the Council must first seek to mitigate the direct impacts of the development (e.g. highways restoration adjacent to development), and secondly ensure that development complies with the policy requirements set out in national planning policy, the East of England Plan 2008, Core Strategy DPD 2007 and Borough Local Plan 1994 (e.g. affordable housing /public art). Thirdly, the Council will seek obligations that are relevant on a site-specific basis (e.g. wider public realm improvements and CCTV).
- 2.3 Southend Borough Council has decided on an approach that identifies the impacts of the development and sets these against its priorities for planning obligations, based on its knowledge of the locality and community. Whilst the Council does not seek to apply a blanket approach, it is necessary to have a consistent and transparent approach so that applicants can be aware early on in the development process what the Council's expectations might be. At all times Southend Borough Council will seek to ensure that the benefit sought is reasonable in scale and kind to the specific development proposal and meets the tests set out in Circular 05/2005.
- 2.4 Commercial developments bring employment and economic benefit but there is a need to integrate such developments into the local community and environment, hence planning obligations may be sought to achieve this. Both employees and other users require effective transport provision and a safe and functional environment. This may be achieved by improvements to the highway (including cycle paths and public footpaths) and the wider public realm. The increased workforce may also place increased demands on services such as libraries, health centres, leisure and recreational facilities.

- 2.5 Similarly, entertainment uses such as bars, restaurants, nightclubs and cinemas attract tourists, shoppers and after work patronage which needs to be balanced with Southend's residential communities. Many of these activities also operate late into the evening and so issues of safety, provision of transport, night time noise, litter and street fouling arise. These activities need to be managed in order to maintain the local character that people find attractive as well as protecting the amenity of residents and other business users.
- 2.6 In respect of new housing, such developments bring new residents who will use existing facilities and create a demand for additional ones, hence planning obligations may be sought to address this. Education and training, health facilities, transport, arts and culture, open space and leisure demands will arise. Therefore, community facilities are also likely to be required in support of residential schemes where there is a demonstrable need for this supporting infrastructure.
- 2.7 For residential schemes, the Council seeks the provision of affordable housing from the threshold of 10 or more residential units or 0.3 hectares as set out in Core Strategy Policy CP8 'Dwelling Provision'. The policy generally requires 20-30% of the proposed units to be affordable depending on the scale of the development, or a financial contribution to be made where on-site provision is either not feasible or not practicable.
- 2.8 Planning obligation requirements may be applied more flexibly to applications for community, voluntary sector or education facilities. For example, such a development may be fulfilling Southend Borough Council's key policy priorities for a location such as provision of a local health care facility, an educational, leisure or cultural facility (e.g. pocket park, community theatre or arts centre). Planning obligations will also not normally apply to householder applications or small-scale commercial development (under the 1000m<sup>2</sup> threshold), which should have limited impact or be sustainable in their own right.
- 2.9 The Council acknowledges that in certain circumstances the costs associated with a development may be such that all the issues which ideally should be included within a planning obligation cannot be addressed without the scheme becoming unviable.
- 2.10 If a developer considers that the Council is placing unreasonable obligations upon a development scheme, the Council will require a developer to adopt an 'open book' approach, whereby relevant development finances are shared with Council officers and/or an appropriate assessor carrying out an independent financial appraisal, in order to provide appropriate and necessary information to support such a claim. The Council will employ confidentiality and discretion with any evidence provided, and this will only be utilised to address and evaluate a specific claim in relation to viability.

- 2.11 If the Council agrees that a development cannot reasonably afford to meet all of the Council's specified requirements, these requirements will then be prioritised by the Council in negotiation with the developer, subject to the proposal being acceptable in all other respects. While commercially sensitive information and detailed figures will be treated in confidence, it may be necessary to report the key issues and broad conclusions in reports to elected members at the time of their consideration of a planning application.
- 2.12 In assessing the precise nature of on-site and off-site planning obligations to be required on individual sites, the Council will take into account the impact of the proposal, the economics of provision, and any abnormal development and infrastructure costs. Proposals may be considered unviable owing to unforeseen and abnormal costs associated with the development, which may include the costs of identification and remediation of contamination or noise, major service diversions, or other specific exceptional planning requirements. The Council does expect that factors such as contaminated land will have been reflected in the site value (i.e. purchase price of the land) and should not therefore affect a developer's ability to meet planning obligations. However, consistent with the advice relating to pre-application discussions, the Council will be seeking to agree draft heads of terms prior to submission of an application and any likely difficulties should be brought to the attention of the Council at this pre-application stage. This will avoid delays to the planning application process and will also avoid planning applications being refused on the basis of non-compliance with planning obligation requirements.
- 2.13 Circular 05/2005 recommends the use of independent third parties where there are any difficulties in reaching agreement in negotiations. The actions of mediators may help to reduce the cost and length of negotiations if disputes over obligations are occurring. The associated "Planning Obligations: Practice Guidance" (DCLG 2006) provides detailed information on the use of independent third parties. If issues of viability arise and there is a need for the Council to obtain independent valuation and financial advice, it will be expected that the costs from this would be met by the developer who is objecting to one or more obligations.

## **Southend Borough Council's Priorities for Planning Obligations**

- 2.14 Southend Borough Council recognises the need to achieve positive planning for sustainable communities within the Borough. The Council has therefore categorised the planning obligations, which it considers need to be sought from and addressed by new development to achieve this, as 'Sustainable Communities Criteria'. Developers will be invited to enter into planning obligations with the Council through Sustainable Communities Criteria within the following categories:
- Transport, Highways and Accessibility
  - Education, Training and Skills

- Community Facilities, including 'Open Space, sport & recreation' and 'Health, social care and physical community needs'
  - Public Art and the Public Realm (including the Historic Environment)
  - Natural Environment and Conservation
  - Affordable Housing
  - Flood Risk, Waste and Resources
  - Administration and Monitoring of Planning Obligations
- 2.15 The Sustainable Communities Criteria cover a range of infrastructure, services and facilities and other requirements, which should be considered in the determination of planning applications to ensure sustainable development within the Borough and the creation of sustainable communities. All Sustainable Communities Criteria reflect the objectives, needs and requirements of Council strategies including those for planning, transport, housing, recreation and education. The Criteria also take into consideration the policies and aims contained in national, regional and local planning policy.
- 2.16 The Sustainable Communities Criteria are not set out in priority order and details of the planning obligations likely to be sought are not exhaustive. Other obligations not contained within the Criteria may be sought to ensure the delivery of key policy and sustainable regeneration objectives depending upon the individual characteristics of a development proposal, as well as other requirements which may arise from specific circumstances. Similarly any thresholds and calculations, which may be applied once adopted, are not rigid and may be updated as and when it is deemed necessary.

### Transport, Highways and Accessibility

- 2.17 It is recognised that new development may give rise to the need for different types of transport/highways improvements and it is important that they are clearly distinguished.
- 2.18 Some development schemes will require specific works and improvements which will be needed to mitigate direct impacts to the transport network to make the proposed development acceptable in planning terms. Mitigating measures may include sustainable transport initiatives, improvements to junctions, slip roads, provision of traffic lights and pedestrian or toucan crossings, local traffic calming or the introduction of parking management schemes on surrounding streets.
- 2.19 Developers may also be expected, to provide other measures such as on site estate roads, footpaths, bridleways and cycle ways, parking spaces (for cars, motorcycles and bicycles), lighting and bus stops/lay-bys which are adequately connected to the existing highway network. In addition, contributions towards the sustainable transport infrastructure including public transport, walking and cycle routes may be requested if the impact of a development necessitates. Subject to any changes in legislation that may preclude this approach, contributions from a number of developments may need

to be 'pooled' in order to cost effectively and appropriately implement certain transport improvements and measures.

2.20 The Council proposes the following Sustainable Communities Criteria as essential to achieving the above aims and objectives:

- To provide works, services and facilities to secure improved sustainable transport and accessibility – by public transport, walking, bridleways and cycling including access for the disabled
- To provide safe access to a site during the construction phase and once development has been completed including access for the disabled
- To include parking provision and 'servicing' facilities in line with adopted or emerging vehicle parking standards contained herein
- To contribute to parking management schemes and local parking conditions
- To accommodate safely and sustainably local and strategic increases in traffic numbers arising from a development
- To help discourage additional traffic from using unsuitable local highways and roads, in accordance with the Southend Route Hierarchy and 'Environmental Rooms' policy
- To provide works, services and facilities to secure improved sustainable transport and accessibility – by public transport, walking and cycling including access for the disabled
- To contribute to providing safe, adequate and sustainable access to all nearby community facilities, including parks, open spaces and schools
- To provide adequate access and facilities for managing waste
- To contribute to Road Safety Schemes
- To contribute to any Park and Ride Schemes
- To promote sustainable transport options through the implementation of Travel Plans, which support the policy aspirations of TravelWise and MoveEasy, securing monitoring costs where appropriate

## Education, Training and Skills

2.21 Most new development will lead to an increase in demand for school places or will place pressure on these services leading to a need for either new accommodation or refurbishment and improvement of existing educational facilities. The Council has a duty to ensure that there are sufficient school places in the local authority area to meet present and future demand for places. The Council are mindful of the impact new development may have on the level of education provision in the area and the cumulative effect on the Borough. In the majority of cases, the planning obligation sought is a financial contribution towards educational provision. This is to help address the impact of new housing on local schools and other educational facilities. Within this remit the Council will also seek contributions towards the potential cumulative impact of smaller developments on local facilities in order to secure mitigation of any development proposal on the education system.

- 2.22 The Council is committed to achieving the economic, social and environmental well being of all residents so as to ensure that a better quality of life and prosperity is shared by all. To achieve this, the Council proposes that in appropriate circumstances contributions should be made by developers towards the training and skills base needed to achieve the jobs led growth and regeneration.
- 2.23 The Council proposes the following Sustainable Communities Criteria as essential to achieving the above aims and objectives:
- To ensure adequate provision and condition of Primary, Secondary and post 16 schooling facilities
  - To contribute to the provision of Nursery and child care facilities
  - To contribute to local skills and training provision, including improved access to local jobs and recruitment

### **Community Facilities including 'Open space, sport and recreation' and 'Health, social care and physical community needs'**

- 2.24 A key priority for the Thames Gateway is to create places where people want to live and work, as well as delivering sustainable communities. Southend is a compact densely developed urban area, which presently has heavy demands placed upon its infrastructure. Community and cultural facilities, therefore, have an essential role to play in ensuring that a balanced and quality environment is created. The quality and quantity of fundamental services need to be maintained and improved, while simultaneously achieving the regeneration objectives for the town, to ensure that the quality of life of individuals is maintained and improved.
- 2.25 The town's existing facilities will need protecting and enhancing according to the level of additional housing and commercial development and the pressures that these place on them. Any further growth within the Borough must not only safeguard the existing community infrastructure but seek to enhance the infrastructure balance. Improvements to and/or re-provision of community infrastructure, delivered through planning obligations, must therefore accompany development or act as a pre condition to it.
- 2.26 The Council proposes the following Sustainable Communities Criteria as essential to achieving the above aims and objectives:
- Provision, enhancement and maintenance of on and/or off site open space both formal and informal and recreation space (including public parks, beach and foreshore areas etc.)
  - Provision of or improvements to built sports facilities, playing fields and other outdoor sports facilities as well as other recreation facilities in major developments
  - Adequate provision of all health facilities for local community needs

- Adequate provision of extra care housing and supported accommodation units for older people, those with learning disabilities, those with mental health problems and for family centres and children’s services
- Provision and/or improvements to other community facilities that fall into Use Class D1, D2 or *sui generis* (e.g. theatres, swimming pools, community centres etc.) or that contribute to the quality of the public realm (e.g. public toilets)
- To contribute (in kind and/or financial) to providing adequate facilities for emergency services where such a contribution meets the tests set out in legislation and is required to mitigate the impact of a development

### Public Art and the Public Realm (including the Historic Environment)

2.27 The quality of the built environment affects the way in which people perceive and enjoy places and spaces. Well designed, accessible and legible urban places and spaces will help promote and support greatly the creation of cohesive, pleasant and sustainable local communities. An environment and its surroundings, whether natural or built, will play a significant role in shaping the quality of life experienced by a population. Interesting and innovative buildings, quality streets, good relationships between new and existing development, the use of public art and soft and hard landscaping can all help to develop local identity, create places which people are proud of, and thereby, improve their quality of life and a sense of belonging. Accordingly, there is a need for greater emphasis on the use of buildings, streets, open spaces and landscaping – the public realm – and an understanding of how these elements relate to each other to create a unique ‘sense of place’ and identity. Indeed the public realm, comprising both ‘physical’ and ‘social’ elements, has a significant role to play in creating a quality environment, as it encapsulates the spaces and settings which facilitate and support social interaction and public life.

2.28 Consistent with the objectives of the adopted Design and Townscape Guide SPD, the Council proposes the following Sustainable Communities Criteria outlined as essential to achieving the above aims and objectives:

- To apply good quality, sound & sustainable design in all new developments which positively contributes to the character and appeal of the immediate and surrounding area
- To ensure that any new development provides a significant contribution to the existing and emerging townscape being established within the town, and enhances the public realm through high quality hard and soft landscaping and the application of urban design principles in accordance with Council policies and guidance
- To provide on site, where appropriate, or contribute towards “public art” which will help broaden and reinforce Southend as the “cultural capital” of the Essex Thames Gateway
- To contribute to the maintenance and enhancement of the public realm

- To contribute to the conservation, restoration and enhancement of the historic environment and archaeological sites and monuments, including provision for public access and interpretation, and future management of historic assets where appropriate
- To offset/compensate/mitigate for any loss of/impact on the historic environment
- To ensure that all new developments contribute to personal and public safety by “Designing Out Crime” and being “Secured by Design”
- Provision towards Information Communication Technology (ICT) within developments
- Provision of CCTV cameras within the vicinity of a development where appropriate
- Provision of additional approved street lighting if required within the vicinity of a development

## Natural Environment and Conservation

- 2.29 The cumulative effect of new development has and will impact greatly upon the physical and natural environment. Even though many developments are relatively small scale, their accumulation results in major effects on the overall natural systems of neighbourhoods, towns, cities, regions and, eventually, on the earth’s biosphere. Given serious concerns in relation to global climate change, pollution of the natural environment, and the depletion of fossil fuel sources, the need for environmental responsibility is an important consideration for those involved and associated with development. Development will need to have regard to environmental impacts as well as social impacts and long term economic viability to contribute towards the creation of truly sustainable communities and lasting environments.
- 2.30 In view of future development demands and pressures within the Borough, the Council will ensure that development contributes towards the provision of additional public open spaces, biodiversity and nature conservation areas, especially in circumstances where existing amenities would be impacted upon by development. It will also be necessary for developments to contribute towards enhancement, retention and management of these areas, in order to meet national, regional and local objectives and to offset any additional pressures and demands.
- 2.31 The Council proposes the following Sustainable Communities Criteria as essential to achieving the above aims and objectives:
- To ensure new development does not have any significant detrimental effect on the quality of land, air or water
  - To offset/compensate/mitigate for the loss of/impact on any natural or environmental resource, for example, woodland, grassland, open water, hedgerows, allotments etc. which were in existence prior to development

- To preserve, maintain and enhance natural habitats and mitigate/compensate against loss of or damage to species or habitats which contribute to local biodiversity,
- To preserve, maintain and enhance public open space\green space wherever it contributes to Thames Gateway “Green Grid” Strategy or any other strategic open/green space documents which have been agreed by the Council
- To replenish/replace trees, vegetation or areas lost to/affected by development, through re-planting of suitable/appropriate species and by landscaping new and additional areas
- To include suitable measures for preserving, maintaining and enhancing species or habitats through management agreements where these species or habitats may be accommodated within the footprint of the development scheme
- To replace any areas of green/open space lost to parking facilities or service roads
- To contribute to the protection, maintenance and enhancement of the foreshore
- To contribute to the preservation, maintenance and enhancement of designated Special Protection Areas (SPA), Special Areas of Conservation (SAC), Sites of Special Scientific Interest (SSSI) and RAMSAR sites and Local Nature Reserves (LNR’s), including Southend-on-Sea foreshore.

## Affordable Housing

- 2.32 A key objective of the Government and the Council is to ensure that everyone has the opportunity to live in a ‘decent home’. To help meet this objective, the planning system is expected to provide housing that is genuinely affordable to a wide range of people. It is expressed in ‘Sustainable communities: building for the future’ (2003) that a ‘step-change’ in housing supply will be needed to tackle serious shortages that exist, particularly in London and the South East. It states that too many people do not have access to decent, affordable housing and that many are living in housing of poor quality. It considers that more affordable housing should be delivered, especially for key workers, young families and those in priority need; and that new sustainable communities should be created in regions of high demand like the Thames Gateway.
- 2.33 In order to achieve this aim, and to ensure that affordable housing is provided in accordance with Southend Borough Council’s Core Strategy, the Council proposes that the Sustainable Communities Criteria should reflect the specific requirements as stated in Core Strategy Policy CP8 ‘Dwelling Provision’, which states that the Borough Council will:

....enter into negotiations with developers to ensure that:

a. all residential proposals of 10-49\* dwellings or 0.3 hectares up to 1.99 hectares make an affordable housing or key worker provision of not less than 20% of the total number of units on site; and

b. all residential proposals of 50\* dwellings or 2 hectares or more make an affordable housing or key worker provision of not less than 30% of the total number of units on the site.

*\*The rational which will be used by the Council to determine whether more than the specified floor target for affordable housing will be sought will be set out and justified in 'Part 6 Affordable Housing' of the 'Planning Obligations and Vehicle Parking Standards DPD'.*

*For sites providing less than 10 dwellings (or below 0.3 ha) or larger sites where, exceptionally, the Borough Council is satisfied that on-site provision is not practical, they will negotiate with developers to obtain a financial contribution to fund off-site provision. The Council will ensure that any such sums are used to help address any shortfall in affordable housing. Preferred arrangements for this will also be set out in the above DPD.*

## Flood Risk, Waste and Resources

- 2.34 The Council acknowledges and supports the Government's aims and objectives for flood and coastal defence. A key policy aim is to reduce the risk to people and the developed and natural environment from flooding and coastal erosion by encouraging the provision of technically, environmentally and economically sound and sustainable defence measures. Where existing water supply and sewerage infrastructure is inadequate for the demands placed on it by development, developers should also contribute to any necessary off-site improvements (including sea defences).
- 2.35 Core Strategy Policy CP4 'The Environment and Urban Renaissance' states that development proposals will be 'expected to contribute to the creation of a high quality, sustainable urban environment which enhances and complements the natural and built assets of Southend'. It aims to achieve this by promoting sustainable development and encouraging innovation and excellence in design, including design solutions that maximise the use of renewable resources and resource conservation. Therefore, a developer should ensure that any new development is environmentally sustainable in terms of energy, waste, water efficiency, build type and quality. It should also increase the use of sustainable build types and materials, and ensure that there are adequate facilities for recycling in order to meet local policy objectives and demands.

2.36 The Council proposes the following Sustainable Communities Criteria as essential to achieving the above aims and objectives:

- To contribute to the provision and maintenance of flood defences
- To ensure no increase in total flood risk within the Borough by provision of suitable flood protection measures and their future maintenance
- To make provision for sustainable urban drainage and minimisation of surface water run off
- To ensure provision of flood resilient development
- To provide for additional local water supplies and sewerage capacity, matching any additional demands generated by development, and minimise water demand
- To contribute towards essential provision and upgrading of utilities related to development
- To contribute towards present and future sustainable power sources and energy efficiency
- To provide for adequate waste management facilities during demolition, construction and post development phases
- To provide facilities which promote and facilitate separation, storage and collection of recyclable, compostable and other waste (e.g. adequate on site storage facilities)
- To contribute (in kind and/or financial) to water/waste water infrastructure where such a contribution meets the tests set out in legislation and is required to mitigate the impact of a development

### Administration and Monitoring of Planning Obligations

2.37 In line with Government timescales the Council expects planning applications to be determined within statutory 8/13/16 week targets. The delivery of obligations within these timescales may take a considerable amount of time and resources and often requires public consultation, committee resolutions or involvement and support of third parties. Therefore, proposed development will be required to contribute towards the costs incurred during this stage of the process.

2.38 Once a planning obligation has been signed, administrative costs are incurred on tasks such as ensuring on-site measures are provided, financial contributions are received and contributions are spent in accordance with the terms of the obligation. This requires compliance checks, monitoring, project management and implementation by the Council.

2.39 The Council proposes the Sustainable Communities Criterion outlined below as essential to achieving these aims and objectives:

- Contribution to the Council's costs of administering and monitoring planning obligations

- 2.40 The administrative and staff costs of monitoring planning obligations will be recouped through a standard payment, which will be used to fund:
- S106 (Development Monitoring) Database – support cost approx £6,310 per annum
  - S106 Monitoring Officer role – delivering planning obligations, enforcement of obligations, site inspections to assess status of schemes, data entry, monitoring of expenditure, report function
  - Legal advice – non payment procedures, legal action etc
  - Finance liaison and tracking of financial contributions
  - Building Cost Information Service (BCIS) subscription for indexation to ensure that contributions reflect current costs within the building industry
- 2.41 The estimated total annual cost for the administration and monitoring of obligations is approximately £46,000 per annum (as increased by inflation) and taking this into consideration the administration and monitoring payment will be required in accordance with the following criteria, which reflect the complexity of an agreement and the subsequent monitoring:
- For agreements with one non-monetary obligation or a contribution of less than £5000 a fee of £250 is charged
  - For agreements with one monetary obligation with a contribution of more than £5000 a fee of £500 is charged
  - For agreements with multiple Heads of Terms, 4% of the monetary contribution and £750 per non-monetary Head of Term is charged
  - The administration and monitoring fee shall be capped at a maximum of £10,000

Had this requirement for an administration and monitoring payment been operational in financial year 2008/9 then £37,603 would have been collected; and had this charge been payable in 2009/10 then £18,693 would have been collected. In light of the greater fee for large-scale developments with complex planning obligations, phased payments may be agreed by negotiation. These charges will be reviewed annually to reflect the actual costs of administration and monitoring of planning obligations.

## Review

- 2.42 It will be necessary to review this SPD as a whole as further guidance and legislation is evolved by the Council and in light of Government policy and advice.
- 2.43 Details on planning obligations secured, and the status and use of financial contributions will be reported as part of the Annual Monitoring Report (AMR).



section three



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### **3. Procedure for Completing Planning Obligations**

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3.1 The procedure for completing planning obligations is set out below and in diagrammatic form in Appendix 2.

#### **Pre Application Stage**

3.2 Applicants are directed to the policies relevant to the proposal and to any relevant supplementary planning documents, including this SPD on planning obligations. Further information in relation to pre-application advice and Borough Council policies can be found on the Environment and Planning pages of Southend Borough Council's website ([www.southend.gov.uk](http://www.southend.gov.uk)). Having regard to the guidance contained in this SPD, applicants should come forward with proposals including any planning obligations (to be secured through a legal agreement or conditions) that are relevant and related to their development proposals. If a S106 Agreement is considered necessary and appropriate, planning officers in conjunction with other Council officers will seek to agree draft Heads of Terms at pre-application stage so that these details can be submitted with a planning application, to provide greater clarity and speed up the planning application process. The Council will also seek confirmation from developers that they are satisfied that a Section 106 Agreement be drafted on the basis of the local authority's model agreement (available on our website or from the Section 106 Monitoring Officer upon request). Highways implications, including any necessity for a Section 38 or Section 278 agreement under the Highways Act 1980 in relation to works to the public highway or adoption of estate roads, plus any requirement for a Travel Plan, should be identified at this early stage to ensure timely completion of any such matters. Developers will also be advised to liaise with statutory consultees (e.g. rail authorities) at pre-application stage if it is considered that their comments are likely to affect any future discussions in relation to planning obligations and the feasibility of a scheme.

#### **Application Submission Stage**

3.3 In accordance with the Council's local list requirements, planning applications that will require a Section 106 Agreement/Unilateral Undertaking must include the following on submission or they will be treated as invalid (unless exceptional circumstances dictate otherwise):

- a) Proposed heads of terms (i.e. the main aspects) for a S106 agreement and agreement to the model S106 agreement, draft/completed Unilateral Undertaking, or a justification for non-compliance with the planning obligation requirements as detailed in this SPD and confirmed by planning officer at pre-application stage;

- b) Proof of the owner's title (including title plan). All the owners of the site will need to enter into the agreement. If the land is registered this will be by recent office copy entries (no more than 21 days old). If it is unregistered, an epitome of title should be provided;
- c) Names and addresses of any chargees, lessees, mortgages or other holders of security on the land i.e. all parties with an interest in the land;
- d) A solicitor's undertaking to pay the Council's reasonable legal costs (internal or external) in connection with the negotiation and preparation of a S106 Agreement/checking of a Unilateral Undertaking; and
- e) Contact details of the solicitor acting on behalf of the applicant.

## **Application Appraisal Stage**

- 3.4 Once the application is submitted, the negotiation on any potentially appropriate obligations will proceed at the same time as consideration of the planning application, and will include an assessment of whether or not planning conditions will suffice instead of an obligation. This process is without prejudice to the determination of the application by the Development Control Committee. Where there have been no pre-application discussions, the case officer will also direct the applicant to Southend Borough Council's policies and supplementary planning documents, including this SPD on planning obligations.
- 3.5 Where the need for an agreement or undertaking has been identified, the applicant will be requested to progress matters as far as possible prior to a committee resolution. These negotiations are without prejudice to the final determination of the application by the relevant committee, but are an appropriate way to ensure timely decision-making in accordance with government targets.
- 3.6 The key element of the negotiation will be to confirm that the applicant agrees with the matters to be included in the S106 agreement. In conjunction with Southend Borough Council's legal team, the planning case officer will manage the negotiation process and seek to agree the precise nature and scale of matters for inclusion as obligations, including when those obligations are triggered.
- 3.7 By the time the proposal is considered by the Development Control Committee the matters which are to be included in the obligations must be known and agreed with the applicant in detail. The obligations (including when those obligations are triggered) will be set out as part of the committee report and recommendation, which is a public document.

## Committee and Post Committee

- 3.8 Any recommendation to delegate authority to grant planning permission will be made subject to the completion of a satisfactory legal agreement or undertaking within a specified time period, which is likely to relate directly to the government's target period for determination of the application, and will authorise the Head of Legal and Democratic Services to complete the legal agreement or accept the undertaking. The committee will decide whether to approve the recommendation as set out in the report and whether the proposed obligations are appropriate.
- 3.9 A legal agreement or undertaking will normally be drafted prior to the committee resolution in the circumstances set out above, or, if this has not proved possible, immediately following the committee resolution. The draft obligation will be sent to the applicant's solicitor for comment and any negotiations will be progressed through each party's legal team. The reference number relating to the agreement or undertaking will correspond with the planning application reference number (e.g. SOS/09/00011/FULM) and this will be used on all correspondence and monitoring arrangements for the planning obligations.
- 3.10 Where it appears to Southend Borough Council that progress on the agreement is unnecessarily slow, the Council will actively chase progress. The Council is committed to meeting the Government's targets for determination of planning applications. Therefore, if the 8/13/16 week statutory deadline is approaching with no likely prospect of completing the S106 Agreement it may be necessary to refer the application back to committee, or to an officer with delegated powers (if previously agreed by committee), who will then reconsider the original resolution and permission may be refused in the absence of planning obligations being secured. It may also be necessary to refer an application back to committee if, for example, circumstances have changed which would require the obligations themselves to be changed in some way.
- 3.11 At the earliest possible date and certainly prior to completion of the legal agreement, the Council's legal services will ensure that all financial and title matters are in order. At the time the legal agreement is completed, the planning permission and any other consents will also be issued.

## Post Completion of Legal Agreement or Undertaking

- 3.12 Southend Borough Council will register the agreement or undertaking and consents as local land charges and the applicant will be required to register the agreement as a charge against the title to the property at HM Land Registry in accordance with the terms of the agreement or undertaking. Southend Borough Council will also update the statutory registers.

## Monitoring Planning Obligations

- 3.13 The S106 Monitoring Officer will hold a copy of the completed agreement, the details of which will be entered into an electronic monitoring database. The database will track compliance with each obligation in the agreement as the development proceeds and the agreement will be enforced as necessary. This system will be operated by the S106 Monitoring Officer whose responsibility it is to invoice developers when payments are due, monitor the allocation and oversee the expenditure of S106 funding, provide regular updates on obligations and improve the service delivery of the planning obligations process.
- 3.14 The terms of each agreement will require developers to notify the S106 Monitoring Officer in writing when it is intended to implement a planning permission (i.e. commence development). There may also be a requirement to send written notification at various stages throughout the development depending on when a planning obligation comes into effect (e.g. on first occupation or on completion). Invoices will be sent to developers when financial contributions are due. The S106 Monitoring Officer will also carry out periodic site visits to keep track of the stage that each development is at to ensure contributions are received in a timely manner and that all obligations are met.
- 3.15 On receipt of an invoice, payments in respect of financial contributions can be made on-line via the Council's website, over the phone, at the Customer Service Centre or by sending a cheque (made payable to "Southend Borough Council" and marked for the attention of the S106 Monitoring Officer). When making a payment in respect of an invoice it is essential that the invoice number be quoted. If payments are made in advance of an invoice being received this should be by cheque only, which must be accompanied by a covering letter detailing the planning application reference number, the date of the legal agreement and details of the obligation to which the payment relates. Inflation, calculated in accordance with the provision within each agreement, will be added to the amount due on all invoices. If paying by advance cheque, please contact the S106 Monitoring Officer prior to making any payment to confirm any inflation payment due. It should be noted that compliance with the requirements of a S106 Agreement is the responsibility of the owner(s) of a site and it is not reliant upon invoicing by the Council.

## Additional Considerations for Completing an Obligation involving Highway Works

- 3.16 Planning obligations involving highways works may also require the completion of a Section 38 or Section 278 agreement under the Highways Act 1980.

- 3.17 The Council has powers under Section 38 of the Highways Act 1980 to enter into agreements with developers or other persons to adopt highways, namely new estate roads, for future public maintenance provided they are constructed to the Council's specification. The Council's specification is designed so that future maintenance costs are kept to a minimum. The adoption of a highway relieves the developer from their liability to maintain that highway. Fees are paid in advance according to the size of the development to cover the Council's costs in preparing the agreement and inspecting the work during construction. A Bond is also deposited to cover the cost of bringing the road up to an adoptable standard should the developer become insolvent or is unable to meet their obligation. Developers should ensure that when entering into Section 38 Agreements they have complete undisputed title to the land on which the estate roads are to be built. You will need to give us the approved details of all necessary easements before we sign the agreement.
- 3.18 Prior to entering into a Section 38 agreement you will also need to prove a right to discharge surface water from the highway to an existing sewer, a proposed sewer or a water course. We will require proof that your drainage proposals have been approved by the relevant authorities. If the highway water discharges into sewers containing roof or yard water (or both), the relevant water company must approve the proposals and they must be included in a Section 104 agreement of the Water Industry Act 1991. We will not sign a Section 38 agreement before you have received a 'letter of intent' from the water authority that the drainage proposals are suitable for including in a Section 104 agreement. We will adopt only drains laid for the sole purpose of discharging surface water from the highway. However, you must also get consent from the Environment Agency or the water company for its discharge and we will require proof of this before entering into a Section 38 agreement. We must approve proposals for highway drainage, including calculations of surface water run-off. Highway drainage will then be included within the terms of the Section 38 agreement for future adoption.
- 3.19 Alterations to existing public highway are undertaken under Section 278 of the Highways Act 1980 and where development requires works to be carried out on the existing highway, you will need to complete a Section 278 agreement with us. Section 278(1) of the Act (as amended by the New Roads and Street Works Act 1991) states:
- "A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person -*
- a) for the execution by the authority of any works which the authority are or may be authorised to execute, or*
  - b) for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,*
- on terms that that person pays the whole or such part of the cost of the works as may be specified or determined in accordance with the agreement."*

3.20 Highway matters must be discussed at an early stage in the planning application process to agree the extent and scope of any necessary works, the timing of those works (even where a planning obligation is not involved) and who should carry them out (either the applicant's contractor or the Council's contractors). During the initial discussions, some information on the background to the development will be required and the applicant should provide the highways officers with detailed plans and a specification of the proposed works. The drafting of any Section 38 or 278 agreements, based upon the local planning authority's standard format should commence at the same stage as a Section 106 agreement to ensure timely completion. Contact our Highways team on 01702 215003 at an early stage for further advice.



section four



## 4. Frequently Asked Questions

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### **When will financial contributions be paid?**

In order that the needs and impacts arising from new developments are addressed as soon as possible Southend Borough Council will generally aim to achieve the payment of financial contributions before the commencement of development. In the case of major phased developments, contributions may be paid in instalments on the commencement of each phase. Phasing of payments (i.e. payable prior to commencement, at a particular stage in the construction, prior to completion or prior to occupation) will be considered depending on the timescale necessary to deliver supporting infrastructure to a development.

### **Why are financial contributions Index Linked?**

In order to maintain the value of contributions from the date of the committee resolution until the time development is commenced, they will be index linked to reflect changes in the Retail Price Index (RPI) or the Building Cost Information Services Tender Price Index (BCIS TPI) or the Index of Civil Engineering Contracts (CECI).

The late payment of financial contributions is likely to incur interest at a rate 4% above the Base Rate of Barclays Bank plc (the Borough Council's banker). This is to ensure that the projects and works for which the contributions are earmarked are not unduly delayed or if delay occurs there is a contingency which may help negate the costs associated with delay.

### **Why should I pay the Council's Legal Costs?**

Applicants are requested to pay the Council's legal and technical fees (internal or external) in connection with the preparation and completion of a legal agreement as reimbursement for the costs incurred during the negotiation and completion of the legal agreement. This is due to the fact that an extra burden is placed on the local authority as a direct result of development that has planning obligations associated with it and as it is not within the local authority's control to adjust Business Rates to cover these additional costs it is considered reasonable to directly recoup them from developers on completion of a legal agreement.

### **Do I need to involve a solicitor to complete the agreement?**

You are strongly advised to appoint a solicitor because legal agreements and undertakings can restrict the use of the property in the future.

### **Can a legal agreement cover more than one obligation?**

A legal agreement may contain any number of planning obligations depending on the complexity and scale of the development and what would be necessary in order to grant planning permission. Where an obligation is very straightforward it may be contained in an undertaking which tends to be a short and simple document.

### **How do I make payments to the Council?**

On receipt of an invoice, payments in respect of financial contributions can be made on-line via the Council's website, over the phone, at the Customer Service Centre or by sending a cheque (made payable to "Southend Borough Council" and marked for the attention of the S106 Monitoring Officer). When making a payment in respect of an invoice it is essential that the invoice number be quoted. If payments are made in advance of an invoice being received this should be by cheque only, which must be accompanied by a covering letter detailing the planning application reference number, the date of the legal agreement and details of the obligation to which the payment relates. Inflation, calculated in accordance with the provision within each agreement, will be added to the amount due on all invoices. If paying by advance cheque, please contact the S106 Monitoring Officer prior to making any payment to confirm any inflation payment due.

### **What will happen to the payments?**

When payments are received they will be recorded by the S106 Monitoring Officer and assigned to a specific Cost Code for the scheme and to specific accounts depending on the nature of the contribution. Progress in relation to contributions will be reported regularly to Members and senior officers of the Council. A summary will also be made publicly available on a periodic basis.

### **How long will it take to complete a legal agreement or undertaking?**

This will depend on a number of issues including the complexity and size of the proposed development and the complexity of negotiations between the parties. The Council is committed to meeting the statutory 8/13/16 week deadlines for planning applications and therefore a Section 106 agreements should be close to completion and Unilateral Undertakings should be agreed by our Legal Services prior to committee consideration. Hence, applicants are strongly advised to commence negotiations in relation to planning obligations at pre-application stage, agreeing draft heads of terms and the model S106 agreement, to avoid the possibility of planning permission being refused in the absence of an acceptable legal agreement being completed within a the statutory timeframe for determining a planning application.

### **How long will S106 obligations last?**

Some requirements of a S106 Agreement are of an ongoing nature, for example the maintenance of a facility or the community use of a building and so the obligation will continue for so long as development implemented under the associated planning permission continues.

Where financial contributions are being made it will depend upon when payments are due to be made. For example, if a contribution is due on commencement of the development that could be up to 3 years (or such other time limit that might be agreed by the Council) after the date the legal agreement is completed and permissions are issued.

After Southend Borough Council is satisfied that all the obligations in an agreement are complied with the Council will, if requested, provide written confirmation that the obligations in an agreement have been met.

### **Can I vary a Section 106 Agreement?**

Section 106A of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) provides a procedure by which an applicant can apply for the formal modification or discharge of planning obligations. Within 5 years of the date of the agreement this variation can be done by mutual agreement, including an exchange of correspondence, between the parties. After 5 years of the date of a S106 agreement, the agreement can be modified by a formal application to the local planning authority, which is subject to public consultation and includes the right of appeal to the Secretary of State should a negotiated arrangement prove unsuccessful. Either way any agreement between the parties to modify or discharge a planning obligation shall be by a Deed of Variation.

### **Can I use my own contractors for works on the Public Highway?**

This will depend upon the circumstances of the application and the site. Applicants often want to carry out repaving or environmental improvement works to the public highway adjacent to their own development using their own contractors. Southend Borough Council has a duty of care to the public as a local highway authority, including maintaining the highway to the appropriate standards. The Council must be sure that the appropriate safeguards are in place before applicants' contractors begin works on site and therefore a Section 38 or Section 278 agreement will need to be signed, and/or a Highways Licence issued prior to any works commencing that affect the public highway.

Applicants may alternatively want to make financial contributions to highway or environmental improvement works. In such cases, Southend Borough Council will apply the contribution to a scheme in the vicinity of the development and related to it. In some cases, this may be a scheme which uses pooled funding subject to any changes in legislation that may preclude this approach.

You are advised to contact the Council's highways department on 01702 215003 at an early stage to discuss this further.

**Will neighbouring authorities be involved in the planning application process?**

In some instances, yes, particularly if delivery of infrastructure is cross-boundary and if the development will have an impact outside Southend.

**Why does the Council prefer S106 Agreements to Unilateral Undertakings?**

Unilateral Undertakings are often considered to be a quicker process than bilateral agreements (i.e. S106 Agreements). However, Council legal advisors find that the opposite may often be the case. Even if an applicant has based their initial draft on the template on our website, legal services must carry out precisely the same checks of its enforceability and of ownership (title) as for a bilateral agreement. Also, just as much negotiation may be required if the benefits detailed in the agreement are considered insufficient, and ultimately a scheme may be refused if the obligations detailed in the Unilateral Undertaking are considered unacceptable.

Also, whilst a Unilateral Undertaking can commit landowners to certain future actions by *them*, it cannot give applicants any guarantees of future actions by the Council. This considerably reduces the number of situations that lend themselves to the use of Unilateral Undertakings. One of the most common uses of the Unilateral Undertaking is at appeal, where an appellant is attempting to overcome planning objections as part of their case to the Inspector. Here, too, however, it may be best to seek to negotiate a bilateral agreement (without prejudice to the appellant's/Council's case) in advance of an appeal hearing.



appendices



## Appendix 1:

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### List of national, regional and local planning policies and other guidance relevant to each of the Sustainable Communities Criteria

[Note: This is a non-exhaustive list that was last updated on 17<sup>th</sup> March 2010]

#### Transport, Highways and Accessibility

- PPG13: Transport (2001)
- East of England Plan (2008) including Regional Transport Strategy
- London to Southend Movement Study (LOTS) (2004)
- Southend on Sea Local Transport Plan (LTP) April 2006 to April 2011
- Southend on Sea Core Strategy (2007) policies KP1 'Spatial Strategy', KP2 'Development Principles', KP3 'Implementation and Resources', CP3 'Transport and Accessibility'

#### Education, Training and Skills

- PPS1: Delivering Sustainable Development (2005)
- East of England Plan (2008)
- Draft Regional Economic Strategy for the period 2008 – 2031
- Southend on Sea Core Strategy (2007) policies KP1 'Spatial Strategy', KP2 'Development Principles', KP3 'Implementation and Resources', CP1 'Employment Generating Development', CP6 'Community Infrastructure'

#### Community Facilities including 'Open space, sport and recreation' and 'Health, social care and physical community needs'

- PPS1: Delivering Sustainable Development (2005)
- PPG17: Planning for Open Space, Sport and Recreation (2002)
- East of England Plan (2008)
- Southend on Sea Core Strategy (2007) policies KP1 'Spatial Strategy', KP2 'Development Principles', KP3 'Implementation and Resources', CP6 'Community Infrastructure', CP7 'Sport, Recreation and Green Space'
- Sport England: Good Practice Guide (2001)
- Draft Southend on Sea Green Space and Green Grid Strategy
- Open Space and Recreation Assessment in Southend-on-Sea Borough (August 2004)
- A Study of Playing Pitches in Southend-on-Sea Borough (August 2004)

#### Public Art and the Public Realm (including the Historic Environment)

- PPS1: Delivering Sustainable Development (2005)
- PPS3: Housing (2006)
- PPS 6: Planning for town centres (2005)
- PPS 9: Biodiversity and Geological Conservation (2005)
- PPS 10: Planning for sustainable waste management (2005)
- PPG 15: Planning and the Historic Environment (1994)

- PPG 16: Archaeology and Planning (1990)
- PPG 17: Planning for Open Space, Sport and Recreation (2002)
- Sustainable Communities: Building for the Future (DCLG, 2003)
- Creating sustainable communities: making it happen: Thames Gateway and Growth Areas (DCLG, 2003)
- Urban White Paper: Our Town and Cities (DCLG, 2000)
- Towards and Urban Renaissance (Urban Task Force, 1999)
- Growth and Regeneration in the Thames Gateway (2004)
- East of England Plan 2008
- Southend Local Transport Plan 2006 to 2011
- Southend on Sea Core Strategy (2007) policies KP1 'Spatial Strategy', KP2 'Development Principles', KP3 'Implementation and Resources', CP4 'The Environment and Urban Renaissance'
- Design and Townscape Guide SPD (2007)

### Natural Environment and Conservation

- The Conservation (Natural Habitats, &c.) Regulations 1994
- Natural Environment and Rural Communities Act 2006
- Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999
- Wildlife and Countryside Act 1981 (as revised)
- Sustainable Communities: Building for the Future (DCLG, 2003)
- Creating sustainable communities: making it happen: Thames Gateway and Growth Areas (DCLG, 2003)
- PPS1: Delivering Sustainable Development (2005)
- PPS3: Housing (2006)
- PPS9: Biodiversity and Geological Conservation (2005)
- PPG17: Planning for Open Space, Sport and Recreation (2002)
- East of England Plan (2008)
- Southend Local Transport Plan 2006 to 2011
- Southend's Local Biodiversity Action Plan (2006)
- Southend on Sea Core Strategy (2007) policies KP1 'Spatial Strategy', KP2 'Development Principles', KP3 'Implementation and Resources', CP4 'The Environment and Urban Renaissance', CP7 'Sport, Recreation and Green Space'

### Affordable Housing

- Sustainable Communities: Building for the Future (DCLG, 2003)
- Creating sustainable communities: making it happen: Thames Gateway and Growth Areas (DCLG, 2003)
- PPS1: Delivering Sustainable Development (2005)
- PPS3: Housing (2006)
- Circular 6/98 'Planning and Affordable Housing' (1998)
- East of England Plan (2008)
- Regional Housing Strategy for the East of England (2005)

- Southend Housing Needs Survey
- Key Worker Study for Southend (2004)
- Southend on Sea Core Strategy (2007) policies KP1 'Spatial Strategy', KP2 'Development Principles', KP3 'Implementation and Resources', CP8 'Dwelling Provision'

### **Flood Risk, Waste and Resources including 'Flooding and drainage', 'Water resources and utilities', Sustainable power and energy' and 'Waste management and recycling'**

- Thames Estuary 2100
- Thames Gateway South Essex Strategic Flood Risk Assessment (Nov 2006)
- Essex Thames Gateway Water Cycle Study Scoping Report 2009
- Water Industry Act 1991
- Water Act 2003
- Climate Change Act 2008
- Code for Sustainable Homes (DCLG, 2006)
- Securing the future (DCLG, 2005)
- The Energy Review (PIU, 2006)
- PPS1: Delivering Sustainable Development (2005)
- PPS3: Housing (2006)
- PPG 8: Telecommunications (2001)
- PPS10: Planning for Sustainable Waste Management (2005)
- PPS12: Local Development Frameworks (2004)
- PPS 22: Renewable energy (2004)
- PPS 23: Planning and Pollution Control (2004)
- PPS25: Development and Flood Risk (2006)
- East of England Plan 2008
- Southend's Policy Statement on Flood and Coastal Defence (July 2003 – July 2008)
- Southend's Municipal Waste Management Strategy (2004 – 2020)
- Southend on Sea Core Strategy (2007) policies KP1 'Spatial Strategy', KP2 'Development Principles', KP3 'Implementation and Resources', CP4 'The Environment and Urban Renaissance'

### **Administration and Monitoring of Planning Obligations**

- Southend on Sea Core Strategy (2007) policy KP3 'Implementation and Resources'

## Appendix 2:

### Procedure for Negotiating, Preparing and Completing a Legal Agreement

Stage	Actions	Paragraph ref. in SPD	Responsibility
Pre Application	Applicant to consider relevant policies and this SPD prior to submitting proposal for pre-application discussion	3.2	Applicant
	Need for planning obligations established in discussion with other officers within the Council (e.g housing, education) and applicant provided with written advice following pre-application discussions. Any need for a S38 or S278 agreement also identified at this stage.	3.2	Case Officer
Submission of planning application	Check validity of application	3.3	Business Support Team
	Consultation with key stakeholders		Business Support Team/Case Officer
Consideration of planning application and preparation of legal agreement	Consideration by case officer and other key stakeholders in relation to policy, this SPD, Circular tests etc.	3.4 – 3.7	Case Officer
	Further negotiation meetings held if necessary, including stakeholder representatives where relevant	3.4 – 3.7	Applicant/Case Officer/Legal
	Ensure all financial and title matters are in order	3.11	Legal
	Draft legal agreement (including S38 or S278 agreement if relevant) sent to applicant's solicitors for consideration	3.4 – 3.7, 3.9	Legal
	Agreed heads of terms and triggers to be included in committee report.	3.7	Case Officer
Committee consideration	If proposal acceptable, resolution to delegate authority to Group Manager of DC & BC to grant permission subject to completion of legal agreement	3.8	Committee
	Timeframe for completion of legal agreement imposed (which is likely to be directly related to Government targets for determination of	3.8	Committee

	applications)		
	<b>Legal agreement completion</b>		
Post legal agreement completion	Copy of legal agreement and decision notice(s) sent to applicant's solicitor and applicant/agent, Business Support Team and S106 Monitoring Officer	3.12	Legal
	Copy of S106 placed on Statutory Register and register updated to show that permission has been granted	3.12	Business Support Team
	Agreements and consents registered as local land charges	3.12	Legal
	Agreement registered as a charge against the title at HM Land Registry	3.12	Applicant
Monitoring	Details of agreement including clauses and triggers recorded on database	3.13 – 3.15	S106 Monitoring Officer
	Implementation of planning permissions monitored	3.13 – 3.15	S106 Monitoring Officer
	Fulfilment of applicant's and Council's obligations monitored and recorded on database. Compliance enforced as necessary	3.13 – 3.15	S106 Monitoring Officer

## Appendix 3:

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### Useful Contacts and Information

Planning, Development & Building Control

Telephone: 01702 215004  
Fax: 01702 339607  
Email: [council@southend.gov.uk](mailto:council@southend.gov.uk)

For planning application, appeal, enforcement, Section 106 or Land Charges enquiries request one of the following:

- Borough Wide Team ext 5373
- Town Centre and Seafront Team ext 5378
- Planning Appeals and Enforcement Team ext 5347
- Section 106 Monitoring Officer ext 5371

**Postal Address:**

Development Control, Department of Enterprise, Tourism and the Environment, 10<sup>th</sup> floor Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ZF

Strategic Planning and Transport Policy

Telephone: 01702 215004 ext 5408  
Fax: 01702 339607  
Email: [council@southend.gov.uk](mailto:council@southend.gov.uk)

**Postal Address:**

Strategic Planning and Transport Policy , Department of Enterprise, Tourism and the Environment, 12<sup>th</sup> floor Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ZF

Local Land Charges

Telephone: 01702 215004 ext 5124  
Email: [landcharges@southend.gov.uk](mailto:landcharges@southend.gov.uk)

**Postal Address:**

Local Land Charges, Support Services, 8th floor Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER

Parking, Highways & Transport

Telephone: 01702 215003

Fax: 01702 339607

Email: [council@southend.gov.uk](mailto:council@southend.gov.uk)

Postal Address:

Traffic and Highways Network, Department of Enterprise, Tourism and the Environment, 11<sup>th</sup> floor Civic Centre, Victoria Avenue, Southend-on-Sea, Essex SS2 6ER

## Useful external websites:

Department for Communities and Local Government – [www.communities.gov.uk](http://www.communities.gov.uk)

Environment Agency – [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

Essex County Council – [www.essex.gov.uk](http://www.essex.gov.uk) (includes information relating to infrastructure contributions)

HM Land Registry – [www.landreg.gov.uk](http://www.landreg.gov.uk)

Homes & Communities Agency – [www.homesandcommunities.co.uk](http://www.homesandcommunities.co.uk)

Office of Public Sector Information – [www.opsi.gov.uk](http://www.opsi.gov.uk)

Planning Portal – [www.planningportal.gov.uk](http://www.planningportal.gov.uk)

Southend Borough Council – [www.southend.gov.uk](http://www.southend.gov.uk)

Valuations Office – [www.vo.gov.uk](http://www.vo.gov.uk)

## Other relevant information:

### Greater London Authority Affordable Housing Development Control Toolkit

A tool to assist in appraising the viability of residential development schemes in relation to the provision of affordable housing. Available at: [www.london.gov.uk/who-runs-london/mayor/publications/planning/affordable-housing-development-control-toolkit](http://www.london.gov.uk/who-runs-london/mayor/publications/planning/affordable-housing-development-control-toolkit)

### HCA Economic Appraisal Toolkit

A tool to help development partners demonstrate how grants from the National Affordable Housing Programme (NAHP) will help them deliver more affordable housing over and above the level that can be supported from planning obligations alone. The tool can also assist Local Planning Authorities and developers negotiate and agree the viability of planning obligations generally. Available at: [www.homesandcommunities.co.uk/economic-appraisal-tool](http://www.homesandcommunities.co.uk/economic-appraisal-tool)

### Sport England

A toolkit including information to assist in securing improved sport and recreation facilities. Available at:

[www.sportengland.org/facilities\\_planning/planning\\_tools\\_and\\_guidance/planning\\_kitbag.aspx](http://www.sportengland.org/facilities_planning/planning_tools_and_guidance/planning_kitbag.aspx)

Southend on Sea Local Development Framework

**Planning Obligations – A Guide to S106 and Developer Contributions**

Supplementary Planning Document 2 – November 2010

## Appendix 4:

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### Glossary

This glossary contains words, phrases and names of organisations that are mentioned in this Guidance and are relevant to the planning process.

<b>Affordable housing</b>	Subsidised housing at below market prices or rents intended for those households who cannot afford housing at market rates. The accommodation is usually managed by an registered social landlord (RSL).
<b>Borough Local Plan</b>	Plan prepared under Part II, Chapter 1 of the Town and Country Planning Act 1990 by a local planning authority for its area. Borough local plans will be replaced by a local development framework prepared under the provisions in the Planning and Compulsory Purchase Act 2004. Southend's Unitary Development Plan (UDP) was adopted 1 March 1994.
<b>Character</b>	The distinctive or typical quality of an area as described by its historic fabric; appearance; townscape; and other land uses.
<b>Circulars</b>	Government publications explaining procedural matters and legislation. Circular 05/2005 relates to 'Planning Obligations'. The purpose of this Circular is to provide guidance to local authorities in England on the use of planning obligations under section 106 of the Town and Country Planning Act 1990 as substituted by the Planning and Compensation Act 1991.
<b>Commercial Floorspace</b>	Floorspace utilised by the following uses: offices, industry, warehousing, showrooms, hotels, retail, entertainment and private educational, health and leisure facilities, other than social and community uses that are principally provided by the public sector. This does not include residential use.
<b>Commuted sum</b>	A financial payment made, in accordance with a planning agreement, by a developer towards the provision of, for example, affordable housing.
<b>Conditions</b>	A restriction or qualification imposed when planning permission or other consent is granted under the Planning Acts. Conditions are required in law to be necessary, relevant to planning, directly related to the development to be permitted, enforceable, precise and reasonable in all other respects.

<b>Conservation Area</b>	An area of special architectural or historic interest designated by the local planning authority under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, the character or appearance of which it is desirable to preserve or enhance.
<b>Department for Community &amp; Local Government (DCLG)</b>	Government department, established in 2006, responsible for community cohesion and equality, for housing, urban regeneration, planning and local government.
<b>Development</b>	The carrying out of building, engineering, mining or other operations in, on, over or under the land; or the making of any material change in the use of any buildings or other land, as defined in the Town and County Planning Act 1990 as amended. Unless it is defined under the Act as 'permitted development', planning permission is required for the carrying out of any development of land.
<b>Development Control Committee</b>	The above committee has power to make most decisions in respect of planning applications and other development control matters. Made up of elected councillors in proportion to the political complexion of the Borough Council. Members of the committee are not bound to follow the recommendations of planning officers when taking their decisions.
<b>Development Plan</b>	Under the Planning and Compulsory Purchase Act 2004, the development plan comprises the regional spatial strategy (RSS) prepared by East of England (known as the East of England Plan), the Southend-on-Sea Borough Local Plan 1994, until it is replaced by development plan documents prepared under that Act, and any DPDs or SPDs adopted as part of the Local Development Framework . If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan, unless material considerations indicate otherwise.
<b>Development Plan Document (DPD)</b>	These documents outline the key development goals of the Local Development Framework (LDF). Eventually these documents will replace the Borough Local Plan.
<b>Entertainment Use</b>	Uses within Class A3 (Restaurants and Cafes) A4 (Drinking Establishments) and A5 (Hot Food Take-aways)

and other entertainment uses where the primary activity is use as a nightclub, live music and dance venue, discotheque, entertainment centre, dance hall, casino or bingo hall. These are mostly uses where the greatest attendances occur during the evening or at night. Most of these uses fall within Class D2 of the Revised (2005) Use Classes Order 1987. It does not include theatres.

**Government Office for the East of England**

The Government Office for the East of England is responsible for overseeing the preparation of the Regional Spatial Strategy (RSS) and Local Development Frameworks (LDF).

**Key workers**

Person having skills in an employment sector important to the functioning of the region in which employers have severe difficulties in recruiting and retaining staff. Some categories of key worker are eligible for special forms of housing assistance.

**Listed building**

A building contained in a list of buildings of special architectural or historic interest prepared by the Secretary of State for the Environment. Before any work can be carried out which affects the character or appearance of a listed building, inside or out, listed building consent is required.

**Local Development Framework (LDF)**

The new plan-making system, introduced by the Planning and Compulsory Purchase Act 2004 requires local planning authorities to prepare a local development framework, which will comprise development plan documents, which will form part of the statutory Development Plan and supplementary planning documents which will provide additional detail. The framework will also include the statement of community involvement, the local development scheme and the annual monitoring report.

**Material considerations**

A factor which a local planning authority may take into account in making a decision on a planning application before it. In certain circumstances, such a factor, or a combination of them, may be sufficient to lead the authority to determine the application other than in accordance with the provisions of the development plan. Where that occurs, the factor or factors involved must, by law, be genuine planning matters, relating to the development and use of land, and must fairly and reasonably relate to the application concerned.

**Office of the Deputy Prime Minister (ODPM)**

Government department responsible between 2002 and 2006 for regional and local government (including the regional Government Offices), housing, planning, regeneration and neighbourhood renewal. The ODPM is now the Department for Communities and Local Government.

**Permitted development**

Some development does not require planning permission from the Borough Council. Blanket permission is given by the General Permitted Development Order.

**Planning agreement**

See planning obligation

**Planning obligation**

Also known as "S106 agreements". Private agreements negotiated, usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land (or "developers"), and **intended to make acceptable development which would otherwise be unacceptable in planning terms**. Obligations can also be secured through unilateral undertakings by developers. For example, planning obligations might be used to **prescribe** the nature of a development (e.g. by requiring that a given proportion of housing is affordable); or to secure a contribution (financial or non-monetary) from a developer to **compensate** for loss or damage created by a development (e.g. loss of open space); or to **mitigate** a development's impact (e.g. through increased public transport provision). The outcome of all three of these uses of planning obligations should be that the proposed development concerned is made to accord with published local, regional or national planning policies.

**Planning permission**

A written consent to the carrying out of development issued by a local planning authority or, on appeal, by a Planning Inspector or the Secretary of State. The permission is normally subject to conditions and will lapse if the development is not started within a stated period of time. Planning permission for buildings may be in outline where the principle is approved, subject to the later submission of further applications for the approval of reserved matters.

**Planning Policy Guidance Notes**

<b>(PPG)</b>	Government policy notes which contain advice on a wide variety of planning issues. PPGs are being replaced by PPSs.
<b>Planning Policy Statements (PPS)</b>	Government policy statements (replacing PPGs) which contain guidance on planning issues.
<b>Public Art</b>	Permanent or temporary physical works of art visible to the general public, whether as part of a building or freestanding: can include sculpture, lighting effects, and the designed treatment of street furniture, paving, railings and signs.
<b>Regional Spatial Strategy (RSS)</b>	The Planning and Compulsory Purchase Act 2004 strengthened the role and importance of regional planning, introducing Regional Spatial Strategies (RSS) and making them the top tier of the statutory Development Plan in all regions of England except London, where the London Plan provides a similar role. RSSs provide a consistent regional framework to inform the preparation of Local Development Documents which must be in general conformity with the RSS, local transport plans and regional and sub-regional strategies and programmes with a bearing on land use activities. The RSS for Essex is the East of England Plan 2008.
<b>Registered Social Landlord (RSL)</b>	Organisation registered with the Housing Corporation under the provisions in Chapter 1 of the Housing Act 1996. The organisations concerned may be housing associations which are registered charities, or non-profit-making provident societies or companies. They must provide housing kept available for letting, and meet other requirements set out in the Act.
<b>Residential Use</b>	As set out in the Use Classes Order (C3) Dwelling Houses unless otherwise stated.
<b>Section 38(6) (formerly 54A)</b>	The provision within the Planning and Compulsory Purchase Act (2004) which contains the principle of the development plan-led system. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
<b>Section 106 Agreement</b>	An agreement or undertaking made under s106 of the Town and Country Planning Act 1990 to secure planning obligations. Sections 46 and 47 of the Planning and Compulsory Purchase Act (2004) give the Secretary of

State the power to make regulations to replace S106, but these powers have not yet been taken up.

**Social, Community and Cultural Facilities**

Most social, community and cultural facilities are in classes C2, D1 and D2 of the Use Classes Order. Such facilities can include social service uses, health facilities, some leisure and recreation facilities such as libraries, theatres and general social uses such as community meeting facilities and community halls etc.

**Supplementary Planning Document (SPD) (formerly SPG)**

Formally adopted policy statements that either elaborate key policies set out in the UDP/LDF or set out how policies apply to a particular site. They are prepared to cover particular development topics, or area-based issues, such as planning briefs. SPDs will consist of the main document, a sustainability appraisal, an equalities impact assessment and a consultation plan. Recent SPDs are a material consideration in the determination of planning applications.



**southend-on-sea**  
town, shore and so much more