

Appendix A



HARBOROUGH DISTRICT COUNCIL

**PLANNING OBLIGATIONS
FINAL DRAFT SUPPLEMENTARY PLANNING DOCUMENT**

July 2016

Contents

1. INTRODUCTION	3
2. POLICY ON PLANNING OBLIGATIONS	4
National Policy and Guidance.....	4
Local Policy	5
3. MANAGING PLANNING OBLIGATIONS	6
The Development Plan – basis for considering obligations	6
Pre-Application Stage.....	7
Submitted Applications	7
Determining planning applications	10
Finalising the S106 Agreement.....	10
Variations to planning obligations	11
Monitoring the implementation of planning obligations.....	11
4. OTHER ASPECTS OF PLANNING OBLIGATIONS	13
Tariffs or standard charges.....	13
Pooling	13
Holding and Spending of Financial Contributions	13
Thresholds for Planning Obligations	14
Viability.....	14
Maintenance of assets secured through planning obligations	15
Legal and Monitoring Fees	15
Bonds and Enforcement Action	16
5. AFFORDABLE HOUSING	16
Justification	16
Definition of Affordable Housing	17
Mix of Housing.....	18
Special Needs and Extra Care Housing.....	18
Rural Exception Sites	19
Development of Affordable Housing	19
Cascade Mechanisms and Commuted Sums	20
Spending of Commuted Sums.....	22
6. COMMUNITY FACILITIES	22
Justification	22

Level of Contribution to Community Facilities	24
Allocation of funding for community facilities	24
7. OPEN SPACE, SPORT AND RECREATION PROVISION	25
Justification	25
Level of contribution	27
Spending of funding held by the District Council for Recreation development.....	28
8. HEALTHCARE.....	28
Justification	28
Level of Contribution.....	28
Spending of contributions	28
9. COMMUNITY SAFETY	29
Justification	29
10. SUSTAINABLE DRAINAGE	29
Justification	29
11. BROADBAND CONNECTIVITY	30
Justification	30
12. LEICESTERSHIRE COUNTY COUNCIL SERVICES	30
ANNEX 1: DEVELOPMENT TYPE AND CONTRIBUTIONS	32
ANNEX 2: REGISTERED PROVIDERS OF AFFORDABLE HOUSING	33
ANNEX 3: LEICESTER AND LEICESTERSHIRE LOCAL AUTHORITIES.....	34

1. INTRODUCTION

- 1.1 A planning obligation is a legally enforceable obligation entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal, to ensure a planning application is acceptable. Harborough District Council (together with Leicestershire County Council) enters into these agreements with developers to help ensure that obligations (which mean the developer funds provision of what infrastructure is needed) are met.
- 1.2 This document has been prepared to inform developers, landowners, infrastructure providers and local communities about the approach of Harborough District Council to securing community infrastructure and affordable housing through planning obligations.
- 1.3 It replaces the *HDC Planning Obligations Guidance Note* issued in September 2009 and the *Affordable Housing Supplementary Planning Document 2006* and takes into account:
- The adoption of the Harborough District Core Strategy (2011);
 - The Community Infrastructure Levy Regulations (2011);
 - National Planning Policy Framework (2012 as updated)
 - National Planning Practice Guidance (2014 and continually updated)
 - Leicestershire Developer Contributions Protocol (2015)
 - Leicestershire County Council Planning Obligations Policy (2014)
- 1.4 The document seeks to advise and support developers and communities on current practice in applying planning policy to securing community infrastructure. Harborough District Council is reviewing the option of introducing a new Community Infrastructure Levy (CIL) linked to the preparation of the Council's forthcoming Local Plan to fund certain elements of future infrastructure, potentially of a District wide significance. The Council is expected to take a decision on this during 2016/17. The Government has commissioned a review of CIL and the results will help determine how the District Council proceeds. Planning obligations will remain very necessary to deal with site specific impacts.
- 1.5 Although this document provides guidance to be followed when considering development proposals, the Council in determining planning applications, makes a judgement on what planning obligation would be necessary. The requirements of a planning obligation will also be dependent upon the capacity of the existing infrastructure within the vicinity of the proposed development and the requirement for on-site and contributions towards enhancing off-site infrastructure.

2. POLICY ON PLANNING OBLIGATIONS

National Policy and Guidance

- 2.1 National Planning Policy Framework (NPPF) paragraph 204 states planning obligations should only be sought where they meet all of the following CIL tests:
- Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
- 2.2 The tests above are known as the “CIL Tests” after the Community Infrastructure Levy Regulations which made them statutory requirements. (Please refer to paragraph 3.15 onwards)
- 2.3 National Planning Practice Guidance (NPPG) provides guidance on planning obligations and can be read via the link below
- <http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>
- 2.4 In summary the Guidance describes:
- When planning obligations can be sought by the Planning Authority;
 - How they relate to other contributions;
 - That a policy on obligations should be set out in the development plan;
 - That requirements should be fully justified and evidenced;
 - That some obligations, such as for affordable housing, should be flexible and can be subject to negotiation;
 - That planning obligations can be re-negotiated;
 - That funding may be returned if it is not required or used in a specified time;
 - That appeals can be made against refusals to change a planning obligation;
 - Contributions to affordable housing can be made by commuted contributions (funding payments made in lieu of on site or other actual provision);

- That tariff style contributions (set rates per dwelling for specific types of infrastructure) must still satisfy the three CIL tests (referred to in paragraph 2.1 above).

2.5 From April 2015, regulations restrict the use of pooled contributions towards items that may be funded via the Community Infrastructure Levy. At that point, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 obligation.

Local Policy

2.6 The Harborough District Core Strategy 2011 is the relevant adopted development plan for the District. Policy CS12 and Appendix 2 of the Core Strategy define the levels of infrastructure necessary to mitigate the development proposals in the Strategy. Policy CS3 supports the development of an appropriate mix of housing including provision of lower cost affordable homes to rent through social housing providers which are secured through planning obligations.

2.7 Policy CS2, CS12 and Appendix 2 to the Core Strategy indicate areas which are most likely to be the subject of planning obligations as follows:

- Affordable Housing
- Community Facilities
- Open Space, Sport and Recreation Provision
- Education
- Highways and Transportation
- Library Services and Facilities
- Recycling and Waste
- Health Care
- Policing and Fire and Rescue

2.8 Obligations may also be sought towards other types of infrastructure or project which are necessary to make development applications acceptable in planning terms. The need for these will be determined on a case by case basis. Obligations may be sought where appropriate towards matters related to flood control and sustainable drainage and are referenced in Section 10 of this document.

2.9 The CIL tests referred to at paragraphs 2.1 and 2.2 above will still need to be passed in order for an obligation to be justified. The following section “Managing Planning Obligations” sets out how this is carried out (paragraph 3.15 onwards).

- 2.10 Leicestershire has a two tier system of local government. Services such as housing, community facilities, open space and waste collection are the responsibility of the seven District and Borough Councils in the County. The County Council is responsible for the provision/commissioning of a range services including education, highways, transport, libraries, social care, public health and waste disposal.

3. MANAGING PLANNING OBLIGATIONS

- 3.1 This section sets out for the guidance of applicants for planning permission infrastructure providers and community groups how Harborough District Council manages the Planning Obligation process - from making policy, considering applications for planning permission, making and amending S106 obligations as needed, and monitoring the delivery of planning obligations.

The Development Plan – basis for considering obligations

- 3.2 Alongside Harborough District Councils *Planning Obligations SPD*, potential applicants and infrastructure providers should also refer to the adopted development plan, coupled with national planning policy and guidance in order to help assess what may be required to make development acceptable and comply with the CIL Tests. In Harborough District, for the purposes of planning obligations, the development plan at current time comprises the Harborough District Core Strategy 2011 (to be replaced by a Local Plan during the period 2016-2018). Policy CS12 of the Core Strategy seeks to secure appropriate infrastructure as part of development and a Local Infrastructure Delivery Plan sets out the framework for what types of infrastructure are needed to support development levels specified in the Strategy. This is the starting point for the decision maker to assess whether planning obligations are needed to ensure delivery of appropriate infrastructure.
- 3.3 The Core Strategy is being replaced during the period to 2018 by a new and up to date Local Plan and a decision will be taken alongside this Plan as to whether a Community Infrastructure Levy (CIL) should be set to supplement site specific planning obligations in order to help deliver infrastructure of District scale significance.
- 3.4 Infrastructure providers are encouraged to respond to consultation stages on the new Local Plan, particularly to help inform the Council's decisions on what is necessary to include within the Infrastructure Delivery Plan which will accompany this plan. This document will be prepared in light of proposed development levels and the capacity of existing community infrastructure.

- 3.5 At this stage, the scope and scale of any requests for funding can be assessed and infrastructure providers can be engaged. Infrastructure provision can be a key aspect of determining the appropriate development strategy.
- 3.6 The Local Plan has to be subject to a viability assessment to confirm that its proposals as a whole are achievable and deliverable. This viability assessment will take into account likely levels of developer and other sources of potential infrastructure funding. This does not replace the need to consider viability issues at a site specific level when individual planning applications are considered.

Pre-Application Stage

- 3.7 As set out in the Council's adopted Statement of Community Involvement, potential applicants are encouraged to discuss applications with the Council at an early stage and certainly prior to submission.
- 3.8 At the pre-application stage discussions will take place between those submitting proposals for development and officers of the Council, in order to ascertain the potential impacts on infrastructure and the range of potential planning obligations which may be necessary relating to particular developments in order to make them acceptable. Officers of the Council will decide, based on the nature of the proposal, whether specific infrastructure providers should be invited to input and advise at the pre-application stage.
- 3.9 The Council also encourages potential applicants for all major residential, employment and mixed use schemes to carry out pre-application consultation and, as part of this, to contact local organisations and identify what local infrastructure may need supporting to make any planning application acceptable. The Parish Liaison Officer at Harborough District Council maintains a list of appropriate contacts at parish level and can assist further.
- 3.10 It is important that appropriate information is available to a potential applicant to help assess how a proposal is likely to be considered and whether appropriate mitigation can be made through planning obligations to make the development satisfactory in planning terms and thus if a proposal could be acceptable

Submitted Applications

- 3.11 Planning applications should be accompanied by necessary information in order to identify the likely impacts of the development proposal in the local area. It is helpful if consideration can have been made at this stage as to the range of planning obligations considered necessary within the supporting information submitted.

- 3.12 Once a planning application is received, the authority will notify specified bodies, including all infrastructure providers providing services where there may be an impact on the service they provide.
- 3.13 The infrastructure provider will be directed to information concerning the application located on the Council's website and asked to respond and comment on the application within 21 days.
- 3.14 Infrastructure providers /service areas may include:

Relating to functions for which Harborough District Council is the responsible authority:

Community and Sports Facilities;
Open Space and Recreation
Housing.

Relating to functions for which Leicestershire County Council is the responsible authority:

Adult Social Care and Health;
Waste Management;
Education;
Economic Development;
Highways and Transportation;
Library Services; and
Sports and Recreation Facilities.

Relating to functions that are the responsibility of the following other authorities: :

NHS England;
Leicestershire Constabulary;
Leicestershire Fire and Rescue Service;
Water and Sewage Service Providers;
Public Transport Operators;
Utility Companies;
Environment Agency
Highways England
Natural England

- 3.15 All information related to submitted applications will be available on the District Council website for infrastructure providers to examine. Infrastructure providers who identify that a planning obligation is required should set this out clearly in a formal response relating to individual applications. Harborough District Council will decide if the obligations requested meet the tests set out in the Community Infrastructure Levy Regulations (known as the "CIL Tests") as set out in paragraph 2.1 and 2.2 above.

- 3.16 It is also important to understand that that the three statutory CIL tests mean that S106 developer contributions can only be used to enable the provision of additional or renewed community infrastructure to create additional capacity in order to satisfy the demands arising from that development and to make it acceptable. It is also important to realise that S106 developer contributions cannot be used to put right existing pre-development community infrastructure deficits that arise otherwise than directly relating to the development concerned.
- 3.17 In light of the CIL (Community Infrastructure Levy) Regulations 2010 (as amended), from April 2015 it is no longer possible to pool more than five S106 planning obligations towards the provision of a specific project or type of infrastructure. In order not to prejudice the use of planning obligations to fund infrastructure, the Council will expect that infrastructure requests are made as specific as possible to a project by those making the request. The Projects must be described appropriately and justified with as much precision as possible in order to support this process. Given the need to retain some flexibility on how funding is spent , projects should be described in terms of what is required to 'extend the capacity of (named facility / specific location) by the provision of (specific project)'.
- 3.18 In assessing whether a planning obligation is necessary, the Council will undertake a two stage process:
- Would the proposed planning obligation meet the statutory tests as set out in Regulation 122 of the CIL regulations (as referred in paragraphs 2.1 and 2.2)?
 - Is the planning obligation of such significance in this particular instance that an application should be refused in the absence of the infrastructure enhancement specified?
- 3.19 At stage two, the assessment should be informed by the impact of the obligation on the viability of the development. Viability is discussed in paragraph 4.8-4.12 of this Guidance.
- 3.20 To aid further understanding of the S106 process, Planning Authorities across Leicestershire have developed a Protocol to assist in considering planning obligations. The purpose of this Protocol is to set out three tests contained in Regulation 122 of the Community Infrastructure Regulations 2010 and provide details of what is assessed when considering these tests. It also sets out how the information supplied in support of an request for planning obligations will be assessed. The Protocol is attached as Annex 3 to this document.
- 3.21 Certain types of development will be exempt from the need to make planning obligations because they provide a community benefit and because of the nature of the applicant. Thus proposals for affordable housing, proposals

from charitable organisations related to projects to meet their objectives or specialist housing schemes offering care for the elderly or for those with special needs may also be exempt.

- 3.22 Large commercial and employment generating developments may increase demands on infrastructure, therefore should there be a demonstrable need directly related to the development a contribution will be sought. The types of need may often be related to transportation, such as cycle ways and footpaths, but may extend to other types of contribution dependent on the nature of the development and what is required to make an application acceptable.

Determining planning applications

- 3.23 In determining planning applications, Harborough District Council as the local planning authority has responsibility for deciding which planning obligations are necessary to ensure developments are acceptable. In executing this responsibility, the District Council will take account of adopted guidance and responses from all service providers listed in paragraph 3.14, together with any responses from Town and Parish Councils and the views of Ward Councillors.
- 3.24 Planning applications which require a planning obligation will not be determined unless there is a draft Heads of Terms for S106 Obligations agreed with the applicant in writing, placed on the public planning register (the electronic database of planning applications and associated correspondence also known as the Planning Portal) and referred to in the associated case officer report, which sets out:
- all specific types of infrastructure/projects to be delivered;
 - the contribution to any infrastructure (where this is agreed as a financial payment); and
 - the timing of payment or delivery of the necessary infrastructure in relation to development.

- 3.25 This document covers the principal areas where contributions may be sought, but should not be regarded as exhaustive. The impact of planning proposals on all types of services or infrastructure will be examined on a case by case basis when applications are submitted and obligations considered in order to ensure development is made acceptable.

Finalising the S106 Agreement

- 3.26 In the majority of cases when a planning obligation is necessary, the applicant will submit a draft S106 Agreement for consideration as early as possible.

However this is not a requirement and the Council's Legal Service's team will send a draft agreement to the applicant for consideration on instruction from the Development Management Case Officer if required.

- 3.27 The Council's Legal Services team will assist in reviewing and finalising the S106 agreement – on receipt of full instructions from the relevant Case Officer, in liaison with the legal representatives of the Applicant and any other party to the Agreement.
- 3.28 The initial draft Agreement will be placed on the Planning Register by the Case Officer who will also advise relevant Ward Members by sending them a link to the Register.
- 3.29 Subsequent draft versions of the Agreement (version controlled, redacted as needed) will be placed on the Planning Register by the Case Officer following receipt from Legal Services.
- 3.30 Legal Services will negotiate the clauses and redraft the S106 as necessary in liaison with the legal representatives of interested parties, until a final Agreement is reached.
- 3.31 All Harborough District Councillors will be notified via the Member Information Service prior to the final Agreement being executed by the Council.
- 3.32 The Final signed version of the Agreement will be placed on the Planning Register by the Case Officer.

Variations to planning obligations

- 3.33 Applications can be made to vary or remove a planning obligation at any time on the basis of a material alteration to circumstances since the application was originally determined e.g. that a viability issue has emerged. Such applications will be processed in the same way as the original application. Infrastructure providers will be notified and consulted where a proposed change relates to an obligation they have an interest in. Councillors for the ward in which the application is made will be consulted as will parish/town councils as necessary.
- 3.34 If the application was originally determined by the Planning Committee rather than being delegated to officers, the Planning Committee will usually determine the application to vary the obligation.

Monitoring the implementation of planning obligations

- 3.35 Whether a planning obligation requires a developer to undertake some works on site or make a financial contribution to off site infrastructure, it is important that there is confidence that the planning obligation is delivered. The Council

employs an officer to monitor development and ensure that, when development “triggers” are reached, the required obligation is met (or in the case of a financial contribution - paid). Councillors for the ward in which the development occurs will be informed when such triggers are reached and obligations fulfilled and the relevant parish/town council notified.

- 3.36 Invoices are issued by the Council at trigger points defined within agreements when the obligation involves financial payments. The Council will alert those with responsibility for delivery of the relevant infrastructure to those dates when any planning obligation payments are received and will monitor the date when funding secured in relation to planning obligations has to be spent where these are set out in an agreement.
- 3.37 Where there is a default on fulfilling a planning obligation, the Council will use its enforcement powers and in the case of a payment default will deploy appropriate legal powers to recover funding through Court procedures. Staged payment schedules may be agreed to assist developers in making fulfilling payments. As referred to in the section above, the Council has to consider variations to planning obligations where viability issues are a concern, which should assist developers who face subsequent financial issues relating to the development.
- 3.38 The Council will also monitor the delivery of the infrastructure improvement for which the planning obligation has been obtained. The Monitoring Officer will be informed from the relevant District Council service manager or Leicestershire County Council when and for what purpose the planning obligation funding has been used.
- 3.39 Monitoring and reporting will inform the community that appropriate infrastructure to make development acceptable, has not just been secured through a planning obligation, but that obligations have been fulfilled through the investment in improved community infrastructure. It is also important to be able to assure developers that the obligation they made via a commuted sum has been spent on that for which they made the contribution.
- 3.40 Monitoring information will be published within the Authority Monitoring Report (AMR) which is prepared annually and contains information on all aspects of development planning. It will be published on the Council’s website.
- 3.41 The Councils S106 Monitoring Database provides a clear and transparent record of obligations required and made. It ensures the developer is informed of obligations expected and provides a record of obligations made. Where contribution payments are made, provides the community with a record of the use of the contributions to accord with the S106 Planning Agreement.

4. OTHER ASPECTS OF PLANNING OBLIGATIONS

Tariffs or standard charges

- 4.1 The District Council has developed a series of standard charges in relation to aiding the funding of specified recreational provision and community facilities where these are needed to make development acceptable. This parallels the County Council's approach to securing contributions to educational and other facilities and not only aids pooling of contributions by a number of developments to an individual project but helps to create certainty for developers about the levels of contributions being sought.

Pooling

- 4.2 From April 2015, it is no longer possible to pool 5 or more planning obligations towards a specific project or type of infrastructure following amendment to the CIL (Community Infrastructure Levy) Regulations. In light of this restriction, the Council will expect that infrastructure requests are made as specific as possible to a project, and that projects are described accurately and justified. Given the need to retain some flexibility on how funding is spent it is considered that projects should be described no more specifically than "extending the capacity of (named facility / specific location) by the provision of (specific project)". The Council maintains up to date information on the number of obligations entered into since 6 April 2010 which have contributed to specific projects or types of infrastructure so that it can be determined if obligations are still eligible in specific circumstances.

Holding and Spending of Financial Contributions

- 4.3 Financial contributions will be placed in a fund controlled by the signatory responsible for the provision of that service or facility. The contribution will need to be spent on improvements to services or infrastructure as defined in the obligation which made the original development acceptable.
- 4.4 The relevant service dealing with investment in service delivery shall be responsible for ensuring that the contribution is used in accordance with the terms of the agreement and for reporting on spending. If the facility is to be developed by a Parish Council or other local organisation, then the Community Partnerships service at the District will be responsible for liaison. The relevant Monitoring Officer at either Harborough or Leicestershire County Council shall maintain information (obtained from the service manager) as to when the funding was used and for what purpose.
- 4.5 Under the terms of many S106 Agreements, financial contributions are often required to be spent within a specified time as defined in the agreements.

Unspent contributions beyond the “spend by” date are required to be returned to the developer, unless a variation to the agreement to allow a longer spend by date is agreed. The Monitoring Officer may seek agreement with the original parties to the agreement to extend the period of spend (where this is justified in order to secure certain infrastructure provision) or arrange to return unspent funds to the developer if that is what the parties wish.

Thresholds for Planning Obligations

- 4.6 Some obligations will be required only when a certain level of development is reached. These thresholds must be understood at the time of decision and a CIL compliant request for a planning obligation should make clear in the justification for the obligation when the obligation is needed in relation to the development. These thresholds (eg after 100 dwellings are occupied, contribution of *** is made) will be then written into the Agreement and form the “triggers” for obligations to be made during the course of development.

Viability

- 4.7 Should the requirement for developer contributions relating to the provision of infrastructure needed to ensure a development is acceptable, impact upon the viability of the development proposal, it will be the responsibility of the applicant to provide a financial viability assessment to seek to substantiate the situation and bear the cost of the Council’s independent assessment of that viability assessment. The Council will determine and advise the applicant of the cost for this work.
- 4.8 The Council will only proceed if the applicant agrees to meet this cost. Payment and terms are then agreed directly between the applicant and Council.
- 4.9 The assessment will take the form of a written report that will assess the viability assessment submitted in relation to build costs (including land acquisition) and future sales values. It will provision a conclusive opinion on whether the obligations being sought would make the development unviable or not.
- 4.10 If the viability assessment is accepted as reasonable and shows that the development cannot proceed without reduced or revised planning obligations, the Council may request lower contributions for a particular site, provided that the loss of planning obligations is so significant that the development is no longer acceptable in planning terms,
- 4.11 The Council’s practice in such instances is to seek to maintain, as far as possible, obligations towards community infrastructure and adopt a more flexible approach towards the affordable housing component (stock managed

by social landlords) in order to assist in making the development viable. This may result in changes to the mix of the affordable housing component or look to increase the numbers of smaller and cheaper market housing types (1/2 bed properties) to help increase opportunities for private rented and first time buyers.

Maintenance of assets secured through planning obligations

- 4.12 It is important that assets provided through planning obligations are delivered to an appropriate standard and are subsequently maintained. Subsequent maintenance of assets secured through planning obligations should normally be borne by the owner. If contributions towards maintenance are deemed appropriate, they will apply to a period between hand-over of the facility and when the asset would be expected to be maintained within a general maintenance budget of the subsequent owner. This is particularly an issue in respect of open space adoption. Owing to continued budgetary constraints on the local authority and its wish to be an enabler rather than direct provider, it should not be automatically assumed that such assets will be inherited by the local authority. Each case will be considered individually. The developer should ensure that there are adequate arrangements made to ensure appropriate maintenance and management of the asset in perpetuity and prevent it from becoming a future liability.

Legal and Monitoring Fees

- 4.13 It is appropriate for Harborough District Council and Leicestershire County Council who are party to S106 Agreements to recover costs associated with the negotiating, production and subsequent monitoring of developer contributions and to include these within the planning obligation. This covers:
- a) The legal costs of creating agreements, (full re-imburement of such costs); and
 - b) Costs associated with obtaining independent or specialist advice to validate aspects of the contributions (full re-imburement of such costs).
- 4.14 The District Council will no longer apply a standard charge for monitoring. An assessment will be made in each case to establish whether application of a monitoring fee is justified. This will take account of the time taken to monitor the progress of development and ensure that obligations are delivered. The Council consider it appropriate and justifiable to seek contributions to monitoring where the scale of a development involves complex and long term monitoring, for example significant major developments and especially large urban extensions.

Bonds and Enforcement Action

- 4.15 The Council will request that a bond is obtained to mitigate the risk of defaults on the fulfilment of planning obligations (and payments in the case of commuted sums) based on the merits of each individual case.
- 4.16 Notwithstanding the opportunity that exists for S106 obligations to be varied as described in paragraphs 4.7- 4.11, the Council will seek to ensure that all obligations are fulfilled and will be prepared to accept staged payments if needed to ensure that the terms of the original agreement are met .
- 4.17 The Council will use its corporate debt recovery process where necessary and its enforcement powers to stop development where the necessary obligations have not been made or not been made on time or in accordance with agreed payment schedules or trigger points.

5. AFFORDABLE HOUSING

Justification

- 5.1 Current policy on securing affordable housing in new development is set out in the Council's Core Strategy Policy CS3 (Adopted November 2011).The policy splits the District into five sub market areas. The minimum requirement for affordable housing provision is 40% in Harborough District's rural sub market areas and 30% in the settlements of Market Harborough, Lutterworth and the Blaby Border Settlements (including Broughton Astley), of the total site yield being proposed being affordable.
- 5.2 Although the policy sets these minimum requirements, a greater percentage of affordable housing may be sought if any subsequent local housing need assessment (eg obtained through a neighbourhood plan process) identifies exceptional housing need in a particular area. Core Strategy Policy CS3 aims to increase provision of affordable housing, particularly in rural areas, in order to meet the high need across the District as demonstrated in the Strategic Housing Market Assessment (SHMA) 2014 (available on the Councils website) This document is now being updated and will be superceded by a Housing and Economic Development Needs Assessment to be published by the end of 2016.
- 5.3 Policy CS3 indicates that all developments down to 1 dwelling will be expected to contribute to affordable housing provision. Below three dwellings, this would be by commuted sum. Following a change to Government planning policy as expressed in National Planning Policy Framework (May 2016) which seeks to incentivise smaller housing developments, affordable housing is no

longer requested from sites below 11 dwellings and which have a maximum combined gross floor space of no more than 1000 square metres.

Definition of Affordable Housing

- 5.4 Affordable housing is defined as social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions for the development to remain at an affordable price for future eligible households or where any development is subsequently sold on the open market for the value to be recycled for alternative affordable housing provision.
- 5.5 Social rented housing is rented housing owned and managed by local authorities and RP's (Registered Providers or Housing Associations), for which guideline target rents are determined through the national rent regime. It may also be owned by other organisations and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.
- 5.6 Affordable rented housing is let by local authorities or registered providers of such housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80 per cent of the local market rent (including service charges, where applicable).
- 5.7 Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels. These can include shared equity (shared ownership and equity loans) and other low cost homes for sale and intermediate rent. Lower cost market housing, cannot be considered as affordable housing for planning purposes
- 5.8 The Government consulted in early 2016 on changes to the definition of affordable housing in national planning policy to include a wider range of low cost homes. In parallel, the Housing and Planning Act 2016 has introduced (subject to enabling regulations being issued) a statutory duty on local authorities to promote the delivery of starter homes, and a requirement for a proportion of starter homes to be delivered on all suitable reasonably-sized housing developments. The Act defines starter homes as new dwellings for first time buyers under 40, sold at a discount of at least 20% of market value at less than the price cap of £250,000.

Mix of Housing

- 5.9 Harborough District has an above average number of larger type dwellings (5-7 bedrooms) and a smaller number of 2-3 bedroom house types. Smaller dwellings are under represented in the range and mix of house types. It is evident that the number of smaller households is increasing. The majority of our house type requirements will be based on smaller house types to meet demand.
- 5.10 Development proposals should therefore always seek to provide a mix of size and type of dwellings (both open market and affordable dwellings). In particular, housing for smaller households will be supported to meet District wide identified need.
- 5.11 The benchmark housing mix profile we will aim to seek on housing development sites, as referenced in SHMA 2014 at District level, is set out in Table 1 as follows:

Table 1 - Housing Mix sought in new development

	1 bed	2 bed`	3 bed	4+ bed
Market	5-10%	30-35%	45-50%	10-15%
Affordable	35-40%	30-35%	20-25%	5-10%
All Dwellings	15-20%	30-35%	35-40%	10-15%

Source: SHMA 2014

- 5.12 This is an indicative housing mix for planning purposes within the District. The Council's Housing Enabling and Community Infrastructure Officer will be able to discuss and seek to agree site/ locality specific requirements. There is strong demand for single level development for older people and we encourage apartment and bungalow type development to meet this need.

Special Needs and Extra Care Housing

- 5.13 Special Needs housing may be included in the definition of affordable housing, where appropriate, or where proposed by specialist developers. In such cases there will usually be no further requirement for affordable housing contribution. Examples of those who may be in 'special need' include the elderly, 16-24 year olds, people with mental health or learning difficulties and people with special access requirements such as wheel chair users. The Council will also seek the provision of small 1-2 bed bungalows to meet the

demand for this house type for our expanding elderly community on appropriate sites.

- 5.14 Special Needs housing is strongly encouraged and bespoke guidance and support will be provided to assist in implementation. The Council will work to meet wheelchair and Lifetime Homes Standards which are now covered through optional requirements in Building Regulations.
- 5.15 New forms of sheltered and retirement housing have been developed in Harborough District in recent years, to cater for older people who are becoming more frail and less able to do everything for themselves. The Council strongly supports such provision.
- 5.16 Extra Care Housing is housing designed with the needs of frailer older people in mind and with varying levels of care and support available on site. Most people who live in Extra Care Housing have their own self contained homes, and a legal right to occupy the property. Extra Care Housing is also known as very sheltered housing, assisted living, or simply as 'housing with care'. It comes in many built forms, including blocks of flats, bungalow estates and retirement "villages". It is a popular choice among older people because it can sometimes provide an alternative to a care home. There are communal facilities with domestic support and personal care available.

Rural Exception Sites

- 5.17 In response to evidence of local housing need, the development of sites for affordable housing as an exception to normal planning policy may be permitted in rural areas. Rural Exception sites are:
- Sites primarily set aside for affordable housing but could include some / limited amount of market housing;
 - Developed to meet local affordable housing need and generally held in perpetuity as 'affordable';
 - Sites that are within or adjoining or in close proximity to settlements; and
 - Developed on sites that would normally not be released for market housing.

Development of Affordable Housing

- 5.18 The Council supports a range of Registered Providers (RPs or Housing Associations) to provide and manage affordable housing in the District. A list of current providers and contact details is available in Annex 2 to this document.

- 5.19 The Housing Enabling and Community Infrastructure Officer will engage with developers and ask them to contact RPs at the earliest stage so that an affordable scheme can be discussed and agreed preferably prior to the submission of a formal planning application.
- 5.20 Planning applications should be accompanied by an Affordable Housing Statement to indicate commitment to affordable housing provision through on-site provision. The question of accepting a commuted sum payment is a matter for the Council to determine if it deems it appropriate to accept an off site contribution in lieu of on site provision. It is not a matter for the applicant to propose. The Council will then seek to secure this commitment through a planning obligation.
- 5.21 The Housing Enabling and Community Infrastructure Officer will provide advice on the delivery of affordable homes through the planning process. The Officer will advise on the provision of affordable housing in eligible applications, whether off site provision is appropriate and whether a commuted sum should be accepted. The views of the community via local Ward Councillors and relevant Town/Parish Councils will also help inform the position the Council takes on the approach to the affordable housing component in new development.
- 5.22 The Council will seek in general terms a 60 / 40 split between rent (a percentage of which we would accept as Affordable Rent) and Intermediate social housing respectively. However each site is assessed on its merits regarding how best it can meet local housing need and the Council will adopt a flexible approach in assessing need and provision.
- 5.23 The affordable housing secured will be transferred to a Registered Provider (RP) at values to be agreed between the developer and RP.
- 5.24 Applicants are advised to consult RP's to discuss these matters at an early stage in the preparation of a planning application including an element of affordable housing.
- 5.25 The cost associated with the necessary level of affordable provision on any site should be factored in by the developer in their acquisition of the site.
- 5.26 Development proposals involving 100% affordable housing will normally be exempt from S106 obligations owing to the social and the non profit nature of the developing organisation in order to maximise the delivery of affordable units.

Cascade Mechanisms and Commuted Sums

- 5.27 The Council will generally accept an appropriate "cascade mechanism" within a S106 Agreement relevant to the provision of affordable housing. This will

allow within the Agreement for different mixes of affordable housing to be proposed, if it is not possible to deliver affordable housing to the original specification, or negotiation of a commuted sum. If issues of viability affect the delivery of obligations, then the procedure for considering variations of agreement and the Council's process for submitting viability appraisals as set out in paragraphs 4.7-4.11 of this document should be followed.

5.28 In accordance with both national guidance (NPPF) and local policies, there is a clear preference for affordable housing to be provided within the site subject to planning approval. Whilst on-site provision will always be the priority option for providing affordable housing, it has become apparent that there are circumstances where the inclusion of affordable housing may not be practical or appropriate. In such circumstances, a commuted sum may be an acceptable alternative to the provision of units of affordable housing on a site. The following are circumstances where a commuted sum may be justified:

- Where a Registered Provider is unwilling to acquire affordable units. This may occur for where the proposal involves conversion or redevelopment of existing buildings such as listed buildings or development in conservation areas. It may also occur because the affordable housing proposed may be in a location or is of such a limited scale that a Provider considers it unsuitable to manage efficiently.
- Where housing need priorities could be better met in an alternative location.
- Where there is a dominance of a particular type of affordable housing provision in the immediate area.
- Where the viability of the particular form of development might be compromised by the integration of affordable housing into that development, for reasons that can be clearly set out and justified. Submitted viability appraisals will be re appraised by the Council (as referenced in paragraphs 4.7-4.11) before consideration can be given to acceptance of a commuted sum in lieu of on-site provision of any affordable housing obligation.

5.29 If a commuted sum payment is accepted, the value will be based on the cost to the developer of meeting the affordable homes requirement

5.30 In certain cases, a developer undertaking multiple site development in the District may wish to provide affordable housing on a different site. The Council will consider whether the offer of provision of an alternative site is acceptable.

Spending of Commuted Sums

- 5.31 The Council will use commuted sums for the purposes of developing affordable housing in the District. The Council will report on the funds held and allocated to affordable housing development in its annual Authority Monitoring Report, produced for monitoring development planning matters.

6. COMMUNITY FACILITIES

- 6.1 For the purposes of this SPD, a community facility is defined as a building or space where community led activities for community benefit are held. Community facilities can be located in a wide range of venues. These can include purpose-built structures such as community centres, sports centres and clubs and village halls, as well as adapted venues, including historic listed buildings, converted houses, flats, shops, scout huts and rooms or halls attached to faith buildings.

Justification

- 6.2 Successful and sustainable communities are those where there are a choice of social, cultural, youth and sporting activity often provided by community organisations. Harborough District has a range of providers of community, sporting and play facilities, often delivered through the voluntary sector. New development can often impact considerably on the demand for new facilities in a largely rural area.
- 6.3 Adequate provision of and capacity in local facilities (e.g. community centres of a size to accommodate activities for all community members which include Children & Young people, families, adults and older people) is important in order to meet the additional demands arising from new development. Financial contributions will be sought and pooled to meet the following types of capital projects which increase the capacity of community facilities :
- Community Centre development/expansion;
 - Community Safety schemes;
 - Youth provision;
 - Access improvements;
 - Community and voluntary sector facilities e.g. Scout Halls, Church Halls etc.;
 - Sports provision.
- 6.4 Developments of for example over 1,000 dwellings may generate the need for a new multi purpose community hall or other new community facilities as a resource to meet the needs of the new community. In this circumstance, a

developer would be expected to make a contribution which may take the form of a suitable site and meet the construction costs of a new building to a specification agreed at the time of application.

6.5 Much of the development in Harborough District is at a smaller scale yet should still be expected to similarly contribute to community needs generated by additional development, by helping to expand or develop existing levels of provision. At the time of a planning application being received, the Community Partnerships service of the District Council in conjunction with Town/Parish Councils will be consulted and this will provide opportunity for evidence of need for additional community facilities in the area arising from the proposed development to be identified.

6.6 The Council has developed and adopted the following standards for Harborough District based on the infrastructure, use and likely requirement. They are based on general recommendations stemming from Sport England, and local requirements for the proposed settlement hierarchy:

- Population of less than 1000 – Village hall with 1 court badminton hall;
- Population of 2000 – 6000 – Village hall including a 2 court badminton hall;
- Population of 6000 – 10,000 – Village hall, 4 court badminton hall and other facilities;
- Population of greater than 10,000 – various community and sports facilities, including pool, arts facilities and community meeting halls.

(Source: Assessment of Local Community Provision and Developer Contribution – 2010: Harborough District Council - Roger Tym)

6.7 The Community Facilities funding can be used to support:

- Upgrading of current community facilities; to increase their use;
- New community facilities;
- Extensions of community facilities;
- Feasibility studies (associated with identified and evidenced capital projects);
- Professional costs (associated with identified and evidenced capital projects);
- Refurbishment of community facilities to increase their use;
- Provision of disabled facilities; and
- Improvement of access to community facilities.

Level of Contribution to Community Facilities

- 6.8 The level of contribution is based on the Sport England Sport Facility Calculator. This calculator is updated regularly; therefore monetary guidance cannot be included within this document. The calculator can be found on the Sport England website.
- 6.9 Using information on the number of assumed residents for various sized dwellings, the table below has been formulated. Therefore developer contributions are calculated by multiplying assumed number of residents by the varying house types, this establishes an increased population estimate which can be inputted into the Sports Facility Calculator.

Table 2 Assumed residents per dwelling size

No. of bedrooms	1	2	3	4	5+
Assumed no. of residents	1.5	2	2.3	3	4

Source HDC Community Partnerships Services

Please note: depending on the development and area, greater financial contributions may be sought to fill the identified needs. The Council is currently in the process of developing a District Sports Facilities Strategy and is re-assessing requirements for community facilities.

Allocation of funding for community facilities

- 6.10 The Council operates a community led approach to allocating funding for community projects and off site recreation contributions to take account of community needs and aspirations which occur directly at the time when the development is proceeding in order to deliver the obligations for community provision which help to make it acceptable in planning terms. An application system operates and further details are contained on the District Council's website [here](#).

7. OPEN SPACE, SPORT AND RECREATION PROVISION

Justification

- 7.1 Harborough District Council seeks contributions for the following typologies of Open Space set out in table 3 below

Table 3 Typologies of Open Space

Typology	Definition	Principle Uses
Parks and gardens	Includes urban parks, formal gardens and country parks.	Accessible, high quality opportunities for informal recreation and community events.
Natural and semi-natural Greenspaces, including urban and rural Woodland and Country Parks	includes publicly accessible woodlands, urban forestry, scrub, grasslands (e.g. downlands, commons, meadows), wetlands, open and running water and wastelands.	Wildlife conservation, biodiversity and environmental education and awareness.
Amenity Greenspace	Most commonly but not exclusively found in housing areas. Includes informal recreation green spaces and village greens.	Informal activities close to home or work and enhancement of the appearance of residential or other areas
Outdoor sports facilities	Natural or artificial surfaces either publicly or privately owned used for sport and recreation. Includes school playing fields.	Participation in outdoor sports, such as pitch sports, tennis, bowls, athletics or countryside and water sports.
Provision for children and Young people	Areas designed primarily for play and social interaction	Areas designed primarily for play and social interaction involving children and young people, such as equipped play

	involving children and young people.	areas, ball courts, skateboard areas and teenage shelters.
Allotments, community gardens	Areas for those people who wish to grow their own produce. May also include urban farms.	Opportunities for those people who wish to do so to grow their own produce as part of the long term promotion of sustainability, health and social inclusion.
Cemeteries, disused Churchyards and other burial Grounds.	Cemeteries and other burial grounds.	Quiet contemplation and burial of the dead, often linked to the promotion of wildlife conservation and biodiversity.
Green Corridors	Includes towpaths along canals and riverbanks, cycleways, rights of way and disused railway lines.	Sites that are accessible and free to use for walking, cycling or horse riding, whether for leisure purposes or travel, and opportunities for wildlife migration.
Civic Spaces	Civic and market squares and other hard surfaced community areas designed for pedestrians.	High quality spaces that provide access to shops and can facilitate community events. Also provide a setting for civic buildings.

Source: *HDC Provision for Open Space Sport and Recreation 2015*

- 7.2 In most cases open space will be provided on site by developers. However, some typologies of open space may be unsuitable for on-site provision in which case an off-site contribution can be accepted. There is an expectation that developers of residential schemes will mitigate the impact of development via the provision and enhancement of public open space in the District irrespective of whether this is done on or off site.
- 7.3 Proposed development will be assessed against the existing levels of provision within the accessibility thresholds contained in the document [‘Provision for Open Space Sport and Recreation 2015’](#) to determine the need for additional provision.

- 7.4 The document '*Provision for Open Space Sport and Recreation 2015*' provides information on local standards for open space provision following an assessment of recreational provision in accordance with the provisions of the [NPPF](#). It contains an approach to determining the level of contributions towards open space, sport and recreation facilities that will be sought from developers applying for new residential development where needed to make development acceptable. The level of contributions will be periodically reviewed to ensure that they are accurate and will be calculated for each development from a detailed assessment of the range of existing open space in the area. This will give confidence to developers that they are not being asked to contribute towards open space typologies where there is an existing oversupply. A Playing Pitch Strategy is to be prepared in 2016 to also inform future requirements.
- 7.5 A commuted sum will normally also be requested to ensure arrangements for the maintenance of the facilities over the initial 30 year life of the facility are in place, should the Council decide to take ownership of a site. Paragraph 4.12 indicates that it should not be automatically assumed that open space will be inherited by the local authority. Each case will be considered individually.
- 7.6 Where provision is not appropriate on site, a contribution based on the cost of provision elsewhere will be made.
- 7.7 Provision of outdoor open space, sport and recreation facilities shall be considered in all applications for new homes where there is a net increase of 11 residential units or more.

Level of contribution

- 7.8 Since the proposed method of calculation needs to take into account existing provision and is based on a number of types of open space required to make the development in question acceptable, a specific contribution figure for the amount of on and off-site provision is calculated at the time of the application. The commuted sum for maintenance will be similarly calculated on the basis of the open space type expected to be provided.
- 7.9 A worked example is included in the document '[Provision for Open Space Sport and Recreation 2015](#)'.
- 7.10 There is a need for additional burial space in the District particularly within the Market Harborough area. Further research is being carried out with regard to establishing this need and the likely impact of new development on cemetery provision in the future. This work will inform the case for requesting planning obligations towards burial provision.

Spending of funding held by the District Council for Recreation development

- 7.11 Where contributions towards specific types of open space or recreational provision have been agreed, the Council will ensure that funding is held and pooled in accordance with CIL guidelines in order that a specific scheme can be implemented in its entirety by the Council. In other cases it may be that such provision needs to be secured solely through partnerships with the voluntary sector. In both cases, funding will be disbursed either to District Council projects or to Voluntary Sector agencies through an application process referred to in paragraph 6.10 of this document.

8. HEALTHCARE

Justification

- 8.1 One of the principal demands on a growing community is the need to provide high quality healthcare facilities. Alternatively, existing provision may require additional facilities, extensions or alterations. Where a development would produce extra demand on the local healthcare provision beyond the capacity of existing provision, planning obligations may be sought to meet the needs arising and make the development acceptable.
- 8.2 The District Council supports the need to ensure that local health care provision meets the needs of household growth in the District. The Council will consult NHS England and Clinical Commissioning Groups on future development plans to help assess long term health planning. The Council will consult these agencies on planning applications are submitted which involve developments of 11 dwellings or over to determine if a contribution to health provision is justified based on the capacity in the specific area within which a development is proposed. In larger development projects, the opportunity presented to provide land for medical facilities should be examined.

Level of Contribution

- 8.3 Details of advice on Health Care provision and any need for additional facilities can be obtained by contacting NHS England / Clinical Commissioning Groups.

Spending of contributions

- 8.4 Contributions will be paid to NHS England / Clinical Commissioning Groups who will provide a report on request to the District Council to determine how

funding has been allocated, to enable the Council to monitor how contributions have been utilised.

9. COMMUNITY SAFETY

Justification

- 9.1. Leicestershire Constabulary and Leicestershire Fire and Rescue Service may request planning obligations to meet the additional costs of emergency service provision resulting from additional development.
- 9.2. Under paragraph 69 of the National Planning Practice Guidance and the Crime and Disorder Act 1998, local planning authorities need to actively work towards design solutions which create safe environments and help reduce crime and the fear of crime. Developers will be expected to contribute to safer communities by investing in design that minimises crime.
- 9.3. Sufficient evidence in respect of need in relation to existing or planned capacity will be required to justify a planning obligation. Where there is clear evidence of the need for additional capital development in order to make a development acceptable, particularly those of a larger scale, such contributions may be justified.

10. SUSTAINABLE DRAINAGE

Justification

- 10.1 New development will be required to incorporate appropriate systems for dealing with surface water drainage (Core Strategy policy CS10 (g)). Sustainable drainage systems allow for the holding of surface water caused by rain etc. in pools or lakes on the development site itself and therefore reduce the level of water being discharged into rivers and the consequent risk of localised flooding. Leicestershire County Council is the lead Local Flood Authority and will be consulted on applications in the same way as the County Council is consulted on Highway matters.
- 10.2 The County Council will provide advice on which the District Council as Local Planning Authority has to act. The County Council will prepare conditions for the LPA to attach to planning applications. Planning obligations will be necessary to ensure delivery of the drainage systems if delivered off site and if conditions would be insufficient to ensure delivery of appropriate drainage systems to enable the development to proceed.

- 10.3 The District Council will have to ensure that conditions are in place and can be legally upheld for ongoing maintenance, inspection, implementation and enforcement.
- 10.4 The County Council are preparing a Sustainable Drainage Guide. When published, this Guide should be seen as an annex to the SPD to inform developers and recognise the County Council standards as a unified standard for Leicestershire which should apply in Harborough District.

11. BROADBAND CONNECTIVITY

Justification

- 11.1 The Harborough Core Strategy does not refer to broadband provision. The Council wishes to update policy on broadband provision in new development through the ongoing review of the Local Plan and is exploring the case for ensuring all new homes have access to superfast broadband provision.
- 11.2 High speed broadband is critical for businesses and for access to services, Having a superfast broadband connection is no longer merely desirable, but is an essential requirement in ordinary daily life.
- 11.3 All new developments should have access to superfast broadband (of at least 30Mbps) Developers should take active steps to incorporate superfast broadband at the pre-planning phase and should engage with telecoms providers to ensure superfast broadband is available as soon as build on the development is complete.

12. LEICESTERSHIRE COUNTY COUNCIL SERVICES

- 12.1 The County Council is a local planning authority in its own right and therefore is legally able to enter into and enforce a S106 obligation. The County Council will assess infrastructure needs and make requests for S106 developer contributions in relation to the following services:
- Adult social care and health;
 - Civic amenity/waste management;
 - Education;
 - Economic growth;
 - Highways & transportation;
 - Library service;

- Sports and recreation;
- Community safety; and
- Public health.

12.2 The [Leicestershire Planning Obligations Policy](#) was adopted by the County Council in December 2014 to set out its own approach to planning obligations. The document explains the level and type of infrastructure which would be expected to address the impacts of development in order to make it acceptable in planning terms and to set out clearly the standard requirements the County Council may seek in order to mitigate the impacts of new development.

12.3 The document is linked to this document so that it can be easily referenced.

ANNEX 1: DEVELOPMENT TYPE AND CONTRIBUTIONS

Development type	Affordable Dwellings	Community Facilities	Open Space provision/contribution	Health	Community Safety	Education	Highways	Civic Amenity	Libraries	Legal Fees	Monitoring Fees
Small housing scheme (3 dw or under)	None	None	None	None	None	None	None	None	None	None	None
Medium housing scheme (3- 10 dw)	None	£735 per dwelling where justified	As determined by individual assessment of existing provision and impact	As determined by individual assessment	As determined by individual assessment of capacity and impact	As determined by individual assessment of capacity and impact	As determined by transport assessment	As determined by individual assessment of capacity and impact	As determined by individual assessment of capacity and impact	HDC:: £975 per agreement	None
Large housing scheme (11 dw +)	30% (40% in specified rural areas)	£735 per dwelling where justified	As determined by individual assessment of existing provision and impact	As determined by individual assessment	As determined by individual assessment	As determined by individual assessment	As determined by transport assessment	As determined by individual assessment	As determined by individual assessment	HDC:: £975 per agreement	Monitoring fee: determined by individual assessment
Strategic Development Area (1000 dwellings +)	30% (40% in rural areas)	Land and contribution or direct provision	Direct provision on site as part of scheme	As determined by individual assessment	As determined by individual assessment	Direct provision on site as part of scheme	As determined by transport assessment			HDC:: £975 per agreement	Monitoring fee: determined by individual assessment
Small business development (<1000m2)	None	None	None	None	None	None	As determined by LCC Highways	None	None	HDC:: £975 per agreement	None
Large business development (>1000m2)	None	None	None	None	None	None	As determined by transport assessment	None	None	HDC:: £975 per agreement	None
Retail development	None	None	None	None	None	None	As determined by transport assessment	None	None	HDC:: £975 per agreement	None

ANNEX 2: REGISTERED PROVIDERS OF AFFORDABLE HOUSING

Provider	Phone
East Midlands HA	01530 276000
Waterloo Group	0116 2205555
Riverside HA	0116 247 3800
NCHA	0115 8443066
Seven Locks HA (Acclaim Group)	01629 761550
LHA	0116 2576737
Midland Heart	0345 6020540
Derwent Living	01332 346477
Spire Group (Longhurst HA)	01933 415365
Orbit Homes	07584600476

*now merged with The Waterloo Group

ANNEX 3: LEICESTER AND LEICESTERSHIRE LOCAL AUTHORITIES

SECTION 106 PROTOCOL (May 2015)

Introduction

This protocol sets out how local planning authorities across Leicestershire will deal with requests for S106 planning obligations as part of the planning application process. The purpose is to introduce a more consistent approach to how requests for contributions are dealt with and improve working practices between different public authorities involved in securing infrastructure through planning obligations.

The process relates, in part, to how local authorities consider requests in light of the three tests contained in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended). It establishes how authorities will deal with requests for information from consultees and sets out how authorities will deal with situations where the developer has raised viability as an obstacle to securing a full package of S106 planning obligations.

While this protocol will help to establish consistency in the way requests for contributions are handled across the Leicestershire area, the consideration of requests will continue to be considered on a case by case basis by each Local Planning Authority.

Information Requirement

Consultees are requested to provide the following information in support of their requests for S106 planning obligations:

- How the request would be compliant with local and national planning policies.
- Site-specific evidence of how the contribution would off-set the additional demands on facilities or infrastructure that would arise from the development
- Existing facilities in the locality relevant to the obligation and evidence of the extent to these are unable to meet demands created by the development
- The methodology for calculating how the financial contribution would provide or improve facilities to mitigate the impact of the development
- Details of how and when the financial contribution would be spent, including how the payment could be phased to help developers to reduce up front infrastructure costs
- Whether the facility or infrastructure would need to be provided if the development were not going ahead and if so, how that would be funded

- Confirmation that no more than five S106 planning obligations for that project or type of infrastructure have already been entered into since 6 April 2010
- An explanation of the consequences of not securing the funding, for instance if the scheme were found to not be viable

Application of the CIL Test

Subject to the receipt of the necessary information, the Local Planning Authority will consider the request against Community Infrastructure Levy tests as set out at Appendix 1. In assessing whether a planning obligation can be applied to an application, the council will determine:

1. Whether the obligation would meet the statutory tests as set out in Regulation 122 and 123(3) of the CIL regulations.
2. Whether the S106 planning obligation of such significance in this particular instance that the application should be refused if it were to not be provided.

At stage 2 in particular the judgement should be informed by the impact of the obligation on the viability of the development where this is identified as being an issue.

Viability

Where developers claim that a development would not be viable if the full package of S106 planning obligations are provided, local planning authorities will normally ask for a viability appraisal to be submitted. This will help the council to determine the level of contributions that the scheme can afford.

Where a viability appraisal has not been submitted, or where the appraisal does not contain sufficient information allow a decision to be made, it will be for each Local Planning Authority to determine how to proceed.

In circumstances where it is accepted that a development can not afford the full package of S106 planning obligations, the Local Planning Authority will usually explain to infrastructure providers how those conclusions have been reached. They will also explain how they have applied local circumstances and priorities in determining the appropriate level of obligations. How this is communicated will be a matter for each Local Planning Authority on a case by case basis.

Processing Requests for S106 Obligations

Local planning authorities will promote engagement with developers and consultees as early as possible. This will usually be part of pre-application discussions, or in the case of the most strategic schemes, at plan-making stage.

As part of the consideration of any request by a consultee for a S106 planning obligation, the following process will apply:

1. If it is not clear whether the request complies with CIL Regulations, the Local Planning Authority may seek further information to establish whether a request can be made compliant. In some cases, a view may be taken that the principle of what is being requested is not CIL Regulation compliant and it would not be appropriate in those circumstances to request further information. In this situation, the Local Planning Authority would explain the decision to the consultee making the request.
2. If the developer claims that the S106 planning obligations cannot be afforded for viability reasons, local planning authorities may request a viability appraisal to allow the developer the opportunity to substantiate the claims that are being made. This will be considered and a view taken about the level of contribution that a scheme can afford.
3. Once it has been established how much the development can afford, the Local Planning Authority will weigh up the merits of the proposal, having regard to planning policies and other material consideration (including the S106 planning obligations) to determine whether a recommendation to grant planning permission can be made. Where a scheme can be supported, the council will apply local circumstances and priorities in deciding which requests should be provided. Local Planning Authorities will discuss these priorities with relevant consultees where appropriate.
4. Following the resolution to grant planning permission, subject to a S106 agreement, local planning authorities will seek views from relevant consultees about when payment should be made and any phasing arrangement. While agreement on the payment terms/dates may not always be reached, Local Planning Authorities will take reasonable steps to secure payment at the earliest opportunity.
5. The Local Planning Authority will work with interested parties, including consultees, to monitor the implementation of developments and seek to recover funds promptly so they can be passed to the appropriate body without delay.

Appendix 1 to Annex 3

“CIL Test” – Regulation 122 Community Infrastructure Regulations 2010 The Statutory Tests Definitions and Explanation

1. Necessary to make the development acceptable in planning terms

- a. Needed to mitigate an unacceptable impact of development.
- b. Needed following an assessment of existing and planning infrastructure capacity.
- c. Needed to mitigate an impact up to a minimum standard.
- d. Needed to mitigate an impact that would not normally be provided by other mechanisms.
- e. Supported by local planning policy.

2. Directly related to the development

- a. Geographically linked in terms of the infrastructure provider’s operational geography.
- b. Infrastructure that might reasonably be impacted by the type and use of development.
- c. The impact is generated by the development itself, not as the result of external or cumulative factors.
- d. A type of obligation recognised in local planning policy.

3. Fairly and reasonably related in scale and kind to the development

- a. Proportional to the scale and impact of the development.
- b. Proportional to the financial viability of the development.
- c. Clear relationship between the nature of the development and the nature of the infrastructure or service.