

# Planning Obligations

## Draft Revised Supplementary Planning Document

March 2015



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## **Review of Planning Obligations Supplementary Planning Document (SPD)**

Planning Obligations (also known as S106 Agreements) are legal agreements which can be attached to a planning permission to mitigate the impact of an otherwise unacceptable development to make it acceptable in planning terms.

Obligations can only be sought where they are directly related to the development, fairly and reasonably related in scale and kind to the development, and necessary to make the development acceptable in planning terms.

The review of this SPD has been undertaken for the following reasons:

- To reflect the adoption of a Community Infrastructure Levy (CIL) Charging Schedule to support development and the delivery of infrastructure set out in the Regulation 123 List (a list of projects that the Council intends the levy to fund).
- To reflect changes to Planning Obligations which are effective from April 2015, as a result 2010 CIL regulations (as amended) which limit the pooling of Planning Obligations (S106 agreements); and scale back the use of Planning Obligations to Affordable Housing and those matters that are directly related to a specific site to make a development acceptable in planning terms.
- To reflect changes to national policy which:
  - Exempts small scale development (of less than 11 dwellings or 1000sqm) from the requirement to contribute towards affordable housing and other tariff style contributions; and
  - Alters the way affordable housing contributions are calculated by offering developers financial credit equivalent to existing floor space of vacant buildings on site.
- To provide detail on how infrastructure relating to any retail expansion of Merry Hill and the Waterfront will be delivered through the use of Legal Agreements.

Planning Obligations will continue to play an important role in making individual developments acceptable. Affordable housing will continue to be delivered in this way, and some Planning Obligations can continue to be pooled for measures that are not being funded through the Council's CIL.

The Planning Obligations SPD has therefore been amended to reflect the above changes to provide clear guidance to customers on when Planning Obligations are likely to be required as part of new development.

## **How to Respond to this Consultation**

The consultation period on this draft revised Planning Obligations SPD runs for 6 weeks, from Friday 13<sup>th</sup> March to Friday 24<sup>th</sup> April 2015.

An electronic copy of this draft revised Planning Obligations SPD, along with a Comments Form, are available on the Council's website at:

<http://www.dudley.gov.uk/resident/planning/planning-policy/local-development-framework/planning-obs-spd/>

Alternatively a copy of the consultation draft is available to view during normal office hours at the 4 main libraries within the Borough. It is also available in the main receptions of 4 Ednam Road in Dudley, and at Dudley Council Plus in Castle Street, Dudley. People will be able to view the document and pick up a copy of the response form to have their say on the SPD.

Comments need to be made in writing and sent either:

- By email to [localplan@dudley.gov.uk](mailto:localplan@dudley.gov.uk), or
- By post to Planning Policy, 4 Ednam Road, Dudley, DY1 1HL

Responses must be received either online or at the below address before 5pm on Friday 24<sup>th</sup> April 2015. The Council may not accept your representation if it is received after this date. All comments received will be available for public inspection and representations may be accompanied by a request to be notified of the adoption of the SPD. The information that you provide is subject to the provisions of the Data Protection Act 1998. It will be used solely for the purpose of preparing the SPD. We may share this information with the general public as the preparation of Supplementary Planning Documents is a statutory requirement under the Planning and Compulsory Purchase Act 2004.

Following the end of the consultation period, all representations received will be reviewed and the draft SPD amended as appropriate. The final revised SPD is due to be submitted to the Council's Cabinet for approval later in 2015. A statement of the consultation responses received and how they have been taken into account in finalising the document will be published on the Council's website.

The structure of this SPD is intended to clearly set out what will be required from developers in terms of Planning Obligations, expanding on adopted Core Strategy Policy DEL1 'Infrastructure Provision':

- Chapter 1 sets out the Principles, Policies and Background
- Chapter 2 outlines the Procedures for Securing Planning Obligations
- Chapter 3 explains the Types of Planning Obligations that may be Sought.



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## General Information

This and other Local Development Documents are or will be made available on request in large copy print, audio version, Braille or languages other than English. If you require the document in one of these formats please contact:

Planning Policy Team, Directorate of Environment, Economy and Housing, 4 Ednam Road, Dudley, DY1 1HL or telephone 01384 814136 or email [localplan@dudley.gov.uk](mailto:localplan@dudley.gov.uk)

### Arabic

هذه مع بقية الوثائق لنظم العمل للتنمية المحلية متوفرة عند الطلب بطبعات مكبرة , وعلى الكاسيت , بريل , أو بلغات غير اللغة الانكليزية. فاذا كنت بحاجة لوثيقة بحد من الاشكال التى ذكرت , رجاءا اتصل بفريق التخطيط لطريقة العمل ( **Policy** ) , مديرية البيئة المحلية = ٤ أدنم رود , ددلي دي واي ١ ١ أيج أيل.  
التلفون: ٠١٣٨٤ ٨١٤١٣٦ = أيه ميل [localplan@dudley.gov.uk](mailto:localplan@dudley.gov.uk)

### Bengali

এই দলিল বা ডকুমেন্ট এবং অগা্য স্থানীয় উন্নয়ন বিষয়ক কাঠামো সম্পর্কিত দলিলসমূহ অনুরোধে বড় অক্ষরের লেখা বা লার্জ প্রিন্টে, অডিও কেসেটে, ব্রেইলে কিংবা অগা্য ভাষায় পাওয়া যাবে। আপনি যদি এই দলিলটি উপরোক্ত যে কোন মাধ্যম বা ফরমেটে পেতে চান, তাহলে দয়া করে যোগাযোগ করুন:   
planning Policy Team, Directorate of Environment, Economy and Housing,   
Dudley Metropolitan Borough Council, 4 Ednam Road, Dudley, DY11HL.  
টেলিফোন: 01384 814136, ইমেইল: [localplan@dudley.gov.uk](mailto:localplan@dudley.gov.uk)

### Chinese

這及其它地區發展架構的文件可因應需要而製成大字版, 語音版, 盲人點字或英文以外的語文. 如你需要文件轉為以上其中一個版本, 請聯絡政策計劃小組(Planning Policy Team), 城市環境保護署(Directorate of Environment, Economy and Housing) 得利市政府, 4 Ednam Road, Dudley, DY1 1HL. 電話: 01384 814136 或電郵: [localplan@dudley.gov.uk](mailto:localplan@dudley.gov.uk)

## Gujarati

"આ અને અન્ય સ્થાનિક વિકાસ ફેમવર્ક દસ્તાવેજો મોટા નકલ પ્રિન્ટ, ઓડિયો આવૃત્તિ, બ્રેઇલ અથવા અંગ્રેજી સિવાય બીજી કોઈપણ ભાષામાં ઉપલબ્ધ છે અથવા કરવામાં આવશે. જો તમને આમાંથી કોઈપણ સ્વરૂપમાં દસ્તાવેજ જોઈતું હોય તો કૃપા કરી આમને સંપર્ક કરો

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## Punjabi

ਅਨੁਰੋਧ ਕਰਨ ਤੇ, ਇਹ ਦਸਤਾਵੇਜ਼ (ਲਿਖਤ ਜਾਣਕਾਰੀ) ਅਤੇ ਲੋਕਲ ਡਵੈਲਪਮੈਂਟ ਫਰੇਮਵਰਕ (ਸਥਾਨਕ ਵਿਕਾਸ) ਸੰਬੰਧੀ ਹੋਰ ਦਸਤਾਵੇਜ਼ ਵੱਡੇ ਅੱਖਰਾਂ ਵਿੱਚ, ਅੱਡੀਓ ਕਸੈੱਟ ਤੇ ਰੀਕਾਰਡ ਕੀਤੇ ਹੋਏ, ਬਰੇਲ ਫਾਰਮੈਟ ਅਤੇ ਅੰਗਰੇਜ਼ੀ ਭਾਸ਼ਾ ਤੋਂ ਇਲਾਵਾ ਹੋਰ ਭਾਸ਼ਾਵਾਂ ਵਿੱਚ ਵੀ ਮਿਲ ਸਕਦੇ ਹਨ। ਜੇਕਰ ਤੁਸੀਂ ਕੋਈ ਦਸਤਾਵੇਜ਼ ਇਨ੍ਹਾਂ ਵਿੱਚੋਂ ਕਿਸੇ ਵੀ ਫਾਰਮੈਟ (ਬਣਤਰ) ਵਿੱਚ ਲੈਣਾ ਚਾਹੁੰਦੇ ਹੋ ਤਾਂ ਕ੍ਰਿਪਾ ਕਰਕੇ ਹੇਠ ਲਿਖੇ ਪਤੇ ਤੇ ਸੰਪਰਕ ਕਰੋ: Planning Policy Team, Directorate of Environment, Economy and Housing, Dudley Metropolitan Borough Council, 4 Ednam Road, Dudley, DY1 1HL ਟੈਲੀਫੋਨ: 01384 - 814136  
ਈ-ਮੇਲ ਪਤਾ: [localplan@dudley.gov.uk](mailto:localplan@dudley.gov.uk)

## Urdu

یہ اور لوکل ڈیولپمنٹ سے متعلق دوسری دستاویزات بڑے حروف کی طباعت، آڈیو کیسیت، بریل، یا انگریزی زبان کے علاوہ زبانوں میں ترجمے کی صورت میں دستیاب ہوں گی یا درخواست پر فراہم کی جائیں گی۔ اگر آپ کو دستاویز ان میں سے کسی بھی شکل میں درکار ہے تو براہ مہربانی پلاننگ پالیسی ٹیم، ڈائریکٹوریٹ آف اریزن اینڈ ہاؤسنگ، ڈیڈی میٹروپولیٹن بورو کونسل، 4 ایڈنام روڈ، ڈیڈی، ڈی 1 1 ایڈن ریل، ٹیلیفون نمبر 01384 814136، ای میل: [localplan@dudley.gov.uk](mailto:localplan@dudley.gov.uk)

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## **Chapter 1 – Principles, Policies and Background**

### **Introduction and Aim**

1. This Supplementary Planning Document (SPD) sets out more detailed guidance on Dudley Council's requirements for Planning Obligations, for all those involved in the submission and determination of those planning applications where planning obligations may be required.
2. The SPD aims to provide greater clarity and certainty to developers, landowners, the community and the Council regarding the basis for identifying and calculating Planning Obligations. In addition to the Council adopting a CIL, Planning Obligations may still be required for some development, alongside CIL, where site specific impact mitigation may be necessary in order for a development to be granted planning permission. Planning Obligations will also be required for infrastructure that is not capable of being funded by the levy, such as affordable housing.
3. This SPD sets out the likely site specific planning obligations that may be required on certain developments within the Borough. However, the SPD is not able to specify all of the potential Planning Obligations that may be necessary for every development due to their site specific nature. Other Planning Obligations may be required that are not set out in this SPD, but will be identified on a site by site basis.
4. This SPD does not stand alone; rather it should be read in conjunction with the Council's CIL, Black Country Core Strategy (BCCS) (2011), and other policies and strategies for individual infrastructure types covered in this SPD.
5. The purpose of this document is to set out in a transparent and consistent way the Council's approach to seeking Planning Obligations. It amplifies the policies in the adopted BCCS under the provision of the Planning and Compulsory Purchase Act 2004 and the 2010 CIL Regulations (as amended). Once adopted, the SPD will be a material consideration in determining planning applications. It forms part of the Dudley Local Plan and supports the relevant policies in the adopted Core Strategy.
6. This SPD has been written in accordance with national and local policy and therefore parts of the document may be superseded where policy is updated after its adoption.

### **Planning Obligations and CIL**

7. Planning Obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. A Planning Obligation is where a developer enters into a legal agreement to provide infrastructure and/or

services on or off the development site where it is not possible to achieve through planning conditions.

8. In contrast CIL is intended to fund more generalised infrastructure requirements across the Borough to support new development. For more information on CIL and to view the Council's CIL Charging Schedule, please see the [Council's CIL webpage](#). A table detailing the difference between Planning Obligations and CIL can be found in Appendix 2.
9. Site specific impact mitigation may be necessary in order for a development to be granted planning permission. Where site specific mitigation is needed that cannot be dealt with through the use of planning conditions, then, Planning Obligations will be required. On some development schemes, both Planning Obligations and CIL may be required.
10. In order to ensure that Planning Obligations and CIL can operate in a complementary way, the CIL Regulations 122 and 123 place limits on the use of Planning Obligations in three respects:
  - 1) they put the Government's policy tests (set out below in line with Regulation 122 of the CIL Regulations) the use of Planning Obligations (also found in paragraph 204 of the National Planning Policy Framework (NPPF)) on a statutory basis, for developments that are capable of being charged the levy.

Regulation 122 of the CIL Regulations embed into law the following three tests that a Planning Obligation must meet in order for it to be lawful:

    - a. **necessary to make the development acceptable in planning terms;**
    - b. **directly related to the development; and**
    - c. **fairly and reasonably related in scale and kind to the development**
  - 2) The Regulations ensure the local use of CIL and Planning Obligations does not overlap;

Once CIL is introduced (and nationally from April 2015), Regulation 123 limits the use of Planning Obligations. Planning obligation requirements therefore need to be scaled back to those matters that are directly related to a specific development, and are not set out in a CIL Regulation 123 list. Where the Council's Regulation 123 list includes a project or type of infrastructure, Planning Obligations will not be sought on those projects or infrastructure to prevent a developer paying twice for the same item of infrastructure
  - 3) The Regulations impose a limit on pooled contributions from Planning Obligations towards infrastructure that may be funded by the levy. Further information on the pooling of contributions is contained in Chapter 2.



## Thresholds for Planning Obligations

### Affordable Housing and Tariff Style Contributions

11. In line with the [National Planning Practice Guidance](#) (updated November 2014) there are specific circumstances where contributions for **affordable housing and tariff style contributions** should not be sought from small scale and self-build development, as follows:

- contributions will not be sought from **developments of 10-units or less, or which have a maximum combined gross floorspace of no more than 1000sqm**
- affordable housing and tariff style contributions will not be sought from any development consisting only of the **construction of a residential annex or extension to an existing home**.

### How do the above thresholds apply to development in the Dudley Borough?

- **Affordable housing** will be secured through Planning Obligations, as it is not currently capable of being funded by CIL. Policy HOU3 of the BCCS states that the Council will seek to secure 25% affordable housing on all sites of 15 dwellings or more, unless there is financial justification for a lower level of provision. On the basis the Council's HOU3 policy, affordable housing will only be sought on sites proposing 15 dwellings or more.
- **Tariff style contributions** are those Planning Obligations that contribute to pooled funding 'pots' intended to provide common types of infrastructure for the wider area. These will only be applied in line with the national threshold shown above and where they meet the policy tests for Planning Obligations.
- **Site specific Planning Obligations** will be sought where site specific impact mitigation may be necessary in order for a development to be granted planning permission, and do not contribute to a pooled funding 'pot'.

### Status of SPD in decision making process

12. The SPD expands on Core Strategy Policy **DEL1 'Infrastructure Provision'**. Compliance with the SPD, once adopted, is a material consideration in the making of planning decisions and therefore carries significant weight in the decision making process.



## Policy Framework – National Policy

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

13. Paragraph 203 of the NPPF states “*Planning Obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*” Paragraph 204 goes on to include the policy tests on the use of planning obligations in line with Regulation 122 of the CIL Regulations.

### National Planning Practice Guidance (March 2014)

14. This online facility provides guidance in relation to CIL and Planning Obligations and how the two operate together.

### Community Infrastructure Levy

15. The Community Infrastructure Levy (CIL) Regulations introduced in April 2010 (amended 2011, 2013 and 2014) enables Local Authorities to introduce a CIL, a standard levy to be applied to new development. The level of the CIL should be informed by an appropriate evidence base and be linked to the infrastructure planning for the local area, and forms part of the Local Plan
16. Dudley Council is intending to adopt a CIL. At the point in time of the consultation of the draft revised Planning Obligations SPD the Council's CIL is being independently examined by the Planning Inspectorate.

### Localism Act (2011)

17. The Act devolves greater powers to Councils and neighbourhoods and gives local communities greater control over housing and planning decisions. The Act gives Councils the power to raise money to support local infrastructure through CIL.

## Policy Framework – Local Policy

### Dudley Community Strategy 2005-2020

18. The Dudley Borough Challenge vision for 2020 is of sustainable, inclusive and connected communities across Dudley that actively realise their own potential, effectively supported by local services. The use of Planning Obligations contributes to the delivery of the five Community Strategy principles, as follows:
- Promoting equality – tackling inequality
  - Safeguarding the future
  - Reflecting priorities through physical change

- Delivery in partnership
- Involving people

**Black Country Core Strategy (BCCS) (2011)**

- 19.** The scale of growth proposed in the BCCS will have impacts upon the local environment and the capacity of a range of infrastructure and facilities within Dudley Borough. The provision of appropriate infrastructure underpins the whole transformational and regeneration strategy of the Core Strategy and without it future development will be neither sustainable nor acceptable.
- 20.** New developments in Dudley as set out in the adopted Core Strategy and other emerging Local Plan documents have a cumulative impact resulting in increased pressure on existing local infrastructure; Planning Obligations are required to deliver the local infrastructure improvements necessary to mitigate the impact of the scale of the new development.
- 21.** The Core Strategy sets out the policy framework for Planning Obligations. Policy DEL1 'Infrastructure Provision' as set out below states the Council's policy on Planning Obligations. This SPD provides further detail on the implementation of this policy.

**DEL1 Infrastructure Provision**

**Strategic Objectives**

The provision of appropriate infrastructure in a timely manner underpins the whole transformational and regeneration strategy and this policy is intended to ensure the delivery of Spatial Objectives 6, 7, 8 and 9.

**Policy**

**All new developments should be supported by sufficient on and off-site infrastructure to serve the development, mitigate its impacts on the environment, and ensure that the development is sustainable and contributes to the proper planning of the wider area.**

**Unless defined circumstances apply, development proposals will only be permitted if all necessary infrastructure improvements, mitigation measures and sustainable design requirements can be secured through planning obligations, the Community Infrastructure Levy, conditions or other relevant means, to an appropriate timetable, and supported by the necessary resources.**

**Local Development Documents for each authority will set out:**

- The range of infrastructure to be provided or supported;
- The scale and form of obligation or levy to be applied to each type of infrastructure, including maintenance payments and charges for preparing agreements;
- The defined circumstances and procedure for negotiation regarding infrastructure provision, where viability is at issue.

**22.** The BCCS policies support and underpins the delivery of Dudley's Sustainable Community Strategy and other Council strategies and plans. Amongst others, these include:

- Dudley Council Plan 2013-2016
- Black Country Strategic Economic Plan (2014)
- Local Investment Plan 2010-2014
- Brierley Hill Area Action Plan (2011)
- Brierley Hill Public Transport Strategy
- Stourbridge Area Action Plan (2013)
- Halesowen Area Action Plan (2013)
- Emerging Dudley Area Action Plan
- Emerging Borough Development Strategy
- Air Quality Action Plan (2011)
- Birmingham and Black Country Biodiversity/Geodiversity Action Plans
- Infrastructure Delivery Plan (2014)
- Dudley MBC Housing Market Intelligence Report (2011).
- Dudley's Housing Strategy 2013-2016
- Joint Health and Wellbeing Strategy 2013-2016
- Dudley Children and Young People's Partnership Plan 2013-2015

## **Chapter 2 – Procedures for Securing Planning Obligations**

### **Implementation of SPD**

- 23.** The Planning Authority takes a strategic lead on the overall monitoring and management of financial and on-site delivery of Planning Obligations, working with other parts of the Council and, through them, with external partner agencies where appropriate. In addition, the Council has an established Planning Obligations and CIL Working Group which includes representatives from across the Council, along with specific service area Delivery Working Groups.
- 24.** The Design Review Panel is a tool used by the Council for large and/or complex development proposals to provide developers with a co-ordinated approach, from the initial development concept, pre-application stage through to the formal application and final decision; this approach can assist in the Planning Obligations process, and promotes development of the Borough, shaping its towns and communities.
- 25.** The Planning Obligations process is subject to regular internal audits, the last one being in August 2014.
- 26.** Scaling back planning obligation requirements alongside CIL ensures that the Council's infrastructure requirements continue to be realistic and reasonable, enabling development and regeneration in the Borough.

### **Minimum Threshold for Financial Planning Obligations**

- 27.** Where the total planning obligation contributions (not including any legal or administrative fees) equate to £500 or less then, for reasons of expediency and practicality, the Council will waive the obligations.

### **Prior Approval Applications**

- 28.** Planning Obligations may be required for Prior Approval Applications when considering the potential impacts of the proposed development. Affordable housing requirements will not be sought on these applications, in line with the [Planning Practice Guidance](#).

### **Submission of a Planning Application**

- 29.** Following receipt of a planning application other Council Departments will be consulted (e.g. Highways, Education, Economic Regeneration and Housing Strategy) as well as other external service providers and statutory consultees as appropriate to the application. The Case Officer will rely on these other services, in addition to reference to this SPD, to identify whether there is a need for Planning Obligations and whether they comply with the CIL

regulations 2010 (as amended). The Case Officer will then inform the developer of any site specific Planning Obligations including details of on-site and off-site provision, and agreement is sought from the developer to provide the required Planning Obligations through a legal agreement.

- 30.** Failure by the developer to agree to the required obligations and/or sign the legal agreement within the required timescales may result in the planning application being refused by the Council. Further information on [How Planning Applications are Dealt With](#) can be found by following the link.

## **Legal Agreements - S106 Agreements and Unilateral Undertakings**

- 31.** Planning Obligations can be secured through one of two types of legal agreements, either a Section 106 Agreement or a Unilateral Undertaking.

### **Unilateral Undertakings:**

- 32.** A Unilateral Undertaking is a simplified version of a planning agreement, which is relatively quick and straightforward to complete, and is entered into by the landowner and any other party with a legal interest in the development site. The Council does not enter into Unilateral Undertakings. Their use is encouraged by the Council where appropriate; the following gives two examples of where Unilateral Undertakings can be used:

- Where there is difficulty in coming to a negotiated agreement; and
- Where the developer can determine the requirements in advance and wishes to speed up the process.

### **S106 Agreements:**

- 33.** Where a planning obligation will not be covered by a Unilateral Undertaking applicants will be required to enter into a S106 Agreement with the Council. This type of legal agreement has to be entered into by the applicant, the Council and anyone else who has an interest in the development site land. A S106 Agreement is usually a more complex type of planning agreement than a Unilateral Undertaking and normally takes longer and is more expensive to complete.
- 34.** Information on the drafting of Legal Agreements and Index Linking can be found in Appendix 3. Further information on Unilateral Undertakings and S106 Agreements, including template agreements, can be found on the Council's website at:  
<http://www.dudley.gov.uk/environment--planning/planning/planning-services/section-106-agreements-and-undertakings>

## **On- or Off-Site Provision**

- 35.** On suitable sites, where it cannot be secured through a planning condition, the Council will encourage the on-site provision of Planning Obligations such as affordable housing, open space, sport and recreation and nature conservation. However, in some cases on-site provision may not be appropriate; in these instances off-site provision in the way of financial contributions will be required in lieu of on-site provision.

## **Administrative and Legal Fees**

- 36.** Administrative and/or Legal Fees may be required for certain Planning Obligations, based on an individual assessment of special costs liable to be incurred for that particular development.
- 37.** Where a Fee is required for a particular Planning Obligation, applicants will be notified prior to the Legal S106 Agreement being finalised.

## **Dealing with Viability Issues**

- 38.** It is recognised that in dealing with development proposals, exceptional circumstances may occasionally arise which result in genuine financial viability concerns (for example where remediation costs are abnormal or are above what could reasonably have been foreseen).
- 39.** If a developer believes there are exceptional circumstances (not including land purchase costs) which would render a scheme unviable if the full level of Planning Obligations were required in line with this SPD, the following process is to be followed:
- (a) The applicant approaches the Local Planning Authority (LPA), ideally at development concept stage so that Planning Obligations can be established at pre-application stage, and submits a detailed financial appraisal, signed by a suitably qualified professional, to support their case. If an appraisal is submitted in confidence to the LPA then a de-sensitised version will also need to be provided at formal application stage which can be made publicly accessible by the LPA. The financial appraisal should follow an open-book approach and include the following information as a minimum with supporting evidence and justification where appropriate:
- A breakdown of all cost variables and development value including level of developers profit;
  - Identification of any exceptional cost items;
  - Explanation of all assumptions made concerning the provision of Planning Obligations;
  - Identification in cash flow terms of the effect of deferred payments; and
  - Provision of both 'Grant' and 'No Grant' Scenarios in relation to Affordable Housing provision (this is only required on schemes which generate Affordable Housing requirements)

- (b) Once the financial appraisal has been received from the applicant, the LPA arranges for it to be assessed by an independent, suitably qualified professional. All of the information submitted to the LPA will be handled on a confidential basis in recognition of a developer's commercial interests. The applicant may be required to meet the costs of this independent assessment and any other expert advice that the LPA considers it requires.
- (c) The independent financial appraisal assessment is usually carried out using industry standard software and normally follows a Residual Land Value approach. For larger schemes that are likely to be completed over a longer period of time a Cash Flow based approach may also be used. Once completed, the results of the financial assessment are provided to the LPA, and the applicant will be advised by the LPA of the conclusions of the financial assessment. If there is any disagreement of the assessment the Council will expect the applicant to agree to adjudication by an independent financial body and any costs of the adjudication shall be funded by the developer.
- (d) The Council's objective in viability negotiations is to secure the maximum value of Planning Obligations to mitigate the impact of development, whilst working with developers to enable developments to come forward. To this end the Council may consider the use of one or more of a range of 'Value Engineering' mechanisms, depending on the results of the independent financial assessment, including, but not exclusively restricted to;
- **Deferred or Staged Payments**  
Phasing payment of Planning Obligations deferred to later date(s) within the development.
  - **Clawback**  
The arrangement put into place when the Local Planning Authority, in granting permission, agrees to mitigate the planning obligation requirement for viability reasons. If, subsequently, the completed development (or phase) generates more profit than expected, the Local Authority would then claw back an appropriate provision of the additional profit for the planning obligation, up to the amount originally sought on the site.
  - **Phased Viability Assessments**  
Usually associated with large developments, several viability assessments are conducted over an extended period of time to provide a reliable forecast of what developer obligation requirements for each phase can be met by a developer.
  - **Time Constrained Planning Permissions**  
Where reduced planning obligation requirements are agreed by the Local Planning Authority for viability reasons but these reduced obligations are only valid for a limited period, and in the event that the



developer does not implement the permission within that period then the obligations will revert back to the original requirements.

- (e) The LPA will have due regard to the independent financial assessment results and the use of any appropriate 'value engineering' mechanisms, and in taking into account all other planning considerations will make appropriate recommendations to the Council's Development Control Committee for determination. Viability considerations are one factor to be taken into account when determining a planning application; the Council has to take into account a range of other factors to ensure development is acceptable in planning terms. For these reasons the Council is under no obligation to agree reduced contributions, even if a developer is able to demonstrate that the scheme would not be viable.
- (f) If the Council approves any reduction in Planning Obligations on a particular development, any secured obligations may be prioritised in accordance with the Council's policy priorities. Alternatively financial payments may be apportioned on the ratio or percentage as if there was no reduction in Planning Obligations. The approach taken is at the discretion of the Council, depending on the individual circumstances of a particular development.

- 40.** Please note, however, that Planning Obligations should only be sought where they are necessary to make the development acceptable in planning terms. Where they provide essential site specific items to mitigate the impact of the development, there may only be limited opportunity to negotiate.

### **Timing and Payment of Financial Obligations**

- 41.** Financial obligations will normally be expected to be paid upon commencement of development. However, in exceptional circumstances and at the discretion of the Council, for larger phased developments the payments may be made at various stages during the development process. The trigger points for the payment of financial obligations will be included within the S106 Agreement.
- 42.** Financial obligations are payable to Dudley MBC. Payments can be made by cheque, debit/credit card or BACs electronic transfer.
- 43.** In the unlikely event that financial contributions are not spent by the Council within the timescales required within the legal agreement, the Council is required to refund the monies to the developer on request.



## **Monitoring, Enforcement and Spend**

### **Monitoring**

44. Monitoring of Planning Obligations will be undertaken by the Local Planning Authority to ensure that all obligations are complied with, both by the Developer and by the Council. The Council will track compliance with each provision contained within each Legal Agreement as developments proceed. This ensures that all developers are paying obligations and delivering on-site obligations in accordance with the Legal Agreement; similarly monitoring is undertaken to ensure that Council services are spending the financial obligations in accordance with the terms of the Agreement.
45. A summary of the financial Planning Obligations information for each financial year is also incorporated into the Council's [Authority Monitoring Report \(AMR\)](#).
46. It is also important that information on the implementation of Planning Obligations is readily available to the Council, the applicant and members of the public on request.

### **Enforcement**

47. Once Planning Obligations have been agreed it is important that they are implemented or enforced in an efficient and transparent way, in order to ensure that infrastructure is provided in accordance with the terms of the legal agreement, and to ensure that the associated development contributes to the sustainability of the area.
48. Planning Obligations are enforceable by the Council under Section 106(5), (6), (7) and (8) of the Planning and Compensation Act 1991.
49. If it is evident that the Planning Obligations requirements are not being complied with, the Council may instigate the relevant legal or enforcement action.

### **Spend**

50. Where on site provision cannot be accommodated and financial contributions are received through Planning Obligations, the money will be spent to mitigate the impact of the development, in line with Regulation 122 of the CIL Regulations (as amended).
51. Financial obligations received from developers are required to be spent by the Council within the timescales set out in the legal agreement.

## **Pooling of Contributions**

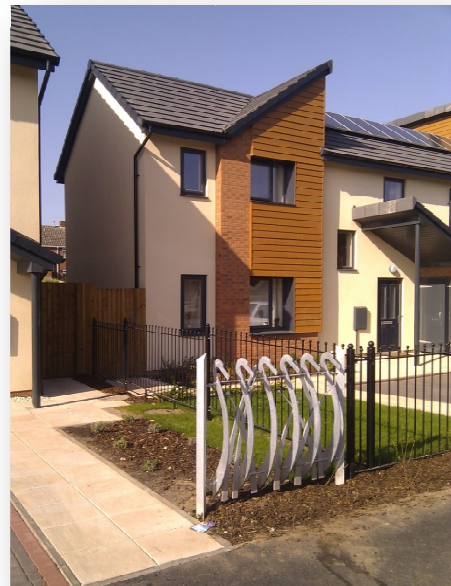
- 52.** The CIL Regulations restrict the use of pooled contributions towards items that may be funded via the levy. At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement, if five or more obligations for that 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. Where a section 106 agreement makes provision for a number of staged payments as part of a planning obligation, these payments will collectively count as a single obligation in relation to the pooling restriction.
- 53.** For provision that is not capable of being funded by the levy, such as affordable housing, there is no restriction in terms of the numbers of obligations that may be pooled.

## Chapter 3 – Types of Planning Obligations that may be Sought

### Affordable Housing

**Black Country Core Strategy Policy HOU3 ‘Delivering Affordable Housing’ requires the delivery of 25% affordable housing on all sites of 15 dwellings or more.**

54. The BCCS aspires to create a network of cohesive, healthy and prosperous communities across the Black Country, with equal access to a mix of affordable and aspirational housing and a range of quality community services.
55. The provision of Affordable Housing through new development is not capable of being funded by CIL and therefore Planning Obligations is a key mechanism for the provision of affordable housing in the Borough.
56. Key challenges for the Borough include the need to address housing affordability and to meet the housing, care and support needs of a growing elderly population. A full list of the challenges for the Borough and housing can be found in both the Housing Strategy (2013-16) and Local Investment Plan (LIP) (2010-14).
57. The Council’s preferred option will be to secure **on-site provision**, however, there may be exceptional circumstances where this is not realistic and so an off-site contribution may be required.



*Figure 1. New affordable housing at Blackthorn Road, Wordsley*

### On Site Provision

58. It is expected that developers make early contact with the Council’s Planning and Housing departments, as well as Registered Providers to discuss the affordable element of any proposed residential developments of 15+ dwellings. In providing affordable units on site the developer will be expected to transfer completed units to an approved registered provider, please see Table below.

<b>Accord Housing Association</b>	<a href="http://www.accordha.org.uk/">http://www.accordha.org.uk/</a>
<b>Black Country Housing Group</b>	<a href="http://www.bcha.co.uk/">http://www.bcha.co.uk/</a>
<b>Bromford Group</b>	<a href="http://www.bromfordgroup.co.uk/main.cfm">http://www.bromfordgroup.co.uk/main.cfm</a>
<b>Jephson Housing Association Group</b>	<a href="http://www.jephson.org.uk/">http://www.jephson.org.uk/</a>
<b>Midland Heart</b>	<a href="http://www.midlandheart.org.uk/">http://www.midlandheart.org.uk/</a>
<b>West Mercia Housing Group</b>	<a href="http://www.wmhousing.co.uk/">http://www.wmhousing.co.uk/</a>

59. The following will be sought when agreeing obligations in respect of affordable housing:

### **The standards to be applied to the construction of those units**

60. The Council expects developers to comply with the Council's latest minimum standards for affordable housing, which accord with the Homes and Communities Agency (HCA) scheme development standards (2007). Please follow the link for further details:

[www.homesandcommunities.co.uk/design\\_sustainability\\_standards](http://www.homesandcommunities.co.uk/design_sustainability_standards)

### **The location and tenure of the units within the site**

61. In order to achieve mixed and balanced communities, the Council encourages affordable units to be dispersed evenly throughout the site. To achieve this it is expected that affordable provision be designed in at the start of the development process, as part of a comprehensive proposal. The required tenure mix will be negotiated on a site by site basis, based on local need.

### **Addressing Threshold Avoidance and Site Sub-Division**

62. Where a site is divided into smaller parcels, the Council will require for the purposes of a planning obligation, that the individual parcels are treated as a whole. Normally this means that one S106 Agreement will be negotiated for the entire site concerned. Where separate agreements are negotiated, the same Planning Obligations will be sought in aggregate as if only one agreement were involved and then divided to reflect the proportionate impact of development on each parcel.

### **Off-Site Contributions**

63. The Council wishes to make it clear that commuted sums will only be accepted in **exceptional circumstances**, where all other avenues have been explored and found insufficient. These exceptional circumstances would need to be demonstrated by a developer before the Council will consider an off-site contribution.
64. The commuted sum calculation, shown below, is based on a formula whereby the typical construction costs and land costs are added together and the Registered Provider contribution is taken off.

Off-Site Financial Contribution (H) = Total Construction Cost (A x B) + Typical Land Cost per Unit (D x E) – RSL Contribution (G)							
A	B	C	D	E	F	G	H
Construction Costs (sq. m.)	Typical unit size (sq. m.)	Total Construction Cost (A x B)	Land Costs (£/Ha)	Land take of unit (Ha)	Typical land cost per unit (D x E)	RSL Contribution	Off-Site Contribution (C+F-G)

65. It is considered that this formula is the most robust method for calculating off-site contributions for affordable housing as the figures utilised in the formula are locally derived. In appropriate circumstances, further information with regard to calculation of off-site contributions can be obtained from the Council.
66. Commuted sum payments will be ring fenced to fund affordable housing in the Borough, in line with the Local Investment Plan and Housing Strategy.

## Tariff Based and Site Specific Planning Obligations

67. The following provides examples of where Planning Obligations may be required for development and how these will be calculated. This is not an exhaustive list and therefore there may be Planning Obligations required for site specific infrastructure that is not listed below.

### Education

**Development that would generate additional pupil numbers in excess of what local schools could accommodate will be required to provide education planning obligations. The additional pupil numbers required will be determined on a site by site basis.**

**Contributions required per pupil:**

- £11, 399 cost per Nursery and Primary School
- £17, 176 cost per Secondary School
- £18, 628 cost per Post 16

68. The availability of a high-quality network of educational facilities is fundamental to the delivery of sustainable communities, promoting social cohesion and inclusion and creating equal opportunities for all.

69. The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. The NPPF indicates that LPAs should take a proactive approach to meeting this requirement, and give great weight to the need to create, expand or alter schools.



Figure 2. Recently Built Quarry Bank Primary School

70. Core Strategy Policy HOU5 'Education and Health Care Facilities' requires developers to provide Planning Obligations for educational facilities on sites where the development increases the need for education facilities to the extent that new or improved facilities are necessary.
71. It is intended that borough wide education projects will be included on the Council's Regulation 123 list, meaning that these projects will be funded

through CIL. Projects listed on the Regulation 123 list will therefore not be funded through Planning Obligations. However, site specific mitigation may be required through Planning Obligations and considered on a site by site basis.

### Application

- 72.** Where a proposed development results in the generation of additional pupil numbers in excess of that which local schools can accommodate within the local area, then a financial contribution may be required. Without investment, schools' ability to accommodate extra pupils generated by new housing development can be compromised; therefore it is important to maintain sufficient levels of school capacity for a growing population. The development industry has a key role to play in delivering this provision, on a scale and kind that is appropriate and directly related to the new development.
- 73.** Obligations may be required for both Primary (3-11 year olds) and Secondary (11-16) School Facilities, Sixth Form Provision and in exceptional circumstances for 0-5 year olds and Special Education facilities. If a contribution is required for Nursery provision then the necessary data will be collated.

### Exceptions

- 74.** The following types of residential accommodation will not be subject to Planning Obligations for education: sheltered housing, rest homes, nursing homes, hostels, student accommodation, one-bedroom dwellings and studio flats.



## Highway Infrastructure Works

**Highway Infrastructure Works will be required on planning applications which require either the construction of new road(s) or works to existing public roads.**

**A Traffic Regulation Order (TRO) will be required if the Highway Infrastructure Works result in the introduction of new, or amendments to an existing TRO.**

75. The justification for requiring obligations in respect of highway and infrastructure works is set out in Core Strategy Policy TRAN2 'Managing Transport Impacts of New Developments'. This Policy states that planning permission will not be granted for development proposals that are likely to have significant transport implications unless applications are accompanied by proposals to provide an acceptable level of accessibility and safety by all modes of transport to and from all parts of a development.

### Application

#### Section 278 or 38 Agreements under the Highway Act 1980

##### Section 278 Agreements

76. Agreement for the private sector funding of trunk road works are made under Section 278 of the Highways Act 1980. A developer may be required to enter into a Section 278 Agreement with the Council for improvement works to local roads. A Section 278 is essentially a financial mechanism, not a contract to carry out works.
77. Section 278 Agreements under the Highways Act are legally binding agreements between the Highway Authority and the developer to ensure delivery of necessary highway works. Currently the limitations on Planning Obligations in CIL Regulation 123 do not apply to S278 Agreements. S278s can't be required for works that are intended to be funded through CIL, with the exception of the Highways Agency where those restrictions do not apply.

##### Section 38 Agreements

78. In addition to the use of Section 278 Agreements as set out above, a common way of creating new highways is by way of a Section 38 Agreement between the developer and the Council, under Section 38 of the Highways Act 1980. Section 38 Agreements are often made with developers of large residential schemes, who agree to build up roads to standards laid down by the Highways Authority. In return, the Council will agree to adopt the roads and to maintain them thereafter as public highways. However, until a road has been adopted by the Council it remains private and under the responsibility of the developer/house owners.



- 79.** If any payment due under any of the provisions of S278 and S38 Agreements is not made on or before the (“due date”) the Developer shall pay interest on the payment due of 2% above the base rate for HSBC Bank plc as at the due date on which the payment of the sum on which interest is payable is made. Furthermore, the Council will require third party insurance liability of £10m and indemnity against all liability claims, demands and expenses under the Land Compensation Act 1973 (Parts I and II) and regulations made under it or the equivalent statutory provisions for the time being in force arising from the Highway Works.

#### Traffic Regulation Orders (TROs)

- 80.** A Traffic Regulation Order is a legal process implemented through the Road Traffic Regulation Act 1984, its purpose is to control, restrict or prevent the on-street waiting of vehicles. As part of the planning process a TRO may be required to be paid by the developer if it is considered by the Council that the development will generate on-street waiting to the detriment of through traffic and/or public safety; the developer will be required to make a financial contribution which is calculated on a site by site basis depending upon the extent or works required.

- 81.** Monies secured via TROs will be used to:

- Formulate the proposal;
- Write reports to obtain authority to progress with the proposed TRO;
- Consult by advertising on-street and in the local press the proposed TRO;
- Consider any objections to the proposed TRO and make any necessary amendments;
- Further report to address objections and gain authority to implement;
- Arrange and carry out the physical works to implement the TRO.

- 82.** In the event that a proposed development requires Highway Infrastructure Works through a S278 or S38 Agreement and/ or a Traffic Regulation Order as set out above, a Planning Obligation or condition will normally be required to ensure that the planning permission will not be implemented until such time that the land owner or developer has entered into the necessary S278/S38 Agreements and/or made TRO payments.

## Nature Conservation

Nature Conservation planning obligations will be sought in the following circumstances:

- **Mitigation:** where significant harm cannot be wholly or partially avoided but can be minimized by design or by the use of effective mitigation measures.
- **Compensation:** where, despite whatever mitigation would be effective, there would still be significant residual harm to a site. As a last resort, this is compensated for by measures to provide for an equivalent value of biodiversity through one of the following:

Creation and establishment (min. 15 years) of an equivalent size of new habitat, to an appropriate quality.

Or

Provision and establishment (min. 15 years) of significant restoration works, twice the area of that lost.

83. The justification for requiring obligations with respect of Nature Conservation is set out in policies CSP1, CSP2, CSP3, CSP4 and DEL1 of the BCCS. The NPPF supports these policies which indicate that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity, geodiversity and valued landscapes.



Figure 3. Wrens Nest, Dudley

## Nature Conservation Mitigation

84. Mitigation is usually very site and development specific and are considered on this basis. It is not possible to provide general guidelines on these two aspects. The Council should be consulted for further information.
85. Harm to the Nature Conservation value of a site will be resisted by planning policy. Avoidance and mitigation measures should be used to neutralise the negative impacts of a development. However in exceptional circumstances, where damage is permitted and full avoidance and mitigation would not be possible, compensation will be required to balance the resultant loss.

## Nature Conservation Compensation

- 86.** Compensation will normally involve onsite works, however in some circumstances offsite contributions may be considered. The character and scope of these works and/ or contributions will be based on the specific negative impacts created by the development. The Council should be consulted for further information.
- 87.** Where a designated nature conservation site (including a Wildlife Corridor or Strategic Wildlife Corridor as defined in the Brierley Hill Area Action Plan) is harmed and both avoidance and mitigation measures will not fully neutralise the impacts, the calculation set out below will be used to determine the level of compensation required.

### Application

- 88.** The level of this planning obligation will be based on the following general rules (set out above), however the actual amount will depend on the level of impact the development creates. These should be carried out either on the development site or in a location strategic for nature conservation. The following methods of compensation are listed in order of preference:

- Creation and establishment (min. 15 years) of an equivalent size of new habitat, to an appropriate quality.

Or

- Provision and establishment (min. 15 years) of significant restoration works, twice the area of that lost.

## Open Space, Sport and Recreation

**Residential schemes of 80 dwellings or more should provide open space, sport and recreation facilities on-site in circumstances where the development site is isolated from and poorly served to existing nearby off-site public open space provision.**

**In exceptional circumstances, where on site provision cannot be accommodated the financial contribution is as follows:**

Type of Dwelling	Cost Per Person	Average Occupancy Rate	Open Space, Sport and Recreation Contribution per house type
House	£810.26	2.50	<b>£2,025.65</b>
Flat	£810.26	1.39	<b>£1,126.26</b>

**89.** The NPPF states that “*access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.*” The justification for requiring obligations in respect of open space, sport and recreation, which is taken to include Public Open Space, (including municipal Parks), Children’s Play and Playing Fields, is set out in Policies CSP3, ENV2 and ENV6 of the Core Strategy.

**90.** Policy ENV6 ‘Open Space, Sport and Recreation’ encourages development that would increase the overall value of the open space, sport and recreation network. The provision of high quality open space to serve new residential developments and the improvement of existing open spaces is critical to the overall aims of urban renaissance and environmental transformation across the Black Country.



Figure 4. Priory Park, Dudley

### On-Site Provision

**91.** Residential schemes of 80 dwellings or more should provide open space, sport and recreation facilities on-site in circumstances where the development

site is isolated from and poorly served to existing nearby off-site public open space provision.

92. On other schemes proposing less than 80 dwellings the Council will explore the requirement within each residential scheme on a case-by-case assessment basis to achieve the optimal layout and positioning using the principles of good landscape and urban design and on its individual planning merits.
93. Where on site provision can be accommodated within the red line boundary of a development, this can be secured through a planning condition or through a planning obligation depending on the individual circumstances of the development. A planning obligation will be required when on site provision is accommodated outside the red line boundary.
94. When on-site provision is being provided by the developer, qualitative standards and guidance are set out in the Council's Open Space, Sport and Recreation SPD; in addition Appendix 5 of this SPD provides some key guidelines for the provision of on-site open space as well as types of provision.
95. The quantity of on-site provision should be **at least 0.81 ha per 1,000 population** of Amenity Green space provision in line with the figures set out in BCCS Policy ENV6 and the standards identified in the Council's adopted [Parks and Green Space Strategy \(2009\)](#).
96. When on-site provision is being provided by a developer, it is generally acceptable for it to be maintained either by the developer themselves or via a management company, providing it is to a suitable standard, meeting all necessary regulatory requirements. In some instances it may be appropriate for the open space to be transferred to the Council for maintenance; on these schemes the developer will be required to make a financial contribution for 15 years maintenance.

#### Off-Site Financial Contributions

97. In exceptional circumstances, where on site provision cannot be met, the Council will require financial contributions for open space, sport and recreation provision as an alternative to on-site Amenity Green Space provision.
98. The financial contributions required for off-site provision is set in the table above.
99. Where appropriate, in addition to providing a financial contribution, the developer may be required to provide on-site green landscaping narrow buffers (e.g. non-recreational amenity public open space) within the site layout. Very low maintenance landscaping solutions such as natural green space buffers containing locally-occurring indigenous shrub and suitable tree



species (such as Silver Birch, Hawthorn, Holly, Hazel and Elder) will be encouraged.

#### Playing Fields Contributions

- 100.** Contributions will be determined based on the overriding priorities in the local area and will be costed on a site by site basis. This costing will have regard to the particular circumstances that will apply to each site and as a result will encompass a range of construction activities that will differ from site to site.

## **Environmental Safety & Health**

- 101.** The justification for seeking Planning Obligations with respect to Environmental Safety and Health lies in the Planning Practice Guidance which requires Council's to take account of the risks of and from pollution when considering development proposals, and how this can be managed or reduced in order to remove any unacceptable risks.
- 102.** The Planning Practice Guidance indicates that it may be appropriate for developers to provide Planning Obligations in instances where the Council's planning objectives cannot be achieved by imposing a planning condition; for example where there is a requirement to make a financial contribution, or they relate to development, roads or buildings other than those covered by the planning application.

## **Noise and Land Contamination**

**Noise and Land Contamination Planning Obligations are only required where matters relating to noise and contaminated land cannot be dealt with through the use of conditions.**

### **Noise Emissions**

- 103.** A planning obligation for noise will only be required in circumstances where the Council considers that there is noise from a source outside of the development site boundary which is likely to be detrimental to the amenity of future residents/occupiers, and which can't be mitigated against in any other way. It is good practice in circumstances where noise of an industrial/commercial nature is involved for the applicant to provide a report to the LPA on noise affecting the development site using 'British Standard 4142- Methods for rating and assessing industrial and commercial sound' where applicable. The report should detail the action proposed by the developer to mitigate the noise issues.
- 104.** It may be necessary for a developer to enter into a planning obligation for noise, particularly in circumstances where the proposed development is for a sensitive development, i.e. residential, hospital, school etc and there is an existing industrial use/ railway/ busy road etc located nearby.
- 105.** The planning obligation will be required to enable the developer to undertake works outside of the development site boundary in order to reduce noise at source for example by the provision of an off-site barrier. The purpose of this action will be to effect a reduction in noise at the development site which is sufficient to enable the proposed development to go ahead without adversely affecting the operation of the existing use whilst providing an acceptable noise climate at the location of the proposed development.

## **Land Contamination**

- 105.** The Council will seek a planning obligation for land contamination on developments in or adjacent to areas where objectives for land affected by contamination cannot be secured through a planning condition (i.e. where there is still a residual impact).
- 106.** Planning Obligations for land contamination will be directed towards measures designed to deal with the contamination, including during construction works, in order to make the site suitable for its intended use. Similarly contamination testing and remedial requirements may also be required in relation to any off-site green space infrastructure, such as amenity open spaces and allotments, to ensure that the site is suitable for use.
- 107.** In light of the above, in instances where a planning obligation for land contamination is required, the Council will seek to secure measures or contributions towards site investigation and/or remediation works on land affected by contamination. In particular this could include the following:
- Review / Verification of such works carried out at the development site under condition, where necessary;
  - Risk assessments and remediation works for other affected land related to the development. For example actions to address migration of contamination from adjoining land onto the development site;
  - Monitoring works following the completion of the development. Examples include measuring gas and/or water contamination in boreholes and/or installing permanent monitoring equipment;
  - The management of contaminated land, including a requirement for certain operations and activities to be carried out, such as the maintenance of remedial works. Examples include landscaping improvements and maintenance, gas protection and/or leachate treatment facilities (e.g. water treatment barriers)
  - Restrictions on the development or use of the land;
  - Any other measures deemed appropriate, for example independent monitoring/ investigation during remediation works to ensure there are no off-site effects as a result of contamination;
  - Supervision Fees – The developer may be expected to pay fees to cover the cost of council officer time associated with dealing with contamination. Such instances might include inspecting compliance with requirements of planning conditions and agreed works (e.g. risk assessments and remediation strategies) or routine monitoring of boreholes or installations. Any such fees will be calculated in accordance with the hourly rate for officer time set in the Council's fees and charges structure.
  - Performance Bonds (surety) to ensure the implementation of obligations.



## Air Quality Improvements

Developments that have the potential to increase ambient concentrations of the pollutants, nitrogen oxides and particulate matter or create relevant exposure to pollutant concentrations that exceed national air quality objectives will be required to mitigate against its impact through the **provision of on-site air quality off-setting measures**.

**In exceptional circumstances, on sites where it is not possible or appropriate to provide on-site provision of air quality off-setting measures, a financial contribution will be required.**

- 108.** The whole of Dudley Borough has been declared an Air Quality Management Area for nitrogen dioxide based upon measured exceedances of the Government's national air quality objective. Promoting healthy living is a key element of a sustainable community and reducing exposure to poor air quality will improve the health and quality of life of the population of Dudley Borough.



*Figure 5. Traffic congestion along the A491, Wordsley*

- 109.** BCCS Policy ENV8 'Air Quality' states that where a proposed development will result in exposure to pollutant concentrations that exceed national air quality objectives, adequate and satisfactory mitigation measures which are capable of implementation must be secured.
- 110.** The Council's Air Quality Action Plan (2011) sets out how the Council will work towards improving air quality, particularly with regard to reducing levels of nitrogen dioxide. A copy of the latest Plan can be found on the Council's website at the following location: <http://www.dudley.gov.uk/business/environmental-health/pollution-control/air-quality/air-quality-action-plan/>. The emerging Black Country Air Quality SPD will provide further guidance in relation to how development can contribute towards air quality improvements.
- 111.** Developments which generate additional traffic to and from a site are likely to increase emissions of nitrogen dioxide. Such transport emissions will contribute to the aggregated impact of development schemes throughout the Borough, leading to an emissions creep likely to increase human exposure to transport related air pollutants.

### On-Site Contributions

- 112.** The developer will be encouraged to provide air quality off-setting measures on-site as part of the development. At present, this will be negotiated on a site

by site basis, depending on the nature and scale of the development. The emerging Air Quality SPD will provide further detail on which developments will require on site mitigation to prevent exposure to pollutant concentrations and how air quality off-setting measures can be provided on site. In most cases this will be secured through planning conditions but there may be circumstances where Planning Obligations will be required to secure on site works that are located outside the red line boundary.

#### Off-Site Financial Contributions

- 113.** In exceptional circumstances, on sites where it is not possible or appropriate to provide on-site provision of air quality off-setting measures, a financial contribution will be required. At present, financial contributions will be determined on a site by site basis. Further guidance on calculating Air Quality financial contributions will be included in the Black Country Air Quality SPD, once adopted.

## Historic Environment

Planning Obligations may be required on new developments which fall into either of the two following categories:

- Developments impacting upon archaeological/ historical/ architectural assets, i.e. damaging actions.
- Developments impacting upon Landscape Heritage Areas, Castle Hill Special, Landscape Heritage Area, Conservation Areas, Buildings of Local Historic Importance, Listed Buildings, Canals, Scheduled Ancient Monuments and other sites of national importance and sites of regional importance (ancient monuments), i.e. location based

In these instances where mitigation cannot be secured through conditions, a planning obligation, which may include a financial contribution, may be required to address the impact. Each case is unique identified by the Council on a site by site basis.

**114.** Dudley has a rich and diverse historic environment which is evident in the survival of individual historic assets and in the local character and distinctiveness of the broader landscape. To ensure that historic assets make a positive contribution towards wider economic, social and environmental regeneration, it is important that they are not considered in isolation but are conserved and enhanced within their wider context.



Figure 6. Dudley Castle

**115.** The NPPF states “*when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation.*” BCCS Policy ENV2 ‘Historic Character and Local Distinctiveness’ requires new developments to preserve and, where appropriate, enhance historic character and local distinctiveness. Further local detail and guidance is provided within the [Historic Environment Supplementary Planning Document \(SPD\)](#).

### Application

**116.** In order to secure the relevant ‘heritage objective’ the types of Planning Obligations that may be used by the local authority in respect of the historic environment fall into three broad categories: -

- To require the carrying out of specific operations or activities to a heritage asset;
- To require a sum or sums of money to be paid towards the cost of the carrying out specific operations or activities to an heritage asset; and
- To restrict the development or use of the land until the identified 'heritage objective' has been met.

**117.** Planning applications which are close to certain types of heritage asset (e.g. Canals, publicly owned Listed or Locally Listed Buildings etc), or that directly impact upon or fall within a heritage asset may result in a developer being required to either carry out specific improvement works or to set aside a commuted sum of money.

**118.** The type of contributions or specific operations or activities likely to be required for the Borough's historic heritage are as follows (this list is not exhaustive but provides an indication of how Planning Obligations may be used) :

- Contribution towards the repair, restoration or maintenance of an heritage asset.
- Contribution towards improved signage to and from an historic asset
- Contribution towards the provision of Interpretation panels/ material illustrating the history of an heritage asset. (Please note that where proposed development directly involves sites of historic or local interest (e.g. canal side development, or sites that contain listed or locally listed buildings) developers will be expected to make full use of this heritage asset as an information resource and as such, new development will be expected to be accompanied by relevant interpretation material of the historical and archaeological background of the heritage asset).
- Contribution towards environmental improvements of an heritage asset e.g. public realm improvements in a conservation area.
- Contribution towards better understanding, education and research of an archaeological site or resources that have not only wider community benefits but an identifiable relationship/ connection with the development concerned e.g. contribution towards post-excavation costs for Dudley Castle excavation.

## **Renewable Energy**

- 119.** The adopted BCCS places great emphasis on sustainable development and facing up to climate change with the inclusion of Renewable Energy policy ENV7. This policy applies thresholds to both residential and non residential development where renewable energy generation is required to offset 10% of the estimated residual energy demand of that development.
- 120.** The Council's preference is for Renewable Energy provision to be provided on-site by developers and incorporated into individual developments. However, in limited circumstances, where it is not appropriate or feasible for this to be provided on-site, the Council may require an off-site contribution. This will usually be a financial contribution and will be secured through a S106 Legal Agreement.
- 121.** In these instances the level of contribution will be calculated on a site by site basis to reflect the characteristics of the proposed development and the level of mitigation required. By using the approach to calculating the 10% renewable energy provision as set out within the emerging Renewable Energy SPD, the developer will be required to provide costed evidence to the Council, to be used as the basis of any requirements for a financial contribution.
- 122.** The emerging Renewable Energy SPD is currently out for consultation for five weeks from Friday 13<sup>th</sup> March to Friday 24<sup>th</sup> April 2015.

## **Planning and Health**

- 123.** In line with the planning and health agenda, the BCCS highlights under Policy HOU5 that where development would increase the need for health care facilities, to the extent where new or improved facilities would be required, Planning Obligations will be secured. Under the Council's [Planning for Health SPD](#), those developments that would trigger a requirement for a health care facility contribution will be determined on a site by site basis.



## Brierley Hill Strategic Centre

### Merry Hill and Waterfront – A1 Comparison Retail Development

- 124.** Brierley Hill Town Centre, including Merry Hill, The Waterfront and the traditional Brierley Hill High Street, was designated as a Strategic Town Centre in 2008, presenting an unprecedented opportunity for regeneration and place making. The transformation of an existing urban place into a fully functioning Strategic Centre presents an opportunity to expand comparison retail development at Merry Hill and Waterfront, requiring supporting infrastructure which provides rapid, convenient, sustainable public transport links to the rest of the Black Country and beyond.
- 125. Policy CEN3 “Growth in Strategic Centres”** of the BCCS sets out three conditions that need to be met before any comparison retail floor space is brought into operation at Merry Hill, which include the **adoption of an Area Action Plan, transport infrastructure improvements and introduction of a car park management scheme.**
- 126. Brierley Hill Area Action Plan (AAP)** (2011) defines the area to which the Policy CEN3 conditions apply, within which 56,500m<sup>2</sup> of new comparison retail is allocated for development. That development is therefore **directly responsible** for delivering the infrastructure requirements of Policy CEN3. A planning application for all or part of that 56,500m<sup>2</sup> allocation will therefore need to demonstrate compliance with Policy CEN3, the Brierley Hill Area Action Plan and all other policy related to an application of this nature.



Figure 7. Merry Hill Shopping Centre.

- 127.** The Brierley Hill AAP sets out the infrastructure requirements that are linked to Policy CEN3 and relate directly to the projected impact that significant retail expansion will have on the Strategic Centre, improving accessibility and providing a transport system that is effective and proportionate to the expansion of the Merry Hill Centre.

**Infrastructure requirements set out in Policy CEN3 to be delivered primarily through the use of Legal Agreements and not through CIL.**

- 128.** Due to the scale and complexity of development, infrastructure will be delivered through a range of mechanisms, which include Planning Obligations, Section 278 Agreements and planning conditions.
- 129.** The CEN3 requirements have been accounted for in the CIL charging rates for comparison retail development at Merry Hill and Waterfront, where the charging rate is indicated as 'N/A'. This ensures that CIL is not charged on comparison retail development at Merry Hill and Waterfront and instead, infrastructure is secured through other mechanisms, through Legal Agreements.
- 130.** A summary of the infrastructure that is likely to be required as a result of the comparison retail expansion at Merry Hill and Waterfront is provided below. This is not an exhaustive list; further information on the Policy CEN3 infrastructure requirements is set out within Stage 3 of Appendix 1 of the Brierley Hill AAP.

**Public Transport**

- 131.** The AAP Public Transport Strategy identifies a range of measures which may be considered as 'advance works' to a Wednesbury to Brierley Hill rapid transit extension.
- The construction of a dedicated rapid transit corridor within Brierley Hill (effectively linking, internally, Brierley Hill High Street, Merry Hill Shopping Centre and the Waterfront) as advanced Rapid Transit works. Such a route is envisaged to be for use by bus only and then shared between bus and rapid transit following implementation of the completed rapid transit extension from Wednesbury to Brierley Hill; mitigating congestion and improving accessibility at Brierley Hill and its hinterland;
  - The construction of a bus-only Pedmore Road link to the Merry Hill Centre
  - Capacity and quality improvements to the bus station (existing site or relocated site);
  - A range of potential highway improvements on key links to improve journey times and journey time reliability for all road based modes on the internal network and on strategic corridors on the wider network (to maximise the value of the 'internal' enhancement to the network within the Brierley Hill AAP area)

**Measures to improve accessibility to and circulation within the centre by non-car modes**

- 132.** The character and quality of the urban environment within Brierley Hill Town Centre will be fundamental to its success; the intention is to create an attractive, efficient, well-connected urban environment. Key objectives include:



- Developing a hierarchy of thoroughfares within which the movement of pedestrians, cyclists and public transport is prioritised.
- Integrating the malls of Merry Hill into the network of thoroughfares;
- Stimulating the senses and aid navigation around the centre by cultivating distinctiveness and through maximising the potential of views, vistas and the skyline to assist in linkages;
- Creating a network of attractive, functional and purposefully designed green infrastructure, with wildlife and creation in mind;
- Physically integrating and celebrating the canal as an attractive setting for development and recreation.

**133.** The Brierley Hill AAP, which is a fundamental part of the strategic planning and regeneration strategy for the growth and development of the Borough (Stage 3 of Appendix 1, attached) sets out a number of related infrastructure projects that are required to be delivered alongside any retail expansion of Merry Hill & The Waterfront:

- Creation of a number of Public Squares/Spaces to provide a stage for public activity, a setting for important town centre buildings, to punctuate the convergence of important routes and create identity within the town centre;
- Provision of the new primary thoroughfare 'Central Avenue' along with a number of other thoroughfares which are essential in integrating the main activities of the town centre together and providing connections to the strategic transport network and the urban quarters.
- Creation of remaining sections of new canal-site routes
- Creation of Wildlife habitats in Wildlife Corridors within the area

## APPENDICES

### Appendix 1 – Glossary

Affordable Housing	The NPPF defines affordable housing as “ <i>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 to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.</i> ”
Amenity Green Space	A closely mown, well maintained, reasonably level gradients public open space area suitable for informal, safe, well-observed children’s play, place to relax and exercise dogs.
Area Action Plan (AAP)	A type of Development Plan Document focused upon a specific location or an area subject to conservation or significant change.
Biodiversity	The variety of life on earth or in a specified region or area
Black Country Core Strategy	The over-arching strategic planning policy document which sets out the key elements of the planning framework for the Borough. Once adopted all other Local Development Documents must be in conformity with it.
Children’s Play Area	An area of land which encompasses children’s play equipment
Community Infrastructure Levy (CIL)	The community infrastructure levy is a new local levy that authorities can choose to introduce to help fund infrastructure in their area.
Conditions	Attached to planning approval Decision Notices which restrict the development or require additional details.
Conservation Area	An area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance
Environmental Infrastructure	The Environmental Infrastructure Network comprises open space, sport and recreation facilities, areas of biodiversity and geodiversity importance, wildlife corridors, the canal network, watercourses and drainage systems, air quality and renewable energy generation, pedestrian and cycle routes, areas and buildings of high quality design, and the special character and historic aspects of locally distinctive elements of the Black Country.
Geodiversity	The variety of rocks, fossils, minerals, landforms and soils along with the natural processes that shape the landscape

Geodiversity Action Plan (GAP)	A document which is compiled and reviewed by the relevant area's Geodiversity Partnership. It sets out the geological context of an area, the priorities for conservation and targeted actions to facilitate this.
Heads of Terms	The types of Planning Obligations that a developer agrees to provide. These do not need to be overly detailed, although they may include and trigger points identified. They can also be presented in a draft legal agreement.
Heritage Objective	A term used as shorthand for achieving a beneficial end result for a particular 'Historic Asset'. For Example, the heritage objective could be the repair and restoration of a listed building.
Historic Asset	A building, monument, site, place, area or landscape positively identified as having a degree of significance meriting consideration in planning decisions. Heritage assets are the valued components of the historic environment. They include designated heritage assets (as defined in PPS5) and identified by the local planning authority during the process of decision making or through the plan-making process (including local listing).
Homes and Communities Agency (HCA)	The national housing and regeneration agency whose role is to create opportunities for people to live in high quality, sustainable places.
Listed Building	A building or structure of special architectural or historic interest which is registered on a national list, and cannot be demolished or altered without government permission.
Scheduled Ancient Monument (SAM)	A Scheduled Monument is a 'nationally important' archaeological site or historic building, given protection against unauthorised change.
Local Plan/Local Development Framework	A term used to describe a folder of documents, which includes all the Local Planning Authority's Local Development Documents.
Local Development Scheme	The Local Planning Authority's time-scaled programme for the preparation of Local Development Documents that is reviewed annually
Locally Listed Building	Locally important building valued for contribution to local scene or for local historical situations but not meriting listed building status.
Localism Act	The Act devolves more powers to councils and neighbourhoods and gives local communities greater control over local decisions like housing and planning.
Local Planning Authority	The Local Authority or Council that is empowered by law to exercise planning functions.
Local Investment Plan (LIP)	Sets the vision for the future of housing and housing led regeneration in the Borough.
Local Transport Plan	A five-year integrated transport strategy, prepared by Local Authorities in partnership with the community,

	seeking funding to help provide local transport projects.
Major Planning Application	Major planning applications are those for 10 or more dwellings or where the site area for residential development is 0.5ha or more, or for non-residential development of 1000 sq m or more or where the site area is 1 ha or more
Minor Planning Application	Minor planning applications are those for less than 10 dwellings or where the site area for residential development is less than 0.5ha, or for non-residential developments which are less than 1000 sq m or where the site area is less than 1 hectare.
National Planning Policy Framework (NPPF)	Sets out government's planning policies for England and how these are expected to be applied.
Nature Conservation	The protection, preservation, management or enhancement and the improvement of understanding and appreciation of flora, fauna and geological and geomorphological features.
Open Book Financial Appraisal	This is necessary when a developer is stating that the viability of the proposal would be detrimentally affected by the required Planning Obligations. It involves independent verification of the development's likely costs and profits. It is commercially sensitive and is therefore not part of the public consultation for the proposal.
Planning Obligation	A legal instrument under Section 106 of the 1990 Town and Country Planning Act which restricts or regulates the use of the development of the land. It may also ensure the delivery of infrastructure associated with a development.
Planning Practice Guidance (PPG)	Web based resource which brings together planning practice guidance for England.
Playing Field	An area of land which encompasses at least one playing pitch.
Pooling	This occurs when individual financial contributions are collated together to pay for infrastructure, facilities or services which have been identified but could not be funded by an individual contribution.
Public Open Space (POS)	Any land laid out as public garden or used for the purposes of public recreation.
Public Realm	Urban Spaces to which the public predominantly have access
Registered Provider	All social landlords registered with the Homes and Communities Agency, not covered by local authorities. Also referred to as a Housing Association.
Section 106 Agreement	A legal agreement under section 106 of the 1990 Town and Country Planning Act. Section 106 Agreements are legal agreements between a planning authority and a developer
Section 38 Agreement	A Section 38 Agreement (under the 1980 Highways Act)

	is the mechanism between the Council and a developer requiring the construction of new roads to the Council's standards for subsequent adoption.
Section 278 Agreement	A financial mechanism under the 1980 Highways Act through which a developer pays for the highways improvements work and their future maintenance
Staged Payments	These are set out within the legal agreement and allow a developer to spread the cost of obligations for the development.
Strategic Centre  Strategic Economic Plan	A strategic centre is the main focus of 'higher order' retail, office, leisure and civic functions. The Black Country Plan makes the case to secure additional funding to accelerate growth in high value manufacturing and, specifically, the aerospace, automotive and building technology sectors.
Supplementary Planning Document	A Local Development Document that may cover a range of issues, thematic or site specific, and provide further detail of policies and proposals in a 'parent' Development Plan Document
Thresholds	All Planning Obligations have an identified threshold, at and above which contributions will be applicable to the development. These thresholds are specified within each of the sections within Part 3 of this SPD
Traffic Regulation Order	This is a legal order under the Road Traffic Regulation Act 1984 which allows the Council to regulate the speed, movement and parking of vehicles and regulate pedestrian movement.
Transport Capital Programme	Transport Spending Programme on a wide range of transport related projects
TRICS	The Trip Rate Information Computer System which provides national standards for trip generation analysis
Unilateral Undertaking	A legal agreement under section 106 of the 1990 Town and Country Planning Act. The Agreement is only signed by the developer and anyone else with an interest in the land, but not the Council.
Unitary Development Plan (UDP)	An old-style development plan prepared by District, Borough and Unitary Authorities. The policies within UDPs are gradually being replaced by those within Local Plans/Local Development Frameworks
Value Engineering	Value techniques applied during the design or 'engineering' phases of a project.

## Appendix 2 – Developer contributions: Planning Obligations and CIL

	Section 106 Planning Obligations	Community Infrastructure Levy (CIL)
<b>Mechanisms for infrastructure provision</b>	Site specific infrastructure necessary to make the development acceptable in planning terms, provided either on site or via a financial contribution. These items of infrastructure are agreed within a Section 106 Agreement. Contributions cannot be sought for items identified in the CIL Regulations 123 list (the list of infrastructure projects to be funded by CIL).	CIL is charged on certain residential and retail development located in charging zones in the Dudley Borough. CIL is charged in pounds per square metre on the net additional floor space.  CIL revenue from new development will primarily be used to help fund the identified local infrastructure priorities of an area, with specific projects listed the Regulation 123 List (see CIL Charging Schedule).
<b>Can contributions be pooled?</b>	Financial contributions from no more than five Planning Obligations can be pooled to deliver a specific infrastructure project. The pooling restriction does not apply to affordable housing Planning Obligations.	CIL is effectively a pooling mechanism to fund locally identified infrastructure projects. 15% of CIL monies will be subject to consultation with communities to determine how best to spend those monies on infrastructure where development has taken place.
<b>How is viability assessed?</b>	In exceptional circumstances, viability evidence is assessed on a case by case basis, negotiated during the Planning Application process. Further information on viability is provided in Chapter 2.  Pre-application discussions are a valuable opportunity to discuss likely Planning Obligations associated with a development to gain an understanding from an early stage.	The viability of the CIL levy was established during the development of the Charging Schedule. The levy rate is essentially non-negotiable.  The Council does offer a process for giving relief from CIL in exceptional circumstances where a specific scheme cannot afford to pay but certain conditions must be met (see CIL Charging Schedule for further details).
<b>Spend</b>	Time limits for spend and site specific with detail set out in legal agreement	No time restrictions on spend; monies are spent in line with the Regulation 123 list.

## **Appendix 3- Drafting of Legal Agreements and Index Linking**

1. For all planning applications that require Planning Obligations, the Legal Agreement that will secure those obligations is required to be signed and in place before any Decision Notice can be issued. If the applicant fails to enter into the Agreement within the necessary timescales then the application is likely to be refused by the Council.

### **Unilateral Undertakings**

2. Where an applicant wishes the required Planning Obligations to be secured by a Unilateral Undertaking then this should be submitted with the Planning Application, along with up to date Office Copy Entries from the Land Registry confirming ownership of the application site land. A [Unilateral Undertaking Template](#) is available to download from the Council's website. The Council will then arrange for it to be checked and validated by the Council's Legal Section who will advise on whether any amendments are required and who will also request that the applicant makes any necessary changes. Any individual or organisation with an interest in the land will be required to sign the Unilateral.
3. A £50 Legal Fee in addition to the Management and Monitoring Fee is required to be paid by applicants who use Unilateral Undertakings and both the Legal and Management and Monitoring Fees are required to be paid prior to the determination of the application. In the event that the application is withdrawn or refused then these monies will be refunded.

### **S106 Agreements**

4. Where a Unilateral Undertaking is not submitted with the Planning Application the Council will secure the required Planning Obligations through a S106 Agreement.
5. Once the Planning Application has been registered by the Council the following process is undertaken:
  - (a) The Planning Case Officer will write to the Applicant/Agent setting out all the required Planning Obligations, requesting written confirmation within 14 days that the applicant is willing to enter into a S106 Agreement for the identified Planning Obligations.
  - (b) The Legal Officer will write to the Applicant/Agent enclosing a Draft S106 Agreement and requesting written confirmation that the S106 Agreement is acceptable. In addition, up to date Office Copy Entries from the Land Registry confirming ownership of the application site land need to be provided to the Legal Section.



- (c) If the Planning Application is approved subject to the S106 Agreement, the Legal Section will send a final S106 Engrossment to the Applicant/Agent for signing and returning to the Council along with the necessary Legal and Monitoring and Management Fees; and individual or organisation with an interest in the land will be required to sign the Agreement.
  - (d) Once the S106 Agreement has been signed and sealed by the Council and all parties with an interest in the land, the Legal Section will provide a copy of the signed S106 Agreement to the Applicant/Agent and the Planning Authority.
  - (e) Once the Planning Case Officer is in receipt of the final signed S106 Agreement the Decision notice will be issued.
6. In addition to the Management and Monitoring Fee a Legal Fee is also required to be paid for the Council's work in drawing up the S106 Agreement, this fee varies depending on the work involved and the applicant/agent will be advised of the figure by the Legal Section. These fees are required to be paid prior to the determination of the application. In the event that the application is withdrawn or refused then these monies will be refunded.

## Index Linking

7. Where Planning Obligations are required and cannot be accommodated on site, a financial contribution is usually agreed. Formulas for calculating required contributions are based on an evidence base setting out the need within Dudley to support new development. This evidence base calculates the financial contributions required at the time of the evidence base, thus there is a need to index link these financial calculations annually to ensure that the contributions remain at a sufficient level to fund the required infrastructure. If Planning Obligations were not indexed linked then insufficient contributions would be secured resulting in a loss of benefit to the Borough as a whole.
8. The use of inflationary indices for Planning Obligations is an established principle and the Council uplifts contributions annually from the 1<sup>st</sup> April. Appendix 1 of this SPD is updated annually in line with the Consumer Price Index (CPI) as it is a well-established general indicator covering a wide range of services, and can be used to index wages, salaries, pensions and regulated or contracted prices. As Planning Obligations can fund a broad range of both construction and maintenance elements of site specific infrastructure ranging from highway works to nature conservation, it is considered more appropriate to use CPI rather than a more obscure, construction based indicator which may be wholly inappropriate for the funding of some aspects of local infrastructure.

## **Appendix 4 – Education and Open Space, Sport and Recreation- Basis of calculation for Planning Obligations**

### **Education Planning Obligations**

#### Basis of the Calculation

1. Basic Need (BN) cost multipliers are prepared in August/September each year as taken from the Department of Education for the following financial year. These provide a **cost per pupil** for building new educational accommodation. There is currently one cost multiplier figure for each phase of education (Primary, Secondary and Post 16) each using different area standards.
2. The BN cost multipliers are based on the weighted average of two separate multipliers, one for totally new schools and one for extensions to existing schools. Each of these multipliers has two main components — an area per place factor derived from BB98 or BB99, and a cost per m<sup>2</sup> factor, derived from actual tendered projects.
3. The area and cost factors are multiplied together to give the building cost per place. To this are added percentages to provide for the cost of site works, furniture and equipment and professional fees. VAT and land purchase costs are not covered by the multipliers. The two multipliers are then weighted to reflect the national balance of basic need places provided in new and extension projects and give the published multiplier values. Location factor adjustments are then applied to the cost multiplier.

#### Calculation:

4. The standard used to assess educational provision requirements for Primary, Secondary and Sixth Form/Post 16 pupils is based on the Housing Market Intelligence Report (2011). From this survey a Matrix was formulated and developed to obtain a pupil yield and costs for the different types of dwellings a development would generate.
5. The Matrix and pupil yield has a cost attributed to it as a cost per school place (as taken from the Department of Education Cost Multiplier figures which are likely to be updated every two to three years. The figures listed below are for 2008-2009:
  - **£11, 399 cost per Nursery and Primary School**
  - **£17, 176 cost per Secondary School**
  - **£18, 628 cost per Post 16**
6. These figures are specific to Dudley as they include a location factor provided by Department of Education.
7. In line with Government Safer Routes to School, the Council is working with schools to encourage and increase alternative ways of getting to school without driving. Providing safer routes will encourage and increase the proportion of pupils walking and cycling to school.

8. Government recommendations for Children's Service will generally maintain between 5 and 10% surplus capacity for schools to allow greater flexibility to allow opportunity to respond to parental choice, together with greater flexibility to accommodate unpredictable changes to demographic patterns, and capacity to provide accommodation to a sudden influx of children to particular areas. Schools within the statutory walking distance, described above, will be scheduled for each development, taking into account the nearest available route that a child may walk with reasonable safety.

## Open Space, Sport and Recreation

### Off-site Financial Contributions-Basis of calculation for formula based approach

9. The formula-based approach for Open Space, Sport and Recreation Planning is based on the following:
- A combined contribution for Open Space and Children's Play split into construction and maintenance elements (15 year maintenance element);
  - A contribution which is based on the estimated population of the proposed development, calculated on data of household occupancy gathered in Dudley Borough from the 2001 Census Data;
  - A cost per sq. m. for the construction and maintenance of open space and children's play, based on the true implementation costs of a number of Liveability Masterplans for a range of parks and open space sites which have secured significant community support, and have been robustly tested at feasibility stage and are thus realistic and capable of being implemented.
10. The approach used for calculating open space, sport and recreation financial contributions is based on the following formula:

$$\text{Cost per person} = \text{Average Cost of Works (£)} \times \text{Open Space Requirement per person (sq. m.)}$$

11. Policy ENV 6 of the Core Strategy sets out a target figure of 5.08 hectares of open space per 1000 population; this equates to **50.8 sq. m. per person**.
12. A cost per sq. m. for the construction and maintenance of open space and children's play has been calculated, based on the costs of a number of Liveability Masterplans for a range of parks and open space sites which have secured significant community support; this equates to **£8.90 for construction works and £7.05 for maintenance works (£0.47 x 15), this gives a total of £15.95**.

- 13.** Using the above formula and figures the costs per person for open space, sport and recreation are calculated as follows:
- 14.** £15.95 (average cost of works) x 50.8 sq. m. (open space requirement per person)
- 15.** This gives a sum of £810.26 per person (made up of £452.12 construction and £358.14 maintenance)
- 16.** Based on data from the 2001 Census for Dudley, the average occupancy rate for a flat is 1.39 and for a house is 2.50. Therefore the financial contributions are as follows:

Type of Dwelling	Cost per Person	Average Occupancy Rate	Open Space, Sport and Recreation Contribution per house type
House	£810.26	2.50	<b>£2,025.65</b>
Flat	£810.26	1.39	<b>£1,126.26</b>

## **Appendix 5 – Open Space, Sport and Recreation – Types of Provision and On-Site considerations**

### **Types of Provision**

#### Children's and Young Peoples Green Space provision

1. There is a need for more publicly accessible Children's and Young People's green space provision, including equipped children's play areas.

#### Parks and Gardens and Natural and Semi-Natural Green Space Provision

2. There is a need to enhance green space biodiversity levels across the borough in accordance with Biodiversity Action Plan targets. In addition regular sensitive maintenance is needed across the Borough to address frequent wear and tear issues.

#### Allotments

3. Where practical and possible creation of new allotment space as part of major new development proposals to address current shortages in provision, address increasing levels of community demand and encourage healthy lifestyles. Additionally improvements to the quality of existing allotments space are required.

#### Green Space Landscaping/Buffering

4. Provision of high quality and attractive on-site green space landscaping has an integral role to play in creating high quality residential communities, particularly low maintenance solutions with locally occurring deciduous tree planting (wildlife friendly landscaping). This type of provision can help to promote more sustainable development by making development schemes more responsive to future climate change pressures such as urban cooling, reduced flood risk and biodiversity movement. The visual amenity benefits are also important which can help encourage inward investment into the Borough.

#### Adaptation for more elderly population

5. We need to start to think how we can make our green space environments more user friendly and adaptable for an **increasingly more elderly borough population in future years**. The Demographics Chapter of the adopted Parks and Green Space Strategy suggests that the number of people in the Dudley Borough aged 60 years and over are likely to increase by 27.5% by the year 2026, whilst there is likely to be a 71.9% rise in the number of people **aged 60 years and over**. The impact this is likely to have on future demands and needs for green space will be important to consider. For example, conveniently located benches, toilet facilities, disabled friendly access, signage for visually impaired, green space safety and security issues, good quality pathways for improved access, high quality green space environments

to encourage use by elderly residents, areas to study nature conservation close to home, etc.

### Climate Change

6. Responding to the challenges presented by future climate change is an important issue which needs to be considered now, as well as requiring on-going consideration and action in future years. Maximising the role of green space should help to contribute to urban cooling, reducing flood risk, reducing air pollution, nature conservation and biodiversity enhancement and protection through drought resistant locally occurring plant species, sustainable watering systems particularly within formal park settings to minimise water use, etc.

### **On Site Provision considerations:**

7. Any provision of open space, sport and recreation facilities within a development site should take into account a range of factors, and these will vary depending on the individual circumstances of a site. This qualitative analysis forms an essential part of pre-application discussions and a key part of the overall site and layout design rationale. This analysis should be set out within the Design and Access Statement thus informing the urban design principles for good site design. Key factors to consider, which are set out in more detail in the Council's Open space, Sport & Recreation SPD, include:

### **Existing Landscape Character:**

8. A Landscape Site Survey to include local contextual landscape character and elements and features such as topography, paths, boundary structures, treescape, other planning and wildlife habitats; wherever possible these features need to be retained.

### **Local Context:**

9. In terms of safe, walkable and access for all to existing open space, sport and recreation facilities within a 1,500m radius and its relevancy along with the potential capacity for increased use.

### **Areas of Under-Provision:**

10. The Council's Parks and Green Space Strategy identified that certain areas of the Borough are under provided for in terms of access to open space, sport and recreation, whereas other areas have been identified in the Black Country Bio-Diversity Action Plan as needing provision of open space to ensure connectivity of multifunctional greenspace, providing for both people and wildlife; as such these areas will be treated as a high priority within any assessment of on-site provision.

### **Landscape Maintenance Access:**

- 11.** Careful balance, offer and provision of appropriate maintenance and emergency vehicular access to the potential Open Space land under consideration, without the need for major additional road connections for vehicles and any other retaining or drainage infrastructure works outside of the application site or at a future date. Such necessary vehicular accesses will need to be provided by the developer as part of the approved Highways layout within the overall application site, and give free and unencumbered legal access for maintenance and other vehicles to the area of Open Space as approved by the Council within consideration of the development site application or at a later future date.

### **Former Buildings, Previous Roads, Cellarage and other Construction**

- 12.** On land that is agreed to become the location for future Open Space, Sport and Recreation will be remediated by the Developer to the extent required by the Council, leaving a clean and decontaminated site to levels and soil quality as required by the Council ready for the new future use at the developers cost; this should not be considered as part of the Open Space or Playing Field sum formula for on site provision by a developer or for the Council then to provide via the developers financial contribution.

### **Previous Site Uses and Constraints**

- 13.** The potential Open Space land will need to be free from encumbrances above or below ground by way of mineshafts, whether treated or untreated, culverts and sewer, mains services and tunnel/mining sub-structures Highways and other existing or newly provided infrastructure such as drainage (below or above ground) will not exert an unacceptable risk or cost to the future landscape management of the new open space. Geotechnical and contamination remediation evidence will need to be provided as part of the site suitability assessment and consideration process at pre application stage, and be concluded before an application is approved. Desk surveys may be adequate initially within the early stages of pre application scoping, however depending on the sites previous site history, detailed surveys may be required to prove the acceptability for the open space. The need and type of technical information will vary on a site by site basis as required to confirm that the land quality and viable remediation can be achieved. Further information can be found within Appendix 1 in the Councils Open Space, Sport and Recreation Provision SPD June 2007.

### **Other Infrastructure not included in Open Space, Sport and Recreation Contribution**

- 14.** Provision of new and the enhancement of existing strategic footpaths, cycleways and other links required as part of the areas Highways network which may cross or adjoin the potential open space land within the development site, would be provided by way of the developers Highway costs



and contribution and processes via the planning application. Provision for such paths and links together with the infrastructure, retaining walls and drainage, excavations for and disposals, signing, guard railing and bollards etc are therefore outside of the Open Space contribution., including its construction, supervision and maintenance costs. Likewise, the question of adoption by the Highways Authority and future operational issues is a separate matter from the open space maintenance and management.