London Borough of Havering Local Development Framework

Planning Obligations
Supplementary Planning Document

Consultation Draft

March 2012
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Structure of Report

This document is divided into five sections. **Section One**, the Introduction, explains the purpose and scope of the SPD, its status and its relationship with the Local Development Framework. **Section Two** sets out the national, regional and local policy contexts for the SPD. **Section Three** presents the form of the proposed standard charge, and explains how it has been set in relation to the underlying infrastructure requirements and costs, and the viability of development. **Section Four** details the arrangements proposed for negotiating the standard charge and other planning obligations. **Section Five** sets out the proposals for monitoring and review of the SPD.

The SPD is supported by a number of technical documents, namely:

- **Technical Report 1: Assessment of Infrastructure Costs** which underpins the calculation of the full standard charge by establishing the total amount of planned new development in the area over the plan period and total cost of providing the additional infrastructure required to support this new development.

- **Technical Report 2: Viability Assessment** which tests the financial viability issues considered in setting the discounted standard charge.

- **Draft Environmental Report** which reports the outcomes of the Strategic Environmental Assessment (SEA) of this SPD, carried out in accordance with the requirements of the European Directive (2001/42/EC) and the Environmental Assessment of Plan and Programmes Regulations 2004.
1 Introduction

1.1 This Supplementary Planning Document (SPD) sets out the Council’s approach to planning obligations. New development has a cumulative impact on infrastructure and often creates a need for additional or improved community services and facilities without which the development could have an adverse effect upon service provision, amenity or the environment. This SPD proposes arrangements for a ‘standard charge’, to apply initially to new residential development, to ensure that development contributes appropriately, both financially and in-kind, towards the provision of required infrastructure and services. As the standard charge does not cover every likely impact that may need to be addressed through a planning obligation, the SPD also provides further guidance on the consideration of other obligations that may be sought depending on site-specific circumstances.

1.2 The scale and type of development planned for the Borough are set out in the Local Development Framework (LDF), the context for which is set by the Council’s ‘Living Ambition’ agenda and the goals and objectives of the Havering Strategic Partnership. The preparation of this SPD has involved assessing the types of physical and social infrastructure, needed to serve the planned development over the period to 2020 to ensure that it results in sustainable communities.

1.3 The analysis underpinning the SPD covered current and future infrastructure capacity, existing funding arrangements, the requirements for revenue as well as capital costs for various types of infrastructure and services, and the apportionment of costs between various uses. The infrastructure requirements and costs have been derived from information provided by service providers, standard unit costs, comparables and infrastructure studies undertaken by the Council, such as the Local Implementation Plan.

1.4 Account has been taken of the financial viability of a development in assessing the contribution it may be able to make towards the cost of infrastructure provision, having regard also to the cost to the development of delivering affordable housing and other policy requirements.

1.5 The SPD is based on as clear a view as possible of the infrastructure needs of the Borough to 2020, how much it will cost to provide, and the potential contribution of development towards this provision. A full understanding of what s106 planning agreements can realistically deliver and what will need to be funded from other sources is essential to enable the Council to prioritise and programme infrastructure delivery and to seek further public and private investment in facilities and services needed to achieve the regeneration and strategic objectives for Havering as set out in the Core Strategy.

1.6 The final step in the preparation of the SPD has been to devise the detailed arrangements for inclusion in the draft to be published for consultation. This has involved considering alternative options for the application of a charge under various development scenarios, how potential issues about development viability should be dealt with, and the procedural and practical arrangements for securing obligations in accordance with the SPD.
1.7 The next step is to undertake formal consultation on the draft document. This is an important part of the process, allowing for scrutiny of the approach and the methodology used to underpin the SPD and providing the opportunity for consultees to feed into and refine the evidential baseline and the working arrangements for inclusion in the final Strategy.

What are Planning Obligations?

1.8 Planning obligations, or section 106 planning agreements, are legal agreements between local planning authorities and developers, or unilateral undertakings made by developers, in the context of the grant of planning permission. Planning obligations are intended to make development acceptable, which would otherwise be unacceptable in planning terms.

1.9 The justification for planning obligations is that, in most cases, proposed development has an impact beyond the boundary of the site. Planning obligations can be used to prescribe the nature of development (eg. by requiring that a given portion of housing is affordable); or to secure a contribution from a developer to compensate for loss or damage (eg. enhancements to open space); or to mitigate a development’s impact (eg. through increased or improved public transport provision). The use of planning obligations is an effective process by which the Council seeks to ensure that growth and development, whether individually or cumulatively, meet the objectives of sustainable development as promoted in local, regional and national policies.

Purpose and Scope of the SPD

1.10 The role of the SPD is to set out Council’s approach to planning obligations. The aim is to establish robust arrangements for securing an appropriate level of developer contributions towards the overall provision of social and physical infrastructure required to ensure development and growth in Havering results in sustainable communities.

1.11 It is expected that the SPD will:

- establish a transparent, fair and consistent process for negotiating and securing s106 planning agreements;

- ensure that development makes a reasonable contribution, financially and in kind, towards the infrastructure that is needed in Havering over the plan period;

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2 A unilateral undertaking is where planning obligations are offered by the applicant, and accepted by the Council, but without the need for a formal agreement between the parties.
3 Cumulative development is created by the gradual build up of successive smaller developments.
• assist developers, landowners and other stakeholders in understanding the infrastructure requirements that will be sought to cope with the additional demands brought about by new development;

• provide greater transparency and consistency around the legal arrangements for negotiating and securing s106 planning agreements;

• provide for more timely and cost-effective decisions on applications involving section 106 planning agreements or unilateral undertakings; and

• enable planning obligations to be considered from the earliest stages of the proposal formulation process.

1.12 The funding to be raised from planning obligations is likely to represent only a relatively small portion of the overall funding needed to deliver the infrastructure and services required. The overall objective of the SPD therefore, is to enable the Council to seek a reasonable level of contribution from development and to pool s106 funds together with other public and private sector funding to secure delivery of the needed infrastructure and services. In this respect, the SPD should not be seen solely as a development control tool but as the basis of a framework for the co-ordinated investment and delivery of infrastructure required to support development and contribute towards achieving the spatial vision and strategic objectives of the Core Strategy.

1.13 The geographic scope of the SPD is the whole Borough. The planning powers previously vested with the London Thames Gateway Development Corporation have been returned to the Council. Although the geographic scope is the whole Borough, a different level of discounted standard charge has been set for Havering Riverside based on viability considerations. The different standard charge areas are shown on Figure 1.

STATUS OF THE SPD

1.14 The SPD will form part of Havering’s Local Development Framework (LDF), which, along with the London Plan (2011), forms the Development Plan for the Borough. The SPD will, therefore, be material to decisions on planning applications. It has been prepared in line with the requirements of the Planning and Compulsory Purchase Act 2004 and associated regulations and guidance on Supplementary Planning Documents.

1.15 The Draft SPD has been published for public consultation in accordance with Regulation 17 of the Town and Country Planning (Local Development) (England) (Amendment) Regulations 2008. Responses to the Draft SPD will be taken into consideration within a revised document, which the Council will then proceed to adopt.

HOW DOES IT FIT WITH THE LOCAL DEVELOPMENT FRAMEWORK (LDF)?

1.16 The proposed SPD is one of the local development documents that comprise Havering’s Local Development Framework (LDF). It provides further detail on the implementation of Development Control policy DC72: Planning Obligations
and the wide range of matters covered in that policy and in policy DC6 Affordable Housing.

1.17 It will assist in implementing local objectives in respect of the provision of sustainable development across the Borough by contributing towards the delivery of Havering’s Core Strategy (adopted 23 July 2008).

**STRATEGIC ENVIRONMENTAL ASSESSMENT**

1.18 Strategic Environmental Assessment (SEA) of this SPD has been carried out in accordance with the requirements of the European Directive (2001/42/EC(d)) and the Environmental Assessment of Plan and Programmes Regulations 2004. This is to ensure the SPD takes account of the protection of the environment and the promotion of sustainable development during its formulation. A number of objectives and options were assessed, which have informed the content and guidance of the SPD. A copy of the draft Environmental Report is available to view on the Council’s website.

**HOW YOU CAN MAKE COMMENTS**

1.19 The consultation on the Draft SPD is in line with Havering’s Statement of Community Involvement and will take place in Spring 2012. Copies are available on the Havering website at www.havering.gov.uk. Alternatively, you can request a copy from LDF@havering.gov.uk or a printed copy from:

Martyn Thomas  
Development and Transportation Group Manager  
London Borough of Havering  
9th Floor, Mercury House  
Mercury Gardens  
Romford  
RM1 3SL

1.20 Responses can be sent by email to LDF@havering.gov.uk or by post to the above address.
2 SPD Policy Context

NATIONAL POLICY CONTEXT

2.1 The legislative basis for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended, which provides local authorities with the opportunity to enter into planning agreements to secure contributions in connection with the development and use of land and developers to give unilateral undertakings when making a planning application.


2.3 Circular 05/2005 provides detailed advice in respect of the use of planning obligations to deal with the direct impacts of development. The Circular appreciates that the planning system operates in the public interest and should aim to foster sustainable development, providing homes, investment and jobs in a manner that positively intervenes in the quality and condition of the physical and built environment.

2.4 The Secretary of State’s policy requires that planning obligations should only be sought where they meet all the following policy tests. The tests state that the obligations must be:

1. relevant to planning;

2. necessary to make the proposed development acceptable in planning terms;

3. directly related to the proposed development;

4. fairly and reasonably related in scale and kind to the proposed development;

5. reasonable in all other respects.

2.5 The CIL Regulations which came into force on 6 April 2011, under Regulation 122, makes the three ‘necessity’ tests in Circular 05/05 mandatory, namely:

- necessary to make the proposed development acceptable in planning terms;
- directly related to the proposed development; and
- fairly and reasonably related in scale and kind to the proposed development.
2.6 Circular 05/2005 also establishes the principles for the use of planning obligations, which are fundamental to the Council’s approach to planning obligations:

- planning obligations are to be used to ensure development accords with national, regional and local level planning policies;
- planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold;
- planning obligations may be used to make development acceptable, which would otherwise be unacceptable in planning terms; and
- a planning obligation will not be used solely to resolve existing deficiencies or lack of capacity in existing facilities.

2.7 Acceptable development will not be refused permission because the applicant is unwilling or unable to offer unrelated benefits, nor will unacceptable development be permitted because of unrelated benefits offered by an applicant.

2.8 Where there is a choice between imposing planning conditions and entering into a planning obligation to manage the impacts of a new development, the use of a planning condition is always preferable.

**Community Infrastructure Levy**

2.9 The Planning Act 2008 introduced the principle of a standardised infrastructure charge in the form of the Community Infrastructure Levy (CIL). The Localism Act 2011 introduced amendments on the use of CIL. The aim of CIL is that the cost of all or part of the cost of specified classes of infrastructure which is necessary to support development should be met by developers and landowners. Detailed provisions were set out in Regulations which came into force in April 2010. Subsequently the Department of Communities and Local Government has undertaken consultation on draft Regulations on the reform of CIL, in light of the provisions of the Localism Bill, including the implementation of neighbourhood funds, allowing receipts to be used to provide affordable housing, providing transitional provisions to allow fair operation of the levy in Mayoral Development Corporation areas and requiring greater transparency on the contribution that developers are making and how those funds are used.

2.10 Following the introduction of CIL by a charging authority (such as a London Borough), the use of planning obligations within that authority’s area will be restricted to securing necessary requirements that facilitate the granting of planning permission for a particular development, while CIL will be used to help fund identified types of infrastructure. The intention is that existing tariff or standard charge schemes should, over time, be replaced by CIL and the establishment of new tariffs will no longer be possible after April 2014.

2.11 The requirements for introducing the Levy, including collecting evidence and progressing it through a similar process to that for Development Plan Documents, mean that it may take up to two years to prepare and adopt a CIL. The Council has decided that it should in the meantime continue to develop a standard charge arrangement which reflects current policy but which can in due course form the basis for a CIL.
REGIONAL POLICY CONTEXT

2.12 The priorities for the GLA, as set out in the London Plan (2011), in terms of planning obligations are to secure funding for public transport, especially Crossrail, and ensure adequate provision of affordable housing. Other important priority uses for s106 funding are measures to mitigate and adapt to climate change, the improvement of learning and skills, improved healthcare, childcare facilities and small shops. CIL is seen as an appropriate tool to deliver cross-Borough initiatives.

2.13 The London Plan states, in Policy 8.2, that the Mayor will provide guidance for Boroughs and other partners on the preparation of frameworks for negotiations on planning obligations in DPDs, reflecting the London Plan’s strategic priorities and that the Mayor wishes to develop with Boroughs a voluntary system of pooling contributions for the provision of facilities related to proposed developments. Policy 8.3 further states that the Mayor will prepare guidance for Boroughs and other partners setting out a clear framework for application of the Community Infrastructure Levy.

2.14 The Regulations for CIL, which came into force in April 2010, state that the Mayor of London has a power to charge CIL only to fund transport infrastructure, such as Crossrail. The GLA is proposing to use CIL rather than a s106 standard charge to raise funds for Crossrail. The Draft Charging Schedule, which went for Examination in Public in August 2011. The Inspector has recommended that the Charging Schedule be approved which is likely to be in April 2012. The Draft Charging Schedule proposes charging £20 per m² of gross internal floorspace of any type within the proposed Charging Zone 3, which includes Havering. The Mayor’s CIL will have priority over any Borough’s CIL or standard charge, so when adopted, the Crossrail CIL will need to be treated as a ‘first charge’ and taken into account when setting and implementing any s106 standard charge in Havering. This has been taken account of in setting the discounted standard charge in Havering.

Changes to the Mayor of London’s Powers

2.15 The Town and Country Planning (Mayor of London) Order 2008 sets out the powers the Mayor has in relation to planning decisions in London. The Order states that the Mayor’s powers extend to direct approval as well as refusal of certain strategic applications and to act as ‘lead’ negotiator in any section 106 planning agreements.

2.16 The Mayor expects referable planning applications 1 to be accompanied by a statement, where a Borough Council is inclined to grant permission, outlining any conditions the Council is seeking to impose and, as applicable, a draft of any planning obligations the Council proposes to enter into and the details of any proposed planning contributions.

1 Referral criteria for strategic planning applications are contained in Statutory Instrument 2008 No 580 of the Town and Country Planning (Mayor of London) Order 2008, and include developments comprising more than 150 dwellings or occupying more than 10 hectares; consisting of more than 15,000m² outside central London; buildings more than 30m high outside central London; and alterations to an existing building to increase its height by 15m where the completed building would exceed 30m in height.
LOCAL POLICY CONTEXT

2.17 The Core Strategy and Development Control Policies DPD (adopted on 22 October 2008) sets out the policy framework for planning obligations and affordable housing.

2.18 Development Control Policy DC72 sets out the Council's policy on planning obligations.

2.19 This list of planning obligation types has been used as the starting point for this SPD but has not been considered to be definitive.

2.20 The guidance contained within this SPD should be read in conjunction with the relevant Core Strategy and Development Control DPD policies referred to in relation to specific obligations in Policy DC72.
DC72 – PLANNING OBLIGATIONS

In order to ensure that new development is in line with the principles of sustainable development as set out in the Core Policies and Development Control Policies one or more of the following or other items, may be sought in connection with a planning application approval where they satisfy all the tests set out in Circular 05/05.

- **Places to Live**
  Affordable housing (DC6)

- **Places to work**
  Training programmes and employment support, and access to employment schemes including the provision of premises in appropriate locations (CP3 and DC13)

- **Town Centres**
  Qualitative improvements to town centres (CP4)

- **Culture**
  Qualitative improvements in Hornchurch Town Centre (CP6)
  Improvements to the quality and quantity of open space, recreation and leisure facilities (CP7, DC18 and DC21)
  Implementation of the Green Chain network, London Outer Orbital Path, the Green Arc, Thames Chase and Green Grid (DC22)
  Public Art (DC25)

- **Community Needs**
  Education facilities (DC29)
  Community facilities (CP8 and DC30)

- **Transport**
  Improvements to public transport accessibility and capacity and other transport infrastructure (CP10)
  Improvements to conditions for walking (DC34)
  Improvements to conditions for cycling (DC35)
  Road improvements (DC32)

- **Waste Management**
  Waste recycling facilities (DC40)

- **Environmental Management**
  Provision of on-site renewable energy equipment (DC50)
  Mitigating the impact of development on air quality (DC52)
  Mitigating the impact of development on water quality, water courses, groundwater, surface water and/or drainage system (DC51)
  Restoration of rivers (DC57)
  Enhancements to biodiversity and geodiversity (DC59)

- **Heritage**
  Preservation or enhancement of historic assets (CP18)

- **Design**
  Measures to achieve safer environments (DC63)

For developments which are determined by the London Thames Gateway Development Corporation (LTGDC) the LTGDC Planning Obligations Community Benefit Strategy will be applied.
3 The Proposed Standard Charge

INTRODUCTION

3.1 This section presents proposals for a standard charge, describing, in particular:

- how the infrastructure requirements and costs of the standard charge have been derived;
- how the Council has taken development viability into account;
- the development to which the standard charge is to apply and the setting of the discounted charge;
- the treatment of proposed development within different parts of the Borough, in particular Havering Riverside having regard to required levels of infrastructure and services and viability considerations;
- the alternatives to a ‘per dwelling’ charge that were considered; and
- the Council’s approach to development thresholds.

THE CONSIDERATION OF INFRASTRUCTURE REQUIREMENTS AND COSTS

3.2 A detailed study has been undertaken to identify and assess infrastructure and services to be considered for inclusion in the standard charge. This study is provided as Technical Report 1, accompanying this SPD. In summary, the assessment uses four basic principles (drawn partly from Circular 05/2005) to determine the infrastructure and services to be covered within the standard charge. They should:

- be necessary to make the proposal acceptable in planning terms;
- be reasonably related in scale and kind to the proposed development;
- require a significant amount of developer funding; and
- be such that costs can be derived and apportioned between new and existing development, and between residential and commercial development.

3.3 The key steps undertaken in the assessment are set out below:

a) establish the quantities of new development which will require supporting infrastructure;

b) identify the types of infrastructure required and to be appropriately covered by the standard charge;

c) establish provision standards and costs for each type of infrastructure required;
d) estimate the quantities of each type of infrastructure required; and

e) apportion costs to residential and commercial uses.

3.4 The quantity of new housing is based on the housing target for Havering in the London Plan. The quantities of commercial development were derived from projections contained in the Employment Land Review (2006) and Havering Retail and Leisure Study (2006), undertaken for Havering Council as part of the evidence base for the emerging LDF.

3.5 The identification of needs and costs for particular infrastructure and services were derived from the consideration of planning policy requirements, current practice in securing obligations, discussions with service providers, standard unit costs or comparables, and from various studies prepared by the Council, such as the Local Implementation Plan.

3.6 The assessment considered whether each facility or service was appropriate for inclusion in the standard charge, based on consideration of the following factors:

- the applicability of the infrastructure or service to new development;
- whether they constitute ‘strategic facilities’ meeting wider needs;
- whether existing facilities have spare capacity or shortfalls in capacity;
- the legitimacy of including revenue as well as capital costs;
- whether the infrastructure or service constitutes a ‘normal’ cost of development or constitutes a site specific requirement (see paragraphs 4.13 to 4.28);
- usual or alternative funding sources; and
- the robustness of data on infrastructure requirements and costs.

3.7 The assessment also took account of the need to apportion fairly and reasonably the costs to be included in the standard charge:

(a) between additional and existing development, and
(b) between residential and commercial development, depending on the relative demand these two types of developments make on particular types of infrastructure.

This assessment is set out in detail in Section 5 of Technical Report 1 accompanying this SPD.

**WHAT DOES THE STANDARD CHARGE CONTRIBUTE TOWARDS?**

3.8 The assessments suggests it would be legitimate to seek contributions, in the form of a standard charge, towards investment in the provision of the following services:

- Education;
- Culture and Heritage;
- Libraries and Archives;
- Community Facilities (including Provision for Youth);
- Green Space and Children’s Play Space;
- Sport, Physical Activity and Recreation;
• Emergency Services;
• Health;
• Transport;
• Public Realm;
• Employment Training;
• Voluntary Sector; and
• Inward Investment & Enterprise Support.

**FINANCIAL VIABILITY TESTING**

3.9 A financial viability testing exercise was carried to determine the extent to which residential and commercial development can contribute appropriately towards the cost of the identified infrastructure requirement, having regard to the costs of meeting other policy requirements (e.g., affordable housing and sustainable building design). The viability testing used standard development appraisal software widely applied across the industry, modelling an extensive range of values, densities, profit margins, affordable housing requirements and yields. The analysis of the modelling, and the residual land value tables, are provided in *Technical Report 2* accompanying this SPD.

3.10 The findings of the viability testing exercise shows that current market conditions, including bank lending, are affecting the residual land values to be achieved on most sites. However, the modelling suggests that, in 'normal development conditions', residential development within Havering can still deliver affordable housing and contribute a modest level of planning obligations but that account will need to be had to the circumstances on each site, when planning applications are made.

3.11 For commercial development, the modelling demonstrates that a reasonable level of planning obligations can be delivered by those schemes achieving rents towards the higher end values. However, such high value schemes are unusual in the current market, suggesting that either a very low obligation target be sought, or as a more practical solution, individual commercial applications will be treated on their merits for the negotiation of obligations.

**DEVELOPMENT TO WHICH THE STANDARD CHARGE IS TO BE APPLIED AND THE SETTING OF A DISCOUNTED CHARGE**

**Residential**

3.12 The standard charge is to apply, initially, to all forms of residential development, including that provided within mixed-use schemes, affordable housing and specialist housing, as all of these give rise to the need for a range of additional infrastructure and service provision. It will be charged on all new dwellings included in those planning permissions which provide for a net increase of one dwelling or more. The level of the standard charge is based on the assessment of the overall infrastructure requirement, which demonstrates that residential development is liable for a full standard charge, currently assessed at £20,444 per dwelling. A detailed breakdown of the calculation of the full standard charge applicable to residential development is
provided in the provisional infrastructure costs schedule in Appendix C of Technical Report 1.

3.13 However, having regard to development viability, the Council recognises that, in the majority of cases, residential development within Havering cannot currently support the full cost of the infrastructure requirement it generates and remain viable.

3.14 In setting the discounted standard charge allowance has been made for the Mayoral CIL.

3.15 It is therefore proposed, as a result of testing viability under a range of conditions, that a discounted standard charge be set at **£6,000 per dwelling in Havering Borough** and **£4,500 per dwelling in Havering Riverside** is justified and will be sought. The charging areas are shown in Figure 1.

3.16 By applying a discounted standard charge, the Council seeks to ensure that, on the whole, residential development remains viable. However, the Council also recognises that there may be particular circumstances which mean that even the discounted standard charge is too high to allow development to be viable. In such cases the Council will need to consider the balance of obligations sought and apply specific arrangements to securing obligations and policy requirements. The overall level of discount applied means that there should be a large margin between the level of charge actually payable and the overall infrastructure cost, avoiding the need for detailed discussion about the overall liability that falls on any one development.

**Commercial and Other Non-residential Development**

3.17 Although it would be legitimate for the Council to seek a standard charge from commercial development, the likely values to be achieved from most commercial uses within Havering are relatively modest under present market conditions. Furthermore, while gross costs for infrastructure and facilities applicable to commercial development were derived, the assessment of infrastructure requirements concluded that it would be difficult to then fairly apportion the costs between different types of commercial development and therefore, to justify the application of a standard charge to these.

3.18 Based on the financial viability considerations and the findings of the infrastructure requirement assessment, commercial and other types of non-residential development will, currently, not be subject to a standard charge. Financial and ‘in kind’ obligations for commercial and non-residential development will therefore continue to be negotiated on a scheme-by-scheme basis, taking account of site circumstances and the impacts arising directly as a result of the proposed development.
Figure 1
Areas subject to the LB Havering Standard Charge and the LB Havering Riverside Standard Charge

Area covered by Havering Standard Charge
Area covered by Havering Riverside Standard Charge
**Mixed Use Developments**

3.19 The standard charge arrangements will apply to the residential component of any mixed-use proposal. Planning obligations sought in respect of all other proposed uses will be considered separately, taking account of the nature of the proposed development, site-specific circumstances and the need to manage any impacts likely to arise as a result of the proposed uses.

**Public Sector Development and Land**

3.20 The requirements of the SPD and the application of the standard charge are to apply equally to development proposals on all land within the Borough, including land owned by the Council and other public bodies. It should be noted, however, that on Council related schemes, some elements of the infrastructure costs may be included within the land deal, where appropriate.

**Alternatives to a Per Dwelling Charge**

3.21 It is intended that the standard charge be levied on a per dwelling basis. The Council has considered other potential options for the form of the standard charge, including a two-tier standard charge that identifies local and strategic elements separately, and a charge that varies with dwelling size or is applied on a habitable rooms or floorspace basis. However, the preference is for a single ‘per dwelling’ charge for residential development.

3.22 The justification for this is that the approach to setting the appropriate discounted level of charge to apply to new development is based on development viability considerations. While development will be liable for the full cost of the infrastructure requirement identified in the standard charge, it is recognised that, in the majority of cases, to levy a charge at that level would inhibit development and/or the regeneration of the area. Given that the overall average cost of the infrastructure requirement is significantly in excess of what development, in any form (ie. flats or houses), can afford to contribute, it is reasonable for the Council to determine a standard level of per dwelling discounted standard charge that will normally apply to all new dwellings.

3.23 In addition to offering administrative advantages in terms of simplicity of operation and transparency, the application of a charge on a per unit basis makes it applicable at the outline permission stage, before detailed design (and hence dwelling mix or floorspaces) has been defined. With a few exceptions, there are no standards defined for infrastructure provision required by different sizes of residential unit and, at this stage, there is no reliable estimate of the likely dwelling mix or total residential floorspace to be built in Havering between now and 2020. Taking account of the total quantum of housing to be delivered over the plan period, the overall policy objective is to encourage a mix of housing of different sizes and types, so any distortion caused by using a standard per-dwelling charge is likely to be small.
DEVELOPMENT THRESHOLDS

3.24 A threshold, in the form of a minimum size of development, is a mechanism for determining which planning applications need to provide contributions to infrastructure and affordable housing. It can be used to ensure an appropriate balance between securing contributions and the use of Council resources to do so. In simple terms, the higher the development threshold the fewer the number of developments requiring section 106 planning agreements and the fewer the resources required to implement the process, but the lower the level of contributions achieved.

3.25 Current practice in the use of development thresholds varies widely across different local authorities. There is however a good case for avoiding the use of thresholds except where there is clear justification, such as those prescribed in policy. The key principle is that all developments generate requirements that need to be addressed through planning obligation contributions; the impact of one dwelling within a development of a hundred dwellings is the same as a development of a single dwelling.

3.26 The Council therefore considers that no thresholds, other than those specifically set in policy, should be applied. Such an approach is supported by the fact that the infrastructure requirement and costs identified are derived based on the total development expected over the plan period to 2020, and that the housing trajectory anticipates a significant number of smaller sites contributing to the delivery of the overall strategic housing requirement. Furthermore, by combining a number of individual requirements into a standard charge, it is practicable to collect a tariff from individual properties, thereby spreading the burden and increasing resources to deliver public services and facilities. There are other ways in which the Council can reduce the potential resource burden of dealing with smaller s106 planning agreements, including the use of standard unilateral agreements.
Arrangements for Negotiating the Standard Charge and Other Planning Obligations

THE COUNCIL’S OBJECTIVES

4.1 The Council’s objective is to make the handling of planning applications more efficient, speed up decision-making and provide clear guidance to applicants seeking planning permission. The Council, working closely with applicants and other stakeholders, will seek to ensure:

- a high standard of service; and

- that the majority of applications subject to planning obligations are determined within the Department of Communities and Local Government (DCLG) target periods for decisions where possible.

4.2 The following section outlines the Council’s expectations and procedure for agreeing planning obligations (be they unilateral undertakings or section 106 planning agreements) and identifies the steps required to be taken before and during the consideration of a planning application. The main objectives are to ensure that, as far as possible:

- all appropriate information is provided by applicants and is available from the date of submission of the application (this information should enable the Council and consultees to respond properly to applications); and

- prior to applications being presented for determination, the content of the proposed planning obligations and/or other appropriate legal documents is detailed (where approval is recommended); such that

- the time taken to negotiate a planning obligation post Regulatory Services Committee (assuming a delegation is given to the Head of Development and Building Control to grant planning permission subject to a satisfactory section 106 planning agreement) is kept to a minimum.

EMPHASIS ON PRE-APPLICATION DISCUSSION AND ADVICE

4.3 Prior to submitting a planning application, applicants are strongly encouraged to engage with the Council in discussions regarding the planning issues and requirements to be taken into account in preparing development proposals. The pre-application discussion should extend to the potential impact of the proposed development and any specific planning conditions or obligations that might be required to manage those impacts. The Council will not normally negotiate on schemes submitted outside its formal pre-application process.

4.4 In addition to providing greater clarity and certainty for developers as to the type and scale of obligations required, the early discussion of planning obligation matters will enable the costs of planning obligations (i.e., the standard charge, the cost of site specific obligations and potential abnormal development costs) to be considered early in the development process and
taken into account in any land deal. The Council, therefore, anticipates that planning obligations will be a significant factor affecting the value of land rather than the viability of development. Council officers can also advise on whether financial information should be submitted with proposals, especially in respect of major applications. Applicants should refer to the Council Planning Service’s “Planning Application Checklist” for guidance on the information which must be submitted with an application.

For planning applications that are referrable to the Mayor of London, the Greater London Authority and Transport for London also offer a pre-application advice service.

**STATEMENT OF PLANNING OBLIGATIONS**

Applicants should submit a Statement of Proposed Obligations with their planning application setting out:

- their agreement to meet the requirements of the Model Planning Agreement or Unilateral Undertaking, which the Council will make available;
- title information and, where applicants are likely to need to enter into a section 106 planning agreement with the Council, a solicitors undertaking and the solicitors or agents contact details;
- details of site specific requirements, establishing the nature and scale of relevant obligations (see paragraphs 4.13 to 4.28); and
- any proposed offsets from the discounted standard charge (see paragraphs 4.30 to 4.33).

All documents submitted with an application must be in accordance with legislation and planning policy. If an application is received without the necessary information the Council will write to the applicant explaining this and asking for the information to be supplied. Once the planning application has been validated, the Council will contact the applicant (or their agent) to discuss the likely timescales to prepare the draft agreement. In those circumstances where the Mayor will be responsible for negotiating and signing the s106 agreement, in consultation with the Council, the applicant is encouraged to engage with the GLA as well as the London Borough of Havering at the pre-application stage.

The intention behind the Statement of Proposed Obligations is to reduce the time taken to negotiate relevant obligations in parallel with the consideration of the planning application thereby enabling the Council to process planning applications more efficiently and within the tight timescales set by Government.

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1 Major applications include applications for minerals winning and working; waste development; residential development of 10 or more dwellings or on a site with an area of 0.5 hectare or more; the provision of building(s) where the floor area to be created by the development is 1000m² or more; and other development on a site with an area of 1 hectare or more.
USE OF MODEL PLANNING AGREEMENTS

4.9 Circular 05/2005 (paragraph B36) promotes the use of ‘standard agreements’ to speed up the preparation of the section 106 agreement. The Council is to prepare standard legal agreements and standard unilateral undertakings, which will be made available on the Council’s website. These have been prepared to assist developers and landowners to understand how the arrangements will work, in detail, and help with the timely consideration of planning applications. These have been designed to cover the standard charge and other obligation requirements, including non-financial obligations. The model planning agreements may change over time and applicants should always check with the Council that they have the latest version available.

4.10 Where, in the case of a planning application, this SPD requires only the payment of the standard charge, applicants are encouraged to submit a unilateral undertaking with their application and Statement of Planning Obligations. Where a unilateral undertaking is not appropriate, the Statement of Proposed Obligations should include either a draft section 106 planning agreement, using the model section 106 planning agreement or, for strategic applications (ie. those referable to the Mayor of London), a proposed Heads of Terms (the main aspects of a legal agreement). The unilateral undertaking, draft s106 planning agreement or the Heads of Terms will need to reflect any pre-application discussions with officers.

TITLE INFORMATION

4.11 Where planning obligations need to be secured in connection with a development proposal, title information should be submitted to the Council along with the application. In respect of registered land this should consist of up-to-date official copies of the register and title plan from the Land Registry covering all registered interests in the application site. In respect of unregistered land this should consist of a certified copy of the root of title and any conveyances referred to therein. A solicitor, licensed conveyancer or other professional person should prepare this.

4.12 The Council’s starting point in the negotiation and approval of a planning obligation is that all parties with an interest in an application site should be bound into a planning obligation (that is, should be a party to it). That includes those with a freehold and/or leasehold interest, interest under a conditional contract or an option as well as other occupiers, chargees and mortgagees. Where relevant, other public bodies may be a party to the obligation. An applicant must therefore ensure, to the Council’s satisfaction, that there is no risk to the Council (as enforcing authority) that a party with an interest will be excluded. Planning applications will not be validated until satisfactory title information is submitted.
**SITE SPECIFIC PLANNING MATTERS TO BE ADDRESSED IN ADDITION TO THE STANDARD CHARGE**

4.13 The standard charge is not able to cover every impact that may need to be addressed through a planning obligation. While the Council does not anticipate further contributions from developers towards the cost of infrastructure covered by the application of the standard charge, there will be additional on and off-site infrastructure requirements that arise directly as a consequence of the development proposal. The Council will seek to address site specific matters through the application of planning policy and the use of conditions and/or further obligations.

4.14 The cost of additional site specific infrastructure requirements, including those identified as a condition or requirement of the grant of planning permission, are considered by the Council to be 'normal' development costs, which the Council considers should be accounted for in any negotiations with the landowner. Where possible, the cost implications of these additional requirements have been taken into account in the development appraisal and viability testing assessment undertaken in support of this SPD. Other than exceptional infrastructure costs, the Council does not anticipate making any further allowances in relation to such costs.

4.15 The following provides an indication of the more common site specific obligations that may be sought in addition to the standard charge:

- affordable housing and affordable business units;
- sustainable design and construction requirements;
- travel plans, on and off-site highway and sustainable transport facilities;
- transfers of land required for infrastructure or community facilities; and
- arrangements for managing and maintaining open space or other community facilities.

4.16 Each of these matters is covered in more detail in the following paragraphs.

**Provision of Affordable Housing and Affordable Business Units**

4.17 Affordable housing is one of the most significant issues to be addressed through the LDF and an important determining factor for the viability of a development site. The Development Control Policies DPD provides the policy context for affordable housing provision across the Borough. Policy DC6 sets out a Borough wide target of 50% of all new homes to be affordable, the provision of which is to be delivered through a range of sources including planning obligations. It should be noted, however, that a new short term affordable housing target of 800 dwellings over three years between 2008 and 2011 was agreed with the GLA. The requirement for affordable housing applies to sites capable of accommodating 10 of more dwellings or residential sites in excess of 0.5 hectares.

4.18 The financial viability testing undertaken in support of the SPD modelled on site affordable housing being provided at 25%, 35% and 50% of total new dwellings and tenure split of 70:30 between social housing and intermediate forms. It assumes that funding will enable the affordable housing to be delivered at 'nil' net cost to the developer. However, it is the responsibility of the applicant, through early discussions with the Council and a Registered
RSL, to assess the availability of grant and the implications upon a scheme if grant is not forthcoming.

4.19 There are a number of financial and policy circumstances which make assessments of development viability in relation to affordable housing less certain for future years. In particular, significant changes to the Affordable Housing regime and the potential value that can be attributed to affordable units have been trailed in the Comprehensive Spending Review in October 2010, with further details provided in the joint CLG/HCA paper ‘2011-15, Affordable Housing Programme: Framework’ document, released on 14 February 2011.

4.20 The biggest change will come from the Government’s intention that no grant will be made available to support affordable housing through planning obligations, while the introduction of the affordable rent tenure will generate higher capital values to mitigate the loss of that grant. The analysis on development viability supporting the standard charge considers a range of assumptions based on the current funding regime as it is premature to consider the implications of the initial views in the ‘Framework’ document as it presents too many uncertainties.

4.21 As outlined in Policy DC6, in determining the final arrangements to be included in any particular s106 planning agreement, the Council will, through negotiation and agreement with the applicant, assess the suitability of on site and off site provision for affordable housing and the subsequent percentage that is sought with regard to:

- site size, suitability and viability;
- the need to achieve and deliver a successful housing development;
- availability of public subsidy; and
- other scheme requirements.

4.22 In addition to affordable housing, for large commercial developments, especially those of a scale referable to the Mayor of London, an obligation may be required to secure suitable and affordable business units in support of small and medium sized enterprises, in accordance with the Mayor’s Economic Development Strategy and the London Plan (2011). Such a requirement will be determined on a case-by-case basis. The Council and the Mayor will raise any requirement for the provision of affordable business units with the applicant in pre-application discussions.

**Sustainable Design and Construction**

4.23 The Council adopted in 2009 its Sustainable Design and Construction SPD which provides further guidance on the implementation of those Core Strategy and Development Control policies focused on ensuring that new development takes account of and incorporates, where applicable and feasible, environmental and sustainable building design measures at the earliest stage of a scheme’s conception.

4.24 Applicants are advised to read the Sustainable Design and Construction SPD and the applicable policies of the Core Strategy and Development Control Policies DPD to determine the appropriate requirements to be met by their development.
With regard to planning obligations, Table 1 sets out the types of additional obligations that may be sought from development to ensure the delivery and implementation of particular environmental and sustainable building design measures. Applicants should note that this list is not exhaustive and other kinds of obligations may be sought, on a case-by-case basis, depending on the particular impacts arising from the proposed development that will require appropriate management.

### Table 1: Potential Kinds of Planning Obligations to be Secured to Deliver Environmental and Sustainable Design Measures in Development

<table>
<thead>
<tr>
<th>Policy Basis</th>
<th>Types of Planning Obligation that may be sought where applicable</th>
<th>Development Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waste and Recycling – minimising the production of waste and maximising re-use and recycling</td>
<td>Provision of suitable on-site waste and recycling facilities, Provision or a contributions towards suitable off-site community waste and recycling facilities</td>
<td>All development</td>
</tr>
<tr>
<td>Construction and Demolition – maximising the recycling and reuse of demolition waste and minimising use of primary materials</td>
<td>Use of substitute or recycled materials in place of primary materials</td>
<td>All development</td>
</tr>
<tr>
<td>Flood Risk – minimising vulnerability to flooding</td>
<td>Provision or contribution towards improving flood defences and mitigation works, Use of sustainable drainage systems (SUDS) or other measures to reduce surface water run-off, Commuted sum towards subsequent maintenance</td>
<td>All development</td>
</tr>
<tr>
<td>Development Ratings – meeting the required Code for Sustainable Homes and BREEAM standards</td>
<td>Submission of independent certification of a development’s compliance to the appropriate standard, Other relevant measures as outlined in this table</td>
<td>All major development</td>
</tr>
<tr>
<td>Materials – retaining local character and promoting the use of materials with a low environmental impact</td>
<td>Procurement of materials using local suppliers where possible, Use of durable and adaptable low embodied energy materials as well as those that offer passive solar or insulation benefits</td>
<td>All major development</td>
</tr>
<tr>
<td>Energy – using less energy, supplying energy efficiently and using renewable energy</td>
<td>Use of appropriate on-site renewable energy technologies to reduce predicted carbon emissions by at least 20% beyond Building Regulations requirements, Provision or contribution towards a decentralised community power, or combined power and heating systems or a Community Sustainable Energy Fund</td>
<td>All major development</td>
</tr>
<tr>
<td>Water – improving efficiency in the use of water and conserving water resources</td>
<td>Installation of water efficiency fixtures such as duel flushing toilets, low flow tap and shower fittings, low water consuming white goods and leak detection systems, Use of water recycling measures including</td>
<td>All development</td>
</tr>
</tbody>
</table>
## Policy Basis

### Types of Planning Obligation that may be sought where applicable

- **Development Type**
  - greywater and rainwater recycling

### Pollution – minimising damage to the environment through air, ground/surface water, land, or noise pollution

<table>
<thead>
<tr>
<th>Development Type</th>
<th>Policy Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>All development</td>
<td>LDF – DC52 &amp; DC55, LP – 7.14, 5.5, 5.6, 5.7, 5.8, PPS23 &amp; PPG24</td>
</tr>
</tbody>
</table>

- Use of low emissions fuel technology or suitable carbon scrubbing technology
- Tree and other planting, including landscape buffers
- Restrictions on certain types of vehicles
- Use of cleaner fuels for energy and heating
- Use of combined heat and power and community heating systems where appropriate
- Implementation of an air quality strategy for major commercial developments
- Implementation of an environmental management system for major commercial developments
- Installation of temporary or permanent monitoring equipment
- Internal sound insulation measures

### Biodiversity – retaining, protecting and enhancing wildlife habitats, natural features and green space

<table>
<thead>
<tr>
<th>Development Type</th>
<th>Policy Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>All development</td>
<td>LDF – DC58, LP – 7.18, 7.19, PPS9</td>
</tr>
</tbody>
</table>

- On and off-site compensation for loss of habitats
- Restrictions on the development and use of land
- Appropriate protection and enhancement of natural habitats, which may including planting, removal of exotic weeds and pests, fencing, restoration of waterways provision of formalised access, the installation of nesting or roosting boxes
- Implementation of other measures promoted in Havering’s Biodiversity Action Plan

### Secure design – incorporating designs and layouts aimed at reducing crime, fear of crime and antisocial behaviour

<table>
<thead>
<tr>
<th>Development Type</th>
<th>Policy Basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>All development</td>
<td>LDF – DC63, LP – 4B.6</td>
</tr>
</tbody>
</table>

- Use of measures and design practices of the ‘Secure by Design’ award scheme

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### Notations:


## Sustainable Transport Facilities

4.26

In accordance with the Core Strategy (Policy CP10), in addition to the transport infrastructure covered by the standard charge, the Council will, where appropriate, require planning obligations from development where material transport impacts have been identified through a Transport Assessment.
The kinds of additional obligations that may be sought to address transport impacts arising directly as a result of a development proposal may include one or more of the following:

- a package of measures in the form of a travel plan to cover such matters as particular local traffic problems associated with the planning application or actions required to deliver upon the recommendations of the Transport Assessment of the proposal;

- provision of new or improved site access roads and junctions to enable access from the site to the existing highway network;

- off site improvements to roads, footways and cycleways, including traffic signals, pedestrian crossings, traffic calming, lighting and signage; and

- on and off street parking management.

With regard to travel plans, the Council adopts the thresholds defined by Transport for London (TfL) guidance on travel planning 1. The Council advises developers to refer to these documents in preparing Transport Assessments and travel plans. By way of summary, Table 2 outlines the development thresholds above which the TfL guidance recommends a travel plan be required of development.

### Table 2: Development Thresholds Contained in the TfL Guidance on Workplace and Residential Travel Planning

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Enterprise Scale Travel Plan</th>
<th>Standard Travel Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>10 –79 dwellings</td>
<td>80 + dwellings</td>
</tr>
<tr>
<td>Shopping centre</td>
<td>20+ staff but &lt; 2,500m²</td>
<td>2,500+ m²</td>
</tr>
<tr>
<td>A1 food/non-food retail</td>
<td>20+ staff but &lt; 1,000m²</td>
<td>1,000+ m²</td>
</tr>
<tr>
<td>Garden centre</td>
<td>20+ staff but &lt; 2,500m²</td>
<td>2,500+ m²</td>
</tr>
<tr>
<td>A3/A4/A5 Food and drink</td>
<td>20+ staff but &lt; 750m²</td>
<td>750+ m²</td>
</tr>
<tr>
<td>B1 including offices</td>
<td>20+ staff but &lt; 2,500m²</td>
<td>2,500+ m²</td>
</tr>
<tr>
<td>B2 Industrial</td>
<td>20+ staff but &lt; 2,500m²</td>
<td>2,500+ m²</td>
</tr>
<tr>
<td>B8 Warehouse / Distribution</td>
<td>20+ staff but &lt; 2,500m²</td>
<td>2,500+ m²</td>
</tr>
<tr>
<td>C1 Hotel</td>
<td>20+ staff but &lt; 50 beds</td>
<td>50+ Beds</td>
</tr>
<tr>
<td>D1 Hospital / Medical centre</td>
<td>20 – 49 staff</td>
<td>50+ staff</td>
</tr>
<tr>
<td>D1 Hospital / Medical centre</td>
<td>All developments to have a school travel plan</td>
<td></td>
</tr>
<tr>
<td>D1 Higher and further education</td>
<td>20+ staff but &lt; 2,500m²</td>
<td>2,500+ m²</td>
</tr>
<tr>
<td>D1 Museum</td>
<td>20+ staff but &lt; 100,000 visitor per annum</td>
<td>100,000+ visitor per annum</td>
</tr>
<tr>
<td>D1 Places of worship</td>
<td>20+ staff but &lt; 200 members / regular attendees</td>
<td>200+ members / regular attendees</td>
</tr>
<tr>
<td>D2 Assembly and leisure</td>
<td>20+ staff but &lt; 1,000m²</td>
<td>1,000+ m²</td>
</tr>
<tr>
<td>D2 Stadia</td>
<td>20+ staff but &lt; 1,500 seats</td>
<td>1,500+ seats</td>
</tr>
</tbody>
</table>

Note: Definitions of ‘Enterprise Scale’ and ‘Standard’ travel plans are provided in the TfL Guidance.

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OBLIGATIONS TO BE MET IN KIND AND ON-SITE

4.29 The application of a standard charge does not remove the need for developers to make land available and deliver local infrastructure in kind (i.e. where the developer builds or provides directly the matters necessary to fulfil the obligation), where appropriate on-site infrastructure is required to ensure that the scheme is of an acceptable quality. However, there will be cases where this is either not practicable or inappropriate within the policy context of the Local Development Framework. For example, if a new residential development is close to an existing play area, it may be more appropriate to seek a financial contribution towards the improvement of that existing facility rather than a new facility within the development site. The Council will consider the issue of whether facilities are to be provided on or off site on a case-by-case basis.

OFFSETS THAT MAY BE CLAIMED AGAINST THE DISCOUNTED STANDARD CHARGE

4.30 Where agreed by the Council, if the developer makes appropriate provision on-site of particular infrastructure or facilities covered by the standard charge, the developer will be able to offset all or part of the costs of the agreed works up to the assumed unit standard and nominal value for the infrastructure item set out in the infrastructure cost schedule.

4.31 In exceptional circumstances, where agreed between the Council and the developer, if the proper planning of an area requires infrastructure or community facilities to be provided at a level above or greater than the assumed standard within a development site to serve a wider area than just the development, then the developer will be able to offset the cost of the total provision. The Council anticipates such circumstances to arise only in relation to a limited number of local infrastructure requirements, such as community centres and equipped play space.

4.32 Where land is not developable, the level of offset, for the cost of the land, will be based on the open market value of the land. Offsets against land costs may be allowed for those items and maximum area requirements set out in Table 6.1 of Technical Report 1, accompanying this SPD. The Council will agree with the applicant which land costs, and the value of these, may be offset against the financial contribution that would normally be payable, taking account of the cost calculation justifying the standard charge.

4.33 Any offset payment agreed by the Council will normally be withheld until the agreed works have been carried out. An exception may be made for infrastructure required to be provided prior to any development on site being occupied. In such cases, an offset may be made against the first contribution payment, and if necessary, any subsequent phased payments.

4.34 Where development would be liable to application of the Mayoral CIL on Crossrail when it is adopted, the Council will be prepared to consider reducing the level of the DSC to take account of the amount of Mayoral CIL payable by a developer where this adversely affects the viability of the development. As set out in paragraph 6 of the Explanatory Note accompanying the Mayoral CIL Preliminary Draft Charging Schedule, the Mayor considers that it would be
better to address problems of viability caused by the combined demands of CIL and section 106 agreements by making necessary adjustments to the latter.

**MAINTENANCE PAYMENTS**

4.35 The costs associated with the maintenance of recreational open space facilities provided as a result of the development are generally accounted for within the standard charge. However, specific payments may still need to be negotiated for large areas of open space, which the applicant wishes the Council to maintain, which would not be covered by the standard charge.

**FIXING OF STANDARD CHARGE TO BE PAID**

4.36 Where the applicant agrees to pay the discounted standard charge, applicable at the time of grant of planning permission, as well as any other obligations sought specific to the development, the level of discount and the timing of payment of the charge will be fixed for the life of the development upon completion of the section 106 agreement. The charge will however be index linked from the date of grant of permission.

**DEVELOPMENT VIABILITY AND DEFERRED CONTRIBUTIONS**

4.37 The Council acknowledges that, in certain circumstances, a development may not be able to afford the discounted standard charge and/or other required obligations without the scheme becoming economically unviable.

4.38 If an applicant considers that the imposition of the discounted standard charge and/or other site-specific obligations would render the proposed scheme unviable, then an assessment of development viability can be conducted.

4.39 The Council will require the applicant to submit an ‘open book’ development viability appraisal to support the claim, which will be the subject of independent review by an appropriately qualified valuer. Abnormal costs should be reflected in the price paid for the site. Demolition of existing structures, site clearance and decontamination should also be reflected in the price paid for the site. It will not normally be acceptable for the costs of known site constraints to be claimed in any financial viability appraisal. The fees for assessing development viability will be met by the applicant.

4.40 The Council and any independent valuer retained will employ confidentiality and discretion in relation to any financial evidence provided, and this will only be used to address and evaluate a specific claim. However, it may be necessary to report the key issues and broad conclusions in reports to elected members at the time of consideration of a planning application.

4.41 If the Council agrees that a proposal cannot reasonably afford the full discounted standard charge and/or any site-specific obligations required by

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1 An open book appraisal means providing the valuations undertaken to show the likely cost and value of the proposed development. Where necessary, the Council may agree that the appraisal is reviewed by a nominated third party valuer.
the proposed development, it is possible that the proposal would not receive approval from the Council. The issues may be so significant that the application will be refused, but in reaching its judgement the Council will consider whether there are overriding benefits in favour of granting permission, and if so will seek to negotiate a suitable alternative level of contribution. This judgement will be made on a site-by-site basis.

4.42 In exceptional cases, and where provided for specifically through Local Development Documents, where viability concerns are demonstrated and agreed, the Council may waive certain planning obligation requirements in order to emphasise the need for development to contribute to higher strategic and spatial priorities.

4.43 In any such negotiations, the Council will seek to retain the ability to recover part or all of any forgiven contribution through the inclusion in the section 106 agreement of an appropriate deferred contributions arrangement. This is to take account of the fact that, over the life of the scheme, the development may be able to contribute more towards infrastructure provision than is currently possible and has been demonstrated through the viability appraisal. Such arrangements have become increasingly common over the last two years, as a means of responding to current market conditions and the increasing use of financial appraisals in the planning process to support policy and development assumptions. As such, deferred contribution arrangements are both reasonable and sensible, especially given the significant funding gap that currently remains to be met by the public purse.

4.44 Although a range of deferred arrangements is currently being offered by applicants, the Council’s preference is for a deferred charge based on an increase in sales values. This approach uses an agreed base sale value, which is then indexed and if sale prices over an agreed period/phase exceed the benchmark value, then additional contributions are made. The main advantages of this approach are its simplicity and the ability to monitor sales prices easily via the Land Registry. The payment of a deferred charge would apply only to the market housing on a site and, typically, to the later stages of large scale residential permissions.

**INDEXATION OF CONTRIBUTIONS**

4.45 To reflect changes in the cost of providing infrastructure it is intended that all figures within the infrastructure cost schedule (see Appendix C of Technical Report 1 accompanying this SPD) will be updated annually in the first quarter of the financial year and published as an amendment to the Technical Report 1 Appendix C. Updating will, for the most part, use published indices including Building Costs Information Service (BCIS) or the applicable source of costs used in the infrastructure cost schedule, such as DCSF School Design Guidance Cost and the DCSF Location Factor for schools or locally based ‘current’ implementation costs for maintenance.
Recovery of Administration Costs

4.46 The applicant will be required to pay the Council’s legal and other professional costs incurred in preparing individual planning agreements, reviewing ‘open-book’ development viability appraisals, and monitoring obligations. Such administration costs will be in addition to any standard charge or financial contribution payable. The Council will publish a scale of charges for such costs based on the nature and scale of proposed development and informed by the Council’s past experience of costs incurred. This will be made available on the Council’s website.

Development on Council Owned Land

4.47 Where the Council is the landowner, it cannot legally enter into section 106 planning agreement with itself. In such cases, the Council will seek, through a Development Agreement, to secure planning obligations in accordance with the requirements of this SPD and to publish those elements of that development agreement that relate to planning obligations.

Timing of Payments

4.48 To meet the additional demands from developments as they arise, it is important that planning obligations take effect at the right time.

4.49 Generally, the Council will seek payment of contributions, required by means of a planning obligation, in full, on commencement of development (as defined in Section 56 of the 1990 Town and Country Planning Act).

4.50 For large development schemes, with a long build out period, the Council and applicant may agree the staging of payment (i.e. phased payments tied to dates or development ‘triggers’) in the section 106 planning agreement to aid developer’s cash flow.

Penalty Charge for Late Payment

4.51 The legal agreement will specify that a penalty charge will be payable, in addition to the outstanding balance, for financial contributions and fees that have not been paid by their due date or in accordance with the agreed development trigger. The penalty charge will be levied at four percent above Bank of England base rate as applicable at the time.

Long Stop Date

4.52 The Council will set a ‘long stop’ date, usually five years after (and conditional upon) commencement of the development, where all charges owed will need to be paid whether or not the development is complete. The ‘long stop’ date recognises that the Council and other service providers may need to have funded the provision of infrastructure at or before the start of development.
REPAYMENT CLAUSES

4.53 The Council expects to expend the full amount of standard charge receipts in providing the necessary facilities and infrastructure required to support new development in Havering. The Council will not, normally, agree to the inclusion of any repayment clauses in the s106 agreement.

SECURITY

4.54 Security, in the form of a bond, may be required in relation to in kind provision agreed to be carried out by the developer or to payments falling due later in the development programme. In the case of non implementation of on site specific obligations, the Council will pursue all legal means to secure agreed section 106 requirements.

CONSULTATION ON THE PLANNING APPLICATION AND PLANNING OBLIGATIONS

4.55 In accordance with the Council’s Statement of Community Involvement (February 2006), the Council will advertise, and where appropriate, undertake consultation on the development proposal. With respect to major and strategic planning applications, such consultation is likely to include internal Council services, the Greater London Authority (GLA), Transport for London (TfL), and other statutory bodies as appropriate. In such circumstances the Council will also seek the views and agreement of the statutory bodies as to the nature of impacts and to the scope of appropriate site-specific obligations to be secured. For planning applications deemed to be of strategic importance to the implementation of the London Plan, the Mayor of London may wish to determine these himself. In such circumstances the Council will notify the applicant in writing of the procedure to be followed and the implications for agreeing planning obligations.

REPORTING ON MINOR AND MAJOR PLANNING APPLICATIONS

4.56 In the case of minor planning applications, the Council will not present applications for approval unless a planning obligation (typically in the form of a unilateral undertaking or a section 106 planning agreement) has been signed and returned to Council.

4.57 Any applications that are reported to the Regulatory Services Committee will include the content of any planning obligation along with all other material considerations. In the case of major planning applications, the Council will not present applications for approval unless the applicant agrees to the detailed Heads of Terms to be reflected in a planning obligation.

4.58 If it becomes clear that the Council cannot recommend approval of a planning application, the discussions on the planning obligation may be suspended and the applicant may be invited to withdraw the application or the application may be refused.
**POST DECISION RESOLUTION**

4.59 Following the resolution to grant planning permission subject to a section 106 agreement being finalised, Legal Services and the planning officer in liaison with the applicant’s solicitors, will issue a final draft for the applicant to agree the planning obligation(s) in the form of a binding legal agreement.

4.60 For minor applications, once the decision notice to grant permission has been made, the completed section 106 planning agreement or unilateral undertaking submitted with the application will then be placed on the local land charges register. For major applications, only on completion and signing of the binding legal agreement will planning permission be formally issued. The completed agreement will then be registered as a local land charge against the land and a copy placed on the local land charges register.

**APPLICATIONS TO VARY THE SECTION 106 AGREEMENT**

4.61 In exceptional circumstances, where an agreement has been entered into and a charge in circumstances has resulted in the inability to carry out an obligation, applicants can apply for an obligation to be varied or waived. However, this would only be agreed by the Council if it can be fully justified and is the last resort where all other options, including the appropriate deferred arrangements, have been considered. The variation or waiver of obligations should not be used as a means for developers to backtrack on agreed obligations once planning permission has been granted, especially where needs arising as a result of the development still remain to be appropriately managed.

**THE POOLING OF CONTRIBUTIONS AND THE ‘INFRASTRUCTURE DELIVERY PROGRAMME’**

4.62 In accepting a discounted standard charge rather than the full amount required to mitigate the impacts of residential development, flexibility is required to allow the Council to pool the section 106 receipts from the discounted charge together with other public and private sources of service and infrastructure funding, to be used towards the delivery of an Infrastructure Delivery Programme (IDP). The pooling of contributions is supported by Policy 8.2 of the London Plan (2011) and recommended in Circular 05/2005, which states that “where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for the associated developers’ contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way”. Pooling contributions enables receipts from the discounted charge not only to be maximised in terms of the reach of the benefits to be achieved but also to provide a catalyst for regeneration through the funding of development, further reducing the negative impacts of a new development.
4.63 Using the knowledge of development expected to come forward over the plan period, and the anticipated levels of standard charge receipts, the Council will be able to determine, in conjunction with service providers and key partners, which infrastructure is under the greatest pressure from growth and development, and to plan more effectively for an expanded level of local facilities and service improvement. This will be based on the types of infrastructure and services identified in the standard charge (see the infrastructure cost schedule in Appendix C of Technical Report 1 accompanying this SPD). This should ensure that, while new development is only contributing to a portion of the overall cost of the infrastructure required, through the expenditure of the standard charge receipts developments cumulatively deliver solutions to enable the Borough to grow in a sustainable manner.

4.64 To achieve the overall implementation of the Core Strategy, the pooling of contributions should reflect the same timescale. The Council will pool contributions over the 2011-2020 period to ensure that the delivery and management of long-term infrastructure integral to the future sustainability of the Borough is not undermined.

4.65 The Council envisages that the majority of site-specific obligations will be delivered in kind by the developer. However, where a developer makes a financial contribution in lieu of on or off-site provision of a specified facility or service, such funds will be 'ring-fenced' and used only for the future provision of the identified infrastructure and in the relevant geographic area of the development site. The Council will establish accounting procedures that enable contributions towards site-specific obligations to be identified separately.

COVENANTS AND COMMITMENTS TO BE MADE BY THE COUNCIL

4.66 The Council will use 'reasonable' endeavours to deliver the projects identified in the Infrastructure Delivery Programme attached to the agreement. The Council will only consider covenanting to bring forward a particular facility, which is required in connection with a specific development, if it is fully fundable from existing receipts or spending commitments or the applicant undertakes to meet any funding shortfall.

PARTNERSHIP WORKING

4.67 The Council is developing proposals for engaging key partners, including those of the Local Strategic Partnership and the GLA, on the managed delivery of infrastructure. This is likely to involve the establishment of an infrastructure advisory panel, which, along with Council officers, will report to an appropriate Committee on the programming and capacity to deliver the infrastructure and services covered by the standard charge, and the expenditure of receipts.
These arrangements will be developed further in parallel with the production of the IDP and will ensure that the advisory panel and its decisions on infrastructure spend are prioritised in the Council’s own capital investment programmes, as well as the programmes of others (for example, health care providers, the emergency services and TfL), and accounted for in annual reporting. The Council considers that this approach promotes coordinated investment in infrastructure delivery. Such an approach will also help service providers to consider options for service delivery beyond the scope of negotiations on an individual scheme by scheme basis and to seek funding via their own means towards enhanced or new provision to cater for the needs of both new and existing communities.
5 Monitoring and Review of the SPD

5.1 The performance of Policy DC72: Planning Obligations, and those policies listed therein, are assessed and reported on as part of the Council’s Annual Monitoring Report as well as in the quarterly report presented to the Monitoring Committee of the Regulatory Services Committee. However, it is appropriate to ensure that the effectiveness of this SPD is also monitored and reported on. The Council has therefore established the matters for monitoring requirements in respect of this SPD:

- the level of contributions being achieved and compliance with the requirements of this SPD;
- the time taken for decisions where a planning obligation has been agreed as part of the application; and
- delivery of infrastructure, i.e., the completion of obligations by the developer as well as the delivery of infrastructure items included in the Council’s infrastructure Delivery Programme through the use of standard charge receipts.

5.2 To take into account significant changes in circumstance that would affect the appropriateness of the requirements in this SPD, the document will be reviewed periodically. The review will take account of:

- the changing needs for facilities and services, including any changes in the way services are to be provided or funded;
- any changes to the Community Infrastructure Levy and any subsequent Central Government Guidance on planning obligations;
- finalisation of the Replacement London Plan, and future alterations or reviews thereof;
- the adoption of the Romford Town Centre AAP and other DPDs, which may be supported by their own implementation or delivery programmes that may warrant the consideration of a separate charge within these areas; and
- indexation of contributions.

5.3 The level of the discounted standard charge will also be reviewed every two years to take account of any future changes in market conditions.