

# **Planning and Environmental Protection Service**

**Supplementary Planning Document (SPD)**

**Planning Obligations  
or  
S106 agreements**

**Information, Management and Monitoring of Planning  
Obligations**

**September 2006**

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## Executive Summary

In recent years the government has embarked upon significant change in its approach to the way the planning system operates in the UK. Part of this has included a review of the s.106 – planning obligation process, culminating in the provision of the “Circular 05/2005 Planning Obligations”.

The Council has produced this document to provide additional guidance on the subject and sets out the new approach adopted by Barnet Council in response to the Government’s modernising planning agenda. It takes on board the key themes which are essential to planning obligations: transparency, clarity, speed and cost effectiveness, certainty and practicality.

Their new approach embraces the advice contained in the new Circular of using ‘pooled’ contributions to fund larger projects and a more formalised programme of projects. It also incorporates the use of set charges and formulae as a way of ensuring speed and consistency through the process.

The Supplementary Planning Document (SPD) was approved for adoption in February 2006 by the Council’s Cabinet, following an extensive public consultation.

The SPD highlights key aspects relating to project management, monitoring and cost recovery associated with signed legal agreements.

It also provides a framework for legal obligations from development. From this framework will emerge issues related to the forthcoming SPDs covering; “education”, “affordable housing”, “health facilities”, “culture, recreation and green spaces” and “transport and infrastructure” within the Borough. The programme for SPD production including public consultation is set out in Barnet’s Local Development Scheme. These SPDs will provide details on specific types of planning obligations.

The document forms part of Barnet’s emerging Local Development Framework and is therefore a material consideration for development control purposes.

Consultation on the Planning Obligations SPD was undertaken in accordance with guidance as set out in PPS12. Consultation on future SPDs will be in accordance with Barnet’s emerging Statement of Community Involvement.

## 1. Introduction

- 1.1 New developments normally generate requirements for additional infrastructure, services and facilities with an associated cost implication on public sector resources. It is recognised that the community is entitled to seek a contribution from a developer to offset such costs and there may be circumstances in which a development would only be made acceptable if this was forthcoming.
- 1.2 The legislative framework by which financial and non-financial contributions are obtained towards services and facilities affected by a development are currently contained within section 106 of the 1990 Town and Country Planning Act.
- 1.3 Planning obligations have played an important role in the enhancement of development. However, it is also acknowledged by development practitioners that the planning contributions system has been complex, uncertain, slow and responsible for delaying the planning process.

## 2. The Purpose of the Supplementary Planning Document

- 2.1 Given the importance of securing obligations from development it is essential to clarify when, where and how the Council will seek them. This SPD provides an overview on the legislative and procedural issues pertinent to Planning Obligations for those involved in the process.
- 2.2 This SPD sets out the new approach adopted by Barnet Council in response to the Government's Modernising Planning agenda and takes on board the key themes which are essential to planning obligations:
  - **Transparency**

The Council will negotiate planning obligations in a clear and open way which is understandable to stakeholders. The decision making process on planning applications will involve negotiating planning obligation whilst considering the scheme. The agreed obligations known as Head of Terms will be set out in committee reports which are public documents. The Council will operate a robust monitoring system of planning obligations. This system will enable scrutiny of receipts and expenditure.
  - **Clarity**

The Council will seek to provide comprehensive and up to date information regarding the legislative framework. It will set out in detail the necessary process and procedures of the legal agreements from negotiation to implementation.

- **Speed and cost effectiveness**

The Council will adopt a standardised approach in the management of legal agreements. It will use formulae for calculating the necessary obligations. It will also provide standard legal agreements and unilateral obligations to be used by developers. This will speed up the process and reduce costs.

- **Certainty**

The Council will seek to remove uncertainty by providing clear and concise information on its requirement for potential planning obligations from development at an early stage. The information will guide decision making on site acquisition and help to ensure that schemes are economically viable.

- **Practicality**

The Council will ensure reasonableness and fairness in negotiating planning obligations. It will ensure planning obligations enhance the quality and sustainability of future development. It will address and overcome the negative impact of development enabling proposals to go ahead which might otherwise be turned down.

2.3 The SPD highlights the details of project management, monitoring and cost recovery associated with signed legal agreements. It will also include “standard legal obligations”, “unilateral obligations” and clauses to be used by planners, other Council services and applicants.

2.4 This SPD provides a framework for legal obligations from development. From this framework will emerge issues related to the forthcoming SPDs covering; “obligations to life-long learning”, “affordable housing”, “health facilities”, “culture, recreation and green spaces” and “transport and infrastructure” within the Borough. The programme for SPD production including public consultation is set out in Barnet’s Local Development Scheme. These SPDs will provide details on specific types of planning obligations.

2.5 The following information and materials are included in this SPD:

- An overview of the legislative framework and national policy guidance
- Summary of the Barnet planning policy framework
- Guidance on the processes & procedures
- Summary of project management & costs recovery
- Standard legal agreements, unilateral undertakings and other relevant forms

2.6 This SPD along with the forthcoming topic based SPDs will set out a clear framework for the negotiation of planning obligations. The main objective of these documents will be to promote sustainability in development proposals and to meet the Council’s overall objectives

and priorities in delivering high class education, accessible health facilities and provision of decent affordable housing to live in as well as protecting the physical environment and fostering economic growth. All SPDs will be subject to public consultation. The Council will ensure that the views of stakeholders including local residents and businesses as well as prospective developers are appropriately addressed.

### 3. Sustainability Appraisal (SA)

- 3.1 This SPD has been subject to a Sustainability Appraisal which sets out the likely significant social, environmental and economic effects of the measures it is seeking to implement. The SA has appraised the SPD and any reasonable alternatives to it, providing the baseline against which the effects of the SPD can be considered. The SA recognises planning obligations can ensure that all sectors of the community benefit from new development and help foster a sense of pride in neighbourhoods by promoting sustainable communities that are mixed and balanced.

### 4. The Legislative Framework

#### Review of the Planning Obligations System

- 4.1 The legislative framework for the current system of planning obligations is set out in section 106 of the Town and Country Planning Act 1990. This framework was initially interpreted in Circular 1/97 – Planning Obligations. This has now been replaced by ODPM Circular 05/2005 Planning Obligation.
- 4.2 The legislation provides that parties with an interest in land may enter into a planning obligation, either unilaterally or by agreement with the local planning authority (LPA). Planning obligations can be used to mitigate a development's impact and to provide services and facilities required as a consequence of schemes being promoted by the developer, for example, transport improvements. The services and facilities provided through such planning obligations are normally the subject of negotiation between the developer and the LPA taking on board the views of the local community.
- 4.3 The legally binding agreements can be used to;
- Restrict the development or use of land
  - Require operations to be carried out
  - Require the land to be used in a specified way or provide infrastructure the need for which arises from the development
  - Make financial payment towards their provision.

- 4.4 Over the years the system has proved very useful in securing obligations towards local infrastructure as well as requiring measures to enhance development to meet sustainable agenda objectives.
- 4.5 However, the planning obligations system is widely perceived as being complex, unclear, slow and responsible for delay in planning process. In response to this the Government has carried out a number of initiatives:
- December 2001: consulted on new legislation to introduce standardised tariffs, instead of the negotiated regime. *It decided not to proceed with legislation and started to consider other options.*
  - November 2003: consulted on Optional Planning Charges (OPC). *It postponed a decision pending a report on housing review.*
  - March 2004: Barker Review recommendations proposed Planning Gain Supplement
    - a) Tax levy on up lift of land value
    - b) Scaling back planning obligation (see paras 4.8-4.12)
  - November 2004: consulted on revised Circular 1/97– interim reforms
  - July 2005: published Circular 05/05 (Planning Obligations)
  - December 2005: consulted on Planning Gain Supplement (expiry 27th February 2006).
  - Intends to publish planning obligation Best Practice Guidance and model S106 agreements in early 2006.
- 4.6 Hence at present the Government is also considering alternative reforms which may have significant implications upon the existing legislative framework in connection with “planning obligations”.

### **The Optional Planning Charge**

- 4.7 This procedure is contained within sections 46 and 47 of the Planning and Compulsory Purchase Act 2004. The Optional Planning Charge (OPC) allows an alternative to negotiated planning obligations. The new charge would be used by LPAs to secure the same range of contributions as the established system of negotiated planning obligations, but the LPA would set the amount in advance. The proposed OPC is currently on hold pending the outcome of consideration regarding the proposed Planning Gain Supplement initiative set out in the Barker Report into housing supply.

## Planning Gain Supplement

- 4.8 In 2003 the Chancellor of Exchequer set up a review chaired by Kate Barker to examine the issues of housing supply and responsiveness of house building in the UK. The report published in March 2004 and is referred to as “Kate Barker’s Review of Housing Supply”. From this study, the notion of “Planning Gain Supplement” (PGS) has emerged. The “PGS” would seek to recoup the increased value of the land as a result of granting planning permission.
- 4.9 The Government has agreed with the proposed PGS, and the Chancellor in his budget report of 2006, indicated this will replace the existing planning obligation system.
- 4.10 The Government tabled a draft proposal for public consultation with the expiry on 27 February 2006.
- 4.11 Essentially the PGS is a tax which will be levied on “the increase in the value of a land resulting from receiving a planning permission”. The precise amount has yet to be set, but the terminology talks about a “modest proportion”.

The main features of PGS are as follows:

- PGS would capture a modest portion of the value uplift arising on land for which full planning permission has been granted and will be paid upon the implementation of the permission.
  - PGS would apply to non-residential as well as to residential development land.
  - PGS would be payable under a self-assessment regime administered by HM Revenue and Customs (HMRC) and all funds raised will go to treasury where it will be decided what proportion is recycled back to the local authority and how much will be spent on the regional or sub-regional infrastructure.
  - With the introduction of the PGS, the planning obligations will be scaled-back to matters relevant to the environment of the development site and affordable housing. e.g. contributions could no longer be sought for education or community provisions.
  - The PGS will not be implemented before 2008 at the earliest.
- 4.12 Barnet has formally responded to the proposed PGS and has objected on the following grounds:
- The planning system has not been set up as a tax raising system, but its fundamental principles lie in upholding the public interest and delivering decisions in an accountable and participative manner in order to achieve sustainable

development. The proposed PGS would demote and downgrade the intrinsic value of the planning system as it has developed over the years and has served Barnet, London and the rest of the country well.

- The Council's biggest concern is the huge practical concerns around implementation and the scaling back of traditional planning obligations and the removal of local control.

## 5 Circular 05/2005 – Planning Obligations

- 5.1 The Government has indicated that the introduction of an Optional Planning Charge (OPC) (as consulted on by ODPM in 2003) would be an improvement to the current planning obligations system on the basis that it would bring predictability and simplification, while retaining flexibility for planning applicants to negotiate a planning obligation agreement if they preferred. The government therefore, retains an interest in enacting OPC if PGS is not introduced.
- 5.2 Whilst moving towards the introduction of the Planning Gain Supplement, in the interim period the government is encouraging local authorities to follow the advice contained in Circular 05/2005.
- 5.3 Circular 05/2005 further clarifies the objective and the scope of planning obligations and states how planning obligations can provide community benefit.
- 5.4 The new Circular encourages LPAs to streamline the process and procedures, adopting a standard approach by incorporating measures such as “standard clauses and agreements” and “standards charges” to provide further certainty for the developer, to reduce costs and speed up the process.

### Tests for the requirement of Planning Obligations

- 5.5 There are 5 guiding principles or tests which must be considered in order to require a planning obligation;
  - **Relevant to planning**
  - **Necessary to make the proposed development acceptable in planning terms**
  - **Directly related to the proposed development** (in terms of proximity / nature and policy)
  - Fairly and reasonably **related in scale and kind to the proposed development**
  - **Reasonable** in all other respects
- 5.6 The Circular indicates planning obligations can be used in the following circumstances:

- **To Prescribe** the nature of development. For example, from major residential development the Council will expect to secure an element of affordable housing.
- **To Mitigate** the impact of development. For example, to facilitate road or transport improvements arising from development.
- **To Compensate** for loss or damage caused by the development. For example loss of ecological or landscape features caused by development.

The Circular also:

- Advises local authorities to develop codes of practice on negotiating and managing planning obligations.
- Clarifies and firms up the policy on affordable housing.
- Encourages the use of standard charges and use of formulae.
- Encourages the use of Standard Agreements / unilateral undertaking
- Allows for maintenance payments.
- Allows for pooled contributions.
- In line with the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2002, encourages the monitoring and registration of all obligations.

### **On-site or off-site provision**

- 5.7 A useful distinction is made between on- and off-site provisions of facilities. Planning contributions can be provided on-site as built facilities or off-site as cash sums.
- 5.8 When considering major schemes involving very large sites, the requirements for facilities generated by the development will normally be expected to be provided on-site, where possible, to an agreed specification.

### **Pooled Contribution and Spare Capacity**

- 5.9 Normally, an individual development does not, by itself, create significant additional demand for the provision of additional community facilities. In such cases the cumulative impact of development will be considered and contributions from a number of developers will be sought to be paid into a fund to support the provision of additional facilities or improvement to existing facilities.
- 5.10 Pooling of contributions has now been firmly clarified in the Circular. Also it has now been made clear that developers may be expected to pay for the future provision of facilities, the need for which may not be directly caused by their development. The relevant paragraphs contained within the Circular on this issue are as follows:

- **Para B16**, “A reasonable obligation will seek to restore facilities, resources and amenities to a quality equivalent to that existing before the development.”
- **Para B22**, “in some cases individual developments will have some impact but not sufficient to justify the need for a discrete piece of infrastructure. In these instances, local planning authorities may wish to consider whether it is appropriate to seek contribution to specific future provision in line with the requirement for demonstrating need as set out above. In these cases spare capacity in existing infrastructure provision should not be credited to earlier developer.”

5.11 The Circular represents a clear policy shift from the normally understood tests of necessity and the issue of spare capacity. For example, previously, where there was spare capacity within local schools, contribution to education provision could not be sought, as it would not have been possible for the authority to claim that planning consent would have to be refused without the contribution. In such cases an unjust situation might have aroused. For example: Developer A receives planning permission, takes up spare capacity and makes no contribution; Developer B seeks to gain consent shortly after for a similar development, but finds no spare capacity and is obliged to make a full contribution. The Circular makes it clear that the developers should not use the spare capacity as a free gift. Therefore, in cases where UDP or a LDF policy requires all developments to meet their own education impact, the payment will be legitimised. This change represents a major shift in the balance of negotiation on planning obligations for public services.

### Streamlining the process

- 5.12 The Circular recommends the adoption of a more systematic and pre-defined approach to planning obligations. Local Planning Authorities should define the appropriate level of planning obligations for all types of development proposal in advance of planning applications.
- 5.13 However, the use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.

## Significance of Planning Obligations

- 5.14 Increasingly, planning obligations have been used to promote sustainability in development proposals through obligations to travel plans, public transport infrastructure and works to heritage buildings.
- 5.15 It is clear that the Government now considers planning obligations to be key elements in the implementation and delivery of Sustainable Communities. National guidance highlighting the significance of the planning obligation is set out in Planning Policy Statement 1 (Delivering Sustainable Development) (2005) and Planning Policy Statement 12 (Local Development Framework) (2004).
- PPS1 encourages sustainable development to be treated in an integrated way during the creation of development plans. It encourages planners to take full account of the need for transparency, information and participation. It also recognises the potential adverse impact that proposed development may have on people who do not directly benefit from the development. It recognises that this is an area where planning obligations can be used to ameliorate such impacts.
  - PPS 12 recommends that a spatial approach should be followed whereby those areas of policy which cannot solely be implemented by land use planning are also recognised in Local Development Frameworks. Supplementary Planning Documents are designed to expand or provide further detail to policies in a Development Planning Document or a UDP.
- 5.16 The importance of Planning Obligations has also been endorsed in London Plan. This is the Spatial Development Strategy for the region and provides strategic guidance for the London Boroughs. Planning policies adopted by London Boroughs should be in general conformity with the London Plan. **Policy 6A.5** of the London Plan states that Boroughs should set out a clear framework for negotiations on planning obligations in UDPs.

## 6. Policy Framework in Barnet

- 6.1 Barnet's Review UDP scheduled for adoption mid 2006 provides an up-to-date planning framework for seeking planning contributions promoted from development proposals.

6.2 The Council will have regard to these policies whilst considering planning applications. UDP Policy IMP1 and IMP2 set out the council's objectives for planning obligation agreements:

<b>Policy IMP1 – Priorities for Planning Obligations</b> The council's key priorities for planning obligations will be for the provision of:		
<i>Type of development To which it applies</i>	<i>Residential Development</i>	<i>Non-Residential Development</i>
	Improvements to public transport infrastructure, systems and services	
	Education provision in areas with existing shortages of school places or where the development will create such a shortage.	Small business accommodation and training programmes to promote local employment and economic development.
	Affordable or special needs housing to meet identified local needs.	Town centre regeneration schemes, including promotion, management and physical improvements
<i>Other benefits to be sought Where appropriate</i>	Highway improvements (including benefits for pedestrians and cyclists), environmental improvements, the provision of open space, other community facilities	

**Policy IMP2 – Planning Obligations**

6.3 This policy states, *'In order to secure the best use of land the council will seek to ensure through the use of conditions or planning obligations attached to planning permissions, that new development provides for the infrastructure, facilities, amenities and other planning benefits which are necessary to support and serve it and to offset any consequential planning loss to the local area which may result from the development.'*

**Table 2 – Specific UDP Policies on Planning Obligations**

6.4 The Council's key priorities set out in IMP1 are supported by more specific policies covering the following themes

<b>Subject Area</b>	<b>Relevant UDP Policy</b>
Flood Risk Areas Improvement to drainage Improving Community Safety	ENV9 ENV11 D10

<b>Affordable Housing</b>	<b>H5</b>
<b>Commuted payment and affordable housing</b>	<b>H8</b>
<b>Temporary homeless accommodation</b>	<b>H11</b>
<b>Public Art, Culture and Entertainment Facilities</b>	<b>L5</b>
<b>Recreation and open space provision</b>	<b>L12</b>
<b>Outdoor and indoor Sport &amp; Recreation Facilities</b>	<b>L26</b>
<b>Travel Plans</b>	<b>M3</b>
<b>Facilities for Pedestrians and Cyclists</b>	<b>M5</b>
<b>Improvement to Public Transport</b>	<b>M7</b>
<b>Reducing effect of Traffic</b>	<b>M10</b>
<b>Improvement to Roads</b>	<b>M13</b>
<b>Community and Religious Facilities</b>	<b>CS2</b>
<b>Provision of Educational Facilities</b>	<b>CS8</b>
<b>Need for new Social and Health Care Facilities</b>	<b>CS13</b>
<b>Utility under takers and emergency service</b>	<b>CS16</b>
<b>New and / or extended policing facilities.</b>	<b>CS16</b>
<b>Town Centre Environment Improvements</b>	<b>TCR21</b>

6.5 Depending on the nature of the development the Council makes reference to the above policies to require the most appropriate planning obligations to address the impact of the development and to achieve its objective of accomplishing sustainable developments.

## 7. Supplementary Planning Documents

7.1 In order to provide further detailed guidance on the implementation of UDP policies the Council will produce Supplementary Planning Documents on related topics. Currently there is only one adopted SPG relating to education contributions and two draft SPGs in relation to open space and affordable housing. The Council in its Local Development Scheme has set out its programme for producing a set of planning obligation Supplementary Planning Documents on:

- Life-long learning (education / libraries / skills, training and employment initiatives for all ages)
- Affordable housing
- Transport and infrastructure
- Culture, recreation and green spaces
- Health facilities

7.2 In line with Government advice, this set of SPDs underlines a comprehensive system in which a range of planning obligations from development are clearly identified. With the benefit of predetermined formulae the costs of different planning impacts will be calculated. The SPDs will set out clear examples to guide stakeholders on the calculation of contributions. The SPDs will be dynamic, subject to close

scrutiny and review and will allow for modifications as they progress and evolve. Furthermore, this range of SPDs should not be seen as a final list of areas, which the Council may produce. When felt necessary other SPDs will be produced in consultation with the public and the appropriated agencies and bodies. Furthermore, the range of obligations required will not be limited to the areas covered within the SPDs. Depending on the nature and merit and the community concern, appropriate planning obligations will be sought, if and when necessary.

### **Conformity with the Mayor's Plan**

- 7.3 The Mayor of London considers that planning obligations are a key element for the delivery of sustainable policies in London. Upon adoption, Barnet's UDP and the policies upon which the set of intended planning obligation SPDs hang, will be in general conformity with the London Plan.
- 7.4 The London Plan supports the pooling of funds where appropriate for strategic needs. In particular it recognises the importance of obligations in providing for affordable housing, education, health and strategic transport needs. Barnet supports these policies and has reflected them in its own UDP. The Mayor seeks obligations on planning applications that are referred to him under the Mayor of London Order 2000. For transport related obligations this can include bus service enhancements, bus infrastructure improvements, underground improvements, or improvements for the cycling and walking environment. The Mayor has been consulted on and has shown support for the draft SPD.

### **The Status of this SPD and the Approval Process**

- 7.5 This document now forms part of Barnet's emerging Local Development Framework. It is a non-statutory Supplementary Planning Document and therefore a material consideration for development control decisions.
- 7.6 Consultation on the planning obligations SPD took place in accordance with the Regulations (PPS12). Consultation on future SPDs will be in accordance with Barnet's emerging Statement of Community Involvement.

- 7.7 The purpose of the SPD is to provide further detail i.e. supplement an UDP policy. It does not introduce new policy. It is therefore subject to public scrutiny through consultation rather than independent examination.
- 7.8 This SPD was subject to an 8 week period of public consultation. The document was widely publicised and circulated to relevant groups for their comments. A summary of comments and objections from the consultation exercise and the Council’s reply have been highlighted in Appendix 5. For the detailed nature of comments, objections and the manner in which the Council has addressed these issues please view the “Council’s response to SPD consultation document”; available on the Council’s web site.

## **Process and procedure to implement Legal Obligations**

- 8.1 The entire process is set out in a flow chart in Appendix 1. Five key stages are identified in the process.

### **At pre-application stage**

- 8.2 Developers, prior to acquisition of land for development should clarify the potential obligations required and anticipate the financial implications upon their development projects. This understanding may be critically important to acquire the site for an appropriate value and make their proposals economically viable.
- 8.3 By reference to the local planning policy framework, the London Plan, other national advice and guidance, and through dialogue with the local planning authority, the GLA or Transport for London (where appropriate), developers should obtain a general idea of the planning obligations expected from their proposals. This ensures the key Government objective of transparency and certainty is achieved.
- 8.4 Barnet’s Planning Service will seek to establish a dialogue with developers as early as possible to draw attention to the principle issues in relation to development proposals referring initially to UDP or LDF policies and the SPDs, where relevant. Barnet’s Planning Service provides pre-application advice. One of the major benefits of this service is that s.106 planning obligations expected from proposals can be set out. There is a charge for the service the details of are obtained on the Barnet web site.

### **Planning Assessment stage**

- 8.5 With the submission of a formal planning application, the full extent of planning obligations can normally be determined. At the planning

consideration stage, development proposals will need to follow a full consultation exercise which may include various Council services, local residents and community groups, the ward councillors, other relevant agencies and partners. Following the consultation, the full extent of planning obligations related to the development proposal will be ascertained. The required planning obligations will normally be negotiated with the applicants and “The Heads of Terms” agreed and reported to a relevant committee as part of the evaluation of the planning application.

### **Committee resolution**

- 8.6 The relevant planning committee composed of members of the council may agree or disagree with the officers’ recommendation. On occasions, the committee may resolve to grant planning permission subject to legal agreement but give delegated authority to the Head of Planning to refuse the scheme if the required agreement is not signed within a given timetable.

### **Post committee resolution**

- 8.7 Following the committee’s resolution to grant planning permission subject to a planning legal agreement, the Borough Solicitor in liaison with the applicants’ solicitors will complete the legal agreement in the form of a deed. The agreements will be registered as a charge against the title at HM Land Registry and on the Council’s planning register.

### **Implementation**

- 8.8 Details of the agreement, clauses and triggers will be recorded on a data base. The trigger for most section 106 legal agreements will be the commencement of the development. No action will take place in respect of the legal agreements until works of construction to implement the planning permission has commenced or any other specified trigger in the legal agreement has passed.
- 8.9 Upon the implementation of the development or the relevant triggers, the developer will honour the terms of agreement. At this stage developers are required to fill the monitoring form prepared by the Council (see Appendix 3)

## **9. Management, administration and enforcement**

### **Section 106 Project Management**

- 9.1 Project management is coordinated by the Council's Planning Service dedicated major project planning obligation officer. The legal agreements normally require any financial contributions to be paid to the Council on the commencement of the development. However, in some cases the legal agreement may state that payments should be phased to the various stages of the development or occupation of the site. Some non-financial legal agreements, such as those involving a Travel Plan, depending on their nature or terms, require delivery throughout the life of a project. Such cases involve close monitoring by the Council's Planning Service and receiving services/agencies to ensure that all payments have been made or the terms complied with over the agreed period.
- 9.2 Legal agreements will be logged, monitored and accounted for in order to ensure effective delivery of the obligations and to provide information for interested parties on the outcome of any agreement. This will help to ensure that the process is open and transparent.

### **Enforcement**

- 9.3 If it is evident that the legal agreements are not being complied with the monitoring officer will recommend to the Borough Solicitor to instigate appropriate legal or planning enforcement action. Planning obligations can be enforced through the use of an injunction, which is capable of stopping the development proceeding. The Council has the power to enter the land and carry out any works that were required and recover costs, however, the Council must give 21 days notice of its intention to do this. To ensure compliance with the terms of legal agreement, appropriate clauses will be included in the terms of the legal agreement involving interest for the late payment of financial contributions at 4% above the interest rate from the time of the relevant trigger in the agreement. This is written into any planning obligation so that developers are aware of the implications of late payment and agree to the terms.

## **10 Cost Recovery**

- 10.1 The delivery of the planning obligation, from the negotiations stage to implementation can take considerable time and resources. It often requires public consultation, committee resolutions, involvement of lawyers, production of legal documents, monitoring, cross divisional working and partnership arrangements with other services and organisations. As the Council is party to a large number of planning obligations, it takes a significant amount of resources**

to project manage and implement schemes funded by planning obligation agreements.

**10.2 The Council therefore seeks the payment of a financial obligation towards the costs of undertaking the work relating to securing the planning obligations. The Council's legal representatives in consultation with the relevant planning officer(s) will undertake the drafting of the planning agreement. Developers will be required to pay the legal and professional costs expended in the preparation of the planning agreement. If issues of viability arise and there is a need for the Council to obtain independent valuation advice, it will be expected that the developer will meet the costs for this. Legal and professional costs will be charged at an agreed and published flat rate and where relevant at the Council's current hourly rate.**

**10.3 The levying of a charge will be carried out in two stages;**

1. Execution stage:  
**Covers negotiation of the planning obligation, legal fees and the cost of independent advice where there is a dispute. This fee is collected at the time of signing of the legal agreement.**
2. Implementation stage:  
The sum will be collected at the implementation or other agreed trigger of the planning permission. The Council will charge a standard fee for administering and monitoring agreements. This will vary dependent on the value of the contribution and the number of obligations. Each topic area requires a distinct obligation to be drafted. The basis for the costs is set out below and will be updated as and when necessary.

### **Small contributions**

- For Agreements with 1 obligation or a contribution of less than £5000 a fee of £250 is charged
- For Agreements with 1 obligation or a contribution of more than £5000 a fee of £500 is charged.
- For Agreements with multiple heads up to 5% of the monetary contribution plus £750 per non-monetary Head of Term.

### **Large Contributions**

With respect to very large contributions a lower percentage of between 1 and 5% of the monetary contribution:

- Up to £250,000 (2 to 5%)
- £250,001 to £500,000 (2 to 4%)
- £500,001 and above (1 to 2%)
- £5 million and above (1%)

The sum will depend upon the complexity and nature of the planning obligation and the amount of time and expenses which are likely to be required to carry out the implementation and management of the funds.

- For agreement in respect of affordable housing

<b>No. of affordable homes</b>	<b>Monitoring cost</b>
under 10	£250 per unit
between 10 and 30	£3000
between 31 and 60	£6000
between 61 and 150	£10,000
between 151 and 300	£15,000
between 301 and 500	£25,000
over 501	£50,000

**10.4 Where necessary, the Council will take enforcement action to ensure that planning obligations have been complied with or are being complied with on an ongoing basis as appropriate. In such circumstances, the planning service will also seek to recover its costs arising from this action.**

### Appendix I Flow chart for Legal agreement

Procedure for Negotiating, Preparing, Completing and implementing Planning Obligation

Stage	Actions	Responsibility
1	Applicant to consider relevant, national and local policies (PPS, SPG/D and UDP, LDF and the London Plan) prior to submitting application <i>Ideally to seek pre-application advice</i>	<b>Applicant</b>
	Internal consultation – (identify relevant officers of other services) Need for planning obligations established and applicant informed / negotiate terms	<b>Applicant, case officer, corporate officers, legal</b>
2	Heads of terms and triggers agreed & included in the committee report.	<b>Case officer/ applicant</b>
	Standard agreement or draft obligations sent to applicant's solicitors for consideration	<b>legal</b>
	Or use unilateral agreement instead	<b>Applicant</b>
	Committee Consideration Resolution to Grant	<b>Committee</b>
3	If acceptable resolution to grant planning permission subject to s106 and <i>Time frame for completion imposed. Or refuse in case of applicant not signing legal agreement) – instruct legal to draft legal agreement and notify the legal agreement monitoring officer by filling the monitoring form</i>	<b>Committee</b>
	Copy of legal agreement, minded to grant planning permission and sent to applicants solicitor <b>Legal agreement signed and sealed</b>	<b>Legal</b>
4	Decision letter issued -Statutory Register updated to show that permission has been granted.	<b>DC admin.</b>
	Agreements and consents registered as local land charges	<b>Legal</b>
	Agreement registered as a charge against the title at HM Land Registry	
	Copy of Legal Agreements, sent to finance department, monitoring officer and other dedicated officers in other services	
5	Details of agreement including clauses and triggers recorded on database	<b>Monitoring officer</b>
	Await for the triggers (normally commencement of the development)	<b>Building control</b>
	<i>Building control to notify monitoring officer when in receipt of building notice or letter of referral to approved inspectors</i>	
	Triggers passed – developer to honour terms of agreement Dedicated officers from corporate service to monitor implementation <i>Notification Form sent to the Council</i>	<b>Title holder developer / finance</b>
	Enforce if necessary	<b>Legal, finance and monitoring officer</b>
	Finance receive fund and notify the monitoring officer	
	<i>CPM form filled and signed</i>	<b>Dedicated implementing officers / legal/ monitoring officer</b>
	Dedicated officers from services identify projects to be funded Draft a report and make a bid to the resource	
	After resource committee approval, Finance release the fund	
	Dedicated officer ensure the approved project implemented and inform the monitoring officer	<b>Monitoring officer</b>
<b>Monitoring officer record the contribution as spend. Dedicated officers from corporate service to monitor implementation re on going agreements</b>		

## Appendix II

### Section 106 Useful list of contact – topic issue

ISSUE	POLICY	CONTACT	Tel.
<b>General informational</b>		<b>Habib Neshat</b>	<b>020 8359 4921</b>
Key Policies – employment, training, highways, other infrastructure	IMP1 IMP2	Environment Department – Ros Ward Strategic Development Unit	020 8359 4657 020 4835 9862
Affordable housing	H5	Nicola Bird Susan Hunter	020 8359 4862 020 8359 4255
Police	CS16	Metropolitan Police	020 7832 1475
Off site highway improvements	M10	Kishore Joshi /	020 8359 4336 020 8359 3050
Transport facilities	M7	Highways	020 8359 4352
Pedestrians and cyclists	M5	Kishore Joshi Theo Panayi	020 8359 4336 020 8359 7105
Educational provision	CS8	Douglas Elliot Tricia Little	020 8359 7632 020 8359 7776
library service			
Childcare provision	CS8	Paul Fallon	020 8359 5799
Community Safety	D10	Community Design Officer Met Police	0208 733 5092
Health Services	CS13	Barnet Primary Health Care Trust	020 8732 6421
Recycling facilities	ENV14	Environmental Health	020 8359 7511
Drainage works/flood prevention measures	ENV9	Thames Water and Environment Agency,	01707 632406
Green and open space provision	H20 and L12	Mathew Mardling	020 8359 7823
Indoor and outdoor sport	L26	Andy Hatvani	020 8359 7840
Town Centre Improvement	TCR21	Ros Ward	020 8359 4657
Public Art and Culture	L5	Lloyd Gee	020 8359 7760

**Appendix III**

This **Notification form** is to be filled in by the developer upon the implementation of the scheme or the relevant triggers set in the legal agreement.

Notification / cheques and letters, are to be sent to the attention of the Legal Obligation Officer, at the following address; Head of Planning, Barnet House, 1255 High Road, Whetstone, London

**Section 106 Legal Agreement**  
**Site address:** -----  
**Date of Legal agreement:** -----  
**Planning Reference;** -----  
**Obligations:**  
 1) -----  
 2) -----  
**Please continue on separate sheet if necessary**

**Date of implementation of development and or date of relevant triggers where appropriate**  
 -----

**Section 106 Obligation**  
**(i) NOTIFIED TO THE COUNCIL:** \_\_\_\_\_  
 \_\_\_\_\_  
**(ii) SUBMITTED TO THE COUNCIL WITH THIS FORM:**  
 \_\_\_\_\_  
 \_\_\_\_\_  
**NB: Please continue of separate sheet(s) if necessary and enclose attachments.**

**FOR COUNCIL USE**  
**COST CODE:** \_\_\_\_\_  
**PLANNING COSTS:** \_\_\_\_\_  
**SERVICES COSTS:** \_\_\_\_\_  
**OTHER COSTS:** \_\_\_\_\_

**Note:** This Form is of a summary nature only and is not intended to be a binding legal document. The London Borough of Barnet uses this Form to assist in the monitoring and implementation of the covenants and obligations in the s106 Agreement. No statement or declaration in this Form shall override, vary, or modify the wording of the s106 Agreement. If a contradiction does exist between the Form and the s106 Agreement, then the s106 Agreement is to take precedence. **All cheques should be made payable to Barnet Corporation**

## **Appendix IV**

### **Standard Legal Agreements and Unilateral Obligations**

The Council will be producing a much more comprehensive range of model agreements. These would include 'skeleton' agreements for different circumstances, model clauses for specific subjects, and examples of various other types of document.

A link will be provided on an appropriate page at the Council's web site to look at these model documents for Planning Obligations. The list is not intended to be comprehensive, as each site will produce its own specific issues. However, we hope these documents will help applicants to see, at the earliest possible stage, the likely nature of any Planning Obligations that may be required to cover the more common situations that may arise.

The Council will delay the production of these documents pending the publication of the ODPM Practice Guide which intends to include standard legal agreement and clauses.

## Appendix V

### Public consultation Statement

#### Introduction

The statement sets out the consultation strategy implemented by the Council to ensure compliance with the regulation.

The “Draft Supplementary Planning Document” and its associated “Sustainable Appraisal Report” have been subject to internal and external consultations, as advised in ODPM Circulars and guidance. SPD consultation period was held from 24 November 2005 until 16<sup>th</sup> January 2006, involving a press notice, website, libraries and direct consultation letters to 110 organisations, including statutory consultees, housing associations, local groups and residents associations.

A total of 15 responses were received. A number of organisations welcomed the SPD and clarity of approach some objections were received regarding specific topic areas that will be covered by future SPDs, i.e. education or cultural contributions. Some developers objected to the scale and scope of fees for the project management of the planning obligations.

A summary of comments and objections from the consultation exercise and the Council’s reply have been highlighted here. For the detailed nature of comments, objections and the manner in which the Council has addressed these issues please view the “Council’s response to SPDs consultation document”, available on the Council’s web site.

#### Summary of the consultation comments and the Council’s response:

##### Greater London Authority

- The document is comprehensive and should prove very helpful for prospective developers within the borough as well as the borough’s residents, businesses and other stakeholders.
- Further clarification that the London Plan is an integral part of the development plan system would be useful.
- Also ensure that the nature and level of contributions from the GLA Group, including Transport for London should also be ascertained by prospective developers (for referred applications) to help them in reaching decisions on the economic viability of schemes.
- Subject to above modifications the London Mayor’s officers consider that the document is in general conformity with the London Plan.

### **Transport for London**

- TfL supports the policy on planning obligations that seek improvements to public transport infrastructure, systems and services. TfL wish to continue working in partnership with Barnet in securing adequate contributions for these transport areas.
- TfL also supports Barnet's intention to produce a Supplementary Planning Document on contributions to transport and infrastructure. The Land Use Planning Team at TfL would like to be consulted on this document when it is produced.
- The TfL would also like to be referred to as an organisation with an active role in the Management, Administration and Enforcement section of the SPD.

### **London Development Agency**

- Considers the SPD, is light and may not provide sufficient information for developers. Recommends matters regarding the improvement to social and communal facilities to meet the need of the development should also be emphasized.

### **Highways Agency**

- Recommends matters in relation to contributions for trunk road should be spelled out more clearly.

### **English Heritage**

- The SPD should make greater emphasis to the conservation heritage. Recommends the Council's programmed topical SPD for, "recreation, culture and green spaces" would be the best place to include Conservation Heritage issues.

### **Environment Agency**

- Recommends including a topical SPD to address the overarching objectives for Sustainable Development.

### **The Countryside Agency - Landscape Access Recreation**

- Generally supports the SPD and requires further attention to be paid to environmental matters.

### **The Theatre Trust**

- Support the SPD's recognition in regards to the importance of communal facilities and would like to be consulted on the programmed topical SPD on Culture and Entertainment.

**Cgms on behalf of Metropolitan Police Service;**

- It is anticipated that the significant levels of new development in Barnet as envisaged in London Plan, will increase demands on police resources and it is reasonable for planning contributions to be sought for policing need through planning obligations where these are consistent with the policy tests in Circular 05/05.

**Hampstead Garden Suburbs Resident Association**

- The SPD should make greater emphasis to Conservation Areas in general and Hampstead Garden Suburbs Conservation Area in particular. Recommends that the SPD make reference to the Hampstead Garden Suburbs Design Guidance which has jointly been produced by the Trust and the Council in 1994.

**Lyonsdown Residents' Group**

- Financial contributions should not justify over-development of the sites.
- The SPD fails to address parking issues.
- Requires clarification in regards to the management of the contributions and the timeframe when contributions from several developments deliver the additional social community required by the developments.
- The Society considers, "It is essential that such contributions to be earmarked for truly local improvement (and not borough wide), such as for instance endowing the local school, are publicly accounted for. If such a contribution is merely thrown into the bottomless pit of local government finance then the purpose of Section 106 is frustrated and the payment becomes nothing more than yet another tax."
- The Society also comments on the Government proposed PGS and states, "It should be noted that legislation to collect planning gain (the Development Charge) was enacted in the 1947 Town and Country Planning Act and did in fact come into operation. Despite a Global Fund being set aside to compensate owners of Dead Ripe (for development) land the scheme did not last."

**The Whetstone Society**

- Support measures which require developers to meet the full cost of infrastructure required from their development rather than the tax payer paying the price.

**Bellway Homes**

- Highly critical in regards to section 10 of the SPD “cost recovery”. The levels of contributions appear quite excessive, especially for smaller development and for affordable housing.
- In the light of the Government initiative to introduce the PGS, the developer is concerned that the timing for the production of the SPD may not be appropriate.

**Barton Willmore Planning Consultancy on behalf of St. George Central London**

- Is highly critical and have a number of objections to the SPD:
- Their major concern is that the new guidance has been misinterpreted in the SPD. The SPD should make it clear that the Council will not seek contributions to all topic areas (education, green spaces, etc) unless a contribution can be justified having regard to the need to mitigate any particular impacts of the development.
- The other major concern is in regard to “the Council’s cost recovery section of the SPD”. It is stated that there is no policy basis upon which the Council may require an applicant to pay such charges. In any event the level of charge is set too high and there is no indication as how these have been calculated. Hence, it is recommended to delete the section on cost recovery.
- There are also objections to the treatment of the standard legal agreements and formulae. There is a concern that contribution will be required irrespective of their impact and that these should not be used or required to be used universally.
- This major developer also objects to the content of the standard legal agreements.

**A summary of Council’s response**

1. The Council welcomes the support by GLA, TfL and LDA. Their comments have been noted and incorporated in the SPD will be further addressed in the planned topic SPDs.
2. The concerns raised by the Highways Agency, English Heritage, Environment Agency, Countryside Agency, Theatre Trust, Metropolitan Police Service and Hampstead Garden Suburbs Resident Association have been noted. The issues which they have raised will be further explored and addressed in the planned forthcoming topic based SPDs.

3. The concerns raised by Lyonsdown Residents' Group, Barnet & District Local History Society and The Whetstone Society have been noted and will be taken into account in this SPD or in the planned topic based SPDs.
4. The objections made by the developers have been note and a number of comments raised have been incorporated in the SPD. However, in the interest of fairness and to increase certainty, the SPD will follow Government advice to provide standard legal agreements and formulae. However, exceptional circumstances pertinent to individual cases will be taken into account when and where they are justified
5. As outlined in the SPD, the delivery of the planning contribution, from the negotiations stage to implementation can take considerable time and resources. In many occasions a number of services will be involved and inevitably considerable cost will be incurred. The Council is therefore justified to ensure the cost is not passed to the Councils' tax payers. However, the costing level will be monitored to ensure undue sums are not charged.

**The document either in full or in part could orally be interpreted into your own language on request. Please contact Habib Neshat on 020 8359 4921 for further information.**

Haddii aad la tashigaan ku rabtid luuqaddaada, fadlan u soo qor Planning Policy Team, Planning Department, 7th Floor , Barnet House, Whetstone, London, N20 OEJ.. Mahadsanid.

Bu görüşmenin kendi dilinizde yapılmasını istiyorsanız, lütfen şu adrese yazınız:

Planning Policy Team, Planning Department, 7th Floor , Barnet House, Whetstone, London, N20 OEJ.. Teşekkür ederim.

اگر آپ کو یہ مشورہ اپنی زبان میں درکار ہو تو، براہ مہربانی اس پتے پر خط لکھیں۔ شکریہ

Planning Policy Team, Planning Department, 7<sup>th</sup> Floor , Barnet House, Whetstone, London, N20 OEJ..

আপনার যদি এই কনসালটেশন (শলা-পরামর্শ) আপনার নিজস্ব ভাষায় প্রয়োজন হয়, তাহলে অনুগ্রহ করে যাকে লিখবেন তিনি হলেন

Planning Policy Team, Planning Department, 7th Floor , Barnet House, Whetstone, London, N20 OEJ.. আপনাকে ধন্যবাদ।

જો તમને આ સલાહમંત્રણા તમારી પોતાની ભાષામાં જોઈતી હોય તો, કૃપા કરી લખો: એમા ગેયડન

Planning Policy Team, Planning Department, 7th Floor , Barnet House, Whetstone, London, N20 OEJ.. તમારો આભાર.

اگر شما احتیاج دارید کہ این مشاوره را به زبان خودتان دریافت کنید، لطفاً به آدرس زیر نامه بنویسید:

Planning Policy Team, Planning Department, 7th Floor , Barnet House, Whetstone, London, N20 OEJ.. متشکرم.

若你需要以你的母語進行此諮詢，請寫信聯絡

Planning Policy Team, Planning Department, 7th Floor , Barnet House, Whetstone, London, N20 OEJ.. 謝謝。

Εάν επιθυμείτε να γίνει αυτή η συζήτηση στη δική σας γλώσσα, παρακαλούμε να στείλετε σχετική επιστολή στην

Planning Policy Team, Planning Department, 7th Floor , Barnet House, Whetstone, London, N20 OEJ.. Ευχαριστούμε.

For further information please contact

Forward Planning, 7<sup>th</sup> Floor, 1255 High Road, Whetstone, London, N20 0EJ  
or

**Habib Neshat**      **020 8359 4921, email [habib.neshat@barnet.gov.uk](mailto:habib.neshat@barnet.gov.uk)**

**Nick Lynch**      **020 8359 4211, email [nick.lynch@barnet.gov.uk](mailto:nick.lynch@barnet.gov.uk)**