

# **Planning Obligations Framework (Section 106)**

## **Council's response on Supplementary Planning Document: planning obligations (contributions) – consultation draft November 2005**

**Planning and Compulsory Purchase Act 2004  
Regulation 17(1) (2) of the Town and Country Planning (Local Development)  
(England) Regulations 2004**

This document shows how the Council has dealt with the issues and concerns raised during the consultation exercise.

Barnet UDP was adopted in May 2006. It contains policies and proposals for the development, use and protection of land within the Borough. In order to clarify specific policies, the Council has produced a Supplementary Planning Document (SPDs) on Planning Obligations.

The production of the draft SPD has been in accordance with the London Borough of Barnet Local Development Scheme.

This statement should therefore be read in conjunction with the Adopted UDP 2006, Local Development Scheme, draft Supplementary Planning Documents and Sustainability Appraisals.

The "Supplementary Planning Document" and its associated "Sustainable Appraisal Report" have been subject to internal and external consultation, as advised in ODPM Circulars and guidance. Full details of the consultation strategy were outlined in the "consultation statement". This document sets out in detail the Council's response to the comments and objections received from the consultation exercise in respect of the Draft Planning Obligations framework (s.106) (November 2005) – SPD.

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

**Council’s response to the consultation exercise.**

**1. Organisation Greater London Authority**

**Nature of comments**

The London Plan needs to be properly acknowledged within the document. Chiefly that the London Plan is an integral part of the development plan system. This can be usefully stated in paragraphs 5.15, 6.1 and 7.3. Paragraph 8.3 and the pre-application stage within Appendix 1 should also refer to strategic planning policies.

In paragraphs 8.2 and 8.5 it will be beneficial to add a reference to the need to 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. These changes will help to ensure that the Council’s five points purpose of the proposed draft SPD is met.

It is considered that the document is in general conformity with the London Plan.

**Council’s response**

Welcomes GLA’s recognition that the SPD is in general conformity with the Mayors plans and agrees to the points raised.

**Action**

SPD amended accordingly

**2. Organisation TfL (Greater London Authority)**

**Nature of comments**

Section 7.3 and 7.4 relate to the London Plan. TfL support the recognition in paragraph 7.4 which relates to pooling. There are numerous transport projects and proposals that would benefit from pooling arrangements. TfL consider that it would be useful to add further information in this paragraph which alerts developers to the fact that the Mayor and TfL seek obligations on planning applications that are referred to the Mayor 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. In paragraphs 8.2 and 8.5 it would be beneficial to add a reference of the need to ensure that the nature and level of contributions from the Mayoral Group,

including TfL should also be ascertained by developers (for referred applications), as this would also assist developers in reaching decisions on economic viability of their scheme at an early part of the process. In some cases, where a substantial contribution for transport is required or obtained, which involves TfL delivering multiple transport services across differing modes, TfL, upon the Mayor’s instruction, seeks to be co-signatories on legal agreements for very large and complex planning applications. Whilst this occurs infrequently, a reference to this would be useful. For instance, this could apply to a scheme as large as Cricklewood. TfL suggest that a reference to this is added either to paragraph 7.4 and/or after paragraph 8.5. In the Management, Administration and Enforcement section, including TfL would be a positive addition. To include TfL would highlight that our organisation is a transport provider, and often key to ensuring that the terms of the planning obligation in transport terms is delivered.

**Council’s response**  
**Action**

The council agrees with the point raised.

SPD has incorporated the comments raised in respect of paras 7 and 8. However, matters relating to management, enforcement... etc will be dealt with in the forthcoming SPD on contribution to Transport and Infrastructure.

**3. Organisation**  
**Nature of comments**

**London Development Agency**

London Development Agency welcomes the production of SPD. However, the agency considers the SPD to be light and may not provide sufficient information for developers. The agency recommends that matters regarding the improvement to social and communal facilities to meet the need of the development should also be emphasised. Also recommends that greater weight be given to on-site provision of facilities.

Further clarification is required within the relevant sections that planning obligations should not just cover the provision of new facilities but it should also address improving existing facilities if the improvement is needed to meet the needs of development.

Consider including a Monitoring and Implementation section in the SPD as to how the SPD will be monitored, inclusion in Annual Monitoring Repots etc.

Too much weight is given to financial contributions whereas planning obligations cover other issues such as requiring land to be used in certain way or include a particular mix of uses. The Council agrees with the point raised. However, at this stage the Council’s aim is to set out a general framework for a

**Council’s response**

new approach towards planning obligations. The planned topic based SPDs will provide further details on related issues, such as setting out thresholds, or the other delivery mechanisms, i.e. on site-provisions or improvement to the existing facilities.

**Action** SPD amended where appropriate. The other issues raised will be included in the forthcoming topic based SPDs.

4.

**Organisation English Heritage**

**Nature of comments** English Heritage is disappointed that the existing UDP does not consider conservation issues as a priority for planning obligations. EH urges the Council through the LDF review, that a greater weight be given to the value of the borough’s heritage and its contribution to the quality of the built environment through policies or designation of local conservation areas and listed building.

EH also questions whether the Council intends to provide an additional SPD covering conservation and heritage issues.

EH is also concerned that the sustainability’s appraisal report does not adequately evaluate the importance and the value of the historic environment. EH recommends the Council’s programmed topical SPD for, “recreation, culture and green spaces” would be the best place to include Conservation Heritage issues.

**Council response** There is a range of policies in the emerging UDP and LDF which cover conservation issues, listed building and heritage issues.

The Council has adopted a “3 Strand Approach” in addressing the development pressure and the necessary growth in the borough. This approach sets out a strategy for protecting and enhancing the best of Barnet’s quality suburbs and delivering growth through high quality sustainable development and comprises the principles of Protection, Enhancement and Growth.

Strand two, sets out a strategy, “To protect and enhance Barnet’s suburbs of high quality”. In this approach, new development will be considered in relation to its context, wider townscape and landscape qualities, rather than in isolation. Consideration of design and layout will be informed by these wider area characteristics, conservation and heritage issues as well as neighbouring buildings.

The Council over the years has also designated a number of conservation areas and has a rolling programme for producing “character appraisal statements” in respect of the designated conservation areas.

As well as a comprehensive set of policies in its emerging UDP, the LDF and the character appraisal statements, the Council has provided numerous “design guidance notes” to provide further information addressing heritage and sustainable issues. These documents are material considerations in the assessment of development proposals and will be regarded as Supplementary Planning Document in their own right.

Conservation and heritage issues form the corner stone of the Council’s policies and its approach towards development in the Borough. The issues raised will be taken into full consideration in future Development Plan Documents and the SPDs.

**Action**

To fully consider and address issues raised by English Heritage within the Council’s future related documents.  
To Consult EH on the rolling programme and on the planned Character Appraisal Statements and management plans, and all other relevant documents.

**5.**

**Organisation Environment Agency**

**Nature of comments  
Council’s response  
Action**

Generally supports the SPD and requires further attention to be paid to environmental matters.  
Agree  
  
1. The planned topical based SPD to pay particular attention to the environmental matters and to address the overarching objectives for Sustainable Development.  
2. Consult the Agency in respect of the future relevant topic based SPDs and the associated appraisals.

**6.**

**Organisation The Countryside Agency – Landscape Access Recreation**

**Nature of comments**

CA is generally in support of the document. The Agency advises the Council to consider PPG4 in relation to industrial and commercial development and small firms. Further recommends consideration of live / work units to boost the employment potential and to achieve sustainability.

**Council’s response**

The Council welcomes the support and generally agrees with the concerns raised by the Agency. The Council pays particular attention to the employment and training issues. The existing policy framework in the emerging UDP identifies “employment and training” as priority for planning obligation. The issue of work / live is rather complex and difficult to enforce. Experience has shown that such units normally end up being used purely for residential purposes. Whilst considering such schemes, the Council will ensure that the work and live areas are clearly defined or are provided in

separate units.

**Action** The planned topical based SPD to pay particular attention to comments raised by the Agency.

7.  
**Organisation Highways Agency**

**Nature of comments** Recommends matters in relation to contributions for trunk road should be spelled out more clearly.

**Council's response** **Agree.**

**Action** The planned topical based SPD for contribution to transport and infrastructure will pay particular attention to the issues concerning trunk roads.

8.  
**Organisation The Theatre Trust**

**Nature of comments** 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 Recreation.

**Council's response** **Agree**

**Action**  
1. The planned topical based SPD on obligations for "Culture, recreation and green spaces", to pay particular attention to theatres.  
2. Consult the Trust in respect of the future relevant topic based SPDs.

9.  
**Organisation Hampstead Garden Suburbs Resident Association**

**Nature of comments** The SPD should make greater emphasis on the 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.

**Council's response** The design, conservation and heritage issues form the corner stone of the Council's policies and its approach towards development in the Borough.

The Council over the years has designated a number of Conservation Areas and has a rolling programme for

producing “Character Appraisal Statements” in respect of the designated conservation areas.

The Hampstead Garden Suburbs Design Guidance – 1994, forms one of the established documents which is given considerable weight when considering planning schemes in this Conservation Area.

This overarching SPD covers issues in relation to legal obligations and will not affect the status of the Hampstead Garden Suburb Design Guide or other design guides which will remain as material consideration for development control purposes.

**Action**

1. Continue to give all due weight to “Hampstead Garden Suburbs Design Guidance – 1994” in determining schemes in this Conservation Area.
2. Continue to liaise with HGSCA in relation to all development which affects the conservation areas.

10.

**Organisation CgMs on behalf of Metropolitan Police Service**

**Nature of comments**

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 sec. 106 where these are consistent with the policy tests in Circular 05/05.

**Council’s response**

Agree.

The requirement for capital provision for police services could be justified. However, it should be noted that planning contribution can only be required for police facilities (i.e. land and buildings) and not for salaries or wages of the police force.

**Action**

SPD has been amended accordingly

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**Organisation Lyonsdown Residents’ Group**

**Nature of comments**

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

**Council's response**

several developments deliver the additional social community required by the developments.  
The Council agrees with the group's concerns.

Planning contributions are considered as key elements in the implementation and the delivery of "Sustainable Development" and planning policy for an area. However, the guiding principle on the use of such contribution is that **unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by the applicant.** The Council will have full regards to this principle in the application of the planning legal agreements.

Parking issues and standards are covered within the emerging UDP. The planned SPD for transport and infrastructure may further address this issue.

Planning agreements are drafted incorporating a clause requiring the delivery of the deed within a certain period of time, from the date of the receipt of the fund. Failing to adhere to this timeframe means that the fund would have to be returned to the developer. The proposed procedure will allow the Planning Service to manage the S.106 function and work with other services and the Borough Solicitor corporately to provide an effective monitoring system on a single database. S.106 contributions will be regularly monitored to ensure they are implemented in accordance with their legal obligations, with effective enforcement where necessary. To ensure transparency, approved S.106 data is proposed to be made available to interested parties on the planning register.

The planning service will also take a proactive role in ensuring that the Council's other services such as education or highways, will execute the requirements of the deed well within the agreed timeframe.

**Action**

Address the issues raised in the forthcoming topic based SPDs.

**12 Organisation**

**Barnet & District Local History Society**

**Nature of comments**

The Society has commented:

"It is essential that such contributions be earmarked for truly local improvement (and not borough wide), such as endowing the local school, and be 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."

“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.”

**Council’s response**

The Council agrees with the Society’s concern.

The pooling of legal agreements is encouraged by the new Circular and is proposed to be adopted by the Council. These will allow greater flexibility in implementation of the legal obligations. However, there may be potential danger where such development is not delivered in the right place.

These issues are at the heart of the Council’s adoption of a new strategy for the implementation of legal obligation. As stated above, the new procedure will allow the Planning Service to manage the S.106 function and works with other services and the Borough Solicitor corporately to provide an effective monitoring system on a single database. S.106 contributions will be regularly monitored to ensure they are implemented in accordance with their legal obligations, with effective enforcement where necessary. To ensure transparency, approved S.106 data is proposed to be made available to interested parties on the planning register.

The new strategy seeks to “project manage” the legal obligation provisions in a more comprehensive and effective manner through the use of a central monitoring system, cross divisional working and partnership arrangements with other services and organisations.

The planning service will take a proactive role in ensuring that the services will execute the requirements of the deed well within the specified timeframe and in accordance with the Council’s priorities.

In regard to the proposed PGS, the Council totally agrees with the concern raised by the Society. Barnet has formally responded to the proposed PGS and has objected on the grounds of the risk of London losing out, potential inequality of redistribution of funds and huge practical concerns around implementation. The Council’s biggest concern is the scaling back of traditional planning obligations and the removal of local control.

**Action**

Ensure compliance with the procedure set out in the proposed SPD.

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## Organisation      The Whetstone Society

<b>Nature of comments</b>	Support measures which require the developers to meet the full cost of infrastructure born by new development by the developers rather than the tax payer paying the price.
<b>Council's response</b>	Council welcomes the support
<b>Action</b>	Progress with adoption of the SPD.

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<b>Organisation</b>	<b>St George Central London Ltd</b>
Section, Page Paragraph, Subject 1. Introduction, 3, 1.1,-	
<b>OBJECTION</b>	<p>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 <del>to offset such costs and there may be circumstances in which a development would only be made acceptable if this was forthcoming. To</del> mitigate against a direct impact of a development proposal and make acceptable development which would otherwise be unacceptable in planning terms.</p> <p>This paragraph should be amended to be in accordance with paragraph B3 of Circular 05/2005.</p>
<b>Council's response</b>	The aim of this SPD is to interpret and provide further guidance on matters relating to Circular 05/05. The matters relating to legislative issues are further discussed in other sections of the SPD. In the introduction, the SPD explains why contributions from developers are justified.
<b>Action</b>	No further action

<b>Section, page, Paragraph</b>	1. Introduction, 3, 1.2 & 1.3
<b>OBJECTION</b>	The draft SPD should be reviewed and references to planning contributions should be amended to "planning obligations" in accordance with the terminology used in s106 TCPA 1990.
<b>Reason</b>	It is noted that the Council uses the words planning "obligations" and "contributions" interchangeably. The current legislative framework allows local authorities to seek "planning obligations". That is the language of the statute. Whilst s46 and 47 of the Planning and Compulsory Purchase Act 2004 makes provision for a new regime of "planning contributions" these provisions are not yet in force.
<b>Council response</b>	Agreed
<b>Action</b>	Amend the draft SPD taking on board the issue raised in the objection.

<b>Section, Page, Paragraph</b>	The Purpose of the Supplementary Planning Document, 3, 2.2 [Bullet point on "clarity"]
<b>OBJECTION</b>	Amend for typographical errors.
<b>Council's response</b>	Agree
<b>Action</b>	Amend the draft SPD taking on board the issue raised in the objection.

<b>Section, Page, Paragraph</b>	2. The Purpose of the Supplementary Planning Document, 3, 2.2 [Bullet point on "speed and cost effectiveness"]
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<b>OBJECTION</b>	Amend to recognise that the Council's standard form agreements cannot be imposed on developers and that there will be circumstances where it is appropriate for a developer to submit first drafts of s106 documentation.
<b>Reason</b>	<p>It is noted that the Council now seeks to impose its own standard legal agreements/unilateral undertakings/deeds of variation upon applicants. Whilst it is recognised that Government guidance encourages local authorities to prepare and use their own standard form agreements, this practice is, only, "encouraged" by Circular 05/2005. It is <u>not</u> a requirement. The draft SPD should acknowledge this.</p> <p>An applicant that seeks to provide a first draft s106 deed (prepared by its chosen lawyers) should not be penalised by the Council should it choose to do so. It should be recognised that developers who have experience of working in this Borough may well have negotiated agreements with the Council that can more easily be re-used on a different site. In those circumstances it may be quicker to provide that document as a basis upon which to commence negotiations rather than start amending the Council's standard form agreement.</p>
<b>Council's response</b>	In the interest of fairness and to increase certainty and speed, the SPD will follow Government advice to provide standard legal agreements and formulae. Inevitably where circumstances dictate, additional clauses will be inserted into the standard agreements, or clauses may be attuned accordingly.
<b>Action</b>	No further action
<b>Section, Page, Paragraph</b>	2. The Purpose of the Supplementary Planning Document, 3, 2.2 [Bullet point on "practicality"]

<b>OBJECTION</b>	The reference to "negative" should be deleted
<b>Reason</b>	The Council's view of development in the Borough is interesting to note. The statement that planning obligations will be required to overcome the "negative impact" of development suggests that the Council considers development to be something which is inherently bad and something for which compensation will always be required. The Council fails to recognise the very positive effects of development, as promulgated by our client, for example, the remediation of contaminated sites, the bringing back into reuse of derelict sites, the improvements to lighting, safety, visual amenity etc.
<b>Council's response</b>	Developments, as well as making positive contributions, inevitably exert adverse impacts upon the environment. For example, whilst a residential development may address the local / strategic housing need, they may bring to bear negative impact such as traffic and parking problems, quality of life of the existing residents, or exert pressure on existing services and facilities. The Council's aim is to minimise such impacts. In this sense, legal obligations may be used to address such issues, and hence allow the development to go ahead which might have otherwise been refused.
<b>Action</b>	No further action

<b>Section, Page, Paragraph</b>	4. The Legislative Framework, 5, 4.2
<b>OBJECTION</b>	This paragraph should be amended to be in accordance with section B3 of Circular 05/2005
<b>Reason</b>	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 <u>can be used to provide services and facilities required to mitigate against a direct impact of a development proposal</u> <del>are commonly used to provide services and facilities required as a consequence of schemes being promoted by the developer</del> , for example, affordable housing or transport improvements. The services and facilities provided through such planning obligations are normally the subject of negotiation between the developer, <u>landowner</u> and the LPA taking on board the views of the local community.
<b>Council's response</b>	Agree
<b>Action</b>	SPD amended accordingly

<b>Section, Page Paragraph</b>	5. Circular 05/2005 – Planning Obligations, 6 – 8, 5.1 - 5.12
<b>OBJECTION</b>	These paragraphs should be simplified to avoid misinterpretation and uncertainty.
<b>Reason</b>	<p>As a general point, we recognise the Council's attempt to assist applicants and developers in the Borough to understand the guidance on planning obligations as set out in Circular 05/2005. However, rather than repeating some of the key points, the Council appears to have set out its own interpretation of the guidance and included that in the draft SPD.</p> <p>The Council's explanation is, in some instances, difficult to follow and does not always accurately reflect Circular 05/2005. Developers are used to having to review the guidance in 05/2005 and are, of course, aware of its provisions. It is unnecessary therefore for the Council's SPD to summarise the advice in 05/2005 in a way that suits the Council to do so. It would be more helpful if the draft SPD simply referred to the relevant paragraphs of 05/2005 that the Council considered to be particularly pertinent rather than seek to set out the guidance in a way that opens it up to misinterpretation and uncertainty. Pages 6, 7, 8 and should be simplified accordingly.</p>
<b>Council's response</b>	The Council has highlighted the important parts of the new Circular which significantly differ from the previous guidance. Where appropriate, these have been interpreted to provide further guidance to stress the main shift of emphasis which is the expectation that it is the development industry, rather than the public sector which is expected to pay for a wide range of community facilities (for further explanation see below).
<b>Action</b>	No further action

<b>Section, Page Paragraph</b>	5. Circular 05/2005 - Planning Obligations, 6, 5.2
<b>OBJECTION</b>	The reference to the "new Circular recommends" should be amended to "the new Circular encourages".
<b>Reason</b>	To be in accordance with the language of Circular 05/2005.
<b>Council's response</b>	Agreed
<b>Action</b>	Amend the draft SPD taking on board the issue raised in the objection.

<b>Section Page Paragraph</b>	5. Circular 05/2005 – Planning Obligations, 6, 5.2
<b>OBJECTION</b>	This paragraph should be amended to accurately reflect the provision of paragraphs B33 of Circular 05/2005.
<b>Reason</b>	<p>Paragraph B33 of Circular 05/2005 states “Local authorities are encouraged to employ formulae and standard charges where appropriate...”</p> <p>The Council should recognise within paragraph 5.2 of the SPD that it may not always be appropriate to use standard formulae and charges. For example, large development sites or complicated brownfield sites that may require substantial remediation work, renovation of listed buildings and when a community benefit is being provided as part of a development proposal.</p>
<b>Council’s response</b>	The planned topic SPDs programmed in Local Development Scheme will provide further details as to when and where standard formulae or in-kind provision of facilities could be employed.
<b>Action</b>	No further action

<b>Section Page Paragraph</b>	5. Circular 05/2005 – Planning Obligations, 6, 5.3
<b>Subject</b>	Tests for the requirement of Planning Obligations
<b>OBJECTION</b>	<p>This paragraph should read:</p> <p>The five point test is <u>not</u> one that should "normally be considered" but one that "<u>must</u> be met by local planning authorities".</p>
<b>Reason</b>	This should be amended to reflect the language of Paragraph B5 of Circular 05/2005. The guidance is unequivocal in this regard.
<b>Council’s response</b>	Agreed
<b>Action</b>	Amend the draft SPD taking on board the issue raised in the objection.

<b>Section Page Paragraph</b>	5. Circular 05/2005 – Planning Obligations, 6, 5.4
<b>OBJECTION</b>	This paragraph should be amended to be in accordance Circular 05/2005.
<b>Reason</b>	<p>This part of the 05/2005 guidance (more specifically paragraph B8) makes the connection between the need for a planning obligation from a planning point of view in order to bring a development in line with the objectives of sustainable development. In other words the policy is required to justify planning obligations which are regarded as being <u>essential</u>.</p> <p>This should not be interpreted as meaning that provided a local authority sets out its requirements in its policies any planning obligation will automatically be justified.</p>
<b>Council's response</b>	<p>The new Circular represents a clear policy shift from the formerly understood tests of necessity. The equivalent test to the previous necessity test is now expressed as, "<b>Necessary to make the proposed development acceptable in planning terms</b>". This test is expressed in para. B8 of the Circular as: "...necessary from a planning point of view, i.e. in order to bring a development in line with the objectives of sustainable developments as articulated through the relevant local, regional or national policies".</p> <p>Local authorities are encouraged to ensure that their new Local Development Framework policies are fully detailed, setting out a comprehensive framework for the negotiations of planning obligations. Authorities are encouraged to ensure that all relevant requirements are reflected in their policies, including requirements from all sectors and tiers of Government and other public agencies responsible for physical and community infrastructures. The Circular encourages the policies for obligations to cover both allocates sites and windfall site.</p> <p>Once the local policies are approved within LDDs they will carry very substantial weight and therefore need to be complied with in a more strict sense. Hence, if there are policies requiring contributions for development, these need to be forthcoming -albeit-subject to meeting other tests in the circular.</p>
<b>Action</b>	No further action

Section, Page, Paragraph	5. Circular 05/2005 – Planning Obligations, 6, 5.5 [Bullet point "prescribe" ]
<b>Subject</b>	Use of Planning Obligations

<b>OBJECTION</b>	This sentence does not make sense. Is there some wording missing?
<b>Council's response</b>	The Council agrees with the point raised.
<b>Action</b>	Amend the draft SPD taking on board the issue raised in the objection.

<b>Section Page Paragraph</b>	5. Circular 05/2005 – Planning Obligations, On-site or off-site provision 7, 5.7
<b>OBJECTION</b>	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, <u>where possible</u> , to an agreed specification.
<b>Reason</b>	It may not always be possible to provide facilities on a proposed site and a financial contribution may be appropriate. For example, high density towers will have a relatively small site area but may produce a requirement for a community facility.
<b>Council's response</b>	Agreed
<b>Action</b>	SPD amended to take on board the issue raised in the objection.

<p><b>Section Page Paragraph</b></p>	<p>5. Circular 05/2005 – Pooled Contribution and Spare Capacity Planning Obligations, 7, 5.8 and 5.9</p>
<p><b>OBJECTION</b></p>	<p>These paragraphs should be amended to quote paragraphs B21 and B22 of Circular 05/2005.</p>
<p><b>Reason</b></p>	<p>It is recognised that Circular 05/2005 allows local authorities to pool contributions for infrastructure necessitated by the combined impact of a number of developments. However in paragraphs 5.8 and 5.9, the Council fails to accurately reflect the Circular guidance which makes absolutely clear in paragraphs B21 and B22 that there must be "some impact" from the development to justify any need for a planning obligation.</p> <p>It must be demonstrable that there is a "direct relationship between the development and the infrastructure and the fair and reasonable scale of the contribution being sought". These requirements will apply whether the Council is seeking contributions for cumulative impact or for future provision. Paragraph 5.9 is therefore wrong to state that developers may be expected to pay for future provision of facilities "the need for which may <u>not</u> be directly covered by their development". This sentence should therefore be deleted in line with paragraph B22 of Circular 05/2005.</p> <p>The Council quotes paragraphs B16 and B22 in support of its commentary on pooling of contributions. We suggest that it would be more accurate to quote paragraphs B21 and B22 in this section.</p>
<p><b>Council's response</b></p>	<p>This section of the SPD relates to the issue of spare capacity. The Circular at para B22 makes it clear that developers may be expected to pay for future provision of facilities, the need for which may not be directly caused by their development.</p> <p>The new 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 now 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.</p>
<p><b>Action</b></p>	<p>SPD amended to further clarify the notion of treatment of spare capacity.</p>

<p><b>Section Page Paragraph</b></p>	<p>5. Circular 05/2005 – Pooled Contribution and Spare Capacity, Planning Obligations, 7, 5.10</p>
<p><b>OBJECTION</b></p>	<p>This paragraph should be amended to recognise the proper approach to seeking planning obligations as set out in paragraph B8 of Circular 05/2005.</p>
<p><b>Reason</b></p>	<p>The Council suggests in this paragraph that Circular 05/2005 represents a "clear policy shift from the normally understood tests of necessity". It goes on to state that if a UDP or LDF policy includes a requirement for a particular planning obligation to be made, such payment will be legitimised.</p> <p>The Council is, quite frankly, wrong in its interpretation of the revised policy tests as set out in paragraph B5 of Circular 05/2005. The guidance now requires that all planning obligations sought or offered should be necessary from a planning point of view. Whilst development plan policies are a crucial predeterminant in justifying the seeking of an obligation they are not the only predeterminant. The guidance makes clear that obligations must also be "so directly related to proposed developments that the development ought not to be permitted without them". There must therefore be "some impact" of the development to justify the need for a particular obligation. If the Council believes that a payment is legitimised simply because its local policies says that it ought to be provided, then its approach is misconceived, misguided and unlawful.</p>
<p><b>Council's response</b></p>	<p>Unlike the draft Circular, the Circular 05/2005 itself does not offer specific advice if the impact of obligations is such as to render unviable a proposed development. It is implicit in the Circular, however, that all planning obligations must be reasonable and a lack of viability would be a legitimate basis for opposing a proposed obligation. This is not disputed here. The local policies could only be adopted if they address a specific issue and identify a need. The argument here is when a need is already identified through a policy, then it is the developer who has to meet the cost of that additional service required by their development. (See below for further explanation)</p>

<b>Section Page Paragraph</b>	5. Circular 05/2005 – Planning Obligations, 9 – 10, 5.16 - 5.18 Other suggestions and legislative reform, the Optional Planning Charge; and Planning Gain Supplement
<b>OBJECTION</b>	This section should be amended to reflect the latest position with regard to the draft PGS proposals.
<b>Reason</b>	These paragraphs should now be updated to reflect the current position in relation to the Government's draft proposals for PGS. A document was published for public consultation in December 2005 with the deadline for responses given as 27 February 2006. Should the Government decide to implement its proposals for a PGS this is not likely to occur before 2008. The current system of planning obligations under s106 TCPA (planning obligation under section 106 of the Town and Country Planning Act) 1990 is therefore expected to continue in this interim period.
<b>Council's response</b>	The Council agrees with this point.
<b>Action</b>	SPD amended to take on board the issue raised in the objection.

<b>Section Page Paragraph</b>	8., At pre-application stage, 13, 8.2
<b>OBJECTION</b>	This paragraph should be deleted.
<b>Reason</b>	<p>The requirement to engage with the Local Planning Authority prior to the acquisition of land for development is contrary to guidance laid down in Circular 05/2005 (paragraphs B31 – B50: A fast, Predictable, Transparent and Accountable System).</p> <p>There is no national policy background or guidance that supports the Council’s approach that developers should clarify any potential contributions required through planning obligations prior to the acquisition of land.</p> <p>First, when a potential land purchase is made available to a developer there is a very short process involved in confirming the purchase and any requirement to engage with the Council at this stage is highly likely to cause significant delay and additional expenditure and risk.</p> <p>Secondly, at this stage of the development process a developer is highly unlikely to have sufficient details with regards to any development proposals and therefore any likely contributions required through planning obligations cannot be ascertained.</p> <p>This section of the SPD is entitled “At pre-application stage” and this is the time when a developer will engage with the Council regarding their draft proposals and any likely planning obligations, not prior to the acquisition of land.</p> <p>For these reasons, paragraph 8.2 should be deleted.</p>
<b>Council’s response</b>	The Council can not force an individual developer to engage with pre application discussions with the Council or to determine the extent of potential obligations likely to be required. However failing to do so may result in over payment for the site by the developer and consequential suffering of economic loss if such important issues are not factored in the development cost.
<b>Action</b>	No further action

<p><b>Section, Page, Paragraph, Subject</b>                  9, Management, administration and enforcement, 15, 9.1, Section 106 Project Management</p>	
<p><b>OBJECTION</b></p>	<p>This paragraph should be amended to state that financial contributions are usually paid on commencement of development or at other phased stages of development.</p> <p>Reason                  The Council states that s106 legal agreements usually provide for the payment of financial contributions before any physical works commence. In our experience and that of our client generally this is <u>not</u> usually the case.</p> <p>Of course, circumstances will vary between one site and another but financial payments are usually triggered on commencement of development. The suggestion here is that they should be paid upon completion of the deed. It may be that it is several years from the grant of planning permission to commencement of development/physical works and a developer should not be expected to make financial contributions before he has implemented his permission (there may be circumstances where a permission is never implemented).</p> <p>As a general rule the Council should not be prescriptive as to when payments should be made under a s106. Payment will depend on the specifics of the site and scheme in question and it is in the interest of all parties involved for a degree of flexibility to be maintained in this regard.</p>
<p><b>Council's Response</b></p>	<p>The Council agrees with the point raised in the objection.</p>
<p><b>Action</b></p>	<p>Amend the draft SPD taking on board the issue raised in the objection.</p>

<b>Section, 10. Cost Recovery, Page 16, Paragraph 10.2</b>	
<b>OBJECTION</b>	<p>This reference should be deleted.</p> <p><b>Reason</b>                  It is entirely unreasonable for the Council to prescribe that the Council "will undertake the drafting of the planning agreement". There is no requirement in Circular 05/2005 that the Council should be solely responsible for the drafting of planning obligation (s106) documentation.</p> <p>There may be any number of reasons (not least in terms of resources/timing/speed etc) where it will be preferable for a developer's solicitor to take responsibility for drafting. The Council should not seek to prescribe in mandatory terms how the negotiation/drafting/completion of a legal agreement will be undertaken.</p>
<b>Council's Response</b>	<p>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.</p> <p>A link will be provided on an appropriate page of the council's website 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.</p> <p>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.</p>
<b>Action</b>	<p>No further action at present. Redraft standard agreements following the publication of "ODPM Practice Guide", expected imminently.</p>

Section, Page, Paragraph	10. Cost Recovery , 16, 10.2-10.3
<b>OBJECTION</b>	These paragraphs should be deleted.
<b>Reason</b>	<p>There is no policy basis upon which the Council may require an applicant to pay administrative and monitoring costs (previous draft guidance in the revised draft Circular 1/97 on "cost recovery" provisions does not now appear in Circular 05/2005)</p> <p>It is therefore entirely unreasonable for the Council to impose a blanket levy on all developments where planning obligations are sought. It is unduly onerous and completely unjustified for the Council to impose all of the following charges:-</p> <p>Legal and professional costs in relation to the planning agreement                  Costs of an independent expert should valuation advice be required by the Council                  Standard fees per obligation/fixed rate for small contribution or percentage rate for large contributions                  For an agreement with two or more obligations, £750 per non monetary head of term                  £250.00 per affordable housing unit</p> <p>In any event, there is no indication as to how such costs have been calculated by the Council and the basis upon which the Council considers them to be reasonable.</p> <p>A £250.00 charge per affordable housing unit is entirely contrary to the Circular guidance and is also unreasonable. It amounts to a further hidden tax on the developer in the provision of affordable housing and may in itself affect the viability of affordable housing provision. On what possible basis does the Council believe that this charge can be justified per unit? It simply serves to make the provision of affordable housing increasingly unaffordable and will, without doubt, affect delivery in this Borough.</p>
<b>Council's response</b>	<p>As outlined in the SPD, the delivery of the planning contribution, from the negotiations stage to implementation can take considerable time and resources. Normally multi disciplinary teams are involved, reports need to be drafted for the drawing down the money by the services which need to be vetted by legal officers, other relevant services and the Council's s.106 monitoring officers. Inevitably a considerable cost in monitoring and managing of the fund is incurred.</p> <p>The contribution through legal agreement is calculated in a manner which normally covers the cost of the provision of that service. Should any part of a secured contribution be used for the monitoring or the project management purposes, then the remaining sum would not be sufficient to effectively mitigate against the impact of the development.</p>

	<p>The Council is therefore justified to ensure the cost is not passed to the Council's rate payer.</p> <p>However, the cost levels have been adjusted in the SPD. These will be monitored to ensure unreasonable sums are not charged. The Council will test this figures for a period of a year and if appropriate make further adjustment.</p>
<b>Action</b>	<p>Retain the principle of the cost recovery. However, the charging levels have been revised following consultation with other council's services.</p> <p>Carry out annual reviews to the costing regime in order to assess its effectiveness, budgetary implications, impact on the service and customer satisfaction. Readjust the charging level to ensure that the limits and the extent of charging recipient matches the cost of the service i.e. there will be no profit or cross subsidy between recipients of the service.</p>

<b>Section, Appendix III, Page, 20, Paragraph,</b>	
<b>Subject, Notification Form</b>	
<b>OBJECTION</b>	An explanation of the need for this form and when and by whom it is intended to be completed should be included within the main text of the draft SPD.
<b>Reason</b>	It is not entirely clear from the SPD as to whether this notification form is to be completed internally by officers at the Council or whether this is to be completed by the applicant.
<b>Council's response</b>	The form needs to be completed by the developer when the specified terms in the legal agreement are triggered. This has now been further clarified in the SPD.
<b>Action</b>	SPD amended accordingly

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## Organisation **Bellway Homes**

**Nature of comments** The Company is highly critical in regards to sec.10 "cost recovery". The levels of contributions appear quite excessive, especially for smaller development and for affordable housing.

Further, in the light of the Government initiative to introduce the PGS, the company is concerned that the timing for the production of the SPD may not be appropriate.

**Council's response** As outlined in the SPD, the delivery of the planning contribution, from the negotiations stage to implementation can take considerable time and resources. Normally multi disciplinary teams are involved reports need to be drafted

for the drawing down of money by the services which need to be vetted by legal officers, other relevant services and the Council's s.106 monitoring officers. Inevitably a considerable cost in monitoring and managing of the fund is incurred.

The contribution through legal agreement is calculated in a manner which normally covers the cost of the provision of that service. Should any part of a secured contribution be used for monitoring or project management purposes, then the remaining sum may not be sufficient to fully mitigate against the impact of the development.

The Council is therefore justified to ensure the cost is not passed to the Council's rate payer.

As regards to the second point, PGS will not be implemented before 2008 at the earliest. In the interim period the Government is encouraging local authorities to follow the advice contained in the recently published Circular 05/2005.

**Action**

Retain the principle of the cost recovery. However, the charging levels have been revised following consultation with other Council's services.

Carry out annual reviews to the costing regime in order to assess its effectiveness, budgetary implications, impact on the service and customer satisfaction. Where appropriate, readjust the charging level to ensure that the extent of charging recipient matches the cost of the service and that there will be no profit or cross subsidy between recipients of the service.

For further information please contact

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