

PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

Updated following consultation on Draft Charging Schedule for submission to the examiner alongside the Draft Charging Schedule August 2014

1. INTRODUCTION

Status of document

- 1.1 This document is a draft Planning Obligations Supplementary Planning Document (SPD), and sets out the approach the Legacy Corporation will take in relation to section 106 agreements from April 2015 or once the Legacy Corporation CIL is implemented.
- 1.2 The Planning and Compulsory Purchase Act 2004 required that all Local Development Documents, including DPDs (now Local Plans) and Supplementary Planning Documents (SPDs) be subject to Sustainability Appraisal (SA) prior to publication. Alterations to Section 19(5) of the 2004 Act under the Planning Act 2008 removed the requirement for Local Planning Authorities to produce an SA for SPDs. The rationale behind this is that SPDs do not contain any new policies, but provide supplementary guidance relating to policies set out in overarching Local Plans that have already been subject to SA.
- 1.3 The draft Planning Obligations SPD will be supplementary to the LLDC's Local Plan once adopted and therefore the impacts of the policies that the draft SPD is supplementary to will be formally assessed through the Local Plan Sustainability Appraisal process. For this reason LLDC considers that an SA/SEA is not likely to be required for the purpose of the draft Planning Obligations SPD as outlined in this report.

Consultation Process

- 1.4 Comments on this SPD are invited alongside comments on the Draft CIL Charging Schedule and Draft Infrastructure List. The consultation period runs from 27th May - 8th July 2014.

2. CONTEXT

London Legacy Development Corporation

- 2.1 The Legacy Corporation is a Mayoral Development Corporation established by the Mayor of London on 1 April 2012. The purpose of the Legacy Corporation is:
"To promote and deliver physical, social, economic and environmental regeneration of the Olympic Park and its surrounding area, in particular by maximising the legacy of the 2012 Olympic and Paralympic Games, by securing high-quality sustainable development and investment, ensuring the long-term success of the facilities and assets within its direct control and supporting and promoting the aim of convergence"

Infrastructure Needs in the Legacy Corporation Area

- 2.2 The infrastructure needs in the Legacy Corporation Area have been comprehensively assessed and an Infrastructure Delivery Plan (IDP) prepared. Consultation took place on the Plan between July and September 2013 and the plan will be updated as a result of comments as necessary. This SPD should be read alongside the IDP.

3. STATUTORY PLANNING FRAMEWORK

The Development Plan and status of this Strategy

- 3.1 Within the London Legacy area the current development plan is made up of the Borough Local Plans, the four Core Strategies and Fish Island Area Action Plan (September 2012) and Hackney Wick Area Action Plan (September 2012). Borough development plan documents adopted after 30th September 2012 do not apply within the Legacy Corporation area. The Legacy Corporation is preparing its own local plan. The Local Plan will gain in material weight as it moves through the statutory stages towards adoption.

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- 3.2 This is a Supplementary Planning Document which sets out further guidance on how the Legacy Corporation will apply emerging policy in its draft Local Plan. It will be consulted on at the same time as the CIL Draft Charging Schedule, and should be read in conjunction with that.

Community Infrastructure Levy

- 3.3 The Legacy Corporation is a CIL charging authority. The Charging Schedule is at Draft stage, and following consultation will be considered by an independent inspector at an examination if necessary. This draft SPD has been prepared to help inform the inspectors consideration of the Draft Charging Schedule, and to set out clearly to applicants the Legacy Corporation's approach to section 106 agreements.

Power to enter into section 106 agreements

- 3.4 The power of the Legacy Corporation as local planning authority to enter into a planning obligation with an owner of land in its area is set out in s106 of the Town and Country Planning Act 1990 (as amended).
- 3.5 The Government's guidance on planning obligations is contained in the National Planning Policy Framework (March 2012) as set out below.

Planning Conditions and Obligations

- 3.6 203. Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
- 3.7 204. Planning obligations should only be sought where they meet all of the following tests:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 3.8 205. Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.
- 3.9 206. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 3.10 The tests set out in the NPPF at 204 are the same as the test set out in Regulations 122 of the CIL regulations.

Mayor of London's Planning Powers

- 3.11 The Mayor of London does not have the power to take over strategically important (and in doing so determine the details of and be a signatory to s106 agreements) planning applications that are determined by the Legacy Corporation. See section 2A(1A) of the Town and Country Planning Act 1990. However, the Mayor retains the power to direct refusal.

Inherited Planning Obligations

3.12 Prior to 1 October 2012 the whole of the Legacy Corporation Area was either under the Olympic Delivery Authority (ODA) Planning Functions Order 2006 or the London Thames Gateway Development Corporation (LTGDC) Planning Functions Order (2005) as amended. The land within the Legacy Corporation Area, therefore includes planning permissions granted by each of the four boroughs, the LTGDC and the ODA. This includes a number of planning permissions for significant development schemes that are accompanied by section 106 agreements. A list of schemes that have associated section 106 agreements are in Appendix 1 to this SPD.

ODA

3.13 The biggest section 106 entered into by the ODA as local planning authority is the 'Legacy Communities Scheme' planning permission which was granted on 28 September 2012. This is a large phased scheme, which is envisaged to take 20 years to build out. The section 106 for this scheme (the LCS 106) binds future variations to the scheme secured under section 73 of the Town and Country Planning Act 1990 and new planning permissions for development which is part of the scheme. Changes to the currently permitted Legacy Communities Scheme which are made by way of a section 73 application will not attract CIL thanks to the transitional arrangements in Regulations 128 of the CIL Regulations 2010 (as amended). New planning permissions granted pursuant to s. 70 of the 1990 Act or on appeal which are for substantially the same development will be caught by the existing LCS 106 and will also be liable to CIL. In these circumstances, LLDC will reconsider any of the LCS 106 obligations to ensure that in combination with any CIL liability, the financial obligations attaching to any new planning permission are no more onerous than those imposed by the LCS 106 agreement and Mayoral CIL. New Planning Applications in this area which are not for substantially the same development as that proposed in the Legacy Communities Scheme will not be caught by the LCS 106 and will be subject to CIL in the usual way together with any planning obligations required by policy or in accordance with this SPD.

LTGDC

3.14 LTGDC applied a 'Planning Obligations Community Benefit Strategy' to ensure that developments addressed their infrastructure needs through providing contributions towards infrastructure and these contributions were secured through section 106 agreements. Contributions under these agreements were pooled across the Lower Lea Valley. The section 106 contributions were necessary to make the developments acceptable in planning terms. The Legacy Corporation is now ensuring that section 106 payments are made as set out in those agreements, and will monitor and manage the contributions as set out in the section below on monitoring.

3.15 It is likely that two large phased schemes with planning permission, granted by LTGDC, at Bromley by Bow north and Sugar House Lane will be implemented in the near future. The comprehensive regeneration of each of these sites generates specific site-wide infrastructure needs which are currently secured through s. 106 Agreements. Once the Legacy Corporation's CIL comes into effect, any future applications to develop discrete parcels of land within these sites (piecemeal development), will still be expected to contribute to these site-wide infrastructure requirements through a section 106 Agreement. The reason for this is that to realise LLDC's regeneration ambitions for these two sites, development within both sites needs to be part of a comprehensive regeneration scheme.

4. PLANNING POLICY PRIORITIES THAT WILL BE SECURED THROUGH SECTION 106

Sustainability

- 4.1 It is important that development in the Legacy Corporation area is sustainable, and the Legacy Corporation supports the Mayor of London's policies on carbon reduction and renewable energy.
- 4.2 In general development proposals will be expected to meet the requirements of these policies. Draft policy S2 Energy in new development of the Draft Publication Local Plan sets out the targets to be met in terms of reduced CO2 and provides for developments that do not meet targets to make a financial contribution to the Legacy Corporation's carbon dioxide offsetting fund at the rate of £46 per tonne of carbon dioxide. This will be used to deliver carbon savings through local carbon reduction projects. The payment of these financial contributions will be secured through section 106 agreement.

Affordable Housing

- 4.3 The London Plan and the emerging Legacy Corporation Local Plan set out policies on affordable housing. The level of affordable housing agreed on-sites or payments in lieu of affordable housing will be secured through section 106. The type of affordable housing, i.e. affordable rent, shared ownership, social rented will also be defined in the section 106 agreement.

Design

- 4.4 The Legacy Corporation will ensure high standards of design in all developments, in accordance with policies in the London Plan and emerging local plan. The costs of ensuring a successfully designed development and meeting urban design policies will be considered a development cost. For example a development may need to incorporate as part of the design, new open / amenity space for the residents of the development, or for developments adjacent to the waterways, new footpaths, ~~and~~ landscaping of the river bank and river enhancements. The Legacy Corporation may secure the provision of these elements through section 106 but would expect such elements to be an inherent part of the design of the scheme and be provided and paid for by the developers. Public realm enhancements immediately around the site may also be needed, and these will be secured through section 106 where they are related to a particular site. More area based generic works may be funded through CIL.
- 4.5 The Legacy Corporation has an established approach to ensuring design quality which includes its Quality Review Panel, which advises developers, officers and the planning committee on design elements of schemes. Section 106 agreements will be used to ensure that design quality is carried through into the detailed design and construction of the development.

Training and Employment

- 4.6 Draft policy B.6-5 Increasing local access to jobs, skills and employment training of the emerging Local Plan encourages employers to participate in skills and employment training initiatives, during the construction and operational phases of development. Funding towards job brokerage and work placement schemes, and measures towards encouraging local employment during the construction and operational phases of the development will be sought during the planning process and secured through section 106.

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Managed and Affordable Workspace

- 4.7 Under Draft policy B.5-4 of the emerging Local Plan the provision of managed / affordable workspace is encouraged. If the provision of managed / affordable workspace is proposed or required as part of a development, a scheme of rent levels and the principles of the management scheme will be secured through section 106 agreement.

Travel plans

- 4.8 Travel plans are an important tool to ensure that developments implement measures to promote sustainable transport choices, as set out in emerging local plan Draft policy T.7 and the London Plan. Travel plans should be submitted and agreed as part of the application. Implementation of the travel plan measures will be secured through condition or section 106 agreement as appropriate.

Phasing

4.9 The phased construction of development will be controlled where necessary through s106 agreements to ensure that

- on site infrastructure is delivered in phases appropriate to the phases of development completed,
- that uses are delivered sequentially in accordance with planning policy.
- 4.10 Regulation 9 of the CIL regulations allows for payment of CIL to be made on each phase of development, therefore setting out the phasing of development in the s106 will also influence the CIL payment schedule.

5. ON-SITE INFRASTRUCTURE

- 5.1 There are some sites within the Legacy Corporation area where on-site infrastructure will need to be provided and secured through section 106 agreements, in accordance with regulation 122 of the CIL regulations.
- 5.2 This infrastructure will not be added to the Draft Infrastructure List or funded through CIL.
- 5.3 As currently anticipated, on-site infrastructure will be required as part of development on the following sites. These are requirements that are set out in the Infrastructure Delivery Plan and in existing and emerging planning policy.

Bromley by Bow South

- 5.4
- A12 subway works to access Bromley by Bow regeneration-site. (approx cost £3 million). A12 All
 - Movement Junction to access the site (approx cost £4 million).
 - Provision of land for an IDEA store and primary school at Bromley by Bow.

Fish Island

- 5.5 Provision of land for a primary school at Neptune Wharf.

Hackney Wick

- 5.6 Community (D1) use within local centre.

Pudding Mill

- 5.7
- On-site in kind infrastructure such as roads.
 - Access to the area through provision of the realigned Marshgate Lane and All
 - Movement Junction on to the A11 (secured through a section 278 agreement with TfL)

Planning policy considerations and development costs

5.8 Existing and emerging planning policy has allocated land for local services and new schools. This land should be considered as having no development value for other uses. The local planning authority will expect that the transfer of such land to infrastructure providers is secured through section 106 agreement, but that no financial value will be attached to such transfers. Transfers of such sites will not be accepted as Land Payments under Regulation 73. This approach continues the approach followed by LTGDC in their Planning Obligations Community Benefit Strategy.

- 5.9 In summary, works that are normally considered as development costs are:
- Provision of land for infrastructure
 - Open space / landscaping that forms part of the development, for use predominantly by residents
 - Highways works immediately related to the site access
 - Abnormals e.g. river wall works (to be assessed by Environment Agency if works are considered to provide a wider benefit)
 - Facilities for exclusive use of residents of the related development Affordable Housing – part of standard development cost
 - Climate change mitigation costs – part of standard development cost

Value of section 106 contributions

- 5.10 The viability study carried out to support implementation of the Legacy Corporation CIL Charging Schedule assumed an allowance of £1000 per unit for residual section 106 and 278 contributions on top of CIL in its calculations. This is an estimate only and actual sums sought will vary according to site specific circumstances, but is considered a reasonable proxy for the likely sums to be sought after CIL is implemented. In the appraisals for the larger typologies of 1,100 and 1,200 units the viability study included a brownfield allowance of £5,000 per unit over and above the residual section 106 and section 278 allowance of £1000 per unit for the smaller sites, to account for additional site preparation/infrastructure works required to deliver such development.

The relationship between CIL and Section 106 and on site infrastructure

- 5.11 Existing section 106 agreements secure the provision of on-site infrastructure. If development does not come forward under those permissions and new applications are submitted, then the applications may be considered under the CIL regime. In these cases and subject to the Regulation 122 tests, it is likely the land for on-site infrastructure in the case of schools, and the provision of the on-site infrastructure such as bridges will still be secured through section 106, as it will not be identified as infrastructure that would be funded through CIL on the Draft Infrastructure List.
- 5.12 Works which are necessary in the public highway will be considered as a normal development cost and will be secured under 278 agreements, unless they are identified on the Draft Infrastructure List.
- 5.13 Open space within the site will be considered as a development cost necessary to ensure a good level of amenity and good design for the scheme and will therefore not be funded through CIL, but its provision will be secured through a section 106 agreement.
- 5.14 If an unallocated community facility is proposed as part of a scheme and the facilities meet an identified need which is wider than that of the proposed development, the Legacy Corporation may in appropriate circumstances give consideration to how this would be secured through the in kind provisions in the CIL regulations. The Legacy Corporation will also be open to proposals for developers to provide and build specific infrastructure meeting more than site-specific needs as integrated parts of schemes, and will consider on a case by case basis how this could be secured within the section 106 and CIL regimes. If such facilities are identified in a Regulation Draft Infrastructure List, LLDC will consider making Infrastructure Payments available.
- 5.15 Specific community facilities that the Legacy Corporation would welcome being provided include:
- Education facilities (not including land cost)
 - Health facilities (not including land cost)
 - Strategic public open space, parks, public realm, ecological and green infrastructure enhancement and strategic enhancement to the blue ribbon network e.g. construction costs related to the laying out of the space

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- Public transport infrastructure serving a wider community e.g. bridge links /DLR / bus services / station improvements
- Strategic Flood Relief Works
- Strategic Off-site Highway Works
- Emergency Services
- Community Centres
- Sports and Leisure Centres for community use

6. PRACTICAL MATTERS

Fees

- 6.1 Applicants will be required to pay the Legacy Corporation's fees for auditing development appraisals which they provide. Applicants will also be required to pay the Legacy Corporation's legal fees incurred in settling the legal agreement.

Index Linking

- 6.2 All payments set out in section 106 agreements will be indexed from the date that costs were agreed or from the committee date granting planning permission subject to a section 106 using the BCIS or RPI index as appropriate. The legal agreement will set out how the Charge plus inflation will be calculated.
- 6.3 Obligations in existing agreements will continue to be indexed as set out in those agreements.

Interest

- 6.4 All agreements will include requirements for interest to be paid on outstanding contributions if payments are made late. The normal requirement will be 3% above the base rate of a bank to be nominated by the Legacy Corporation.

Ownership

- 6.5 This strategy applies to all land within the Legacy Corporation Area whether private or publicly owned

Triggers

- 6.6 The timing of payments and other matters will be agreed by the Legacy Corporation and the developer before the grant of planning permission, and will be set out in the legal agreement.

7. MANAGEMENT AND MONITORING

How financial contributions collected by the Legacy Corporation are managed

- 7.1 All financial contributions set out in Legacy Corporation agreements will be payable to the Legacy Corporation. Where funds will be more appropriately spent by the local boroughs, for example payments in lieu of affordable housing, Legacy Corporation officers will liaise with borough officers to ensure that suitable projects are identified for spending.
- 7.2 Funds will only be passed to other organisations to be spent where a funding agreement or letter is in place to ensure funds are spent appropriately and within specified time limits.

Expenditure Process

- 7.3 The Legacy Corporation board have delegated decisions on spending of section 106 and CIL funding to the Project Proposals Group. This is a group of senior Legacy Corporation officers which is chaired by the Executive Director of Planning Policy and Decisions. Terms of reference of the group are available from the Legacy Corporation.

Monitoring contributions

7.4 The Legacy Corporation has set up a system to monitor financial and in kind contributions agreed through section 106 agreements. The Legacy Corporation will agree a modest monitoring contribution to facilitate compliance monitoring with the terms of the deed, which will be secured in the section 106 agreement. An annual report to board and planning committee will be produced setting out:

- Financial contributions and in kind benefits negotiated
- Financial contributions and in kind benefits received / provided
- Financial contributions spent

7.5 There is therefore a clear audit trail between the contribution made and the expenditure of the contribution.

Keeping Developers and Landowners Involved and Informed

7.6 Public consultation and liaison with developers and landowners is an important part of the process of developing the Legacy Corporations CIL Charging schedule. Once Legacy Corporation CIL has been introduced a Developer and Landowner Liaison Group will be established and will meet on at least an annual basis. Invitations for these meetings will be based on the most up to date consultation database information. Those who wish to be invited to relevant meetings should contact the Legacy Corporations' Planning Policy and Decisions Team using the contact information provided below.

By email to:

planningpolicy@londonlegacy.co.uk

By post to:

CIL - Policy Team,
London Legacy Development Corporation,
1 Stratford Place,
Montfichet Street,
London, E20 1EJ.

Appendix 1

Sites covered by existing section 106 agreements where development has not yet started or is underway. [Completed schemes are not listed.]

- Sugar House Lane (Land to the South of High Street, Stratford. East of the River Lee Navigation
Channel ref: 12/00336/LTGOUT/LBNM)
- Bromley by Bow North (Hancock Road, Three Mills Lane, Bromley By Bow, London, E3 ref: PA/11/02423/LBTH)
- Unex Tower (Station Street, Stratford and New Town, London, E15 1AJ ref: 11/01655/VARDWG/ LBNM)
- Neptune Wharf (12/00210/OUT)
- Land to the northern side of Great Eastern Road (13/00322)FUL
- Legacy Communities Scheme (11/90621/OUTODA)
- Stratford City (07/900023/VARODA, 10/90651/VARODA, 10/90641/EXTODA)
- 2-12 Stratford High Street (10/90519/FUMODA)
- 80-92 Stratford High Street (06/90011/FUMODA)
- 68-70 Stratford High Street (Porsche Garage site) ref: 11/90619/FUMODA
- Here East 13/00534/FUM, 13/00535AOD, 13/00536/COU, 13/00537/FUL