



**TOWER HAMLETS**

# **REVISED PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT (SPD)**

**Version for Public Consultation  
April 2016**



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# Overview

## Introduction

Tower Hamlets Council has introduced its own Community Infrastructure Levy (CIL) on 1<sup>st</sup> April 2015. This has significant implications for how the Council plans for the delivery of infrastructure and how Planning Obligations are secured from new development. This Supplementary Planning Document (SPD) sets out Tower Hamlets Council's proposed policy for securing planning obligations in respect of new developments that require planning permission.

This Revised SPD provides additional guidance on matters covered in Tower Hamlets Core Strategy (2011) and the Managing Development Document (2013). It is not part of the statutory Development Plan; however it is a material consideration in determining planning applications.

## Relationship with Other Planning Documents

The Planning Obligations SPD operates on a borough-wide scale where the Council acts as Local Planning Authority (LPA). It sits alongside the portfolio of Local Plan documents to support and add detail to the relevant Development Plan Documents (DPDs), particularly Spatial Policy 13 of the Core Strategy. It replaces the Planning Obligations Supplementary Planning Document adopted in January 2012.

As the leading Local Plan document, the Core Strategy (adopted 2010) sets out the spatial strategy for the borough until 2025.

The relevant policies of the London Plan and the Mayor's planning guidance will continue to apply to development in the borough.

## Purpose of the Planning Obligations SPD

The purpose of this SPD is to:

- Explain the Council's approach to using planning obligations to local residents, developers and the wider community;
- Explain the relationship between the Community Infrastructure Levy (CIL) and S106 Planning Obligations
- Explain the circumstances under which the Council will secure planning obligations to mitigate the impacts of a development on the borough's infrastructure;
- Improve transparency in the priority and calculation of planning obligations;
- Provide applicants with greater certainty on when planning obligations will be sought;
- Take into account the cumulative impact of development in the borough and explain how this will be dealt with through the use of planning obligations and CIL.

## **Who is it for?**

This SPD has been prepared for use by the Council, developers, the general public and other stakeholders as a guide to the Borough's position on the use of S106 planning obligations.

## **How Should it be Used?**

This SPD should be used as a framework for calculating S106 planning obligations associated with developments in the London borough of Tower Hamlets (LBTH). In areas of the borough where the Council does not act as Local Planning Authority, such as parts of the borough within the London Legacy Development Corporation (LLDC), the relevant authority's guidance should be followed. As a whole, the document should provide more certainty to all parties involved in the development process.

It will be utilised by the Council as a material consideration when assessing planning applications and will be reviewed and updated as and when necessary. Developers should draw on the document to assist in their costing and inclusion of S106 planning obligations in their financial planning and to help reduce time required negotiating and agreeing obligations with the Council.

The planning obligations outlined in the SPD are not exhaustive. As new policy requirements emerge and change, the SPD will need to be revised to reflect these changes. In some instances, for example in areas of intense redevelopment and regeneration, or in certain site specific locations, additional planning obligations outside the scope of this SPD may be sought.

This SPD should be read in tandem with the CIL Charging Schedule, or subsequent publications.

# 1. Introduction

1.1 This Supplementary Planning Document (SPD) provides detailed guidance on the use of section 106 planning obligations alongside the Community Infrastructure Levy (CIL). This is to ensure that the development industry and others have a clear view on the likely combined level of the Borough CIL and Section 106 planning obligations, which they will have to meet to ensure that any proposed development is acceptable and also makes a reasonable contribution to the infrastructure needs of the borough.

1.2 CIL was introduced by the Planning Act 2008 and came into force through the CIL Regulations 2010 (as amended) on 6 April 2010. Local Planning Authorities (LPAs) adopting CIL are required under CIL Regulation 123 (Reg 123) to prepare and publish a list of those items or types of infrastructure to fund through CIL. Regulation 123(2) of the CIL Regulations 2010 (as amended) provide, insofar as is relevant that:

“A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding of relevant infrastructure.”

Relevant infrastructure refers to the infrastructure included on the LPAs Regulation 123 List of infrastructure types or projects that it intends will be, or may be, wholly or partly funded by CIL. The purpose of this is to prevent ‘double dipping,’ whereby developers are required to pay twice for the same item of infrastructure both through CIL and S106 obligations. In practical terms, this means that if an infrastructure project or type of infrastructure is included in the Regulation 123 List, the local planning authority cannot secure S106 obligations in respect of that project or type.

1.3 Section 106 obligations will be used where the identified pressure from a proposed development cannot be dealt with by Planning Conditions and the infrastructure requirement relates specifically to that particular development and is not covered by CIL. The Community Infrastructure Levy Regulations 2010 (as amended) set out three statutory tests for the use of planning obligations, which are as follows (Regulation 122):

“A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.”

1.4 Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) further requires that, from 6th April 2015, or the adoption of a Community Infrastructure Levy (whichever is sooner), the pooling of contributions towards a specific type or piece of infrastructure will be limited to not more than five planning obligations. From this date, the Community Infrastructure Levy will be the principal

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means of generating developer contributions towards new infrastructure provision, and Section 106 obligations will be restricted to site-specific matters, described in more detail below. This limit on pooled S106 contributions does not apply to contributions for affordable housing.

## Community Infrastructure Levy (CIL)

- 1.5 The CIL is a new, non-negotiable charge which will raise infrastructure funds on new developments. CIL takes the form of a charge per square metre of floorspace applied to most new developments that involve an increase of 100 square metres or more of gross internal floor space or that involves creating a dwelling even where this is below 100 square metres. The CIL charges are based on the size and type of the new development. Some developments are exempt from paying the levy such as developments of qualifying social housing, developments by charities of buildings used for charitable purposes and development that are self-build: new home, extension or residential annex.
- 1.6 There will be two CIL charges payable on qualifying development in the borough:
- Borough-level CIL
  - Mayoral CIL

### Borough- level CIL

- 1.7 From 1<sup>st</sup> April 2015, the London Borough of Tower Hamlets' CIL came into operation, the Council, as Local Planning Authority, is entitled to charge a 'Community Infrastructure Levy' (CIL) on new developments, which is set out in Tower Hamlets Adopted Charging Schedule, available at:  
[http://www.towerhamlets.gov.uk/lgs/501550/register\\_of\\_planning\\_decisions/section\\_106\\_planning\\_obligatio/community\\_infrastructure\\_levy.aspx](http://www.towerhamlets.gov.uk/lgs/501550/register_of_planning_decisions/section_106_planning_obligatio/community_infrastructure_levy.aspx)
- 1.8 The CIL Regulations allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The secured funds can be used to support the provision, improvement, replacement, operation and maintenance of a wide range of local and strategic infrastructure that is needed to support growth and development in the borough. This includes infrastructure projects such as strategic transport facilities, strategic flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces.
- 1.9 The government's view is that CIL *provides* the best framework and the preferred means of pooling funding for the infrastructure required to support new development. It will allow for a better understanding of development costs earlier in the process and therefore provide more certainty.

### Mayoral CIL and Mayoral Section 106 Planning Obligations for Crossrail

- 1.10 From 1 April 2012 the Mayor of London's CIL came into operation. The purpose of this levy is to contribute to the funding package for the construction of the Crossrail line. The Council is responsible for collecting this charge on all new development within the borough over 100sq m and all new dwellings (excluding affordable housing and development by charities for charitable purposes).
- 1.11 From April 2012, the Mayoral CIL charge for new development in Tower Hamlets is £35 per sq m of qualifying development. The details of the current charging rate can be found at: <http://www.london.gov.uk/priorities/planning/mayoral-community-infrastructure-levy>
- 1.12 Having regard to the impact on development viability, pursuant to Supplementary Planning Guidance the Mayor of London also requires a Section 106 financial contribution from office, retail and hotel developments where there is a net increase of 500m2 or more in floorspace, measured by Gross Internal Area (GIA),
- 1.13 From July 2010, the Section 106 charge for those parts of Tower Hamlets which are in the Central London Area, Isle of Dogs and Rest of London can be found in Table 1, below.

**Table1: Indicative Level of Charge per sq.m, by land use and location as at July 2010**

<b>Development Type</b>	<b>Central London Area (within a 1 kilometre radius of Liverpool Street station that fall within the Borough boundary)</b>	<b>Isle of Dogs Contribution Area</b>	<b>Rest of London (Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay north of the Poplar DLR lands as well as such radii around all other stations outside the Central Contributions Areas)</b>
Retail	£140	£190	£31
Office	£90	£121	£16
Hotel	£61	£84	-

- 1.14 The Mayor of London's CIL will be offset against Crossrail planning obligations payments. This means that where the Mayor's CIL is higher than the Crossrail planning contribution, only the Mayor's CIL will be payable. However, where the Crossrail planning contribution amount is greater than the Mayor's CIL then the "top up" or balance (being the difference between the Mayor's CIL and the planning contribution) will also be payable. For further details see the Mayor's Supplementary Guidance on the Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy (2013). Further information can be found via the [following link, https://www.london.gov.uk/sites/default/files/Crossrail%20SPG%20April%202013.pdf](https://www.london.gov.uk/sites/default/files/Crossrail%20SPG%20April%202013.pdf)

## 2. Approach to Development Mitigation and Infrastructure Delivery

2.1 The priority areas for Section 106 agreements as set out in this document are not exhaustive and the Council may wish to negotiate other forms of planning obligations depending on the individual circumstances of a site and proposal, where obligations are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development in question. When considering planning matters, the Council will use a range of planning tools as follows:

- By working with developers, the Council will seek to ensure that most design and mitigation requirements are delivered as part of the initial development proposal. In cases where an initial proposal does not meet the Council's policy and/or objectives, planning conditions will be used to ensure that the final proposal meets the Council's requirements.
- Details relating to highways improvement will be set out in a Section 106 and/or Section 278 agreements, where necessary.
- Where a proposal directly necessitates the provision of infrastructure to mitigate/enable development that is not within the scope of the Regulation 123 list, the Council may seek a contribution through Section 106.
- Section 106 agreements will not be used to secure infrastructure that has already been identified for delivery and investment from CIL funds through the Regulation 123 list.

2.2 Contributions may be financial or 'in kind' (where the developer builds or provides directly the matters necessary to fulfill the obligation) negotiated as part of planning applications. In many cases provision in kind is preferable and suitable, especially where this reduces management costs and/or where finding land for a facility is a problem. Where provision is made within developments, this will be credited to the scheme and would off-set financial contributions that may otherwise be sought. but other contributions may be secured for reasonable fitting out and infrastructure costs. These would ensure that providers of community services necessitated by the development have facilities suitable for their needs and provided at nominal rents and service charges.

~~2.3 — The table below summaries the approach that the Council intends to take to the relationship between S106 Planning Obligations and CIL, once the Community Infrastructure Levy is introduced, the tick box table below is intended as an indicative reference guide.~~

<b>Infrastructure</b>	<b>Planning Obligations /Conditions*</b>	<b>CIL</b>
<b>Affordable Housing</b>	✓	



<b>Job-brokerage</b>	✓	
<b>Construction-phase skills-training</b>	✓	
<b>End-user skills-training</b>	✓	
<b>Apprenticeships and work placements</b>	✓	
<b>Local enterprise – supply-chain commitments</b>	✓	
<b>Employment and training facilities</b>		✓
<b>Roads and other transport facilities</b>		✓
<b>Site-specific transport requirements.</b>	✓	
<b>Transportation measures, including: Car Clubs, Electric Vehicle Charging, Travel Plans, Car and Permit Free Agreements.</b>	✓	
<b>Public-education facilities</b>		✓
<b>Community Facilities **</b>		✓
<b>Health Facility</b>		✓
<b>Public open-space</b>		✓
<b>Site-specific public realm improvements/projects, Open-space suitable for public access / walkways and play facilities</b>	✓	
<b>Infrastructure dedicated to public safety (for example, wider CCTV coverage)</b>		✓
<b>Strategic energy and sustainability infrastructure</b>		✓
<b>Carbon reduction measures/initiatives</b>	✓	
<b>Biodiversity Measures/Initiatives</b>	✓	
<b>Strategic flood defences</b>		✓
<b>Site related flood mitigation/ adaptation measures</b>	✓	

\*Infrastructure and other items to be delivered through Section 106 Agreements, S.278 of the Highways Act or Planning Conditions

\*\*Community facilities includes Multi-Use Community Facilities, Faith Centres, Youth Centres, Ideas Stores, Libraries, Archives and Leisure Centres

## 3. Legislative and Policy Context

### Legislative Context

- 3.1 The legislative basis for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by later legislation including Section 12 of the 1991 Planning and Compensation Act and the Planning Act 2008.
- 3.2 CIL was introduced by the Planning Act 2008 and came into force through the CIL Regulations 2010 (as amended) on 6 April 2010. As of that date Regulation 122 made it unlawful for a planning obligation to be taken into account when determining a planning application for development, or any part of a development, if the obligation does not meet all of the following tests:
- It is necessary to make the development acceptable in planning terms;
  - It is directly related to the development; and,
  - It is fairly and reasonably related in scale and kind to the development.
- 3.3 The purpose of ~~the tests are to~~ Regulations 123 and 122 is distinguish the types of infrastructure or projects that can be secured under CIL and Section 106 and clarify the different roles that both CIL and planning obligations have when used together to support new development. The CIL Regulations 2010 (as amended) also specify that upon the adoption of a CIL, or by 6th April 2015, whichever is the sooner, the use of planning obligations must be scaled back. This means that a planning obligation cannot be used to fund a project or type of infrastructure if there have been 5 or more separate obligations on or after 6 April 2010 which fund that project or type of infrastructure.

### National Planning Policy Framework (2012)

- 3.4 The National Planning Policy Framework (NPPF) sets out the Government's economic, environmental and social planning policies for England. Taken together, these policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations.
- 3.5 Paragraphs 203 to 206 of the NPPF set out the Government's policy on planning obligations. These paragraphs reiterate the tests for planning obligations set out in the CIL Regulations; restate the principle that planning conditions are preferable to planning obligations; require local authorities to take into account changes in market conditions over time in policies and planning obligations and make sure they are sufficiently flexible to prevent planned development from being stalled.
- 3.6 Paragraph 176 of the NPPF recognises that "where safeguards are necessary to make a particular development acceptable in planning terms... the development should not be approved if the measures required cannot be secured through appropriate conditions or [obligations through] agreements." The NPPF also sets out

in paragraph 173 that it is important that the scale of obligations does not threaten the ability of a site to be developed viably.

### **Core Strategy (2010)**

- 3.6 The Core Strategy 'Delivery and Monitoring' section sets out the Council's strategic objective to secure planning obligations between the LPA and developers to mitigate, compensate and prescribe matters relating to development in order to facilitate the granting of planning permission. The strategy also states that the Council may pool contributions relating to significant infrastructure, including transport, education and health, reflecting the regional policy direction.
- 3.7 Policy SP13 of the Core Strategy further sets out the Council's priorities for planning obligations. These are: Affordable Housing; sustainable transport; open space; education; health; training employment and enterprise; biodiversity; community facilities; highway works and public realm.

### **Managing Development Document (2013)**

- 3.8 The Managing Development Document sits under the Core Strategy as part of the borough's Local Plan and has the same status in terms of the determination of planning applications.
- 3.9 A summary of the key aims and objectives of the DPD is provided below.
- Identifies sites for important services – primary and secondary schools, Idea Stores, Leisure Centres, waste management facilities and open space – and sites capable of accommodating 500+ homes;
  - Defines boundaries for planning policy areas including town centres and employment areas; and
  - Includes detailed development management policies against which planning applications will be assessed.

## 4. Negotiating Planning Obligations

- 4.1 The process for negotiating and securing planning obligations is set within the framework of national, regional and local policy guidance and legislation. When carrying out these negotiations for planning obligations, the Council must meet the statutory tests set out in the 2010 CIL Regulations.

### Pre-application Stage

- 4.2 Applicants, agents and developers are encouraged to seek pre-application advice prior to the formal submission of major development proposals within the borough. The pre-application process offers a valuable service for proposed schemes and allows dialogue to resolve any initial concerns which officers envisage may arise during the formal application stage. Pre-application meetings can deter applications with little or no prospect of success. Details of the development proposed should be submitted to relevant officers at pre-application stage. Officers will make an assessment of the impacts of the development and will provide guidance regarding the planning obligations that are likely to be required.
- 4.3 Applicants should use this SPD alongside an analysis of their proposed works to consider the impacts of the proposed scheme and any planning obligations likely to be required to mitigate the impacts of development. These details should be submitted as a draft 'Heads of Terms' document alongside the pre-application submission documentation, to allow officers sufficient time to consider the details contained within the draft 'Heads of Terms'.
- 4.4 During the course of pre-application discussions, where negotiations fail to result in agreement on the draft 'Heads of Terms', the applicant is invited to provide alternative proposals and related justification which will be taken into consideration during the assessment of any future application.

### Application Stage

- 4.5 Applicants are advised in the Council's Development Control Advice Note 2009 (required to validate a planning application) to submit details of planning obligations within their Impact Statement.
- 4.6 In some cases, such as for strategic applications, it may be more appropriate that this information is submitted as a separate Planning Obligations Statement alongside a draft 'Heads of Terms' document. The Planning Obligations Statement should evaluate how the impacts of the development are to be addressed within the context of this SPD as well as other local, regional and national guidance.
- 4.7 Applications which are submitted without a Planning Obligations Statement/Draft Heads of Terms will not be validated until this information is provided.

- 4.8 Details of the applicant's solicitor must be submitted at the time an application is made. The following solicitor details should be provided;
- Name of company
  - Postal address
  - Contact name
  - Telephone number (preferably direct dial)
  - Email address
  - Website
- 4.9 Details of the land title should also be provided alongside details of all parties (including charges) with an interest in the land as they will also be required to enter into the agreement. Should details of other parties not be available before an application is submitted, it should be identified early on in the process to avoid a delay in completion of the agreement. Any charges on the property should also be identified.
- 4.10 During the planning application process, initial advice provided with regard to contribution requirements may be subject to alterations. This is often due to changes following formal consultation and any issues which may arise during the course of an application. 'Heads of Terms' must be agreed prior to planning committee meetings and within an appropriate timescale of delegated applications to allow them to be determined and decisions issued by officers within the statutory target periods.
- 4.11 If the Council and the applicant are unable to come to an agreement on planning obligations after reasonable negotiation, then officers may prepare a recommendation for refusal of the planning application.
- 4.12 In the case of delegated applications, if the 'Heads of Terms' are agreed between the LPA and the applicant/agent where the application is considered acceptable on all other grounds, a draft decision notice will be prepared by officers. The applicant/landowner must enter into and complete the S106 agreement prior to the LPA issuing the decision notice for any delegated application.
- 4.13 In the case of an application referred to a Tower Hamlets planning committee, the 'Heads of Terms', which have been agreed, will be included within the committee report for information. Should members recommend approval of the planning application with planning obligations; this approval will be subject to the completion of the S106 agreement. Following the planning committee, the applicant/agent must complete the S106 agreement in order for the decision notice to be issued.

## **Viability**

- 4.14 Development viability forms part of the national, regional and local policy framework in the consideration of planning applications that trigger the delivery of s.106 obligations. This is reflected in national guidance and policy in the form of the NPPG

and NPPF, regional guidance, in the form of the London Plan, and local policy in the form of the Core Strategy and the Managing Development DPD.

- 4.15 In circumstances, where the full range of planning obligations cannot be met It is recommended that applicants seek pre-application advice from the LPA including the informal submission of a viability report prior to the formal submission of a planning application.
- 4.16 At Planning Application Stage, proposals where the full range of planning obligations cannot be met, must be submitted with a full Viability Assessment to enable the viability of the scheme to be comprehensively assessed.
- 4.17 There are currently a number of sources of guidance relating to development viability. These guidance notes take a range of approaches to certain aspects of development viability. It is for the Council to determine the most appropriate approach to be taken in each case. Applicants and their agents should discuss this with the Council at an early stage.
- 4.18 A Viability Assessment must be completed in accordance with the guidelines set out in the GLA 'Affordable Housing Development Control Toolkit' 2010 or an alternative Toolkit as approved by the Council. Detailed guidance on the information required to enable the Council to scrutinise viability assessments will be provided in due course.

## **Viability Review Mechanisms**

- 4.19 For all applications where policy requirements are not met in full at the time permission is granted and where the departure is justified as a result of the submission of a Financial Viability Assessment, provisions for viability review mechanisms will be required to be incorporated within Section 106 agreements.
- 4.20 Viability review mechanisms will be triggered and undertaken according to the circumstances in each case but based on the following principles.
  - 1. For all schemes requiring a review (see paragraph 4.16 above), an advanced stage review will be carried out. These reviews should be undertaken on sale of 75% of market residential accommodation, or within a three month period prior to practical completion, whichever is earlier.
  - 2. For all schemes requiring a review, where a scheme has not been implemented within 12 months of the relevant application decision date, a pre-implementation review will be required.
  - 3. For phased schemes requiring a review, mid-term reviews will be necessary where the second (or subsequent phases) are not implemented within 12 months of the decision of the application to which the originally submitted Financial Viability Assessment relates.

## Post Decision

- 4.21 Following the decision to grant planning permission subject to a s106 legal agreement, the Council's solicitor and planning officers in liaison with the applicant's solicitor will complete the setting out of the planning obligation(s) in the form of a binding legal agreement. The agreement will set out the detail of the planning obligations, including the trigger mechanisms for payment of financial contributions, viability re-assessments schedules of works and other commitments to be undertaken by the developer, as well as obligations upon the Council.
- 4.22 On completion and signing of a Section 106 legal agreement, planning permission is formally issued. The legal agreement is placed on the statutory register and is publically available online together with the decision notice.
- 4.23 The signed agreements are registered as a local land charge against the land, copies of which can be provided to the public on payment of an administration fee to the Council. The Section 106 obligation agreement is registered on the Council's planning obligation database, which is used for monitoring and project management purposes. A pre-commencement letter is normally sent to developers reminding them of their obligations and the trigger mechanism for payment.

## 5. Standard Obligations and Charges

- 5.1 This section sets out how the Council will use S106 planning obligations necessary to make development acceptable. A variety of planning obligations may be necessary, therefore the topics covered below are not exhaustive and each development will be considered on a case by case basis and in line with relevant, available evidence, guidance, or policies. In line with the CIL Regulations 2010 (as amended), these S106 planning contributions must meet the restrictions of Regulation 123 and 122 in that the obligation cannot be within the scope of the Council's Regulation 123 list and must meet the three statutory tests set out in Regulation 122.
- 5.2 For each obligation, the threshold and contribution requirements are provided. In line with the CIL regulations 2010 (as amended), these are taken into consideration when determining where a proposed development should be subject to planning obligations and to estimate those obligations likely to be required by the Council.

### Affordable Housing and Wheelchair Accessible Housing

- 5.3 Although Tower Hamlets consistently delivers more affordable housing than any other London borough, there is still a pressing requirement for more affordable housing especially for families.
- 5.4 The Council has set an overall strategic target of 50% of new homes across the borough to be affordable until 2025. This is being delivered through negotiations as a part of major residential schemes, as well as through a range of public initiatives and effective use of grant funding.

#### Threshold and Contribution Requirements

Planning obligations relating to Affordable Housing and Wheelchair Accessible Housing will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more.
- Commercial floorspace of 1,000 sqm (gross internal area) or more.

#### Affordable Housing

The Council will require the provision of 35%-50% affordable housing on sites providing 10 or more new residential units. The level of affordable housing and the tenure and mix will be considered on a site by site basis subject to viability having regards to the Council's policies.



### **Forms in Which Contributions Should be made**

In accordance with policy, affordable housing should normally be provided on-site. In accordance with London Plan Policy 3.12 and Council Policy DM3, only where exceptional circumstances exist and where the Council is satisfied that it would deliver a better outcome, will off-site provision be accepted. Where exceptionally, housing cannot be provided on or off-site, a commuted sum will be required in lieu of provision to secure delivery of affordable housing on sites elsewhere. The acceptability of off-site provision and/ or commuted sums are entirely at the discretion of the Council.

### **Wheelchair Accessible Housing**

In line with Core Strategy requirements, 10% of all new housing must be wheelchair accessible, or easily adaptable, as defined in the Managing Development Document. In exceptional circumstances, and where it can be demonstrated that this is not achievable, the Council will require a financial contribution from the developer to adapt an equivalent number of appropriately located homes elsewhere in the borough to wheelchair accessible standard. The level of any such contribution will be determined on a case by case basis commensurate with the cost of adapting homes elsewhere in the borough. The acceptability of the use of an off-site payment is entirely at the discretion of the Council.

## **Student Housing Development**

- 5.5 BNP Paribas Real Estate's 'CIL Viability Study (August 2013)' identifies two separate types of student accommodation in the borough. One type of accommodation is market student housing which charges unrestricted rents and generate sufficient surplus residual values to absorb the borough CIL. The other type, is usually tied to a university and restricts rents at lower than market levels and are identified as being unviable.
- 5.6 As of April 2015 Tower Hamlets' Student Housing CIL rate of £425 will not apply to University led student accommodation with below market rents and a planning obligation will be sought to secure the reduce rent levels.
- 5.7 The University in question will be required to have at least one teaching facility in Tower Hamlets' CIL Charging Area or any developer undertaking development on behalf of a University must enter into a formal nomination agreement, or the equivalent, with the university in question.

### **Threshold and Contribution Requirements**

Planning obligations will be sought for:

- Where a Student Housing development fulfills the criteria for a nil CIL rate.

### **University-led Student Housing**

When considering a nil CIL payment for University led student housing development, the Council will require a Planning Obligation to secure student accommodation let at below market rent level. The discount, to make the rent 'below market' must, over a 7 year period, as a minimum, equate to the CIL liability that would be applicable to 'Student Housing Let at Market Rents'. A valuation should be carried out by an independent person, at the cost of the applicant, to establish this.

The planning obligation will be set for a period of at least 7 years (with 7 years being equivalent to the relevant period for securing CIL charitable relief as set out in the CIL Regulations 2010 [as amended]).

For monitoring purposes, the Council will also require an 'Owners Covenant' to be secured in the obligation, to inform the Council each year of the rent level to be charged for the new academic year for the 7 year period. (CPI indexed yearly from date of planning permission)

## **Employment, Skills, Training and Enterprise**

5.8 Tower Hamlets is in a unique position with regards to its economy. The borough hosts a significant financial services sector and also a large number of small and medium enterprises (SMEs). Maximising employment for local people is a major priority for the Council, and employment opportunities arising from development in the borough must be accessible to its residents to increase employment levels and help to tackle poverty and social exclusion. That relies on a healthy and growing economy for Tower Hamlets which in turn means that the borough must support a retain a wide mix of enterprise and commercial spaces.

5.9 Tower Hamlets has an above average unemployment level within Greater London, with a very low proportion of Tower Hamlets' residents finding employment within the borough. Currently, only 15%<sup>1</sup> of residents are working within Tower Hamlets. There is also a skills mis-match, with many new employment opportunities demanding skills which few people who live in the borough currently have. Employment opportunities from new developments must be accompanied by training to up skill residents so that they can compete for the jobs.

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<sup>1</sup> The percentage of working age residents in Tower Hamlets employed within the borough according to the 2011 Census, NOMIS.

<sup>2</sup> Tower Hamlets currently has an overall 68% employment rate from which 15% are working within the borough. An aspirational target of 20% local labour has been set in order to create an achievable uplift in these figures.

- 5.10 For all new development in the borough the construction phase provides opportunities for local employment, apprenticeships and work experience placements. Commercial developments within the borough also bring new employment, apprenticeship and work-experience opportunities for residents during the end-user phase. This adds increased pressure on the Council to provide access for residents to appropriate employment and skills training. Apprenticeships and work experience placements will enable residents to develop an appropriate skill-set for existing and future employment opportunities within the borough, from an early age.
- 5.11 The Council will seek to ensure that jobs are provided for local people, both in the construction phase of development and, in commercial development, by the end users. To enable local people to benefit from development growth the Council, with partners, has introduced a number of programmes to support job brokerage, employer-led training, construction skill training and apprenticeships, and traineeship and work experience placements.

## **Employment and Skills Training**

### **Threshold and Contribution Requirements**

Planning obligations relating to Employment and Skills Training will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more
- All major commercial development

### **Job Brokerage**

The Council will seek to secure a minimum of 20%<sup>2</sup> of the total jobs, created by the

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<sup>3</sup> The £4.00 per square metre is based upon an average construction training placement of £3,500 which takes into account the need for both soft skills training and accredited training; the average training cost is then divided by the minimum threshold of 1000sqm, i.e. (£3500/1000sqm).

construction and end-user phases of new development above the set threshold, to be advertised exclusively to local residents through the Council's job-brokerage services for a specified minimum period. It is expected that all reasonable endeavors be used to ensure that a target of 20% employment of local residents is achieved in both the construction and end-user phases.

The Developer will be required to supply the Programme of Works for the scheme to allow the employment team to forecast the training needs of residents, to be work ready as the development progresses through the various construction phases.

#### **Formula – Construction Phase Skills and Training**

For all major developments the Council will also seek to secure training opportunities for residents. A financial contribution will be sought to support and provide the training and skills needs of local residents in accessing the new job opportunities in the construction phase of all new development. This contribution will be used by the Council to provide and procure the support necessary for local people who have been out of employment and/or do not have the skills set required for the jobs created.

$\text{£}4^3 \times \text{sqm}$  of the total new development floorspace (GIA)

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= Required Financial Contribution

For example: When applying the formula to a Development consisting of total 7099.8 Sq.m of new floor space (GIA) -  $\text{£}4 \times \text{sqm}$  (7099.8) =  $\text{£}28,399.2$  is obtained in contributions.

Where appropriate the Council may consider whether a developer's in-house training programme can be utilised in lieu of the construction phase skills and training contribution, on the basis that the local residents achieve a minimum requirement as secured through an in-kind obligation. The appropriateness of the in-house training will be assessed by the Council on a case by case basis.

#### **Formula – End User Phase Skills and Training**

For the end-user phase of commercial developments the Council will also seek to secure a financial contribution to support and provide the training and skills needs of local residents in accessing the new job opportunities created by the development. This contribution will be used by the Council to provide and procure the support necessary for local people who have been out of employment and/or do not have the skills set required for the jobs created.

Employee yield of the development<sup>4</sup>  
X  
Tower Hamlets aspirational local labour target (20%)  
X  
Cost of training and support per person (£2,040)<sup>5</sup>

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= Required Financial Contribution

### **Apprenticeships and Work Placements**

For the construction phase of all new development and the end-user phase of commercial development, the Council will seek to ensure that a proportion of the jobs secured for local residents provide apprenticeships where appropriate. Apprenticeships are jobs with an accompanying skills development programme designed by employers in the relevant sector to allow the apprentice to gain technical knowledge and practical experience along with functional and personal skills required for their immediate job and future career. Skills are acquired through a mix of learning in the workplace and formal offsite training. Apprentices are given the opportunity to practice and embed new skills in a real work context. Skills and qualifications gained should be equivalent to those offered in apprenticeships facilitated by the National Apprenticeships Service or trade specific accreditation bodies. Work experience placements for local residents, for a minimum of two weeks per placement, will also be sought from these developments where appropriate. Public liability insurance may need to be amended to reflect this.

## **Local Enterprise**

- 5.12 In order to support local businesses to benefit from new development within the borough, the Council will require a commitment from developments to engage local businesses through the supply chain. This will allow local businesses to compete in the local market and also encourage sustainable supply systems.
- 5.13 The Developer is required to submit to the Economic Development team their Tender Event Schedule (T.E.S) detailing the list of packages being offered for competitive tender including time frames, values of packages and framework agreements in the supply chain.
- 5.14 Any additional health & safety requirements are to be detailed in the T.E.S.
- 5.15 Enterprise monitoring information will be required to be submitted each time a package is awarded, detailing the list of tenderers per package, identifying the successful tenderer with values of packages secured and postcodes. The developer will be required to submit the official order of any package secured locally which can

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<sup>4</sup> Calculated using the HCA Employment Densities Guide. 2nd Edition 2010 or subsequent updated document.

<sup>5</sup> Average cost per unit of NVQ Level 2 Framework = £1,700 + 20% overheads.

be quantified by value and quantity.

- 5.16 The monitoring will allow the principal contractor to track their performance against the enterprise commitment and gauge performance against any targets, as well as capturing the developer's "endeavours" to engage with local suppliers.
- 5.17 All information supplied to the council's Economic Development Team will be treated as private & confidential and not passed to any third parties.

### **Threshold and Contribution Requirements**

Planning obligations relating to Local Enterprise will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more.
- All major commercial development

The Council will seek to secure a minimum 20% of the total value of contracts, which procure goods and services during the construction phase of the development, to be achieved using firms located within the borough. This will be subject to competition rules. The developer will be expected to work with the Council and organisations<sup>6</sup> it may choose to nominate, in order to maximise the opportunities for local firms to win contracts through established procurement procedures.

The Council will seek to secure the provision of flexible workspace within commercial developments, to mitigate the loss of such space through the development process and to support new and existing SMEs within the borough.

## **Transport and Highways**

- 5.18 The provision of a safe, accessible, efficient, sustainable and integrated transport network is important to ensuring everyone has access to services within and outside the borough. The Council is committed to promoting high quality public transport services and delivering an attractive, well-designed street network that reduces the need for travel by private modes of transport.
- 5.19 New development in the borough will place additional stress on the borough's transport and highway networks including public transport infrastructure, bus services and local cycle routes. New development also increases the need for pedestrian and cycle safety education and training, travel awareness publicity, sustainable freight activities and interchange accessibility improvements.
- 5.20 CIL funds will be used to address the cumulative impacts of development on the sustainable strategic transport network. In certain cases, where a transport disbenefit is directly related to the development and it is necessary to outweigh that

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<sup>6</sup> For example, Construction Line and East London Business Place (ELBP)

~~disbenefit to make the development acceptable. However, individual developments may cause a site specific impact which should be directly addressed through the development itself, or where that cannot be achieved~~ the Council will use S278 agreements or S106 ~~Planning Obligations~~ agreements to secure such obligations.

- 5.21 Developments in the borough should provide the necessary additional transport/highway improvements to mitigate the impact of the travel demand they generate. Any necessary alterations to the transport/highway network within or in the vicinity of new development will be expected to be incorporated within proposals, and permission will be refused if the developer is unwilling or unable to provide the necessary solutions. The scope of any off site works required to ~~mitigate site specific impacts of a~~ make the development acceptable in planning terms, are directly related to the development and do not fall under the Council's Regulation 123 List will be secured under a S278 agreement and will be carried out by the Council with the developer responsible for meeting all costs associated with the design and implementation of schemes. Where a S278 agreement is insufficient, mitigation will be secured through a S106 agreement. This will be particularly relevant to developments that are larger in scale or are associated with intensive or increased travel demand.
- 5.22 The Council may also seek to secure non-financial obligations to mitigate the impact of a development proposal, proportionate to the scale and impact of the development.
- 5.23 In addition planning contributions to fund Crossrail will be negotiated in line with the Mayor of London's requirements as set out in the Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy (2013) and policy 6.5 of the London Plan 2011.

### Threshold and Contribution Requirements

In instances where a Transport Assessment is required for the development, in accordance with Managing Development Document policy DM20, the site-specific highway and transport works required will be informed by that assessment.

The Council may also seek to secure non-financial obligations to mitigate the impact of a development proposal. Non-financial obligations will include:

- Car and Permit Free Agreements - which restrict residents from applying for on-street car parking permits. Car and Permit Free Agreements will be sought for residential development in accordance with policy DM22 of the Managing Development Document, i.e. where the Public Transport Accessibility Level (PTAL) is 4 or above and/or there is existing parking stress.
- Car Clubs - provide on-site car parks for car club use, providing marketing about the availability of the car club and free membership for a period of years for residents of the development.
- Electric Vehicle Charging – provision of electric charging points.
- Travel Plan - preparation, submission and subsequent monitoring to ensure compliance

## ~~Public Realm~~, Public Access and Children's Play Space

~~5.24 The quality of the Public Realm has an impact upon the way in which an area is perceived and experienced. High quality Public Realm offers many benefits to people, communities, the environment and local economy and functions as an important place for community cohesion and leisure activities. It also has direct benefits for local people by improving safety, wellbeing, legibility of the built environment, and links between key services such as homes, schools, health services, town centres and places of employment. Therefore we will expect developments to address site specific development impacts on the public realm.~~

5.24 Publically accessible open space is a key resource in an urban area such as Tower Hamlets, providing vital recreation, relaxation and wellbeing benefits, as well as a focal point for community interaction. Investment in public open space on sites will generally be met through CIL receipts as this provides the most appropriate and flexible source for income. However where on site open space is required specifically to provide public access on that site and ~~publically accessible open space~~ has been identified as necessary to make the development acceptable in planning terms and can be provided within a proposed development, an agreement to safeguard the area's on-going use as publically accessible open space and future maintenance to an appropriate standard will be required.

5.25 The provision of facilities for children and young people is important in facilitating opportunities for play and physical activity and the development of movement and



social skills. London Plan Policy 3.6 and Core Strategy policy SPO2 require that residential and mixed use developments make provision for children's play and informal recreation space. The London Plan states that the amount of provision should be proportionally based on the number of children expected to occupy the development and an assessment of future needs. Summarily, the Mayor of London concludes that new development that creates a child yield of 10 children or more is expected to provide a minimum of 10 m<sup>2</sup> of play and recreation space on site for every child regardless of age.

5.26 The Mayor of London's Shaping Neighbourhoods: Play and Informal Recreation SPG (2015) requires that future provision of play space is accessible within reasonable and safe walking distances of new residential developments. Provision for under 5s is required to be within 100m walking distance of the residential unit, with provision for 5-11 year olds within 400m and provision for 12 year olds and above within 800m.

5.27 The Council's Regulation 123 List includes a range of strategic infrastructure types, such as open space, leisure facilities and community facilities. Where strategic infrastructure projects fall under the infrastructure types in the Regulation 123 List, financial planning obligations will not be sought for the same project. Children's Play Space provision that is not covered by the Council's Regulation 123 List and is deemed necessary to the particular development to mitigate specific impacts of that development will be dealt with by planning condition or if this is not possible, by financial and/or non-financial planning obligation.

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#### **Threshold and Contribution Requirements**

Planning obligations relating to ~~Public Realm~~, Public Access and Children's Play Space will be sought for:

- Any development where applicable

#### **Public Realm**

~~All development schemes that have a significant impact on the public realm will be expected to contribute towards improvements to the public realm in the vicinity of the scheme. This will exclude strategic infrastructure works identified in projects and programmes to be paid for using CIL~~

~~Public realm works will either be undertaken by the developer or made through financial contributions to the Council who will organise or undertake the works directly. Planning Obligations could include:~~

- ~~• Site specific transport measures and highway restoration works~~
- ~~• Site Specific Environmental improvements and public realm enhancement works including: air quality, waterways, route ways, landscaping, tree planting, lighting, surfacing and street furniture~~
- ~~• New, improved or relocated pedestrian links and cycle lanes, cycle parking or other infrastructure to aid pedestrians and cyclists;~~
- ~~• Restoration and enhancement works to buildings linked to development within conservation areas or having listed status~~

### **Public Access**

Where open space suitable for public access has been identified and can be provided within a proposed development, an agreement to safeguard the area's on-going use as publically accessible open space and future maintenance to an appropriate standard will be required. In some instances, if the Council agrees to manage the space, the ownership of the land should be transferred to the Council at no cost and a commuted sum for maintenance will be required. A land transfer arrangement will normally only be considered, however, for areas of open space larger than one hectare which do not serve a dual function as access to properties.

### **Children's Play Space**

Applicants must assess the needs arising from a development by following the benchmark standards outlined in the Mayor's Shaping Neighbourhoods: Play and Informal Recreation SPG (2012). The Council policy DM4 and the Mayor's SPG require all developments with an estimated child occupancy of 10 children or more to ensure there is appropriate play provision (well-designed play and recreation space) to meet the needs arising from the development.\*

All new development with an estimated child occupancy of 10 children or more must provide a minimum of 10 s.q.m per child, regardless of age. The Council expect provision for children's play space to be delivered on site and only where exceptional circumstances exist and the Council is satisfied that it would deliver a better outcome, will off-site provision be accepted. In such circumstances provision will be required to comply with the maximum walking distances identified in the Mayor of London's Shaping Neighbourhoods: Play and Informal Recreation SPG. Where direct delivery is not possible, an equivalent financial contribution will be required to be made to an existing or new off-site provision. This could include off-site provision of, or improvements to, an existing adjacent or nearby playground or improvements to access arrangements from the development to the playground. Further details are set out in the Mayor's Shaping neighbourhoods: Play and Informal Recreation Supplementary Planning Guidance (2012).

\* Child Yield figures can be found in the LDF Tower Hamlets Planning for Population Change and Growth, capacity Assessment-Basement Report, Final Report, August 2009 (or any subsequent updated version).

## Environmental Sustainability

5.28 The promotion of renewable, sustainable forms of energy and enhancements to wildlife biodiversity within Tower Hamlets is important to ensuring the borough is environmentally sustainable.

### Energy

5.29 To ensure that the ability of future generations to enjoy the borough is not compromised by the energy requirements of today, it is essential that new developments are as energy efficient as they can be and contribute to reducing energy demands and pollution.

5.30 New development increases the demand for energy supply and requires solutions and innovation to reduce consumption and thereby promote and provide new renewable energy sources and sustainable development.

#### Threshold and Contribution Requirements

Planning obligations relating to Energy will be sought for:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more
- All major commercial development

#### CO2 Reduction

Where officers consider all opportunities to meet the relevant Development Plan carbon reduction targets on-site have been exhausted, contributions to a carbon offsetting fund will be sought to meet the shortfall.

Contributions will be placed in the carbon offsetting fund and will be used by the Council to reduce carbon dioxide emissions in projects elsewhere in the borough. Details of the fund will be set out in the Council's Carbon Offsetting Study.

5.31 The Council strongly supports the development of energy efficient buildings and ensuring all new homes are built to zero carbon standards (as defined by CLG) by 2016 and all new non-domestic developments are built to zero carbon standards by 2019.

### Formula – Carbon offsetting

Carbon Offset Contribution =  $(T - (R \times 0.55)) \times Y \times Z$

Where:

T is the energy efficient design baseline which comprises the regulated CO2 emissions assuming the development complied with Part L of the Building Regulations using Building Regulations approved compliance software (see references to SAP and SBEM below) following application of Be Lean, Be Clean and Be Green measures.

R is the baseline being Part L of the Building Regulations Compliant Development. This comprises the regulated CO2 emissions assuming the development complied with Part L of the Building Regulations 2013 using Building Regulations approved compliance software (see references to SAP\* and SBEM\*\* below).

Y is the number of years for which the contribution is payable, being [30] years;

Z is £60 per tonne of carbon dioxide, being the cost of carbon per tonne taken from paragraph 10 of the Mayor's published Energy Planning: Greater London Authority Guidance on Preparing Energy Assessments (April 2014).

*\*SAP means the Department of Energy & Climate Change's Standard Assessment Procedure published 22 January 2013 which is the methodology used by the Government to assess and compare the energy and environmental performance of dwellings.'*

*\*\*SBEM means Simplified Building Energy Model being a software tool developed by the Building Research Industry for the Department for Communities and Local Government that provides an analysis of a building's energy consumption.*

### Biodiversity

- 5.32 The quality of the physical environment is under increasing pressure in Tower Hamlets with a growing population and significant development demands. The Council recognises the importance of responding to the impacts of climate change and an increasingly dense cityscape by maintaining and encouraging biodiversity within the Borough.
- 5.33 The Council's Regulation 123 List includes a range of strategic infrastructure types, such as open space, sustainability infrastructure and community facilities. Where strategic infrastructure projects fall under the infrastructure types in the Regulation 123 List, financial planning obligations will not be sought for the same project. Biodiversity measures that are not covered by the Council's Regulation 123 List and

are deemed necessary to the particular development to mitigate specific impacts of that development will be dealt with by planning condition or if this is not possible, by financial and/or non-financial planning obligation.

#### **Threshold and Contribution Requirements**

Where it is deemed necessary by the Council to secure Planning Obligations relating to Biodiversity, the threshold will be:

- Residential developments of more than 10 units or with a combined gross floorspace of 1,000 sqm (gross internal area) or more
- All major commercial development

#### **Biodiversity**

Where it is considered unfeasible for a development to provide adequate on-site biodiversity enhancements, or where projects in nearby open spaces, or enhancements to nearby rivers or water bodies, offer better opportunities to enhance biodiversity and/or access to nature, the Council will seek an equivalent financial contribution to off-site projects which will be secured for enhancements which help to deliver the Tower Hamlets Biodiversity Action Plan.

- 5.34 Tower Hamlets has a number of strategies and studies in place that present clear options to help mitigate the impacts of development on biodiversity.

#### **Flood Risk**

- 5.35 There are extensive areas in Tower Hamlets that have been identified as being at risk of flooding. Flood risk in the borough arises from rivers, canals, basins, sewers, surface water and groundwater.
- 5.36 The Council's Core Strategy and Managing Development Policies documents seeks to ensure that developers demonstrate that account has been taken of flood risk from all sources, and that the proposed development incorporates mitigation and management measures appropriate to the use and location. The Council also requires developers to improve water efficiency and reduce surface water run-off through the use of a range of Sustainable Drainage Systems (SUDs) appropriate to the various parts of the Borough.
- 5.37 The Council's Regulation 123 List includes strategic flood defences and where strategic infrastructure projects fall under this description, financial planning obligations will not be sought for the same project. Flood defence measures that are not covered by the Council's Regulation 123 List and are deemed necessary to the particular development to mitigate specific impacts of that development will be dealt with by planning condition or if this is not possible, by financial and/or non-financial planning obligation.

**Threshold and Contribution Requirements**

Planning Obligations relating to Flood Risk will be sought for:

- Any development where applicable

**Flood Risk**

It must be demonstrated that any new development will reduce the risk of fluvial, tidal and surface water flooding and manage residual risks through appropriate flood risk measures. Measures to mitigate flooding from ground water and sewers should also be included.

Provision of flood risk mitigation measures such as Sustainable Drainage Systems (SUDS) are expected to be provided on-site and secured through conditions or a S106 agreement.

## 6. Monitoring and Implementation

- 6.1 The requirement on the Council to monitor all aspects of S106 agreements carries a financial cost that constitutes an impact from new development. Accordingly, the Council will require a monitoring fee as a financial contribution for each S106 agreement. All planning obligations, whether financial or in-kind, require monitoring to ensure the obligation is fully complied with and in line with the trigger date as well as the relevant legal requirements.
- 6.2 This monitoring fee excludes all legal costs associated with the preparation of S106 agreements.

### **Threshold and Contribution Requirements**

Planning Obligations relating to Monitoring and Implementation will be sought for:

- All developments requiring a S106 agreement.

The Council will require a contribution of £500 for each one of the Heads of Terms within a S106 Agreement.

For exceptionally detailed agreements, (for example, variations to existing agreements or those that are complex to monitor and implement) the Council may request a contribution above the standard charge.

## 7. Procedure & Management

- 7.1 The Council starts managing and monitoring each S106 agreement from the moment it is signed. This is a complex process which covers over a thousand legal documents, all with multiple trigger points and obligations. Tower Hamlets Council employs S106 officers dedicated to overseeing this complex programme and ensuring the successful delivery of the obligations secured through S106 agreements.
- 7.2 An internal, cross-directorate panel, chaired by the Corporate Director of Development and Renewal, oversees the process of determining and approving S106 funding.

### Trigger Points

- 7.3 During the negotiation process, trigger points for each obligation will be agreed upon between the developer and the Council. There are established trigger points which are suitable for S106 agreements and triggers selected in each case will be based on the nature of the obligation and the stage at which the mitigation is required. The established trigger points are:
- Upon the date that the agreement is signed;
  - Upon or prior to commencement of the development;
  - Upon or prior to practical completion of the development; and,
  - Upon or prior to occupation of the development
- 7.4 The Council will encourage the use of these four identified triggers in negotiations, with the commencement of the development being the preferred point for an obligation to be delivered upon.

### Interest Bearing Accounts

- 7.5 When a financial contribution is received it will be placed within an interest bearing account from the date of its receipt. The interest accrued will be applied by the Council to the related S106 project(s).

### Penalty Clause and Enforcement of Obligations

- 7.6 Trigger points will vary for each individual obligation within the S106 agreement. The developer is bound within each S106 agreement to notify the Council upon commencement of the development. Where the Council is not notified and obligations become overdue the Council will seek to enforce the obligation and will activate the penalty clause.



- 7.7 A clause included in the S106 agreement will ensure prompt payment by inserting a financial penalty requiring interest to be paid where payments are overdue. As a final recourse, where obligations are not subsequently complied with, the Council will take legal action against those in breach of a S106 agreement. Non-financial obligations are also legally binding and where not provided according to the terms of the S106 agreement may be legally enforced by the Council.

## **Complying with Planning Obligations – the Developer’s Role**

### **Complying with Financial Obligations**

- 7.8 Where a S106 agreement contains a financial obligation, details of how to make the payment to the Council are provided. A payment form as standard will be appended to the agreement and any payments should be made using this form, following the instructions provided. The payment can be made through BACS/CHAPS, cheque or postal order. Once received, the payment will be logged onto the Council’s systems. A breakdown of received financial contributions is published on the Planning Obligations Webpage (found at [www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)) on a quarterly basis.

### **Index Linking Payments**

- 7.9 Financial contributions will be index linked in order to allow for the fluctuation of prices between the date the agreement is signed and the date the payment is made. This is calculated based on the indexation adjustment of the relevant index, from the date the S106 agreement is signed to the expected date of payment. The additional amount paid on top of the financial contribution adjusts the contribution in accordance with inflation.
- 7.10 The method of indexation should be specified within the legal agreement and will usually either be the Retail Price Index (RPI) published by the Department of Trade and Industry (DTI), the Building Cost Information Service Index (BCIS) published by the Royal Institution of Chartered Surveyors (RICS) or the Consumer price index (CPI) published by the Office for National Statistics, depending on the nature of the contribution. In the event that the index shall decrease, the contribution shall not fall below the figure set out in the S106 agreement.
- 7.11 The Council will endeavour to provide updated costs for the standard charges provided throughout the Document as and when necessary.

## **Complying with In-kind Contributions**

- 7.12 Where an in-kind obligation is required through a S106 agreement the developer should provide evidence of compliance with the obligation to the Council, as outlined in the terms of the specific clauses. This evidence should be provided to the Council's Planning Obligations Officer. If approval is required from the Council on an element of the in-kind obligation, the Planning Obligations Officer should be the first point of contact.

## **Monitoring and Delivery of Planning Obligations – the Council's Role**

### **Non-Financial Obligations**

- 7.13 The delivery of non-financial contributions, or in-kind obligations, will be monitored by the appropriate service areas responsible for project delivery. For example, where there is an Affordable Housing element to a legal agreement, the Affordable Housing Team will monitor this section of the agreement to ensure that it is complied with.

### **Financial Contributions**

- 7.14 Once a financial contribution is received by the Council the service area or organisation with the responsibility for delivery of the S106 project will be informed. Projects funded through planning contributions will be selected through strategic objectives, which identify the infrastructure needed within the borough through public consultation and work undertaken by the individual service areas in the Council.

# Glossary of Terms

## **Affordable Housing**

As defined in The London Plan (2011) in Chapter 3 at Policy 3.10 and paragraph 3.61.

## **Community Infrastructure Levy (CIL) – Tower Hamlets**

A Levy charged on new development in the Borough, by the London Borough Of Tower Hamlets in order to fund infrastructure that is needed to support growth in the area.

## **Community Infrastructure Levy (CIL) – London**

A Levy charged on new development in London by the Mayor of London since the 1<sup>st</sup> April 2012 to fund strategic transport. This Levy is in addition to the LBTH Borough's CIL.

## **Community Infrastructure Levy Regulations**

Regulations approved by the House of Commons in accordance with section 222(2)(b) of the Planning Act 2008.

## **Community Plan**

A document prepared by the Tower Hamlets Partnership setting out how the quality of life in the borough will be improved in the period to 2020 and in accordance with four overarching themes.

## **Core Strategy**

The primary document of the Local Plan, the Core Strategy sets out the long-term spatial strategy to deliver the aspirations set out in the Community Plan 2020 through broad areas and principles of where, how and when development should be delivered across the borough to 2025.

## **Development Plan Document (DPD)**

A document which is part of the Local Plan and sets planning policy in local authority areas.

## **Green Grid**

A network of interlinked, high-quality and multi-functional open spaces, waterways and other corridors (see Tower Hamlets Green Grid Strategy).

## **Habitable Room**

A room within a dwelling, the main purpose of which is for sleeping, living or dining and meeting minimum room sizes set out in London Housing Design Standards. It is any room with a window that could be used to sleep in, regardless of how it is used. It excludes toilets, landings, halls, lobby areas and kitchen diners with an overall floor area of less than 13m<sup>2</sup>.

## **Heads of Term**

The different topic areas under which planning obligations might be identified in a Section 106 Agreement, for example Affordable Housing or Employment and Enterprise.

**Idea Store**

A strategic facility in Tower Hamlets which provides library facilities, a wide range of adult learning courses, computer access and activities and events.

**Infrastructure Delivery Plan (IDP)**

A schedule listing the key pieces of infrastructure required by the Core Strategy over the lifetime of the plan.

**Local Implementation Plan (LIP)**

Statutory transport plans produced by London Boroughs bringing together transport proposals to implement the Mayor of London's Transport Strategy at the local level.

**Local Plan**

Is the term for the Council's Development Plan Documents comprising the adopted Core Strategy and the Managing Development Document and Fish Island Area Action Plan.

**Major Commercial Development**

Any commercial development, including hotels, creating 1,000sqm or more of commercial floorspace.

**Major Residential Development**

Any residential development, including student housing, creating 10 or more units.

**Managing Development Document**

The Managing Development Document forms part of Tower Hamlets Local Plan. The document is the planning tool to help meet the policies and objectives identified in the Core Strategy.

**Material Consideration**

A legal term describing a matter or subject which is relevant (i.e. material) for a local authority to consider in assessing development proposals and when using its powers under planning law.

**Public Realm**

~~Any publicly owned streets, pathways, right of ways, parks, publicly accessible open spaces and any public facilities.~~

**Regulation 123 List**

Under Regulation 123 of the CIL Regulations 2010 (as amended), a Charging Authority is required to provide a Regulation 123 list, which sets those projects or types of infrastructure that it intends to fund through the Levy. .

**Section 278 Agreement**

A legal agreement completed between the developer and the Local Planning Authority, under section 278 of the Highways Act 1980, where a development requires works to be carried out on the existing adopted highway. These agreements provide a financial

mechanism for ensuring delivery of mitigation works identified and determined as necessary for planning permission to be granted.

**Transport Assessment (TA)**

A document which accompanies a planning application, and is used by planning authorities and highways authorities to determine whether the impact of a new development on the transport network is acceptable. It should identify what measures may be required to deal with the predicted transport impacts and to improve accessibility and safety, especially for pedestrians, cyclists and public transport users.

**Viability Assessment**

An assessment of the financial viability of a development, taking into account a range of different factors such as location, type of site, size of scheme and scale of contributions to infrastructure and facilities.