

# Planning Obligations Supplementary Planning Document

Final Draft for adoption

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# Overview

## Introduction

The Planning Obligations Supplementary Planning Document (SPD) provides guidance on how planning obligations are secured from new development to promote sustainable development in accordance with Local Plan Policy D.SG5. This SPD replaces the Planning Obligations SPD 2016.

Planning obligations are legal obligations entered into in order to mitigate the impacts of a development proposal. They can be by an agreement between the developer and the local planning authority or via a unilateral undertaking entered into without the local planning authority under Section 106 of the Town and Country Planning Act 1990 (as amended) Planning obligations take the form of financial contributions and non-financial obligations.

London Borough of Tower Hamlets (LBTH) also collects a Community Infrastructure Levy (CIL) locally (in accordance with its CIL Charging Schedule 2020) and on behalf of the Mayor of London. CIL money helps to fund infrastructure projects such as schools, health services, leisure, Open Spaces and transport improvements in the borough.

This SPD provides additional guidance on matters covered in the Tower Hamlets Local Plan (2020) which was prepared in accordance with National Planning Policy Framework. While this SPD does not form part of the statutory development plan, it is a Material Consideration for the determination of planning applications.

## Who is it for?

This SPD has been prepared to provide advice to developers, landowners, members of the public and other stakeholders on the Council's position regarding the use of planning obligations.

## 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 CIL and planning obligations
- Explain the circumstances under which planning obligations will be secured to mitigate the impacts of a development
- Improve transparency in the priority and calculation of planning obligations
- Provide applicants with greater certainty on when and what type of 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

## Relationship with Other Planning Documents

This SPD forms part of the borough's Local Development Documents comprising the Local Plan, Neighbourhood Plans and other SPDs. This document provides detailed guidance on how Local Plan policies related to planning obligations will be implemented.

The Local Plan (2020) sets out policies regarding the development and use of land which the Council wishes to encourage during the Plan period to 2031. This SPD sets out the objectives and reasoned justification of the Council's approach to how it will use planning obligations.

The London Legacy Development Corporation (LLDC) has temporary powers to act as the planning authority for an area towards the north-east of the borough. LLDC's planning guidance should be followed until such time that planning powers for this area are handed back to LBTH. The process to achieve this transition will be agreed with the Mayor, LLDC and the relevant boroughs and stakeholders.

## How should it be used?

This SPD should be used as a framework for identifying and calculating the financial and non-financial contributions associated with developments in the LBTH.

This SPD is a statutory document and a Material Consideration when assessing planning applications. Developers and landowners should draw on this document to assist with costing planning obligations and streamlining the negotiation and agreement of obligations with the Council.

The planning obligations outlined in this SPD are not an exhaustive list. As new policy requirements emerge or change, the SPD will be revised to reflect these changes. Additional planning obligations may also be sought in some circumstances, for example, in areas of intense redevelopment and regeneration, or in certain site-specific locations.

The type and range of planning obligations will depend on the development and its impacts. The legal agreement will also take into account phasing of developments or those that are subject to reserved matters applications.

This SPD should be read alongside the following documents:

- Tower Hamlets Local Plan (January 2020)
- Tower Hamlets CIL Charging Schedule (January 2020)
- Development Viability SPD (October 2017)
- Mayor of London's Affordable Housing and Viability Supplementary Planning Guidance (August 2017)
- The London Plan
- Other relevant SPDs

# 1. Introduction

- 1.1 This Supplementary Planning Document (SPD) provides reasoned guidance on the use of planning obligations in Tower Hamlets alongside CIL. It seeks to provide clarity on the Council's position regarding the combination of Borough CIL and the use of planning obligations.
- 1.2 Contributions will be made through CIL and/or legal agreements. CIL is a standard charge to mitigate the cumulative impacts of development through funding infrastructure delivery across the borough including transport, schools, community facilities and health centres. Legal agreements mitigate site-specific impacts to make the development acceptable in planning terms.
- 1.3 Section 106 obligations will be sought where the impacts of a proposed development cannot be addressed through planning conditions and the planning obligations relate directly to that development.
- 1.4 In particular, planning obligations can be used to:
  - Prescribe the nature of development (for example, a proportion of the housing development to be affordable)
  - Compensate for any loss or damage resulting from a development
  - Mitigate the impacts of a development
- 1.5 Planning obligations must meet the following statutory tests<sup>1</sup>, where they must be:
  - a) necessary to make the development acceptable in planning terms
  - b) directly related to the development
  - c) fairly and reasonably related in scale and kind to the development
- 1.6 Prior to the 2019 amendments to the CIL Regulations, Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) required Local Planning Authorities (LPAs) adopting CIL to prepare and publish a list of those items or types of infrastructure to be funded through CIL. To prevent 'double dipping', infrastructure could not be funded by planning obligations if it was listed on the Regulation 123 list. In the 2019 amendments, Regulation 123 was deleted.
- 1.7 In place of a Regulation 123 list, all LPA's are required, regardless of whether they have implemented CIL, to publish an 'Annual Infrastructure Funding Statement' (IFS) from December 2020. Under CIL Regulation 121A – Annual Infrastructure Funding Statements, the IFS is required to set out certain information about CIL and planning obligations, including:

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<sup>1</sup> Community Infrastructure Levy Regulations 2010 (as amended), Regulation 122 (Limitation on use of planning obligations)

- a) a statement of the infrastructure projects or types of infrastructure which the Council will fund or deliver through CIL and planning obligations
  - b) all CIL revenues received during the previous financial year
  - c) all planning obligations (financial and non-financial) secured during the previous financial year
- 1.8 Regulation 123 also restricted the pooling of contributions towards a specific type or piece of infrastructure to not more than five planning obligations. This element has been deleted in the 2019 amendments to the CIL Regulations meaning that there is now greater flexibility in delivering infrastructure through planning obligations and CIL. Planning obligations will still be restricted to site-specific matters and must meet the Regulation 122 tests (refer to paragraph 1.5).
- 1.9 In 2019, LBTH prepared a revised CIL Charging Schedule. As part of this process, a CIL Viability Study was undertaken. Part of the analysis to inform this study included defining an allowance for planning obligations. Contributions for any given scheme are still subject to the individual viability for that site; however, this allowance was considered an appropriate indicator of the likely average cost of planning obligations.
- 1.10 The outcome of the analysis was an allowance of £1,220 per residential unit and £20 per square metre (sqm) for commercial floorspace for planning obligations for policy compliant schemes<sup>2</sup>. As such, this allowance does not include carbon offset, SUDs, step-free access or affordable housing payments as these are allowed for as build costs in the Tower Hamlets Local Plan Viability Assessment (2018) and would only be sought from developments which do not comply with the Council's policy. The study recognises that individual site characteristics can impact viability. In cases where the cost per unit or per sqm is higher than what was assumed in the CIL Viability Study, planning obligations will take into account the viability of a development.

## Community Infrastructure Levy (CIL)

- 1.11 CIL is a non-negotiable charge which raises infrastructure funds from new developments only. CIL applies a set charge per square metre of floor space capturing most new developments involving an increase of 100 sqm or more of gross internal area (GIA) or the creation of one or more dwellings (even where this is below 100 sqm GIA). CIL charges are based on the size and type of development. Some developments can seek relief from paying CIL, such as developments with social housing, developments used for charitable purposes, or developments exclusively for primary residence that are self-built, including extensions or annexes.
- 1.12 Two CIL charges are payable on developments that are liable for CIL:
- Borough CIL
  - Mayoral CIL

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<sup>2</sup> CIL Additional Evidence and Information Document, October 2018 (CIL Examination Submitted Document 01.4)

## Borough CIL

- 1.13 The LBTH' revised [CIL Charging Schedule](#) came into effect on 17 January 2020.
- 1.14 The CIL Regulations allow local authorities in England and Wales to secure funds which 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.
- 1.15 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.
- 1.16 In accordance with the CIL Regulation 59A, between 15% - 25% of the CIL money collected from new development must be spent on infrastructure provision in the communities where development is taking place. It was agreed by Cabinet on 6 December 2016 to allocate 25% of received CIL funds in all circumstances to the 'neighbourhood portion'. In LBTH this 'neighbourhood portion' goes into the Local Infrastructure Fund (LIF) which residents are then consulted on to determine how this fund should be used to improve the local area.

## Mayoral CIL for Crossrail

- 1.17 From April 2019, the updated Mayoral CIL charge (MCIL2) superseded MCIL1 and the associated Crossrail Funding (Use of Planning Obligations and the Mayoral Community Infrastructure Levy) Supplementary Planning Guidance. MCIL2 (and MCIL1) is currently being used to fund the construction of Crossrail. The Council is responsible for collecting Mayoral CIL on behalf of the Mayor. Developments permitted after 1 April 2019 are liable for MCIL2; new development in LBTH are charged at £60 per sqm of qualifying development, except for health and education uses which have a nil charge. Further details of the current charging rate can be found at the [Mayoral Community Infrastructure Levy webpage](#). MCIL2 broadly reflects an adjusted charge (based on viability) for a combination of the superseded charges.
- 1.18 The charge for office, retail and hotel developments for those parts of LBTH which are in the Central London Area and the Isle of Dogs are liable for different rates than those set out in paragraph 1.17 (refer to Table 1 below).

**Table 1:** MCIL2 charging rates for office, retail and hotel use in Central London and Isle of Dogs

| Land Use | MCIL2 Rate (£ per sqm) |
|----------|------------------------|
| Office   | £185                   |
| Retail   | £165                   |
| Hotel    | £140                   |



## 2. Approach to Development Mitigation and Infrastructure Delivery

- 2.1 The specified subjects for planning obligations, as set out in this document are not exhaustive. Depending on the individual circumstances of a site and proposal, the Council may wish to negotiate other forms of planning obligations which meet the CIL Regulation 122 tests (refer to paragraph 1.5). When considering planning applications, 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 planning obligations and/or Section 278 agreements, where necessary
  - Where a proposal directly necessitates the provision of infrastructure to mitigate/enable development, the Council may seek to secure planning obligations through Section 106
- 2.2 Planning obligations may be financial or non-financial (including 'in kind' where the developer builds or provides directly the matters necessary to fulfil the obligation) and are negotiated as part of planning applications. In many cases provision in kind is preferable and more suitable, especially where this reduces management costs and/or where finding land for a facility is problematic. Where provision is made within developments, this will be credited to the scheme and will off-set financial contributions that may otherwise be sought. Other obligations may be secured for reasonable fitting out and other associated 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 Local Plan Policy D.SG5 notes that a flexible approach will be taken in determining planning applications relating to site allocations. Strategic infrastructure items required by site allocations will not typically meet the Regulation 122 tests and will instead be delivered through CIL-in kind.



## 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 subsequent legislation including 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). 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 three of the statutory tests.

### National Planning Policy Framework (2012 and 2019)

- 3.3 The National Planning Policy Framework (NPPF) sets out the Government's economic, environmental and social objectives of the planning policy framework for England. Taken together, these objectives articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations.
- 3.4 The NPPF was revised in 2019 and replaces the version published in 2012. The Tower Hamlets Local Plan (2020) was prepared, examined and adopted in accordance with the NPPF 2012. As such, the Local Plan is subject to the transitional arrangements specified in the NPPF 2019.
- 3.5 The NPPF reiterates the tests for planning obligations set out in the CIL Regulations and restates the principle that planning conditions are preferable to planning obligations.

### Tower Hamlets Local Plan (2020)

- 3.6 Policy D.SG5 of the Local Plan sets out the requirement for developers to pay contributions, including the Borough and Mayoral CIL charges and planning obligations. Developers are required to enter into a legal agreement to mitigate any impacts of the development through planning obligations where necessary. Where required, a financial viability assessment should be submitted for applications that do not meet policy requirements or if developers do not propose to deliver the necessary planning obligations.
- 3.7 Policy D.SG5 confirms that the majority of future infrastructure projects will be financed from monies secured through CIL, planning obligations and other funding sources, such as grants or subsidies. CIL will be used to fund infrastructure including transport, parks, schools and health facilities. legal agreements will be used where planning conditions cannot address the identified issue of a proposed development or an infrastructure requirement is site-specific and not funded by CIL.

## 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 outlined in section 3. When carrying out these negotiations to secure planning obligations, the three statutory tests set out in the CIL regulations must be met.

### 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, in line with Local Plan Section 5 (Monitoring and Delivery). The pre-application process offers a valuable service through discussions; planning performance agreements (PPAs) and other tools like design reviews and sustainability checklists for proposed schemes. This stage opens dialogue to resolve any initial concerns which officers envisage may arise during the formal application stage. Pre-application meetings can enable more prompt decisions, better quality developments and deter applications with little or no prospect of success.
- 4.3 Details of the development proposed should be submitted to relevant officers at pre-application stage. Schemes should ensure policy requirements are delivered on-site. 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.
- 4.4 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 in order 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'.
- 4.5 In addition to the Council's pre-application advice, TfL also provide [a pre-application service](#) providing advice in relation to transport impacts.

### Application Stage

- 4.6 Applicants are advised in the relevant Council validation checklists (required to validate a planning application) to submit details of planning obligations and viability information with their planning application. Draft Heads of Terms are required for all major developments.
- 4.7 The Council recommends that details of the applicant's solicitor are submitted at the time an application is made (however, they can be provided separately for privacy purposes). The following solicitor details should be provided:
- Name of company
  - Postal address

- Contact name
  - Telephone number (preferably direct dial)
  - Email address
  - Website
- 4.8 The Council's legal services will act on behalf of the Council and will prepare a first draft using its planning obligations template. An undertaking will be sought for their legal costs.
- 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. Companies registered in a foreign jurisdiction will be required to provide a legal opinion confirming that the company is properly constituted in the relevant jurisdiction.
- 4.10 During the planning application process, initial advice provided with regard to planning obligation requirements may be subject to alterations. This is often due to changes required following formal consultation and any issues which may arise during the course of an application. Detailed 'Heads of Terms' must be agreed prior to planning committee meetings and within an appropriate timescale for 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 Council 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 legal agreement prior to the Council issuing the decision notice for any delegated application.
- 4.13 In the case of an application referred to a LBTH 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 legal agreement. Following the planning committee, the applicant/agent must complete the legal agreement within a reasonable timeframe 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 planning obligations. This is reflected in:

- National policy (in the form of the NPPF) and guidance (NPPG)
  - Regional policy (in the form of the London Plan) and guidance (in the form of supplementary planning guidance)
  - Local policy (in the form of the Local Plan) and guidance (e.g. Development Viability SPD)
- 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 Council including the informal submission of a financial Viability Assessment prior to the formal submission of a planning application.
- 4.16 At planning application stage, proposals which cannot meet the full range of planning obligations must be submitted with a full financial viability assessment to enable the viability of the scheme to be comprehensively assessed.
- 4.17 The Development Viability SPD provides guidance relating to development viability. Applicants and their agents should discuss the approach to viability with the Council at an early stage.
- 4.18 Viability assessments must be completed in accordance with the guidelines set out in the Tower Hamlets Development Viability SPD. Where viability assessments are submitted as part of the planning process, the Council will review these rigorously as required by the London Plan and in line with the guidance in the GLA's Affordable Housing and Viability Supplementary Planning Guidance.
- 4.19 Applications that meet or exceed the minimum required level of affordable housing without public subsidy are not required to submit detailed viability information. The 'threshold approach' to viability is adopted by the Council in its Local Plan and detailed in the Development Viability SPD. This approach is in line with the Mayor of London's London Plan and the relevant viability guidance.
- 4.20 The London Plan stipulates that the threshold approach applies to Major Development proposals which trigger Affordable Housing requirements. The threshold level of Affordable Housing on gross residential development is initially set at:
- a minimum of 35 per cent; or
  - 50 per cent for public sector land where there is no portfolio agreement with the Mayor; or
  - 50 per cent for Strategic Industrial Locations, Locally Significant Industrial Sites and Non-designated Industrial Sites appropriate for residential uses in accordance with Policy E7 Industrial intensification, co-location and substitution where the scheme would result in a net loss of industrial capacity.
- 4.21 Schemes which follow the fast track route of the threshold approach will need to comply with housing sizes and local tenure policies in accordance with paragraphs 9.37 and 9.38 of the Local Plan and Policy H5 Part C of the London Plan Intend to Publish version. Such schemes will be the subject of an early stage review mechanism if the scheme is not implemented within 2 years. Schemes that provide off-site Affordable Housing or cash in lieu contributions and estate regeneration schemes will

not qualify for the threshold approach.

## Viability Review Mechanisms

- 4.22 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 legal agreements.
- 4.23 Viability review mechanisms will be triggered and undertaken according to the circumstances in each case, but based on the following principles as set out in the Tower Hamlets Development Viability SPD:
1. If substantial implementation hasn't occurred within 24 months of planning permission, a pre-implementation review will be required.
  2. For phased schemes requiring a review, mid-term reviews will be necessary prior to the implementation of later phases of a development.
  3. For all schemes requiring a review, an advanced stage review will be carried out. These reviews should be undertaken upon disposal of 75% of market residential accommodation for residential-led schemes, or within a three-month period prior to practical completion for all other schemes.

## Post Decision

- 4.24 Following the decision to grant planning permission subject to a 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. If not already provided the Council's solicitor will require the applicant's solicitor to provide an undertaking for the Council's costs. The legal agreement will be drafted using the Council's template agreement. The legal 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.
- 4.25 On completion and execution of a legal agreement, planning permission is formally issued. The legal agreement is placed on the statutory register<sup>3</sup> and is publicly available online together with the decision notice.
- 4.26 The executed 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 legal agreement is also registered on the Council's planning obligation database, which is used for monitoring and project management purposes.

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<sup>3</sup> [London Borough of Tower Hamlets online planning register](#)

## 5. Standard Obligations and Charges

- 5.1 This section sets out how the Council will apply planning obligations to make development acceptable in planning terms. Each development will be considered on a case by case basis in line with relevant and available evidence, guidance and policies. A variety of planning obligations may be necessary depending on the development and its impacts. As such, the planning obligations outlined in this section are not exhaustive.
- 5.2 For each obligation, the justification, threshold and contribution requirements are provided. These are taken into account when determining whether a proposed development should be subject to planning obligations and to estimate the required obligations.

### Affordable, Self-Build, Temporary, Specialist and Intermediate Housing

|                              |                  |
|------------------------------|------------------|
| Relevant Local Plan Policies | S.H1, D.H2, D.H3 |
|------------------------------|------------------|

- 5.3 Tower Hamlets has an acute housing need which is reflected in the housing supply targets for the borough. These targets are required in order to meet the current demand as well as to contribute to meeting the wider London need.
- 5.4 The housing need also extends to Affordable Housing in the borough for which there is a pressing requirement, especially for families. The Local Plan has set an overall strategic target to deliver 50% of new homes across the borough as affordable during the plan period 2016-2031. The housing targets cover a variety of housing products to provide more choice so that development meets a wide range of housing needs.
- 5.5 This section outlines the requirement for schemes to deliver Affordable Housing in accordance with Local Plan policy as well as addressing different housing products which may be included in schemes. As such, the section has been split into two sub-sections; the first addressing Affordable Housing requirements for major and minor applications and the second providing guidance for schemes which include specific housing products.

### How the Council will Secure Affordable Housing Through Planning Obligations

#### Affordable Housing – Major Applications

- 5.6 Affordable Housing is being delivered through negotiations as a part of major residential schemes, as well as through a range of public initiatives and the effective use of grant funding. In line with Local Plan Policies S.H1 and D.H2, a target of 50% Affordable Housing has been set for major residential schemes. These schemes are

expected to deliver a minimum of 35% Affordable Housing with a mix of tenures and unit sizes, subject to viability. The Development Viability SPD sets out the detail around securing on-site Affordable Housing provision, in line with the Mayor of London's Affordable Housing and Viability SPG.

### **Text Box 1: Affordable Housing - Major Applications**

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

Planning obligations relating to Affordable Housing will be secured for:

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

#### **On-Site Provision**

The Council will require the provision of 35 – 50% Affordable Housing. Development is expected to maximise the delivery of affordable housing on-site. The level of Affordable Housing provision or contribution and the tenure and mix will be considered on a site-by-site basis subject to viability having regard to the Local Plan policies.

The legal agreement will require the developer to provide an annual update on the amount of Affordable Housing that has been transferred to housing providers.

#### **Circumstances for Off-Site Provision or Financial Contributions**

Affordable Housing should be provided on-site in the majority of circumstances. In accordance with the explanations for Local Plan Policies S.H1 and D.H2, 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 housing cannot be provided on- or off-site, a commuted sum will be required. As detailed in the explanation for Local Plan Policy D.H2, developers must demonstrate, through the financial viability statement that the payment will enable the construction or purchase of a minimum of 50% Affordable Housing in the borough and there is no financial advantage to the development of not providing Affordable Housing on-site. The commuted sum will be used to provide Affordable Housing in the borough.

The acceptability of off-site provision and/or a commuted sum is entirely at the discretion of the Council.

An indicative formula has been provided below to calculate the commuted sum. The exact figure will be subject to up-to-date costs at the discretion of the Council.



### Commuted Sum

$$\begin{array}{r}
 \text{Total floor area of on-site} \\
 \text{Affordable Housing} \\
 \text{requirement that is to be} \\
 \text{delivered as private} \\
 \text{housing} \\
 \hline
 \end{array}
 \times \left( \begin{array}{r}
 \text{Value per} \\
 \text{square foot of} \\
 \text{private housing} \\
 \text{on-site}
 \end{array}
 - \begin{array}{r}
 \text{Value per} \\
 \text{square foot of} \\
 \text{Affordable} \\
 \text{Housing on-site}
 \end{array} \right)$$

**= Contribution required**

### Affordable Housing – Minor Applications

- 5.7 In accordance with Local Plan Policies S.H1 and D.H2 minor applications where 2 - 9 units are proposed should contribute towards the provision of Affordable Housing (“Small Sites Contribution”). As detailed in paragraph 9.21 of the Local Plan, it is considered necessary and appropriate to seek financial contributions from minor applications using the methodology outlined in this SPD.
- 5.8 The rationale for the contribution and calculation method is set out in the Small Sites Affordable Housing Contributions Paper (2017)<sup>4</sup>. The Small Sites Contribution will negate the need for smaller developments to go through the viability negotiation process, saving time and costs.
- 5.9 The [Small Sites Contribution calculator](#) has been developed to work out the financial contribution by first calculating the monetary value of the affordable housing provision and then applying a sliding scale housing target. The calculator works by users entering the number, floor area and market value of units as well as the ward that the scheme is located in.
- 5.10 The calculator is based on the normal 70:30 split between Affordable and Intermediate products, with the affordable units provided as rented products and the intermediate units as shared ownership.
- 5.11 The rented units have been valued by capitalising the annual rents received at a yield of 5.00%. Rents are based on the relevant policy and will be updated annually as appropriate.
- 5.12 For the shared ownership units, the calculator is based on 25% of the equity being purchased at the outset. An annual rent of 2.75% of the remaining unsold equity is then included, with this income (net of management charge) capitalised at a 5.00%

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<sup>4</sup> The report was prepared as part of the Local Plan evidence base and referred to in the Hearing Statement for Matter 6.

yield. For simplicity, no staircasing has been assumed for the shared ownership units. The market value on which the shared ownership values are based is derived from the floor areas input into the calculator, multiplied by the market value per sqm for the site's CIL Zone. This is then indexed by the "all property types" index on the Land Registry HPI.

- 5.13 The values are then pro-rated to reflect the policy splits. Generally, this will equate to partial units as, due to the small scheme sizes, the provision of each tenure and unit size would be less than one full unit.
- 5.14 This final affordable housing value is then multiplied by the relevant weighting according to the sliding scale. This converts the value from being equivalent to 35% provision to being equivalent to the appropriate provision for the scheme as per the sliding scale.
- 5.15 The calculator uses a range of data inputs to calculate the required financial contribution including affordable rent levels, management costs, yields and equity rent. These inputs will be reviewed and updated as required but on a yearly basis as a minimum.
- 5.16 The Small Sites Contribution will normally be payable on commencement. If agreed with the Council, the contribution may be payed within six months of development commencing or first occupation, whichever is earlier. The contribution will be used to provide Affordable Housing within the borough as part of the Council's Affordable Housing delivery programme.

### **Text Box 2: Affordable Housing - Minor Applications**

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

Planning obligations relating to Affordable Housing will be sought for:

- Applications providing 2 to 9 new residential units.

#### **Sliding Scale Financial Contribution**

The Council will require a financial contribution towards Affordable Housing, calculated using the Small Sites Contribution calculator.

## **How the Council will Secure Self-Build, Temporary, Specialist and Intermediate Housing Through Planning Obligations**

### **Affordable Self-build Housing**

- 5.17 Policy S.H1 recognises the duty for LBTH to support local demand for individual and group self-build projects. Due to the specific financial constraints relating to developing self-build homes (particularly on smaller sites) such as high local land values and housing targets, these developments will often not provide a policy-defined

Affordable Housing product.

- 5.18 The Council's Affordable Self-Build Policy on Council Owned Land<sup>5</sup> seeks to deliver an affordable in-perpetuity self-build product on all Council owned sites provided for self-build. The Affordable Self-Build Policy specifies the approach that will be taken to dispose of Council owned land proposed for release to self-builders. Any reduction in the open market value of the land will apply to the initial buyer and any future buyer or renter.
- 5.19 Self-build homes delivered on Council-owned land in accordance with the Affordable Self-Build Policy, will be exempt from the small sites Affordable Housing requirements (Policy S.H1, part 2a) and would instead secure the reduction in the open market value of the land in a legal agreement. This is to ensure that any reduction is passed onto any household buying or renting a self-build home once developed.
- 5.20 Where a self-build project that has not being delivered under the Council's Affordable Self-Build Policy (i.e. a stand-alone project) comes forward, it would need to comply with Policy S.H1. The Small Sites Contribution would be payable if it cannot be demonstrated that the self-build housing can be classed as affordable.

### **Text Box 3: Affordable Self-build Housing**

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

Planning obligations will be secured for:

- Any self-build home delivered on Council-owned land in accordance with the Affordable Self-Build policy

Self-build housing on Council-owned land will be secured as discounted housing and will be exempt from the Small Sites Contribution policy requirements.

#### **Temporary Housing**

- 5.21 As part of the [Council's Homelessness Strategy](#), the Council will bring forward temporary accommodation as meanwhile use developments on vacant sites. These modular developments are intended to be deconstructed and reconstructed as required elsewhere within the borough as part of the temporary housing strategy. Such sites led by the Council, would be secured as Affordable Housing for the duration of the temporary permission. Privately led temporary housing projects will need to comply with the relevant planning Affordable Housing policies set out in the Local Plan.

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<sup>5</sup>Further information can be found on the [Council's self-build webpage](#)

## Text Box 4: Temporary Housing

### Threshold and Contribution Requirements

Planning obligations will be secured for:

- Privately led temporary housing projects

### Temporary Housing

An adequate management plan setting out the strategy to be adopted for the type of occupants, their length of stay and tenure will be agreed and secured as part of a planning obligation. Where a temporary development includes affordable temporary units, they should be secured as Affordable Housing for the duration of the temporary permission.

### Specialist Housing

- 5.22 Tower Hamlets currently has the lowest supported living accommodation of any Council in the North East sub-region resulting in insufficient specialist accommodation to support residents in the borough. As development continues and population increases, the number of people requiring Specialist Housing is expected to increase resulting in further pressure on the current accommodation options. The Council is committed to ensuring a sufficient supply of appropriate Specialist Housing in the borough.
- 5.23 In Tower Hamlets there is a particular need to accommodate people with learning disabilities, including shared and self-contained accommodation, to address this need. The Adult Learning Disability Strategy '[Living Well in Tower Hamlets](#)'<sup>6</sup> sets out the Councils approach to improving support for Adults with a learning disability. Living locally in accommodation that meets their needs and being part of the local community was identified by people with learning disability, their families, and carers, as important and is one of the six outcomes detailed in the Strategy.
- 5.24 Local Plan Policies S.H1 and D.H4 support developments that meet specialist housing needs. Developments which include specialist housing are encouraged to deliver specialist housing units as Affordable Housing. It is recommended that this is discussed with the Council during pre-application discussions.
- 5.25 Developments are encouraged to deliver specialist housing on-site in accordance with best practice guidance to develop accommodation which meets the specific needs of the intended occupants. This includes universal design properties suitable for all autistic families and wheelchair accessible properties (including those referred to under the wheelchair accessible housing obligation below).

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<sup>6</sup> Approved by Cabinet on 19<sup>th</sup> September 2017

### **Text Box 5: Specialist Housing**

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

Planning obligations will be secured for:

- Developments delivering Specialist Housing

The planning obligation will require delivery of the specialist housing units. The legal agreement will identify the units to be delivered as specialist housing and outline what needs these will be adapted to, including any units to be delivered as Affordable Housing

#### **Intermediate Housing**

- 5.26 Local Plan policies S.H1 and D.H2 support developments which contribute to mixed and balanced communities including through the provision of Intermediate Housing. Intermediate Housing describes a range of homes for sale and rent provided at a cost above social rent but below market levels (subject to the criteria in the NPPF).
- 5.27 The Council wants to promote a variety of Intermediate Housing products across the borough and is particularly supportive of intermediate rented products which are a more affordable Intermediate Housing product for a wider range of Tower Hamlets residents.
- 5.28 Where Intermediate Housing is included in a development and is funded without support from the GLA, the legal agreement will detail the requirements for marketing the units in accordance with the Tower Hamlets Intermediate Housing Policy.

### **Text Box 6: Intermediate Housing**

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

Planning obligations will be secured for:

- New build Intermediate Housing funded without support from the GLA

The legal agreement will require Intermediate Housing products to be marketed to Tower Hamlets residents and those who work in the Borough for the first three months of marketing, in accordance with the Tower Hamlets Intermediate Housing Policy. Developers or registered providers will be required to inform the Council when this marketing begins and once the three-month period is complete, prior to commencing London-wide marketing. This will not apply to resale of Intermediate Housing products.

## Wheelchair Accessible Housing and Parking

|                              |            |
|------------------------------|------------|
| Relevant Local Plan Policies | D.H3, D.H6 |
|------------------------------|------------|

### How the Council will Secure Wheelchair Accessible Housing and Parking Through Planning Obligations

#### Wheelchair Accessible Housing

- 5.29 To meet the current and future needs of households requiring accessible housing, Local Plan Policy D.H3 requires at least 10% of all new units to be built to the 'wheelchair user dwellings' accessible housing standard M4 (3). Where a better outcome would be provided this can be varied to at least 10% of Habitable Rooms.
- 5.30 The Council's preference is that units which meet the accessible units standards M4 (3) will be provided below the fifth floor due to difficulties allocating wheelchair accessible units on higher floors.
- 5.31 At least 10% of all new units across all tenures should be built to the 'wheelchair user dwellings' accessible housing standard M4 (3). The remainder of dwellings should be built to the 'accessible and adaptable dwellings' accessible housing standard M4 (2) both contained within part M (volume 1) of the building regulations.
- 5.32 Within student accommodation, Local Plan Policy D.H6 requires 5% of units to be wheelchair accessible with access to an independent, accessible shower unit in line with the British Standard BS8300.
- 5.33 In general, planning conditions will be used to clearly state requirements and secure the detailed design of wheelchair accessible housing to ensure high quality wheelchair user units are delivered. In instances where these requirements can't be addressed via conditions, they may be secured via legal agreement.
- 5.34 A commuted sum may be sought in exceptional circumstances where units cannot be delivered on-site. This financial contribution covers the typical installation costs for retrofitting an existing home. Retrofit costs vary widely between the types of units and is tailored to the needs of the individual wheelchair user or household. The indicative installation cost listed below would typically include the identified works and additional fees for management work:
- Communal & fire doors to be fully automated
  - Part M wet room, 1500x1500mm laid to fall shower area, a height adjustable with hand basin & toilets high 480mm & projecting 750mm clear of boxing
  - Wheelchair recharge/transfer space in hall
  - Wheelchair accessible kitchen kitchens with hight adjustable worktops, hob and hand basin
  - Through floor lift – if required should be hallway to hallway

- Fixed hoist likely to be in one bedroom, bathroom/wet room or living room

### Text Box 7: Wheelchair Accessible Housing

#### Threshold and Contribution Requirements

Planning obligations relating to wheelchair accessible housing will be secured for:

- All new residential units

#### Commuted Sum (in exceptional circumstances only)

Wheelchair accessible housing should normally be provided on-site. Only where exceptional circumstances exist and at the discretion of the Council, a payment in lieu may be sought for the units that cannot be delivered on-site. The commuted sum is only applicable to the individual units that cannot feasibly be delivered on-site (i.e. it does not automatically cover the full 10% requirement if some of the units can be delivered on-site).

A formula with an indicative retrofitting cost has been provided below to calculate the commuted sum. The exact figure will be subject to up-to-date installation costs at the discretion of the Council.

|   |   |   |
|---|---|---|
| Number of wheelchair units<br>not to be delivered on-site | x | Installation costs of retrofitting an<br>existing home (Indicative cost: £31,740) |
|---|---|---|

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**= Contribution required**

#### Wheelchair Accessible Parking

- 5.35 Local Plan Policy D.TR3 and the associated explanation require that accessible parking should form a portion of overall parking provision. Appendix 3 of the Local Plan specifies the requirements for providing accessible parking on-site.
- 5.36 Developments delivering parking for disabled people on-site should ensure this parking is linked to the wheelchair accessible units within the development and located to minimise the distance to the dwelling or relevant block entrance.
- 5.37 Off-site parking spaces or spaces on the public highway for disabled people (blue badge spaces) that are funded by the developer are subject to the discretion of the Council due to the capacity constraints on public highways. In cases where they are agreed, they shall be delivered through a Section 278 (Highways Act 1980) agreement by the Council.



### Text Box 8: Wheelchair Accessible Parking

#### Threshold and Contribution Requirements

Planning obligations relating to wheelchair accessible parking will be sought for:

- Developments delivering accessible car parking

#### Wheelchair Accessible Parking

The legal agreement will secure the number and location of accessible parking spaces in perpetuity for exclusive use by the wheelchair accessible units. No parking charge should be associated with the use of the accessible parking spaces.

## Student Housing Development

|                              |            |
|------------------------------|------------|
| Relevant Local Plan Policies | S.H1, D.H6 |
|------------------------------|------------|

5.38 Policy D.H6 of the Local Plan details the approach to delivering student accommodation in appropriate locations in the borough and the need to balance this against other priorities.

5.39 Two types of student accommodation<sup>7</sup> have been identified in Tower Hamlets:

- Market student housing which charges unrestricted rents and generates sufficient surplus residual values to absorb the Borough CIL. For such private developments, a mix of affordable and market student housing units are expected to be delivered to meet the full range of housing needs in line with Policy S.H1.
- Higher education-led student housing which is tied to one or more specific education institutions through an undertaking and restricts rents at lower than market levels.

### How the Council will Secure Student Housing Through Planning Obligations

5.40 Student housing led by higher education institutions has been identified as being unviable at the current CIL rates. Tower Hamlets' Student Housing CIL rate of £450 will not apply to higher education-led student accommodation with affordable rents (i.e. below-market rents in accordance with the Local Plan). A planning obligation will be sought to secure the reduced rent levels for the duration that the student housing

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<sup>7</sup> Sources: BNP Paribas Real Estate's 'CIL Viability Study (August 2013)' and 'Community Infrastructure Levy Review (August 2018)

use continues.

- 5.41 Where nil-CIL liability is sought, the higher education institution in question will be required to have at least one teaching facility in Tower Hamlets' CIL charging area. Any developer undertaking development on behalf of a higher education institution must enter into a formal nomination agreement, or the equivalent, with the higher education institution in question prior to the planning application being made to the Council.

### **Text Box 9: Student Housing**

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

Planning obligations will be sought for:

- Student housing development

#### **Student Housing**

The Council requires new purpose-built student accommodation to either have an undertaking in place to provide housing for students at one or more specific education institutions, or otherwise provide an element of affordable student accommodation. This affordable student housing will be secured through a planning obligation, requiring student accommodation let at below-market rent level (being affordable student housing in accordance with the Local Plan and the GLA Housing Supplementary Planning Guidance).

The planning obligation will be secured for the duration that the student housing use continues. For monitoring purposes, we will also require an 'owner's covenant' to be secured in the obligation, to inform us each year of the rent level to be charged for the new academic year (Consumer Price Indexed yearly from date of planning permission).

Nil CIL payments will only apply to affordable student accommodation units delivered in accordance with the requirements in the Local Plan and the GLA Housing Supplementary Guidance (2016).

## Employment, Skills, Training and Enterprise

|                              |               |
|------------------------------|---------------|
| Relevant Local Plan Policies | S.EMP1, S.SG2 |
|------------------------------|---------------|

- 5.42 Tower Hamlets is in a unique position with regard 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. Employment opportunities arising from development in the borough must be accessible to its residents to increase employment levels and help tackle poverty and social exclusion. In addition, supporting residents to work locally will contribute to sustainability outcomes through the reduced need to commute. Achieving these outcomes relies on a healthy and growing economy for Tower Hamlets which in turn means that the borough must support and retain a wide mix of enterprise and commercial spaces.
- 5.43 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. Employment opportunities from new developments must be accompanied by training to upskill residents so that they can compete for the jobs.
- 5.44 The Council will seek to ensure that jobs are provided for local people, both in the construction phase of development and by the end users / tenants (in commercial developments). To enable local people to benefit from development growth the Council has introduced a number of programmes, working with partners to support job brokerage, employer-led training, construction skills training, apprenticeships, and job opportunities. The Council will support and encourage London Living Wage to be paid where possible for employment, skills, training and enterprise obligations.

### How the Council will Secure Employment, Skills, Training and Enterprise Through Planning Obligations

#### Local Employment and Skills Training

- 5.45 Local Plan Policy S.SG2 specifies that development is considered to contribute to the Local Plan vision and objectives where local training and employment opportunities in construction and/or end use are provided. All new developments must ensure that local residents are provided with the opportunity to access jobs resulting from the construction of the site or the end use.

## **Text Box 10: Local Employment**

### **Threshold and Contribution Requirements**

Planning obligations relating to employment and skills training will be sought for:

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

### **Job Brokerage**

We will seek to secure a minimum of 20%\* of the total jobs created by the construction and end-user phases of new developments for local residents. To support developers to meet this obligation, we require the opportunities to be advertised to Tower Hamlets residents through the Council's job-brokerage service or local based organisations. All opportunities are to be advertised for a specified minimum period of two weeks.

The developer is required to supply the programme of works for the scheme prior to commencement. This provides the employment team with the opportunity to prepare residents for upcoming opportunities at the various construction phases.

\* 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.

### **Skills and Training Financial Contribution**

- 5.46 For all applicable Major Developments, the Council will seek a financial contribution to support and provide the training and skills needs of local residents in accessing the new economic opportunities.
- 5.47 This contribution will be used to provide and procure the support necessary for local people who have been out of employment and/or do not have the skill set required to access or progress in work. This includes preparing people to apply for jobs advertised on forthcoming development sites, thereby enabling more applicants to come forward for jobs that are required to be advertised exclusively for local people. For the construction phase this includes all jobs that support the construction of the scheme, including back office and logistics jobs.

### Text Box 11: Construction Phase Skills and Training

#### Formula – Construction Phase Skills and Training

For all applicable developments the Council will seek a financial contribution to support local people in accessing construction phase job opportunities.

£4 x sqm of the total new development floorspace (GIA)

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#### = Contribution required

For example: When applying the formula to a development consisting of total 7099.8 sqm of new floor space (GIA) - £4 x sqm (7,099.8) = £28,399.2 is obtained in contributions.

### Text Box 12: End User Phase Skills and Training

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

The Council will seek a financial contribution from commercial development to support the training and skills needs of local residents.

|                                     |   |  |   |   |
|-------------------------------------|---|--|---|---|
| Employee yield of the development * | x | 20% (Aspirational local labour target) | x | Current cost of training and support (£2,040 per person) ** |
|-------------------------------------|---|--|---|---|

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#### = Contribution required

\* Calculated using the HCA Employment Densities Guide, 2nd Edition 2010 or subsequent updated document.

\*\* Based on the average cost per unit of NVQ Level 2 Framework offered by the Council = £1,700 + 20% overheads. NVQ training is used as an indicator of the level of training required, actual training provided may not be via NVQ depending on the jobs and skills required.

### Apprenticeships

5.48 In order to support local people in the development of their skills, we will seek to ensure that a proportion of the jobs secured for local residents provide apprenticeships where appropriate. This will include the construction phase of all new development and the end-user phase of commercial development,

5.49 Apprenticeships are jobs with a skills development component which allows an apprentice to gain technical knowledge and practical experience. Skills are acquired through a mix of learning in the workplace and formal offsite training. Apprenticeships need to align with a recognised apprenticeship standard.

### **Text Box 13: Apprenticeships**

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

Planning obligations relating to apprenticeships will be sought for:

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

#### **Planning Obligations**

For the construction phase, one apprenticeship should be secured for a minimum of the equivalent of one year (52 weeks) (minimum Level 2) or until completion of their apprenticeship standard qualification, per £5 million of built cost. Developers will be required to suggest an alternative solution should the construction phase be shorter than one year. Apprenticeship requirements for the end-user phase are based on the employee yield and will be secured through the legal agreement. End-user apprenticeships should take place within the first five years of occupation.

All apprenticeship vacancies and opportunities are to be submitted to the Council's job-brokerage team so they can be recorded on the system. This information should be submitted as and when an opportunity becomes available before occupation for non-commercial developments, and regularly for the first 5 years of occupation for commercial developments.

#### **Local Enterprise**

- 5.50 In order to support local businesses to benefit from new development within the borough, the Council will require a commitment from developers 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.
- 5.51 The developer is required to submit a Tender Event Schedule (T.E.S) at the start and end of the construction period detailing the list of packages being offered for competitive tender including time frames, values of packages and framework agreements in the supply chain. Any additional health & safety requirements are to be detailed in the T.E.S.
- 5.52 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 robust evidence of any package secured locally which can be quantified by value and quantity.
- 5.53 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 actions taken by the developer to engage with local suppliers.

- 5.54 All information supplied to the Council's Economic Development Team will be treated as private and confidential and not passed to any third parties.

#### **Text Box 14: Local Enterprise**

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

Planning obligations relating to local enterprise will be sought for:

- Residential developments of 10 units or more, or with a combined gross floorspace of 1,000 sqm (GIA) 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 fulfilled using firms located within the borough. This will be subject to competition rules.

The developer will be expected to work with the Council and other organisations it may choose to nominate, in order to maximise the opportunities for local firms to win contracts through established procurement procedures.

##### **Recommended points for inclusion in Heads of Terms**

- 5.55 The following points should be addressed in the agreement of draft planning obligation Heads of Terms:

- Should the obligation include a prior to occupation clause, discharge should be requested at least 3 months prior to occupation
- Discharge for construction phase employment and enterprise obligations should be requested upon completion of the development and no later than 3 months from the end of construction
- Spot checks will be carried out to ensure that obligations have been adhered to
- Prior or existing supplier agreements will be considered as part of the calculated value
- Tower Hamlets businesses who apply for supply chain contracts must be given feedback in the event they are not selected for contract opportunities

#### **Affordable Workspace**

|                              |                |
|------------------------------|----------------|
| Relevant Local Plan Policies | D.EMP1, D.EMP2 |
|------------------------------|----------------|

- 5.56 Between 2006 and 2015, the number of enterprises that employ fewer than 10



workers grew from 9,219 to 13,000<sup>8</sup> in the borough. The number of SMEs that employ fewer than 250 employees has also grown to 80,000 people at 16,000 firms. Whilst the average size of an office has increased from 500 sqm in 2000, to 617 sqm in 2016, the demand for small office space is also growing, with very little real estate transactions, resulting in unsatisfied demand. Also influencing this situation is the broader trend of increasing rents and loss of employment land in the borough.

- 5.57 In order to address this, Local Plan Policy D.EMP2 requires at least 10% of new employment floorspace is flexibly designed to provide Affordable Workspace in all Major Developments of at least 1,000 sqm gross. This includes use class changes which do not meet permitted development requirements. The 10% should be based on the gross Internal area (GIA) of the commercial floorspace that falls under Use Classes E(g), B2 and B8<sup>9</sup> whether this is a commercial or mixed-use development.

## **How the Council will Secure Affordable Workspace Through Planning Obligations**

### **What is Affordable Workspace?**

- 5.58 Affordable Workspace covers all commercial premises where at least 10% of the gross internal floorspace is offered at a reduced rate. It is workspace let out at below market rates, either in perpetuity or for a fixed period (i.e. for a minimum period of 10 years or more) with the purpose of encouraging access by local entrepreneurs, particularly those from disadvantaged backgrounds.
- 5.59 Workspace can take a range of forms, such as flexible or shared workspace where tenants have a flexible agreement through a workspace provider. It can also include discounted floorspace for one or more SMEs, or shared industrial workspace for businesses or artists. The Council's preference is for developers to deliver the Affordable Workspace, via a specialist workplace provider, as flexible workspace such as (but not limited to) offices, artists' studios and industrial uses (subject to the circumstances set out in paragraph 5.53). The Council will also support the inclusion of community spaces and businesses paying employees London Living Wage.
- 5.60 In instances where the amount of committed affordable floorspace is under 300 sqm, the Council will support the relevant floor area being let out directly to start up and SME businesses within Tower Hamlets rather than through a workspace provider. This is to help alleviate the pressure on SMEs to find suitable small office space.
- 5.61 Where an existing commercial development is being redeveloped, the Council will support priority being given to re-accommodating existing local SME businesses

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<sup>8</sup> Tower Hamlets Affordable Workspace Evidence Base, February 2018.

<sup>9</sup> Paragraph 10.25 of the Local Plan specifies that Part 4 of Policy D.EMP2 applies to B1, B2 and B8 uses. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 and come into force on 1<sup>st</sup> September 2020 and introduced changes to use classes. These changes are reflected in the SPD.

within the borough.

### **Pre-application and legal agreements**

- 5.62 Developers are encouraged to engage as early as possible at the pre-application stage (and before a planning application decision is issued) with the Council's New Business Growth Team and agree the following:
- The affordability discount, rent level and associated service charge level
  - Length of time to secure the affordability
  - Amount of affordable floorspace
  - Relationship between the developer, workspace provider and the type of enterprises envisaged as end occupants
- 5.63 In cases where the Affordable Workspace involves a commercial tenant and an end-user tenant (the end user of the space), the affordability criteria approved in the planning application should be provided for each party.
- 5.64 The obligation to provide Affordable Workspace will be secured in the legal agreement. The affordability criteria approved in the planning application should be provided to the commercial and end-user tenant. The discount level will be secured in the legal agreement.
- 5.65 The obligation will require a strategy for the Affordable Workspace to be submitted for review and approval at least 12 months prior to occupation of development. In the case of phased development or reserved matters applications, the submission of the Affordable Workspace strategy will be linked to the occupation of the phase which the Affordable Workspace is located in. A minimum of 12 months is required to ensure that an adequate period of marketing to attract an Affordable Workspace provider is undertaken prior to occupation. The Council will respond to the Affordable Workspace strategy within 2 months of its receipt.
- 5.66 The strategy should be prepared in accordance with the template provided in Appendix A and should confirm the proposed type of occupier, rent level and discount. If the space will be let out to a workspace provider, details of the workspace provider and where applicable what costs would fall on the provider and their tenants, such as fit out and service charge. If the space will be let out directly to small local businesses, a strategy should be proposed on how to target local businesses and how long the proposed leases will be. The legal agreement will include the obligation to secure further SME tenants if the first tenant outgrows the premises within the initial term.

### **Hierarchy of Affordable Workspace provision**

- 5.67 It is expected that Affordable Workspace will be provided within the same building in the first instance. Where this is not possible (in prescribed circumstances as set out in the explanation to Policy D.EMP2 of the Local Plan), the hierarchy of Affordable Workspace provision below should be followed:

- Commercial floorspace apportioned to include the affordable floorspace within the same building
- Provided within the development scheme
- Provided within the same sub area (as defined in Policy S.SG1)
- If the above locations are not possible or found desirable by officers, provision elsewhere in the borough may be considered

5.68 If Affordable Workspace is provided off-site, the responsibility lies with the developer to find a suitable site in line with the hierarchy above and demonstrate additionality (i.e. that more Affordable Workspace will be delivered than policy requirements alone). An obligation to deliver the workspace off-site will be secured through the legal agreement.

### **Text Box 15: Affordable Workspace**

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

Planning obligations relating to Affordable Workspace will be secured for:

- Commercial developments of 1,000 sqm (GIA) or more
- Mixed-use developments of 1,000 sqm (GIA) or more of commercial space

#### **On-site Provision**

In accordance with Local Plan Policy D.EMP2, the Council requires the provision of at least 10% of new employment floorspace that falls under Use Classes E(g), B2 and B8 to be provided as affordable workspace. The workspace should be let at an affordable tenancy rate at least 10% below the indicative market rate for the relevant location. It is expected that this will be provided onsite in the first instance.

Within the legal agreement, the following will also be secured subject to viability and consideration of the site-specifics:

- The discount in the rent level to be passed on to the tenants / occupiers
- The length of time the discount level will be secured for. This will be for a minimum period of 10 years; however, where appropriate, the Council will secure discount levels for longer periods, including in perpetuity.

#### **Circumstances for Off-Site Provision or Financial Contributions**

Only where exceptional circumstances exist as set out in the Local Plan (refer to the explanation to Policy D.EMP2) and where the Council is satisfied that it would deliver a better outcome, will off-site provision be accepted. In instances where Affordable Workspace cannot be provided on-site or off-site, a commuted sum will be required. The commuted sum will be used to provide Affordable Workspace within the borough. The acceptability of off-site provision and/or a commuted sum is entirely at the discretion of the Council.

### Commutated Sum

The commuted sum will be used by the Council to provide affordable workspace in the Borough. As such, the calculation accounts for the costs the Council will incur when delivering these spaces.

Step 1:

$$10\% \text{ of Gross Internal Area (sqm)} \times \text{Rental value per sqm}^1 = \text{Rent per annum}$$

Step 2:

$$\text{Rent per annum} \times \left( \frac{((1+i)^n - 1)}{i(1+i)^n} \right)$$

**= Contribution required**

<sup>1</sup> Projected rental values from subject property or comparable (on a per sqm per annum basis)

<sup>2</sup> Multiplier calculation inputs:

n = discount period (minimum 10 years)

i = All risks yield (calculated as subject property commercial yields /100)

### Commutated Sum – Worked Example

n = 10 years, i = 0.055 (5.5 / 100)

Step 1: 500sqm x £500/sqm = £250,000 (rent per annum)

Step 2a (multiplier calculation):  $\frac{((1+0.055)^{10} - 1)}{(0.055 (1+0.055)^{10})} = 9.55 / 0.58025$

Step 2b: £250,000 x 16.4584231 = £4,114,605.77 (affordable workspace contribution)

## Early Years Education and Care Facilities

|                              |                      |
|------------------------------|----------------------|
| Relevant Local Plan Policies | D.EMP2, S.CF1, D.CF3 |
|------------------------------|----------------------|

5.69 Local Plan Policy D.CF3 outlines the situations in which the development of new early years education and care facilities will be supported and the guidance they need to meet. The supporting explanation recognises that demand for early years education and care facilities is expected to increase in the borough. The provision of these facilities will require innovative delivery, including co-location with compatible uses such as office space and schools.

5.70 The Childcare Act 2006 (as amended) requires local authorities to support the provision of sufficient, sustainable and flexible childcare. Sufficient childcare meets children’s learning needs as well as providing parents with real choices about work and training.

5.71 The Childcare Sufficiency Assessment<sup>10</sup> (referred to during Hearings for the Local Plan) identifies the areas in the borough that have an insufficient supply of early years education and care facilities.

### **How the Council will Address Early Years Education and Childcare Through Planning Obligations**

5.72 Developers are encouraged to incorporate space for early years education and childcare facilities in developments where the area in which the development is located has a demonstrable need. This should be addressed with the Council during pre-application discussions to confirm that the statutory requirements for these facilities can be met and that the location and surrounding area/uses are appropriate.

5.73 Where developments propose to include an early years education and childcare facility, this will be secured by a legal agreement.

#### **Text Box 16: Early Years Education and Childcare**

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

Planning obligations relating to early years education and care facilities will be secured for:

- Any development which incorporates space for an early years education and care facility

##### **Early Years Education and Care Facilities**

The planning obligation will secure use of the space as an early years education and care facility. If the space cannot be filled by an early year’s education provider, the developer will be required to provide evidence of the efforts made to market and fill the space.

The legal agreement will also require the submission of a statement which addresses design and access components to ensure that premises are safe and suitable in accordance with statutory requirements under the Early Years Foundation Stage (EYFS) statutory framework. This includes access to outdoor play space, indoor space requirements and supporting facilities (i.e. office space and bathrooms).

The early years education provider is required to provide spaces for children eligible for the government-funded early education and childcare entitlement.

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<sup>10</sup> 2018 Childcare Sufficiency Assessment for the London Borough of Tower Hamlets

## Transport, Highways and Public Realm

|                              |                            |
|------------------------------|----------------------------|
| Relevant Local Plan Policies | S.TR1, D.TR2, D.TR3, D.TR4 |
|------------------------------|----------------------------|

- 5.74 A safe, active, accessible, efficient and integrated transport network is essential to meet the travel demands of residents and visitors travelling in and through the borough. The Council is committed to promoting a sustainable pattern of development which prioritises and supports active forms of travel, such as walking and cycling, as well as access to public transport.
- 5.75 New development and population growth in the borough have the potential to exacerbate already congested transport and highway networks, poor air quality and capacity constraints on public transport. New development also increases the need for pedestrian and cycle safety education and training, travel awareness, sustainable freight activities and interchange accessibility improvements.

### How the Council will Secure Transport, Highway and Public Realm Improvements Through Planning Obligations

- 5.76 Where necessary developments in the borough should provide transport, highway and public realm improvements on-site to mitigate site-specific impacts of the additional travel demand they generate. Other required improvements may include improved crossing facilities, road safety upgrades and pedestrian and/or cycling enhancements near to the development site. These improvements will be secured through a legal agreement and in some cases may include Transport for London as a co-signatory.
- 5.77 Any necessary alterations to the transport/highway network within or in the vicinity of new development will be expected to be incorporated into planning proposals. Permission will be refused where developers are unwilling or unable to provide the necessary mitigation measures.
- 5.78 Section 278 (Highways Act 1980 (as amended)) legal agreements will be used to secure monies to reinstate the public highway adjacent to a development where construction damage has occurred from the building of a development. These will be funded by the developer and the Section 278 legal agreement will specify who is responsible for implementing the reinstatement works.
- 5.79 Where both the reinstatement of the highway and improvements to the highway are required, the legal agreement will include a clause requiring a S278 agreement. This clause will detail the scope of works to ensure they are agreed within required timeframes and may include but not be limited to any of the following:
- Footway and carriageway resurfacing
  - Removal of redundant crossovers
  - Creation of new crossovers or access points

- New pedestrian crossings
- Planting of new street trees and other greening and public realm improvement initiatives

- 5.80 Whilst triggers for payment can be agreed by parties in a legal agreement, a S278 agreement itself requires payment for expected reinstatement works to be made prior to commencement.
- 5.81 The Council may also seek to secure financial obligations through planning obligations, separate to highway works, to mitigate the impact of a development, proportionate to the scale and impact of that development. Examples include improvements to walking, cycling and public transport routes within the wider vicinity of the site.
- 5.82 CIL will be charged on new developments to mitigate their cumulative impacts on transport capacity and transport infrastructure and will be used to fund strategic infrastructure items to support growth and development in the borough.
- 5.83 The Mayor's Transport Strategy details the Healthy Streets Approach. This is led by the GLA and Transport for London and falls under the Liveable Streets programme in the borough. Tower Hamlets is leading on making holistic improvements to neighbourhoods which includes initiatives such as the Public Open Space Strategy. TfL has also issued new guidance on Healthy Streets Transport Assessments and Active Travel Zones Assessments which require developers to identify areas of improvement using the Healthy Streets Approach within a 20-minute cycling distance of the site as part of planning applications.
- 5.84 Local Plan Policy S.SG2 notes that developments which contribute to the creation of healthy environments will be supported. Contributions may be sought where proposals do not seek to integrate with, and make improvements to, these programmes. The Council will continue to work with TfL on the implementation of these initiatives.



## Text Box 17: Transport, Highways and Public Realm

### Threshold and Contribution Requirements

Policy D.TR2 details the instances where a Transport Assessment is required for a development. This assessment will inform the site-specific highway and transport works required to mitigate the impacts from the development.

Where appropriate based on the specifics of a scheme, a transport contribution may be sought to contribute to bus, overground, underground, DLR and sustainable transport improvements such as cycle infrastructure.

The Council may seek to secure non-financial obligations to mitigate the impact of a development proposal, including:

- Car- and Permit-Free Agreements: In accordance with Policy D.TR3, agreements which restrict residents from applying for on-street car parking permits will be sought for all residential developments.
- Car clubs: Car club bays required in accordance with Policy D.TR3 should be on-street for public use and details of the car-club provider should be provided to the Council upon occupation. If no provider is found, the space should be reverted to wheelchair user parking space.
- Electric vehicle charging: The provision of fast-charging electric charging points in accordance with Policy D.TR3.
- Travel plan: In accordance with Policy D.TR2, travel plans should be prepared, submitted to a coordinator and monitored to ensure compliance.

## Open Space and Access

|                              |                       |
|------------------------------|-----------------------|
| Relevant Local Plan Policies | S.OWS1, D.OWS3, D.DH6 |
|------------------------------|-----------------------|

5.85 Open Space includes all land that offers opportunity for play, recreation and sport or is of amenity value. This includes land that is privately or publicly owned, whether accessible to the public or not. Open Space provides vital recreation, relaxation and wellbeing benefits, as well as a focal point for community interaction. Publicly Accessible Open Space is a key and scarce resource in urban areas such as Tower Hamlets.

5.86 Overall provision of Open Space in the borough is currently low with some areas, such as the Isle of Dogs, Shoreditch and Whitechapel, being acutely deficient. As the population increases, so too will the need to protect and enhance existing Open Spaces as well as securing new Publicly Accessible Open Spaces.

- 5.87 This need is reflected in the Local Plan Policies along with the requirements to deliver an accessible and well-connected network of spaces. This includes improved connections between existing Open Spaces, such as the Thames Path National Trail and other riverside walkways as well as projects delivered through the liveable streets programme.
- 5.88 The Mayor of London is developing a Public London Charter for the management of Open Space, regardless of whether it is publicly or privately owned. Once completed, developments will be expected to adhere to the standards specified in the Charter.

### **How the Council will Secure Open Space Through Developer Contributions**

- 5.89 The provision, maintenance and access to Open Space is achieved via three mechanisms depending on the circumstances and desired outcomes; CIL, planning conditions and legal agreements.
- 5.90 Investment in strategic public Open Space will generally be met through CIL receipts as this provides the most appropriate and flexible source for income. Developers may be able to offset the amount of CIL they pay where they deliver an amount of public Open Space over and above that required to mitigate their site-specific impacts, such as public Open Space identified by the Local Plan in its site allocations. This can be achieved through securing a CIL 'in-kind' agreement with the Council under Regulation 73 – Payment in Kind of the CIL Regulations 2010 (as amended).
- 5.91 In circumstances where on-site Open Space is required specifically to provide public access, an agreement to safeguard its use as Publicly Accessible Open Space in perpetuity will be required.
- 5.92 New Open Spaces are required to meet the relevant design standards (i.e. layout and connection, materials, active play space design, landscaping) and general principles (i.e. openness, maintenance, access). These will be secured by conditions and discharged by submission of a landscaping plan and/or management plan.
- 5.93 The obligation to maintain the Open Space is the owner's responsibility and will be secured through a legal agreement or CIL 'in-kind' agreement.
- 5.94 The Green Grid Strategy identifies opportunities to improve connectivity between Open Spaces and community facilities to create a grid of walking routes and associated green infrastructure which provides a healthy and attractive environment. Strategic elements or projects for the Green Grid will be delivered through CIL, including upgrade projects such as the Healthy Streets initiative.
- 5.95 Future occupiers and users of developments in the vicinity of the Green Grid will increase the need for the Green Grid and also make use of it over the life of the development. As such, planning obligations will be sought from developments adjacent to the Green Grid to tie-in to the strategic links. Developments will be required to deliver improvements on the part of the site adjacent to the Green Grid route. If this is not possible then a financial contribution will be required.

- 5.96 Development within 200m of the Green Grid (i.e. the Green Grid Buffer Zone as shown on the Local Plan Policies Map) may be required to pay a financial contribution towards improving linkages and wayfinding to the strategic Green Grid in the vicinity of the development. The nature of this contribution, if required, will be determined on a case-by-case basis taking into consideration the scale of the development, existing connectivity and opportunities for improving wayfinding and links to the strategic network. In certain instances, contributions from multiple developments may be pooled to deliver a coordinated approach to linking into the strategic Green Grid.
- 5.97 Where relevant, access to the Thames Path will be secured by planning obligation to make it accessible for the public via a legal agreement. Design requirements associated with new links on the Thames Path will be secured by conditions.

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## **Text Box 18: Public Access**

### **Threshold and Contribution Requirements**

Planning obligations relating to public access will be sought for:

- Any development where applicable.

### **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 publicly accessible Open Space and future maintenance to an appropriate standard will be required.
- Only in exceptional circumstances will temporary closure to the public be accepted by the Council for maintenance or works purpose. The Council should be notified beforehand, and public notification displayed on site. Temporary closure for events will only be accepted if it does not concern the entire Open Space.

### **Access, size and functions**

- The requirements for access, size and function of Open Space should be informed by the Open Space Strategy and will be secured through the legal agreement. Open Spaces should also respond to the need for amenity space / active play space / space for community involvement.

### **Management and maintenance**

- The requirement to maintain the Open Space will be the responsibility of the owner and will be secured through the legal agreement. This will require the contact details of the manager to be publicly advertised on site (including name, address and contact number of manager).
- Where appropriate, the Council will support 'community management arrangements' which are agreements between the Council and community led organisations to undertake tasks within or related to parks and Open Spaces.

### **Community Events**

- Public Open Spaces delivered through CIL-in-kind will be required to be made available free of charge for community events which are open to local residents. The Open Space should be made available a minimum of twice a year for these events. A limit on the number of days that events can be held will be specified in the 106 agreement.
- The community events may be run by the Council or a community organisation and funding for such events is available from the Council. Any activities that the developer or managing agent may wish to hold on the site will not contribute to meeting this obligation.

### **Text Box 19: Green Grid**

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

Planning obligations relating to the Green Grid will be sought for:

- Development adjacent to or within 200 metres of the Green Grid.

#### **Green Grid**

Development adjacent to the Green Grid should contribute to the expansion and enhancement of Green Grid links on-site in accordance with the Green Grid Strategy.

Signage and wayfinding should be incorporated between key destinations to increase ease of use.

#### **Green Grid Financial Contribution**

Where development adjacent to the Green Grid is unable to contribute to the expansion and enhancement on-site then a financial contribution will be required. This will be determined on a case-by-case basis depending on the specifics of the site and the development.

Developments that are within 200m of the Green Grid (i.e. within the Green Grid Buffer Zone as shown on the Local Plan Policies Map) may be required to pay a financial contribution. This contribution will go towards improving linkages and wayfinding to the Green Grid in the vicinity of the development.

### **Text Box 20: Water Spaces**

#### **Water Spaces – Threshold and Contribution Requirements**

Planning obligations relating to public access adjacent to the borough's Water Spaces will be sought for:

- Any new development where applicable.

#### **Public Access to Water Spaces**

Where development is adjacent to the borough's Water Spaces and has suitable links for public access, an agreement to safeguard the access route as publicly accessible will be required. The legal agreement will also require ongoing maintenance to an appropriate standard. This includes development that will contribute to continuous access along the River Thames (Thames Path) and the River Lea.

## Children’s Play Space

|                              |                            |
|------------------------------|----------------------------|
| Relevant Local Plan Policies | D.H3, D.CF2, D.CF3, D.OWS3 |
|------------------------------|----------------------------|

- 5.98 The provision of facilities for children and young people is important to enable opportunities for play, physical activity and the development of movement and social skills. These spaces should be high-quality, inclusive and accessible.
- 5.99 A key challenge for the borough is to retain existing spaces while also increasing the provision of play and informal recreation facilities. Existing parks within the borough do not have the capacity to accommodate new play space and this will be further exacerbated by the requirements of new developments.
- 5.100 Residential and mixed-use developments should provide for children’s play and informal recreation space in accordance with Local Plan Policy D.H3 and the associated explanation, Local Plan Policy D.OWS3 and design requirements.
- 5.101 The design of play spaces should incorporate the social model of disability and the associated principals. On-site play facilities should aim to incorporate a reasonable provision of:
- Multi-unit
  - Rocking unit
  - Swing
  - Rotating item
  - Slide

### How the Council will Secure Children’s Play Space Through Planning Obligations

- 5.102 CIL funding is used for a range of strategic infrastructure projects including, Open Space, leisure facilities and community facilities all of which may include children’s play space.
- 5.103 As specified in Local Plan Policy D.H3, developments should incorporate play space for all children on-site within their design to meet the need generated. This should be proportional based on the number of children expected to occupy the development and should be provided in addition to other open and communal space requirements.
- 5.104 In situations where Council requires the provision of play space to mitigate specific impacts of a development, this will be secured by planning condition. If this is not possible, a non-financial and/or financial planning obligation will be sought.
- 5.105 Planning obligations will be secured to ensure the landowner or on-site management company undertakes the required playground maintenance and inspections and submits evidence of this to the Council. The inspection requirements are generally

expected to include the points below unless otherwise agreed with the Council. The Council welcomes the use of web-based applications where inspection reports can be uploaded.

- Post-installation inspection – Required prior to the occupation of the development, by an Independent RPII Annual Inspector. The certificate for this inspection must be submitted to the Council.
- Annual inspection – To be undertaken by an independent specialist to assess the overall safety of the playground. A record of the inspection must be submitted to Council.
- Operational playground inspection – To be undertaken by a suitably qualified specialist on a quarterly basis (minimum). A record of the inspection must be submitted to the Council.
- Routine visual inspection – To be undertaken by a suitably qualified specialist looking at the basic condition of equipment and ancillary items. A record of the inspection must be submitted to the Council in the event that any issues are identified.

### **Text Box 21: Children’s Play Space**

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

Planning obligations relating to Children’s Play Space will be sought for:

- Any residential or mixed-use development that does not meet the minimum play space requirements set out in the Local Plan.

#### **Children’s Play Space**

The Council requires the provision of children’s play space in accordance with the standards set out in the Shaping Neighbourhoods: Play and Informal Recreation SPG, Play England’s 10 key design principles for creating successful play spaces and the Tower Hamlets Play Space Child Yield Calculator\*. This includes meeting the requirements for play space typologies for children of different age groups.

All new development with estimated child occupancy of 10 children or more must provide a minimum of 10 sqm per child, regardless of age. Play space should be provided in addition to other open and communal space requirements.

#### **Maintenance**

The requirement to maintain the play space will be the responsibility of the owner and will be secured through the legal agreement. The contact details of the manager should be publicly advertised on site (including name, address and contact number).



### **Text Box 21: Children's Play Space (continued)**

#### **On-site Provision**

- Play space for all children should be provided on site in the first instance. Where there are demonstrable site constraints, play space for under five-year-olds must be on site and older children's play space must be within the GLA's specified recommended distances.
- Existing parks in the borough cannot be relied on to satisfy the play requirements of children of 12 years and older due to capacity constraints.

\*LBTH has produced a Child Yield Calculator which is used to calculate the child yield and play space requirements for new developments. The tool can be found on the [Local Plan 2031 Examination Library webpage](#).

#### **Circumstances for Off-Site Provision or Financial Contributions**

Only where there are demonstrable site constraints and the Council is satisfied that it would deliver a better outcome, will off-site provision and/or a financial contribution be accepted.

Subject to agreement with the Parks and Open Spaces Team, this may include funding for the upgrade or assortment of play facilities in nearby parks or improvements to access arrangements from the development to the playground. The financial contribution will be based on costs for similar upgrades to parks and play facilities undertaken by the Council elsewhere in the Borough.

The financial contribution will include maintenance and repair costs for a five-year period based on comparable equipment / play facilities. The maintenance costs will be index linked annually.

The acceptability of off-site provision and/or financial contributions is at the discretion of the Council.

## **Environmental Sustainability and Zero Carbon Borough**

5.106 The delivery of low carbon developments, promotion of renewable, sustainable forms of energy and enhancements to wildlife biodiversity within Tower Hamlets are all important aspects of contributing to reducing and mitigating the effects of global warming. Climate change and biodiversity loss are serious, catastrophic environmental issues occurring on a worldwide scale but also impacting Tower Hamlets at the local level.

5.107 The built environment contributes an estimated 35-40% of the UK's total carbon emissions<sup>11</sup>. As such, development must address its carbon footprint and reduce its impact on climate change to protect the borough's natural environment, future generations, residents' businesses and economy.

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<sup>11</sup> See the [Whole life carbon assessment for architects](#) (2017) by Simon Sturgis, RIBA

## Carbon Emission Reduction

|                              |              |
|------------------------------|--------------|
| Relevant Local Plan Policies | S.ES1, D.ES7 |
|------------------------------|--------------|

- 5.108 In order to contribute towards achieving the carbon emission reduction targets set by the London Plan and ensure the borough's future generations are not compromised by the high energy requirements and consumption of today, it is essential that developments meet the carbon dioxide emission reduction standards detailed in Local Plan Policy D.ES7. Developments are encouraged to maximise energy efficiency to contribute to reducing energy demands and pollution and move away from fossil fuel consumption.
- 5.109 London has a target to become a net zero carbon city by 2050. If Tower Hamlets is to contribute to this, CO<sub>2</sub> emissions per person need to be reduced significantly. As the third worst performing London Borough, achieving only a 22% reduction since 2010, developments have a large role to play in meeting this target.
- 5.110 New development increases the demand for energy supply and requires innovative solutions to reduce consumption and thereby promote sustainable development. Local Plan Policy E.ES1 and the associated explanation note that development should follow the principles of the energy hierarchy to reduce energy demand and CO<sub>2</sub> emissions.

### How the Council will Secure Reduced Carbon Emissions Through Planning Obligations

- 5.104 Local Plan Policy D.ES7 requires all new developments to be zero carbon, and to achieve a minimum of 45% reduction in regulated carbon dioxide emissions on-site with up to 20% reduction of emissions through on-site renewable energy generation. The remaining regulated carbon dioxide emissions to 100% are required to be off-set through a payment-in-lieu
- 5.105 The formula to calculate the carbon offset payment is based on the carbon off-set price set by Tower Hamlets to deliver the most up-to-date considerations for carbon offsetting. The obligation to pay the carbon offset payment will be secured in the legal agreement.
- 5.106 The money raised through the carbon offset payments is spent on the priorities outlined in the Carbon Offset Solutions Study and LBTH Zero Carbon Roadmap.

## Text Box 22: Carbon Emission Reductions

### Threshold and Contribution Requirements

Planning obligations relating to energy will be sought for:

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

### CO<sub>2</sub> Reduction

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

### Carbon Offsetting Contribution

Carbon Gap (Tonnes of CO<sub>2</sub>) x Price of Carbon (£) x 30 (Years)

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**= Carbon offset contribution required**

'Carbon Gap' is the amount of regulated carbon emissions that remains following the integration of energy efficiency measures, clean energy systems and renewable energy technologies to a design, which goes beyond that required by Part L of the Building Regulations.

The carbon off-set price will follow the price set in the most recently adopted London Plan. At present the carbon off-set price is £60 per tonne of carbon dioxide which will be increased to £95 per tonne of carbon dioxide based on the adoption of the Intend to Publish London Plan carbon offset price, and any subsequent updates.

Part L of the Building Regulations Compliant Development is the baseline, assuming the development's regulated CO<sub>2</sub> emissions complied with Part L of the Building Regulations using Building Regulations approved compliance software (see SAP\* and SBEM\*\* below).

*\*SAP means the Department of Energy & Climate Change's Standard Assessment Procedure, most recently 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 that provides an analysis of a building's energy consumption.*

## Biodiversity

|                              |       |
|------------------------------|-------|
| Relevant Local Plan Policies | D.ES3 |
|------------------------------|-------|

5.107 The quality of the physical environment is under increasing pressure in Tower Hamlets due to the growing population and significant development demands. We recognise the importance of responding to the impacts of climate change and an increasingly dense cityscape by maintaining and encouraging biodiversity within the borough.

5.108 Policy D.ES3 requires development to protect and enhance biodiversity through a variety of means, including maximizing 'living building' elements and retaining and enhancing habitats, trees and biodiversity.

### How the Council will Secure Urban Greening and Biodiversity Through Planning Obligations

5.109 CIL funding is used for a range of strategic infrastructure projects including, Open Space, leisure facilities and community facilities which can incorporate urban greening and biodiversity improvements.

5.110 Biodiversity measures that are deemed necessary to the particular development to mitigate specific impacts of that development will be secured by planning condition. Where this is not possible, they will be secured through financial and/or non-financial planning obligation(s).

5.111 In cases where officers consider all opportunities to provide adequate on-site biodiversity enhancements have been exhausted, or where off-site projects offer better opportunities to enhance biodiversity and/or access to nature (i.e. nearby Open Spaces or water bodies), an equivalent financial contribution will be sought. Financial contributions will be secured for enhancements which help to deliver the Tower Hamlets Local Biodiversity Action Plan and if appropriate the Thames River Basin Management Plan objectives.

#### Text Box 23: Biodiversity

##### Threshold and Contribution Requirements

Where it is deemed necessary to secure planning obligations relating to biodiversity, the threshold will be:

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

## Flood Risk

|                              |                     |
|------------------------------|---------------------|
| Relevant Local Plan Policies | D.ES4, D.OS4, D.ES5 |
|------------------------------|---------------------|

- 5.112 Tower Hamlets has identified opportunity areas, located in Flood Zones 2 and 3. Flood risk in the borough arises from a range of sources including: fluvial, tidal, surface water, sewer, groundwater and flooding from artificial sources.
- 5.113 There are three main areas at risk of tidal flooding in Tower Hamlets, the Isle of Dogs (extending into Poplar) Wapping and Blackwall (all located in Flood Zones 2 and 3). There are two main areas at risk of fluvial flooding in the north-eastern corner of the borough. While the actual fluvial and tidal flood risk is considered to be low when flood defences are taken into account, there is still a residual risk of flooding through breaching or overtopping of defences. Non-river related flooding, such as sewer surcharge and surface water flooding exists throughout the borough during heavy rainfall events. This is known to be an issue within Critical Drainage Areas (refer Figure 15 in the Local Plan).
- 5.114 The Local Plan requires developers to demonstrate that they have taken into account flood risk from all sources. Proposed development is required to incorporate mitigation and management measures appropriate to the use and location, including the advice and recommendations set out in the Tower Hamlets Strategic Flood Risk Assessment<sup>12</sup>.
- 5.115 To manage the risk of flooding effectively, Policy D.ES4 requires a minimum of a 16-metre buffer strip along a tidal river; and a minimum of an 8-metre buffer strip along a fluvial river unless significant constraints are evidenced. This might require setting back or realigning defences when sites are redeveloped to improve the riverside frontage through environmental enhancements and provision of amenity space.
- 5.116 Policy D.OS4 supports Policy D.ES4 in mitigating flood risk, and requires developers to optimise opportunities for riverside walkways, canal towpaths and cycle paths, where appropriate. River walls and embankments should also be restored, where necessary.
- 5.117 Developers are required to reduce surface water flooding through the use of a range of sustainable drainage systems (SuDS) and water reduction strategies in line with Policy D.ES5. Developments should retain and maintain the SuDS measures for the lifetime of the development to prevent an increase in flood risk. These requirements will typically be addressed by conditions.
- 5.118 To manage future flood risk, developments should consider the latest climate change allowances and the associated impacts on all sources of flooding.

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<sup>12</sup> Available at the council's [Flood Risk management webpage](#)

5.119 In line with the requirements of the Thames Estuary 2100 Plan (TE2100), developments adjoining the river Thames must maintain, and where necessary, enhance or raise flood defences in preparation for future climate change impacts. Alternatively, development should evidence how tidal flood defences can be raised in the future, demonstrating that they will continue to provide adequate flood protection for the lifetime of the development.

### **How the Council will Address Flood Risk Through Developer Contributions**

5.120 The Council will deliver strategic flood defences through CIL funding. Flood defence measures that are deemed necessary for a 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.

5.121 Provision of flood risk mitigation measures are expected to be provided on-site. They will typically be secured through conditions, however, may be included in legal agreements where they cannot be addressed via conditions.

#### **Text Box 24: Flood Risk**

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

Planning obligations relating to flood risk will be sought for:

- Any development where applicable.

##### **Flood Risk**

New development must demonstrate that it will reduce the risk of fluvial, tidal and surface water flooding and manage residual risks through appropriate flood risk measures. Flood defences should be maintained and, where necessary, enhanced or raised for the lifetime of the development. Measures to mitigate flooding from ground water and sewers should also be included.

Buffer zones required by Local Plan Policy D.ES4 should be retained and maintained for the lifetime of the development.

## Development Co-ordination and Integration

|                              |                              |
|------------------------------|------------------------------|
| Relevant Local Plan Policies | D.SG4, D.ES2, D.ES9, D.TR4.1 |
|------------------------------|------------------------------|

- 5.122 Local Plan policies D.SG4, D.ES2, D.ES9 and D.TR4 seek to ensure that development minimises its impact on the local environment and communities, including cumulative impacts, during construction.
- 5.123 The high density of people living, working and visiting Tower Hamlets and the cumulative nature of multiple development sites coming forward is exposing more people to the impacts of construction. This includes:
- Air quality impacts
  - Noise and vibration impacts
  - Utilities, street and highways works
  - Site access and transport impacts
  - Travel and public transport access impacts
  - Meanwhile use impacts
  - Increased deliveries and logistics
- 5.124 There are a number of actions that developers take to assist in mitigating the impacts of construction activity on the immediate vicinity of the development including those set out in Construction Management Plans (CMPs), Construction Logistics Plans (CLPs) and the Considerate Constructors Scheme (CCS). These processes are expected to continue, led by the developer, to ensure construction activity is considerate, particularly to immediate neighbours of the site.
- 5.125 The nature of development activity in LBTH however, creates further challenges for developers, the local authority and other stakeholders beyond the localised actions set out above. Development levels in the borough are high and often have long, multi-year construction timeframes, land ownership is fragmented, and development is often clustered in already high-density locations. The outcome of these factors is a significant amount of development and construction activity undertaken by a number of different developers and other bodies, concurrently in the same limited space. This results in cumulative impacts of development activity on the borough. While CMPs, CLPs and the CCS consider and seek to reduce such impacts, these plans are undertaken from the perspective of the individual site as opposed to a strategic overview of all sites. As such, the Council do not consider that the individual actions can entirely mitigate these impacts.
- 5.126 The Local Plan policies require developers to ensure the impacts of their construction activity are mitigated and this must include the cumulative impacts on the boroughs streets, spaces, residents and businesses, not only localised impacts. The Council considers that this can only be achieved through the coordination of construction activity.



5.127 The Council is best placed to consider construction activity collectively across the borough and in specific high growth locations and to facilitate coordination between the high number of developers and other stakeholders involved. By undertaking this role, the Council will support greater integration across developments, including the avoidance of conflicts where they might otherwise arise. A modest amount of resource will be required to deliver this role and it is anticipated that benefits will be realised not only by local people, but also developers and other partners.

### **How the Council will Address Development Co-ordination and Integration Through Planning Obligations**

5.128 The need to manage construction activity both on-site and within the surrounding streets and spaces more proactively and strategically across the borough is necessary due to the high growth rate in Tower Hamlets. This is especially relevant to the Isle of Dogs, Lower Lea Valley and City Fringe areas, although the entire borough experiences the cumulative impacts of construction, such as impacts to travel routes resulting from multiple development sites requiring deliveries and undertaking utilities, street and highways works. The high levels of growth and development are expected to continue over the next decade especially given the 10-year target for net housing completions of 34,730 for Tower Hamlets set in the Intend to Publish London Plan.

5.129 A proactive, cross-departmental approach will be funded by the required contributions from all Major Developments. The financial contributions collected will be used over the entire construction period of a given scheme, including for large developments which will be delivered over a long period of time. Representatives from across Highways, Environmental Protection, Clean and Green, Parking and Planning Compliance will share information and calibrate approaches to deal with cumulative construction issues. The funding will enable collaborative and active co-operation between the Council, developers, utility providers, contractors and their supply chain. All partners are expected to benefit from coordination, maximising opportunities to create economies of scale, share best practice, reduce unknowns and risk to development, and establish effective and efficient delivery processes with associated stakeholders. The Council will also seek pro-active opportunities to support local developers with best practice from across London and beyond.

5.130 This co-ordination and integration of developments may occur at a borough-wide level or within specific locations of high activity. Local Development Forums will be established, facilitated and run by the Council, to support the identification of areas for improvement and opportunities for collaboration. Exact outputs and outcomes of Council coordination will vary dependent on the local identified needs, but may include the following:

- Organisation and management of local construction forums with all relevant parties. This may include developers, building contractors, utility providers, the Environment Agency, the Canal and River Trust, Transport for London and relevant Council representatives. These forums will focus on sharing issues, best

practice and communicating and scheduling works to minimise possible disruptions to services and local residents.

- Co-ordination of different construction timeframes, logistics and resources required for sites, as well as planned utility and highways works within the wider area.
- Assessment of construction management plans against other construction management plans for developments in the vicinity to identify opportunities for co-ordination and integration.
- Identifying opportunities for meanwhile interventions to be delivered by the Council or other partners to maximise opportunities and minimise negative impacts during construction periods.
- Community liaison duties, including out-of-hours meetings and forums.
- Monitoring adherence to relevant safety and compliance schemes in line with the latest guidance at the time of submission, as amended from time to time<sup>13</sup>.

### **Text Box 25: Development Co-ordination and Integration**

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

Planning obligations relating to development co-ordination and integration will be sought for:

- All major planning applications.

#### **Development Co-ordination and Integration Financial Contribution**

A financial contribution must be paid on all Major Developments, calculated as:

- £100 per residential unit.
- £1 per sqm of non-residential floorspace.

## **Air Quality**

|                              |                            |
|------------------------------|----------------------------|
| Relevant Local Plan Policies | S.SG2, D.SG3, S.ES1, D.ES2 |
|------------------------------|----------------------------|

5.131 Tower Hamlets residents are already affected by poor air quality and the whole borough is currently designated as an Air Quality Management Area. With the population forecast to continue to increase, it is critical that air quality is not worsened

<sup>13</sup> At the time of writing, the relevant safety standards that should be complied with include: Safer Lorry Scheme, Construction Logistics and Cyclist Safety (CLOCS), Best Practical Means under the Control of Pollution Act (COPA) 1974, and compliance of Non-Road Mobile Machinery (NRMM) in line with EU Directive 97/68/EC as amended.

and is improved wherever possible for current and future occupiers.

- 5.132 Improving the borough's poor air quality is a key priority. Levels of nitrogen dioxide and fine particulate matter are of particular concern in Tower Hamlets based on current levels and the significant evidence demonstrating the negative effects on health. Tower Hamlets has the highest level of hospital admissions related to poor air quality in London<sup>14</sup>, and one of the highest proportions of the most deprived populations (top 30% deprived) in London's worst air quality areas.
- 5.133 Air pollution is regulated under the EU Air Quality Directive which has been transposed into UK law by the Environment Act and the Air Quality Standards Regulations. Central Government has made a commitment to continue to enforce these standards following the departure from the EU. Local authorities have a duty to improve air quality where National Objectives are being breached. In Tower Hamlets, there are numerous areas of exceedance of the objective for nitrogen dioxide. In addition, the World Health Organisation guidance levels for fine particulate matter (PM2.5) are being exceeded in all parts of the borough.
- 5.134 The Council is required to review and assess air quality (including air quality monitoring) in the borough, including for new development. The Council has produced an 'Air Quality Action Plan' (AQAP), adopted in 2017, which outlines how the Council will address air quality issues within our control.
- 5.135 Local Plan Policy S.ES1 states that developments which reduce the areas of sub-standard air quality in the borough and contribute towards delivering the objectives of the latest Tower Hamlets Air Quality Action Plan will be supported. Local Plan Policy D.ES2 requires all development to meet or exceed the 'Air Quality Neutral' standard and specifies which developments are required to prepare an Air Quality Impact Assessment. This policy also requires new developments which include private, communal or public Open Space in areas of sub-standard air quality to incorporate design measures to minimise exposure of future users.

### **How the Council will Address Air Quality Through Planning Obligations**

- 5.136 Developments are required to meet or exceed the 'Air Quality Neutral' standard. Developments which do not meet this standard may be required to pay a financial contribution.
- 5.137 Developments are expected to mitigate their air quality impact on-site. Off-site measures will only be acceptable where it can be demonstrated that no further on-site measures are possible.
- 5.138 The impact of poor air quality can be felt beyond the immediate vicinity of a development. As such, financial contributions will be spent on the implementation of borough-wide initiatives identified in the Air Quality Action Plan 2017-2022.

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<sup>14</sup> [Health Impact Assessment of Air Pollution on Asthma in London](#) (2019) by King's College London

## Text Box 26: Air Quality

### Threshold and Contribution Requirements

Planning obligations relating to air quality may be sought for:

- Development which does not meet the 'air quality neutral' standard Any development required to prepare an air quality impact assessment in accordance with Local Plan Policy D.ES2.

### Air Quality Mitigation Measures

In some cases, a planning obligation may be sought to secure mitigation measures for a development where these cannot be addressed through other means (e.g. conditions or travel plans. This will be dependent on the impacts of the development and recommendations of the air quality impact assessment for the scheme.

### Air Quality Financial Contribution

In instances where a development does not meet the 'air quality neutral' standard a financial contribution may be sought. This will be at the discretion of the Council and will be calculated as:

- £100 per residential unit.
- £1 per sqm of additional non-residential floorspace.
- £50 per student housing and/or hotel bedroom.

The contribution will be calculated by use class.

## Design Certification

|                              |              |
|------------------------------|--------------|
| Relevant Local Plan Policies | S.DH1, D.DH2 |
|------------------------------|--------------|

5.139 Local Plan Policies S.DH1 and D.DH2 and the associated explanations outline the important role that high-quality design plays in contributing to quality of life and the creation of accessible, attractive and integrated spaces.

5.140 High quality design is a key consideration in the planning permission process. It is important that design quality is maintained through the development process to completion. Changes made after permission has been granted, including through minor amendments, can degrade the original approved design. This is of particular concern in instances where the original architectural design team is not involved after permission has been granted.

## How the Council will Address Design Quality to Completion Through Planning Obligations

5.141 In circumstances where there is uncertainty about whether the design quality and intent of a scheme will be maintained from permission and completion and where this cannot be addressed via conditions, the Council will seek a clause in the legal agreement requiring design certification. This will be considered on a case by case basis and will be dependent on the specifics of the development, including phasing.

5.142 The planning obligation will require the development be subject to design certification through to completion of the project. This is to ensure that the original design intent for which planning permission was granted is achieved. Further detailed guidance is being produced to assist developers and design certifiers, post-permission, to understand what the council expects.

### Text Box 27: Design Certification

#### Threshold and Contribution Requirements

Planning obligations relating to design quality may be sought for:

- Major residential and commercial developments.

#### Change in Architect and Design Certification

In instances where the original architect is not retained through to completion of the project the Council must be informed in writing, including the reason for change and the details of the replacement architect. The replacement architect should have appropriate expertise in the nature of the design and delivery of the development.

Based on the information provided, the Council will recommend one of the following:

- Original architect recommended to act as Design Certifier,
- Different architect recommended to act as Design Certifier, or
- Design Certifier not required.

The developer will be required to engage the recommended architect as a Design Certifier for the remainder of the project. The Design Certifier should be adequately resourced by the developer to undertake the following:

- Reviewing construction drawings and material amendments
- Site visits
- Regular submissions of design certification reports to the Council.

## Mansard Roof Conservation Area Contribution

|                              |       |
|------------------------------|-------|
| Relevant Local Plan Policies | S.DH3 |
|------------------------------|-------|

5.143 The National Planning Policy Framework requires that where development proposals, such as mansard roof extensions, would result in harm to a historic environment, that harm must be weighed against public benefits arising from the proposal.

5.144 Local Plan Policy S.DH3 recognises the importance of protecting and enhancing conservation areas while also managing change in a way that retains the character and appearance.

### How the Council will Address Harm from Mansard Roof Extensions Through Planning Obligations

5.145 The Council has adopted revised character appraisals and management guidelines for Driffield Road and Medway conservation areas. These documents contain details on how a mansard roof can be sympathetically designed to ensure that harm to the special character and appearance of the conservation areas is minimised.

5.146 To help address residual harm arising from roof extensions, the council requires proposals to be accompanied by façade enhancements to host buildings and provide a financial contribution to help fund streetscape improvements in the conservation areas. The contributions will be used to help improve the character and appearance of the two conservation areas through heritage related interventions.

#### Text Box 28: Mansard Roof Extensions

##### Threshold and Contribution Requirements

Planning obligations for mansard roof proposals will be sought for:

- Mansard roof applications in the Medway and Driffield Road conservation areas.

The Council will require a contribution of £1,000 secured through a Unilateral Undertaking and payable at the time the Unilateral Agreement is signed.

Where applications are more complex, or involve more than one property, a higher contribution may be sought where appropriate.

## 6. Monitoring and Implementation

- 6.1 The Community Infrastructure Levy (Amendment) Regulations 2019 that came into effect on 1<sup>st</sup> September 2019, specifically allow authorities to seek a monitoring fee through planning obligations.
- 6.2 In light of these changes, monitoring fees have been reviewed to ensure the approach is consistent with the CIL regulations (and associated Government Guidance), other local planning authorities in London and with CIL administrative charging.
- 6.3 The requirement on the Council to monitor all aspects of legal agreements carries a financial cost that constitutes an impact from new development. Monitoring work includes maintaining a planning obligations database, logging agreements, checking trigger points, reviewing information that has been submitted, consulting service areas, index linking financial contributions and recording compliance with clauses. The review and update of this document also forms part of the monitoring administrative work.
- 6.4 All planning obligations, whether financial, non-financial or in-kind, require monitoring. Accordingly, we will require a monitoring fee as a financial contribution for each legal agreement. This monitoring fee excludes all legal costs associated with the preparation of legal agreements. In accordance with CIL Regulation 121A, the amount spent in respect of monitoring will be reported in the Annual Infrastructure Funding Statement.



**Text Box 29: Monitoring Fees**

**Threshold and Contribution Requirements**

Planning obligations relating to monitoring and implementation will be sought for:

- All developments requiring a legal agreement except for proposals for Mansard Roof extensions and car free agreements

The approach set out in tables 2 and 3 below will be used to determine the monitoring fee. The total contribution from a development will be capped at £100,000 per legal agreement.

Table 2: Monitoring fees for non-financial contribution (per HoT)

| <b>&lt;10 units or &lt;1000 sqm</b> | <b>10 - 100 units or 1,000 – 10,000 sqm</b> | <b>&gt;100 units or &gt;10,000 sqm</b> |
|-------------------------------------|---|--|
| £0                                  | £750  | £1000                                  |

Table 3: Monitoring fees for financial contributions

| <b>The first £100,000 of a contribution</b>                  | <b>The part of the contribution between £100,000 – £1 million</b>   | <b>The part of the financial contribution over £1 million</b>                                       |
|--|---|---|
| 5% of the total financial contribution amount up to £100,000 | 3% of the total financial contribution amount on the remainder of the contributions between £100,000 and £1 million | 1% of the total financial contribution amount on the remainder of the contributions over £1 million |

For example:

- If the total financial contribution is £70,000, the monitoring fee will be:  
 $£70,000 \times 0.05 = £3,500$
- If the total financial contribution is £500,000, the monitoring fee will be:  
 $(£100,000 \times 0.05) + (£400,000 \times 0.03) = £17,000$
- If the total financial contribution is £1,500,000, the monitoring fee will be:  
 $(£100,000 \times 0.05) + (£900,000 \times 0.03) + (£500,000 \times 0.01) = £37,000$

## 7. Procedure & Management

- 7.1 The management and monitoring of each legal agreement is a complex process and commences from the moment it is signed. The Council employs officers dedicated to overseeing this process to ensure the successful delivery of planning obligations.

### Trigger Points

- 7.2 During the negotiation process, trigger points for each obligation will be agreed upon between the developer and the Council. The triggers selected in each case will be based on the nature of the obligation, the stage at which the mitigation is required and phasing of development (if relevant). The Council's standard trigger points are included below with the commencement of the development being the preferred point for an obligation to be delivered upon:
- Upon the date that the agreement is executed
  - Upon or prior to commencement of the development
  - Upon or prior to completion of the development
  - Upon or prior to occupation of the development
- 7.3 A Section 73 application for a minor material amendment to remove or change the requirements of a condition on a planning permission requires a Deed of Variation to the legal agreement. Where a development has not yet commenced, the triggers will usually remain. Where the permission has been implemented, it is imperative that any additional obligations are linked to appropriate trigger points, i.e. making a distinction between the implementation of the original permission and the recommencement of works under the new permission.

### Interest Bearing Accounts

- 7.4 When a financial contribution is received it will be placed within an interest-bearing account from the date of its receipt.

### Liquidated Damages Clause and Enforcement of Obligations

- 7.5 Trigger points will vary for each individual obligation within the legal agreement. The developer is bound within each legal 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 a liquidated damages clause.
- 7.6 A clause included in the legal agreement will ensure prompt payment by 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 legal agreement. Non-financial obligations are also legally binding and where these have not been met the Council will seek to legally enforce them.

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

### Complying with Financial Obligations

- 7.7 Where a legal agreement contains a financial obligation, details of how to make the payment to the Council are set out in the agreement. A standard payment form will be appended to the agreement and any payments should be made using this form, following the instructions provided, including providing the calculation used for the index calculation and planning application reference. The payment can be made through BACS/CHAPS. Please ensure that you notify the Council once the payment has been made. Once received, the payment will be logged onto the Council’s section 106 monitoring and finance systems. A summary of received and negotiated financial contributions is included in the [Annual Monitoring Report](#).

### Index Linking Payments

- 7.8 Financial contributions will be index-linked 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 legal agreement is signed to the date of payment.
- 7.9 The method of indexation will 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 decreases, the contribution shall not fall below the figure set out in the legal agreement.
- 7.10 We will endeavour to provide updated costs for the standard charges provided throughout this SPD as and when necessary.

### Complying with In-kind Contributions

- 7.11 Where an in-kind obligation is required through a legal agreement, the developer will need to provide evidence of compliance with the obligation to the Council, in accordance with the terms of the relevant agreement. This evidence should be provided to the Council’s planning obligations officer ([s106@towerhamlets.gov.uk](mailto:s106@towerhamlets.gov.uk)) as soon as it has been satisfied. Failure to do so may result in the Council taking enforcement and/or legal action against a developer. If approval is required from the Council on an element of the in-kind obligation, details of who to contact will be set out in the legal agreement, however, the Council’s planning obligations officer is also available to answer any questions that may arise.

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

### **Compliance and Monitoring**

- 7.12 The Council monitors compliance with planning obligations in accordance with the relevant triggers in the legal agreement.
- 7.13 When information relating to a legal agreement is submitted to the Council, it is first registered and validated and then passed on to the Infrastructure Planning Team. A planning obligations officer is responsible for managing internal consultation with relevant Council service areas, including assessment of the information submitted to confirm that the obligation has been complied with.
- 7.14 Following confirmation of compliance, a formal response is issued to the applicant to verify whether or not the planning obligation has been complied with.

### **Non-Financial Obligations**

- 7.15 The implementation/delivery of non-financial contributions, or in-kind obligations, will in some cases be monitored by the relevant service areas within the Council. For example, where there is an Affordable Housing element to a legal agreement, the Council’s Affordable Housing Team will monitor this section of the agreement to ensure that it is complied with.

### **Financial Contributions**

- 7.16 Financial contributions are used to fund projects in the borough that mitigate identified impacts. These projects are selected for delivery through the Council’s Capital Programme. The Council’s Capital Programme is informed by the Council’s Strategic Plan, Local Plan and Infrastructure Delivery Plan. The Capital Programme is set during the Council’s annual budget process.
- 7.17 The Capital Delivery Team is made up of specialist project and programme professionals who are responsible for the delivery of the Capital Programme, including the expenditure of planning obligation monies and CIL funding. Projects follow the Office of Government Commerce gateway approval process through a number of boards responsible for strategy, delivery and support. Approval to proceed with the investment is made by the Mayor in Cabinet, after which delivery of the infrastructure will happen.
- 7.18 Revenue spend, such as for employment and enterprise initiatives, is approved through internal delegated processes. This process ensures delivery is in line with Council objectives and meets the policy direction of the Local Plan.

## Abbreviations

| Abbreviation | Description                               |
|--------------|---|
| AQAP         | Air Quality Action Plan                   |
| BCIS         | Building Cost Information Service Index   |
| CCS          | Considerate Constructors Scheme           |
| CIL          | Community Infrastructure Levy             |
| CLOCS        | Construction Logistics and Cyclist Safety |
| CLP          | Construction Logistics Plans              |
| CMP          | Construction Management Plan              |
| COPA         | Control of Pollution Act                  |
| CPI          | Consumer Price Index                      |
| DTI          | Department of Trade and Industry          |
| EYFS         | Early Years Foundation Stage              |
| GIA          | Gross Internal Area                       |
| IFS          | Infrastructure Funding Statement          |
| LBTH         | London Borough of Tower Hamlets           |
| LIF          | Local Infrastructure Fund                 |
| LLDC         | London Legacy Development Corporation     |
| LPA          | Local Planning Authority                  |
| MCIL         | Mayoral CIL charge                        |
| NPPF         | National Planning Policy Framework        |
| NPPG         | National Planning Practice Guidance       |
| NRMM         | Non-Road Mobile Machinery                 |
| PPA          | Planning Performance Agreement            |
| RICS         | Royal Institute of Chartered Surveyors    |
| RPI          | Retail Price Index                        |
| SME          | Small and Medium Enterprise               |

|        |                                 |
|--------|---------------------------------|
| SPD    | Supplementary Planning Document |
| Sqm    | Square metre                    |
| SuDS   | Sustainable Drainage System     |
| TA     | Transport Assessment            |
| T.E.S  | Tender Event Schedule           |
| TE2100 | Thames Estuary 2100 Plan        |

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## Glossary of Terms

### **Air Quality Neutral**

An 'Air Quality Neutral' development is one that meets, or improves upon, the 'Air Quality Neutral benchmarks' published in guidance from the GLA. The benchmarks set out the maximum allowable emissions of NO<sub>x</sub> and Particulate Matter based on the size and use class of the proposed development. Separate benchmarks are set out for emissions arising from the development and from transport associated with the development. Air Quality Neutral applies only to the completed development and does not include impacts arising from construction, which should be separately assessed in the Air Quality Assessment.

### **Affordable Housing**

Social rented, affordable rented and Intermediate Housing provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and our (the Council) housing allocation policy. Affordable Housing should include provisions to remain at an affordable price for future households or for the subsidy to be recycled for alternative Affordable Housing provision.

### **Affordable Workspace**

Flexible workspace which is let to a workspace manager, and which will allow for occupation by the end users in one or more sectors on terms:

- Accessible to a wide range of users including but not limited to local residents, start-up entrepreneurs, SMEs etc.
- Substantially below market levels of rents and charges when compared with an equivalent letting of the space and facilities on the open market
- At a rate comparable with similar facilities available in Tower Hamlets or (if sufficient comparator premises do not exist in the borough) across London as a whole, and
- At rates which mean that occupation is feasible to a large number of small/start-up businesses in the relevant sector(s)

### **Affordable Workspace Provider**

An operator or manager of an employment space which is designated as affordable workspace in accordance with the relevant provisions of the Local Plan.

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

A tariff on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres, to help fund new infrastructure required to support the development.

### **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 2019 to fund strategic transport, also referred to as MCIL2. MCIL1 was adopted on the 1<sup>st</sup> April 2012, which has now been superseded by MCIL2. This Levy is in addition to the Tower Hamlets Borough CIL.



## **Community Infrastructure Levy Regulations**

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

## **Design Certifier**

An appropriately qualified and experienced architect engaged to review and assess the design of a development through to completion.

## **Development Viability Supplementary Planning Document**

This Supplementary Planning Document (SPD) provides guidance as to how Development Plan policies should be applied in a development viability context when determining planning applications.

## **GLA-Referable Schemes**

Planning applications that are referable to the Mayor of London as set out in the Mayor of London Order (2008). The criterion includes:

- development of 150 residential units or more
- development over 30 metres in height
- non-residential development outside Central London over 150,000 sqm
- development on Green Belt or Metropolitan Open Land

## **Green Grid**

A network of inter-linked high quality and multi-functional Open Spaces, waterways and other corridors.

## **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 13 sqm.

## **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).

## **Infrastructure**

Services which are necessary for the day-to-day functions of the community and economy such as roads, railways and social/community facilities. Infrastructure includes utility services, transport routes, schools, Open Space and health and leisure services.

## **Infrastructure Funding Statement**

A document prepared annually by a contribution receiving authority, which includes:

- a report relating to the previous financial year on the Community Infrastructure Levy
- a report relating to the previous financial year on Section 106 planning obligations

- a report on the infrastructure projects or types of infrastructure that the authority intends to fund wholly or partly by the levy (excluding the local infrastructure fund)

### **Intermediate Housing**

Homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition. These can include shared equity (shared ownership and equity loans), other low-cost homes for sale and intermediate rent.

### **Local Infrastructure Fund**

A portion of the CIL receipts which is to be spent on local infrastructure priorities agreed with the local communities where development is taking place. Also known as the Neighbourhood Portion.

### **Local Plan**

The Local Plan forms part of the borough's statutory development plan and sets out the long-term spatial strategy to determine the use of land and where, how and when development should be delivered across the borough to 2031.

### **Major Development**

In the context of the Local Plan, Major Developments are defined as:

- 10 to 100 residential units
- 1,000 to 10,000 square metres floorspace
- development on a site of more than 0.5 hectare

### **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.

### **Open Space**

All land that offers opportunity for play, recreation and sport or is of amenity value, whether in public or private ownership, where public access is unrestricted, partially-restricted or restricted. This includes all open areas consisting of: major parks (e.g. Victoria Park and Mile End Park), local parks, gardens, squares, playgrounds, ecological spaces, housing amenity land, playing fields (including playing pitches), allotments and burial grounds, whether or not they are accessible to the public. This definition does not include water bodies, private residential gardens or incidental areas such as shrub beds and verges.

### **Publicly Accessible Open Space**

Open Space will be considered to be publicly accessible, where access for the public is secured by virtue of legal agreements and formal arrangement; whether it is in public or private ownership. Publicly Accessible Open Space will not include areas of water such as rivers, canals, lakes, docks or incidental spaces.

In instances where on-site Open Space is required specifically to provide public access, an agreement to safeguard the area's on-going use as Publicly Accessible Open Space will be required

### **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.

### **Small Sites Contribution**

A financial contribution from minor residential developments proposing 2 – 9 units, used to provide Affordable Housing in the borough.

### **Specialist Housing**

Supported housing such as sheltered housing, residential care homes, nursing homes and dual-registered care homes.

### **Strategic Development**

Proposals involving over 100 homes or 10,000 square metres of floorspace.

### **Supplementary Planning Document**

A document which contains a statement setting out any environmental, social design and economic objectives which are relevant to the attainment of the development and use of land mentioned in the Local Plan. This is one such document.

### **Transport Assessment**

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.

### **Water Space**

An area of water (permanently or intermittently), and includes rivers, canals, docks, basins, ponds, marshland and other water bodies.

## Appendix A – Affordable Workspace Strategy Template

An Affordable Workspace Strategy is a written strategy identifying how the Affordable Workspace will be designed to meet the needs of the end user and the mechanism through which an Affordable Workspace Provider will be appointed. As a minimum the strategy should include:

- a) a specification for the construction of the Affordable Workspace by the Owner, including the minimum landlord's fit out and value of fit out, floor plans detailing size and layout
- b) details of the proposed types of shared workspace, including the workspace typology and proposed use class designation
- c) details of the proposed types of Affordable Workspace Provider and/or end user tenant to be targeted in marketing
- d) the proposed marketing strategy which should include (as a minimum) how the Affordable Workspace will be marketed to attract an Affordable Workspace Provider or how the Affordable Workspace will be marketed to ensure take up by end users in the event that no Affordable Workspace Provider will manage the Affordable Workspace. It should also include features typically included in standard commercial marketing documents such as images of the workspace and price points.
- e) the proposed charging arrangements, including the level and type of additional services to be made available and the charges for those services (a cost schedule)
- f) comparison data from the surrounding local area (in line with the hierarchy as set out in the explanation to Policy D.EMP2 of the Local Plan) including details of vacancy rates for similar uses and the levels of rent or occupation charges charged
- g) details of lease agreement between Owner and Affordable Workspace Provider, including rent review periods after the initial discount period has passed and lease break clauses
- h) full details of the Affordable Workspace Discount and Local Businesses Discount and how the discount will be passed from the Affordable Workspace Provider to Qualifying Occupiers and Businesses
- i) full details of monitoring of the Affordable Workspace to be provided to the Council
- j) full details on how the Affordable Workspace will be retained in the event that an appointed Affordable Workspace Provider fails