

S106 Planning Obligations

Summary

Section 106 agreements (s106) are legal agreements between local authorities and developers, which are usually linked to planning permissions. These are also sometimes known as planning gain, planning benefits, community benefits or planning obligations. s106 agreements are used when there is a requirement to mitigate the impact of a development and the impact itself cannot, due to legislative restrictions, be dealt with through the imposition of planning conditions on the permission. Where they are required, developers would normally be expected to complete any s106 agreement before permission can be issued.

The introduction of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010, as amended, will result in significant changes to the way that developments contribute towards the provision of infrastructure that is required to support sustainable growth across the borough. Whilst previously contributions towards infrastructure were secured through s106 legal agreements, under a tariff, or standard, charging approach, in the future this approach will become less effective as a means of providing the necessary infrastructure due to restrictions on the pooling of contributions due to be introduced in April 2014. Instead, in the future, the Council will seek to secure contributions towards Infrastructure through the imposition of a Community Infrastructure Levy which will provide a more appropriate and flexible way of securing contributions towards infrastructure from new developments.

Despite these changes to infrastructure funding, s106 agreements will continue to provide a valuable means of securing other site specific mitigation required in order to make developments acceptable in planning terms. This could include ensuring that developments meet sustainability objectives or provide sufficient levels of affordable housing although s106 agreements could be used to secure a much wider range of measures providing that they are:-

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

This Supplementary Planning Document (SPD) proposes to replace the previous s106 Planning Obligations SPD, which included a standard charge, with a policy document focused on mitigating the direct impacts of development.

Scope of the Supplementary Planning Document (SPD)

This document has been developed as part of the London Borough of Brent (LBB) Local Development Framework (LDF). The Town and Country Planning (Local Development) Regulations 2004, as amended, requires local authorities to go through an independent examination of their Development Plan Documents (DPD), and the Council has already adopted the Core Strategy 2010, and the Site Specific Allocations 2011. The Council is also progressing, in parallel with this document its Community Infrastructure Levy Charging Schedule.

This Supplementary Planning Document, once adopted, will form part of the Local Development Framework and will be a material consideration in the determination of planning applications. However, as the document is supplementary to higher level policy although it is required to go through a period of public consultation, it is not required to go through an independent examination.

Policy

This SPD has been produced in accordance with the following planning legislation and policy documents.

- Community Infrastructure Levy Regulations 2010, as amended
- Planning Policy Statement 12 : Local Spatial Planning
- Circular 05/05 - Planning Obligations
- The London Plan 2011
- The London Borough of Brent LDF Core Strategy

In particular, this guidance is intended to supplement the policies and supporting text contained in the LDF Core Strategy. Within the Core Strategy the following policies are considered to be of particular relevance in terms of supporting the general imposition of appropriate planning obligations.

- CP14 – Public Transport Improvements
- CP15 – Infrastructure to Support Development
- CP18 – Protection and Enhancement of Open Space, Sports & Biodiversity
- CP19 – Brent Strategic Climate Change Mitigation and Adaptation Measures
- CP21 – A Balanced Housing Stock
- CP23 – Protection of existing and provision of new Community and Cultural Facilities

Standard Heads of Terms

Wherever possible, on all major developments, and on other developments that would be unacceptable in planning terms without adequate mitigation, the Council will seek to secure measures through s106 agreements that would allow sustainable development to proceed. Whilst it is acknowledged that the Heads of Terms for any s106 agreement should be based on the specific impacts of the proposed development, many proposals raise similar planning issues and therefore the following list has been produced as a guide to those Heads of Terms that are most likely to be included within any s106 agreement. This list is not intended to be in any way exclusive, or exhaustive, in terms of the planning obligations that may be considered necessary by the Council to make a particular development acceptable in planning terms. For example, some sites may have specific constraints, such as exceptional heritage or flood risk sensitivities, which will require the drafting of bespoke Heads of Terms to provide the necessary mitigation.

Transportation
<p>Prior to any Occupation, repave, or reinstate, the footway adjoining the development to Council standards.</p> <p>Adhere to a 'Permit-Free' scheme whereby occupants of the development would not be entitled to permits for any on-street controlled parking zone</p> <p>Prior to any Occupation, submit for approval and adhere to a Travel Plan, including the provision of further mitigation if the targets within the Travel Plan are not met. The Travel Plan should be compatible with the i-trace software, or any successor.</p> <p>Prior to any Occupation to submit for approval and adhere to a servicing agreement.</p> <p>Prior to occupation, undertake agreed access and/or highway improvements. If this involves work to the public highway this may need to be subject to an agreement under s278 of the Highways Act 1980.</p>
Sustainability
<p>Sustainability - submission and compliance with the Council's Sustainability check-list ensuring a minimum of 50% score is achieved. Compliance with appropriate Code for Sustainable Homes/ BREEAM, and carbon reduction standards in line with current local and regional planning policies. Adherence to the Demolition Protocol, with compensation should it not be delivered.</p> <p>An appropriate reduction in the sites carbon emissions through on-site renewable generation, which has no detrimental effect on local Air Quality</p> <p>Design in and allow a future connection of the site to any Decentralised Heat / Energy Network (in areas with a proposed DHE Network).</p> <p>Provide compensatory measures for any adverse impacts on biodiversity</p>
Housing
<p>Specify the quantity and type of Affordable Housing to be provided on site. Normally Affordable Housing provision will be required on sites which have the capacity to provide 10 or more homes</p>

and be defined and delivered at an appropriate level, tenure and unit size mix, including family accommodation, which contributes towards the wide range of borough household needs. Normally affordable housing provision will be required on-site, but in exceptional circumstances this may be provided off site or through cash in lieu contributions which may be pooled (subject to any legislative restrictions)

To secure the occupation of student housing to specified educational institutions

Public Realm & Open Space

Prior to any occupation provide street tree planting, and other landscape improvements, along the public frontage of the site.

To provide compensatory measures for any under provision of amenity space, when developments are assessed against the Council's amenity space standards

Provide, prior to occupation, and maintain a CCTV system.

Employment

Prior to a Material Start, inform in writing Brent In2 Work (or any successor) of the projected amount of construction jobs and training spaces. During construction target 1:10 of the projected amount of construction jobs to Brent residents and for every 1:100 jobs provide paid training for a previously unemployed Brent resident or Brent school leaver for a 6 month period.

Provide affordable employment or retail space within a development

Community & Cultural

Provide new, or compensatory, community or cultural facilities

Provide public access through a community agreement should the development include facilities suitable for community or cultural use

Miscellaneous

Payment of the Council's legal and other professional costs in (a) preparing and completing the agreement and (b) monitoring and enforcing its performance.

Join and adhere to the Considerate Contractors scheme

To ensure consistency and to provide developers with an outline of what is expected in terms of obligations, standard Heads of Terms have been established which will be provided to developers and agreed at the earliest point. The Heads of Terms will form an integral part of any report that may go before a planning committee, establishing the basic points of any agreement.

Infrastructure

The infrastructure required to mitigate the impact of new development and support sustainable growth will predominantly be delivered through the Community Infrastructure Levy (CIL).

Sometimes the Council will still use s106 powers but this will be limited to funding local site specific measures in line with the tests set out in CIL regulations 122 and 123. For example to compensate for the loss of facilities existing on a development site, such as the loss of a school, open space or community facility or compensation for the loss of a site's value, e.g. nature conservation.

The Council will make discretionary relief from CIL in exceptional circumstances available in the borough, in line with the CIL regulations (55-58). The council will issue a statement to this effect after adoption of any local CIL charge in line with Regulations (56).

The Council will also consider in kind land payments in satisfaction (of whole or part) of the CIL amount due, in respect of any particular development, in line with CIL regulations 73 and 74.

In conclusion the main burden for infrastructure will fall on CIL. S106 Planning Obligations are intended to deal with mostly site related and local matters.