

S106 Planning Obligations

Supplementary Planning Document



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London Borough of Brent

Planning Obligations Supplementary Planning Document

Summary

Within the Planning system, the regulatory framework for both Planning Policy and more specifically Planning Obligations, policy has changed considerably with the introduction of the Planning Act 2008 and the Community Infrastructure Levy Regulations (CIL) in 2010. Traditional S106's have been pared back to the 3 key principles in Circular 2005/05 which has left S106 obligations focusing primarily on the direct impact of proposed new development.

This indicates a clear governmental shift away from standard charges and tariffs as CIL offers local authorities a more appropriate option for securing contributions toward infrastructure to support growth.

This SPD proposes to replace the previous S106 Planning Obligations SPD, which included a standard charge, with a policy document focused on the direct impacts of planning applications.

Planning Obligations Supplementary Planning Document

Planning Obligations (s106)

Section 106 agreements (s106) are legal agreements between local authorities and developers, which are usually linked to planning permissions. These are also known as planning gain, planning benefits, community benefits or planning obligations. S106 agreements are used when there is a requirement to mitigate the pressure of a development and the negative impacts of a development can not be dealt with through conditions in the planning permission.

New developments place additional pressure on the existing social, physical and economic infrastructure in the local area. Planning obligations aim to balance the extra pressure from developments with improvements to the infrastructure in the local area, in order to mitigate adverse effects of the development. CIL will secure contributions towards strategic infrastructure to support growth, while s106 will secure Affordable Housing and other site specific mitigation. The obligations must relate to the development and be acceptable in planning terms, which the SPD will provide.

Scope of the draft

This document has been developed as part of London Borough of Brent (LBB) Local Development Framework (LDF). The Town and Country Planning Local Development Framework Regulations 2008 requires local authorities to go through an independent examination of their Development Plan Documents, and the council has already adopted its two higher level policy Development Plans, including the Core Strategy, adopted 2010, and the Site Specific Allocations, adopted 2011. The council is also progressing with its Community Infrastructure Levy Charging Schedule in parallel to this document.

This Supplementary Planning Document forms part of the lower level policy which, once adopted, will be part of the Local Development Framework and will a material consideration. However, as the document is supplementary to stronger policy, it is not required to go through an independent examination although it is required to go through a period of consultation.

The Policy background

Purpose of the Supplementary Planning Document (SPD)

LBB has existing planning guidance in the form of the adopted Core Strategy, and adopted s106 Planning Obligations SPD. The later will be replaced by this document. The SPD will clearly set out the principles for when, where and what form planning obligations may be required by the Council for a variety of developments.

The SPD will follow central government policy guidance in the form of circular CIL regulations 122 and 123, Circular 05/05, The London Plan, LBB Core Strategy and Best Practice guides published by the Department for Communities and Local Government.

Section 106 of the Town and Country Planning Act 1990 enables a local planning authority to enter into a legal agreement with a developer to secure a planning obligation. The SPD will be reviewed annually as part of the monitoring of Council Planning Policies and CIL

The SPD will be material consideration when determining appropriate planning applications and referred to as such. Moreover, this SPD should be read with the draft Policy CP15 within the LDF Core Strategies and supporting text.

3 of the 5 original tests, detailed below, have now been made statutory, namely:

- (i) necessary to make the proposal development acceptable in planning terms;
- (ii) directly related to the proposed development;
- (iii) fairly and reasonable related in scale and kind to the proposed development; and

S106 will now focus on these mitigations:

- Affordable Housing – including definitions, off site provisions and in-lieu contributions
- Sustainability, Code for Sustainability Homes, BREEAM
- Onsite renewable / carbon reduction provision, off site contributions.
- Permit Free
- Training provision / notification.
- Repaving the footway adjoining the development.
- Travel Plan, including fees and fines.
- Community Access agreements
- New Streets.

Standard Heads of Terms:

For all Major Developments, Brent is proposing a revised S106 SPD in conjunction with CIL, which would remove all standard charges and would focus on:

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

- Prior to a Material Start, inform in writing Brent in 2 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.
- Prior to any Occupation, repaving the footway adjoining the development to a standard comparable to the rest of the pavement, unless the Council has confirmed in writing this is not required.
- Prior to any Occupation, submit gain approvals for and adhere to a Travel Plan, including fees and fines.
- Street Tree) planting along public frontage.
- Affordable Housing – Normally affordable housing provision will be required on sites which have the capacity to provide 10 or more homes and be defined and delivered at an appropriate level, tenure and unit size mix that contributes towards the wide range of borough household needs. Normally affordable housing provision will be required on-site, but in exceptional circumstances may be provided off site or through cash in lieu contributions.
- 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, standards in line with current policy. Adherence to the Demolition Protocol, with compensation should it not be delivered.
- An appropriate reduction in the sites carbon emissions through onsite renewable generation, which has no detrimental effect on local Air Quality.
- 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 at the earliest point to agree prior to committee. The Heads of Terms will form an integral part of any report that may go before a planning committee and be the basic points of any agreement.

Replacement facilities

Where planning permission is sought for the redevelopment of any sporting facilities, community space, allotment, public open space or other public space, where the development is acceptable, planning obligations will be sought to

enhance and expand other facilities to ensure an acceptable level of provision remains. (Brent CP18 & CP23)

The following is a non-exhaustive list of potential obligations that may be required by particular developments.

Other obligations may include:

- Public access / Community agreements, public rights of way
- Community or Affordable Workshop space
- Servicing agreements
- CCTV
- Highways improvements, adoption of new highways (S38 /S278 agreements)
- Listed building improvements
- Remove new residents' rights to parking permits
- Allowance of future connection of the site to any Decentralised Heat / Energy Network (in areas with a proposed DHE Network)
- Compensatory measures for loss of D1 space (Policy CP23)
- Compensatory measures for significant under provision of amenity space

Stakeholder involvement

It is envisaged local residents, stakeholders and the wider public can make comments when a planning application is submitted in the way they currently can. They may identify particular pressure or areas for mitigation and the Council will consider any identified pressure or issues to see if using s106 planning obligations are an appropriate response. During the consultation process for this SPD proactive steps, in line with the Statement of Community Involvement, will be taken to draw in other stakeholders into the process.

Appendix 1: Reasoning & Justification

Payment of the Council's legal and other professional costs is an accepted obligation to ensure the Council's costs in preparing and executing the agreement are covered by the applicant not borne by the wider Council.

Brent's and the Mayor's Policies for Employment, CP1, CP3 and CP7 respectively, support the requirement of new developments to support local employment and training opportunities. Construction places a heavy impact upon the local environment and offers a clear entry level opportunity for training and employment for local residents. As failure to provide the obligation can not be reversed by a court, a financial penalty is sought for non-compliance.

Footways adjoining the development are the principle area directly impacted by the pressure of new development, with residents and users daily using them. Footways are often damaged during construction changes in building lines. Unless accepted by the Council that the current standard of the footway is

acceptable. It is fair and reasonable to accept the development to pay for its repair to a level comparable to the rest of the street. (Brent CP14).

Travel Plans enable developments to reduce their impact on the road and pollution (Brent CP19) and promote public transportation (Brent CP14). As failure to provide the obligation can not be reversed by a court, a financial penalty is sought for non-compliance.

Street trees support improved air quality (CP19), place making (CP5) and

Affordable Housing – Affordable housing includes social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market (PPS3 Annex B). Brent normally requires affordable housing provision on sites which have the capacity to provide 10 or more homes (London Plan 3.13A).

Brent plans for the provision of at least 22,000 additional homes between 2007 and 2026 and has set an overall target that 50% of new homes should be affordable (Brent CP2)). At least 25% of new homes should be family sized accommodation of 3 bedrooms or more (CP2). Brent seeks to maintain and provide a balanced housing stock by protecting existing accommodation that meets known needs and by ensuring that new housing appropriately contributes towards the wide range of borough household needs (CP21).

Brent will seek the maximum reasonable amount of affordable housing when negotiating on individual private residential and mixed use schemes and negotiations on sites will take account of their individual circumstances including development viability, the availability of public subsidy, the implications of phased development including provisions for reappraising the viability of schemes prior to implementation ('contingent obligations'), and other scheme requirements (London Plan 3.12).

Brent's and the Mayor's Policies for Sustainability CP3 and CP19 and LP5.2, LP5.3, LP5.7 respectively, support the requirement of new developments to support a better environment, with carbon reduction and consideration and mitigation for the environmental impacts of development.. As failure to provide the obligation can not be reversed by a court, a financial penalty is sought for non-compliance.

Local Infrastructure Improvements CIL

Policy support

Circular 05/05 Planning Obligations

This is discussed in the main body of the SPD, particularly paragraphs B25-36.

Planning Policy Statement 1: Delivering Sustainable Development (PPS1)

PPS1 states that “Planning shapes the places where people live and work and the country we live in. Good planning ensures that we get the right development, in the right place and at the right time. Paragraph 3 states that sustainable development is the core principle underpinning planning. Paragraph 5 goes on to indicate how planning should facilitate and promote sustainable and inclusive patterns of urban and rural development. This SPD seeks to ensure the principles outlined in PPS1 are secured and sustainable positive developments are achieved.

The London Plan

The London Plan, which was adopted in July 2011 details the Mayor’s strategic strategy for Greater London and sets out an integrated social, economic and environmental framework for the future development of London over the next 15-25 years.

Within the plan, Policies 8.2 covers the requirement for Planning Obligations noting Affordable Housing, Crossrail and Transportation contributions as high on the list of priorities. In addition, measures to mitigate climate change, educations and skills, healthcare, child care and small shops are noted as other priorities across London.

Core Strategy CP19

Supporting text for Core Strategy CP19 states that Code Level and/or BREEAM performance will form part of S106 agreement to ensure the required performance level throughout the lifetime of the development, including verification by post construction performance certificate.

Core Strategy CP15

Core Strategy policy CP15 refers to the council’s Infrastructure Investment Framework, which sets out the overall requirements for growth in the borough up to 2026. The Infrastructure Investment Framework also sets out the wider requirements for the borough’s growth, and was updated to form the evidence base for the draft Community Infrastructure Levy Charging Schedule (2011). The Infrastructure Investment Framework is required to be updated by the council under policy CP15, and whilst growth is likely to occur outside of the Growth Areas, it is expected that the majority of change is to happen within Wembley, South Kilburn, Alperton, Burnt Oak/Colindale, North Circular Road, Park Road and Church End.

Core Strategy policy CP15 states that before granting planning permission for major proposals, the council will have to be satisfied that the infrastructure requirements arising from the scheme will be met by the time it is needed, and contributions will be sought from development giving rise to the need for new infrastructure. Whilst the Infrastructure Investment Framework contains the majority of infrastructure required, there will be some infrastructure requirements that are specific to sites which will not be covered by the Infrastructure Investment Framework, which will be covered by S106 contributions.

