

## Comments

### Draft SPD s106 Planning Obligations (31/10/11 to 12/12/11)

<b>Comment by</b>	Development Securities PLC ( Laurence Martin)
<b>Comment ID</b>	s1068
<b>Response Date</b>	14/12/11 11:50
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Letter
<b>Version</b>	0.7

**Please confirm your general view on the proposed SPD on s106 Planning Obligations**    Objection

#### **Please provide any specific comments on the document in the box below**

Development Securities welcomes the opportunity to comment on the CIL and S106 consultations. We are concerned about how these changes are implemented and the effect they will have on the delivery of Brent's targets for new homes. The overriding concern relates to viability, both in the detail of how this has been calculated, and the broad application of the rates. Overall approach to viability The level of CIL is being set at a time of considerable economic uncertainty, with a significant risk of a further recession. This would affect development values, and given the inflexible nature of the CIL charge once set, many more schemes could become unviable as a result. This would jeopardise delivery of the Core Strategy housing targets. The sensitivity analysis undertaken in the CIL viability assessment does not take this into account, and only models "up-side" risks of higher growth in property values. To be a fair and reasonable assessment of viability it needs to also look at the very real down-side risks to development value from the current (and future) economic situation. Infrastructure Needs This overestimates the demand for infrastructure arising from new development in two important respects. Firstly, in some cases (particularly for sports infrastructure) it expects provision for new development to exceed the level currently provided by the Council for the existing community. This is not justified. Secondly, it overestimates the degree to which new housing leads to an increase in the population. The population in Brent (and London more widely), is increasing irrespective of house building, and new homes to some extent simply relieve pressure on the existing housing stock. Evidence such as the "net population gain" calculations by the Healthy Urban Development Unit confirm that a significant proportion of residents taking up new housing were already living locally, even after allowing for the net effects of their previous homes being "backfilled" by other households. Much of the infrastructure needs identified in the Investment Framework therefore are a result of general growth in the borough's population, not as a result of house building. Application of CIL and 8106 The interaction of CIL and S106 will be complex and needs to be managed carefully to avoid damaging both viability and delivery of infrastructure. Concerns include: ? Paragraph 4.3 of the IIF needs to be brought into line with the CIL regulations to recognise that land for infrastructure can be accepted in lieu of payment of CIL. ? The S106 SPD should make clear how developers will be given certainty over the delivery of infrastructure that is necessary for their development, and which is paid for by the development (through CIL), but implemented by the Council or others. ? The phasing of CIL payments will be determined by the Council and will have implications for viability of development. This is not set out in

the charging schedule and must be properly consulted on. We would welcome the opportunity to discuss these issues further, and urge the Council to revisit the detail and application of these draft policies to reduce the risk of introducing an inflexible charge that renders the Core Strategy targets unviable.

## Officers Response

In response to correspondence dated 14 th December 2011 from Development Securities on the Brent Preliminary Draft Charging Schedule and Revised S106 Planning Obligation SPD consultations, we make the following remarks, which address the comments made in the correspondence from Development Securities in turn, and under the broad headings therein.

### Overall Approach to Viability

The CIL Regulations state that in setting rates (including differential rates) in a charging schedule, a charging authority must aim to strike *what appears to the charging authority* to be an appropriate balance between -

(a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and

(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

The Council commissioned BNP Paribas Real Estate to undertake a strategic CIL Viability Study to form part of an evidence base to inform Brent's CIL Draft Charging Schedule. The BNP Paribas Real Estate study tests the ability of developments across the borough to yield contributions to infrastructure requirements through CIL. The study uses a standard development valuation methodology that compares residual land values of a range of developments to the sites' current use values, plus a margin to incentivise landowners to release sites for development. The value of potential development schemes is estimated, cost, financing, fees, CIL and profit deducted, and due regard given to policy requirements that residential development contribute towards affordable housing provision. If a development incorporating a given level of CIL generates a higher value than the current use value, plus an appropriate landowner's margin, then it can be judged that the proposed level of CIL will be viable.

The report tests a series of development scenarios and in the main the imposition of CIL is not considered a critical factor in determining whether a scheme is viable or not, with the relationship between scheme value, costs and existing use value considered far more important. The diagram below illustrates, proportionally, the constituent parts that make up the development scheme values and costs that inform development viability.

The study concludes by setting out ranges of CIL levels that different types of development schemes should be able to absorb and recommendations as to appropriate CIL levels for those different types of development schemes, with a margin or buffer between the proposed rates and the maximum rates that the study indicates are viable in the majority of development schemes.

Development Securities raise concerns regarding the current economic climate and in particular development values. The Council is aware that the economy is currently going through a difficult time and, more generally, that the pattern of economic circumstances will change over time and with market cycles. As noted, the BNP Paribas Real Estate Viability Study considers that in the main the imposition of CIL is not considered a critical factor in determining whether a development scheme is viable or not, with the relationship between scheme value, costs and existing use value considered far more important.

On the specific point of house prices and values, the fundamental problem of the UK housing market failing to provide enough new homes to meet the needs of our growing population remains. The top industry experts all continue to forecast medium term growth in London house prices. Savills forecast growth of 19.1% in the London mainstream markets between 2012 and 2016 (Savills Residential Research, November 2011). Knight Frank forecast growth of 9.3% in the London market for the same period, 2012 to 2016 (Knight Frank Residential Research, Q4 2011). Cluttons forecast that house

prices in Greater London will increase by an average of 5% per annum over the next 5 years (Cluttons Residential Property Forecasts, October 2011).

Notwithstanding that, the BNP Paribas Real Estate Viability Study sets out a range of CIL levels that the majority of different types of development schemes should be able to absorb and, following BNP Real Estate's recommendations, the Council has specifically allowed a margin or buffer of at least 20% versus the maximum CIL levels that the majority of different types of development schemes should be able to absorb to allow for movements in economic variables.

### **Infrastructure Needs**

The Council's Infrastructure & Investment Framework (I&IF) was adopted in May 2009 and the Council undertook a detailed review of the I&IF in October 2011. The I&IF sets out the foreseeable infrastructure requirements that will arise from anticipated new housing and commercial development that will be needed to create sustainable development and sustainable communities. The Framework does not claim to be exhaustive but does set out the broad priorities for the growth and regeneration areas identified in the adopted Local Development Framework Core Strategy.

Development Securities assert that demand for infrastructure is overestimated in the I&IF and make two specific arguments.

On the matter of the standards of the I&IF infrastructure requirements, one needs first consider that standards of infrastructure provision have changed over time, in the main progressing and improving to meet the increased expectations of the general public. As such it should come as little surprise that new infrastructure such as sports facilities will generally be of a higher standard than older existing facilities. Most of the standards that inform the I&IF infrastructure requirements cost estimates follow current national and regional standards. Furthermore, if one looks at the amount and density of development planned under the LDF CS growth strategy, one can see that the Council has taken a flexible approach to infrastructure such that the qualitative nature of infrastructure provision is in some cases used to compensate for an actual shortfall against adopted quantitative standards. For example, the planned increase in the population of Wembley will suffer from a shortage of locally accessible grass football pitches, however an attempt has been made to compensate for this shortage through an infrastructure requirement for new synthetic football pitches that can be more intensively used.

With respect to population growth, the adopted LDF CS plans for the development of 11,200 homes between 2007/08 and 2016/17. On the basis of the London Plan average household size of 2.34 falling to 2.19 over the plan period (para. 3.16, London Plan, July 2011) this yields a range of between 24,500 and 26,000 people. Brent has a higher average household size, which ONS projects will be 2.526 by 2016. (2008 based household projections, CLG, November 2010). Applying this to planned development of 11,200 homes yields an estimated population of 28,000 people by 2017. The adopted LDF CS Core Policy 2 on Population and Housing Growth therefore refers to a growth strategy that plans for over 11,200 homes from 2007/08 to 2016/17 and population growth of between 25,000 and 28,000 people by 2017. For the purposes of the I&IF, the more conservative Wandsworth model has been used to predict population growth in order to set a baseline that few would object to, with an average household size of 1.92 yielding a population growth of 21,500 people. In terms of the effect these ranges of population prediction have on the IIF, there will be limiting factors, for example with education infrastructure, where the I&IF requirements are driven by child population calculations.

We do not accept that growth in the borough's existing population significantly undermines the infrastructure investment requirements needed to support the population growth created by new development.

### **Application of CIL and S106**

The Planning Act 2008 and CIL Regulations 2010 set a new framework within which infrastructure will be secured through the planning system and in particular the movement away from the use of S106 Planning Obligations and towards the Community Infrastructure Levy.

The CIL Regulations that came into force in April 2010, and subsequent amendments made in April 2011, demonstrate that CIL remains Government's preferred vehicle for the collection of pooled development contributions to fund infrastructure. The CIL Regulations limit the use of S106 Planning Obligations such that a planning obligation may now only constitute a reason for granting planning permission for the development if the obligation is:

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

On local adoption of the levy, or nationally after a transitional period of four years, that is 6 th April 2014, CIL Regulations will also restrict the local use of S106 planning obligations for pooled contributions towards items that may be funded via the levy. Pooled contributions may then only be sought from up to five separate planning obligations for an item of infrastructure that is not locally intended to be funded by the levy. The limit of five applies as well to types of general infrastructure contributions, such as education and transport.

The Council understand that care must be taken to ensure the Council's planning approach to the use of CIL and S106 to support development is consistent, balanced and deliverable and proposes to introduce a local CIL to ensure the continued delivery of the infrastructure required for sustainable growth in the borough, and to concurrently revise existing s106 arrangements, to that effect. The Council is also currently undertaking a full audit of the position on triggered and untriggered S106 Planning Obligations to determine how funding can and could be allocated against the I&IF, as well as any implications for the list of infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL, and subject to CIL Regulation 123, which will be agreed and published following the adoption of the proposed Brent CIL Charging Schedule.

Development Securities raise three specific concerns.

The Council understand that under the CIL Regulations a charging authority may accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development, however if such an in kind land payment forms part of a wider development, the value of that in kind land payment will be derived with consideration to the value of the wider development. The I&IF details the capital costs of the infrastructure required to support the LDF CS growth strategy but does not include land costs unless they are outside of the development. Given the difficulty of determining exactly where and in what form all identified infrastructure requirements will come forward, the I&IF does not speculate as to the value of land for infrastructure that may form part of wider development, albeit when such costs are determined in actuality, as infrastructure delivery comes forward, one will see that the total cost of delivering the I&IF infrastructure requirements will increase and the funding gap widen. As such there is no tension between the acknowledgement of the principle that one or more land payments can satisfy the whole or part of the CIL due in respect of a chargeable development, and the exclusion of difficult to determine land values from the I&IF, and no need to amend the wording of para. 4.3 of the I&IF.

The Council has a track record of securing cash contributions for infrastructure under S106 Agreements, and then delivering that infrastructure. For example, one can point to the Council's successful school expansion programme, or public highways and transport projects. The move to funding infrastructure through CIL rather than S106 Planning Obligations will only provide the Council with greater freedom and flexibility to deliver infrastructure. In particular, the move to funding infrastructure through CIL will enhance the Council's ability to pool developer contributions to deliver larger infrastructure projects. The Council will agree and publish the list of infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL, and subject to CIL Regulation 123, following the adoption of the proposed Brent CIL Charging Schedule. The Council, in accordance with CIL Regulation 62, will also report on the amount of CIL collected and spent each financial year.

The Council is aware of the amendments to the CIL Regulations that allow charging authorities to set their policies on the phasing of CIL payments and intends to introduce such a policy. The Council appreciates that, for a majority of developers, the timing of the payment of CIL will be more important than the actual level at which CIL is levied. This is not a matter that the Council is required to determine as part of the consultation on the charging schedule and will consult further with the development community in due course. In any case, attention is drawn to the amendments to CIL Regulation 70 which detail the circumstances in which CIL is payable in accordance with any Mayoral instalment policy where London boroughs do not issue an instalment policy.

We invite and welcome comment from developers on our efforts to strike an appropriate balance in setting CIL rates in a charging schedule and are happy to continue our dialogue with Development Securities. We are particularly keen to know what developers think would be appropriate CIL rates to charge in Brent and would be grateful to hear your views.

<b>Comment by</b>	Mike Johnson
<b>Comment ID</b>	s1067
<b>Response Date</b>	13/12/11 09:32
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Email
<b>Version</b>	0.9

**Please confirm your general view on the proposed SPD on s106 Planning Obligations** Neutral

**Please provide any specific comments on the document in the box below**

Prior to any occupation, submit a travel for approval and adhere to a Travel Plan including provision of further mitigation if the targets within the Travel plan are not met. Response: The travel plan monitoring should include a requirement for iTRACE compatibility. Prior to occupation, undertake agreed access and/or highway improvements, if this involves work on the public highway this may need to be subject to an agreement under s278 of the Highways Act 1990 Response: It would be helpful if the SPD referred to s.278 agreements with Transport for London (TfL) where TfL are the Local Highway Authority. Infrastructure Response: It would be helpful to make reference to strategic transport contributions to support public transport capacity enhancements where these have been identified at the planning application stage; e.g. site specific requirements such as bus stop improvements or pump priming contributions for bus service enhancements, which cannot be delivered through a CIL, but are still required to make the development acceptable in planning terms.

**Officers Response**

Officers propose to include reference to compatibility with i-trace, or other similar software, within the standard Heads of Terms. The standard Heads of Terms are intended to set out the likely s106 requirements for the majority of development across the borough to give developers a broad understanding of what will be required. Officers do not consider that it should be within the scope of the proposed SPD to provide information that will only be relevant in the minority of cases. The Council will continue to provide more detailed site specific information to developers through pre-application discussions. Similarly, where the Council intend to use s106 planning obligations to secure site specific mitigation this will be negotiated on a site by site basis as the majority of the required infrastructure will be funded through CIL.

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<b>Comment by</b>	Environment Agency (Miss Eleri Randall)
<b>Comment ID</b>	s1066
<b>Response Date</b>	13/12/11 09:24
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Letter
<b>Version</b>	0.6

**Please confirm your general view on the proposed Support  
SPD on s106 Planning Obligations**

**Please provide any specific comments on the document in the box below**

Section 106 Supplementary Planning Document As discussed with you by phone, we welcome the shortened version of the Supplementary Planning Document however due to it's shortened version there are a number of environmental issues which we feel have been missed out. We would request that under the Standard Head of Terms a bullet point is included which requires contribution towards mitigation and/or compensation of impact of development on biodiversity. It could read as follows: To provide compensatory measures for any adverse impacts on biodiversity (where developments have not included biodiversity benefits as part of the Sustainability Checklist). We understand that biodiversity does feature in your boroughs Sustainability Checklist which is listed in the Standard Head of Terms however would like this to be a separate bullet point as some developments could score highly on other sustainability aspects but not necessarily biodiversity as part of the checklist. In addition we feel that a bullet point referring to flood risk management and the long term maintenance and management of Sustainable Drainage Systems (SuDS) could be added as design features which could be specified and submitted as part of a Section 106 agreement.

**Officers Response**

Policy CP18 of the Council's Core Strategy sets out to protect and enhance biodiversity across the borough and therefore officers consider it appropriate to include a specific reference to mitigating the impact of development on biodiversity within the listed standard Heads of Terms. In terms of Flood Risk Management and the provision of SuDS, in the Council experience, this issue can often be satisfactorily resolved through the imposition of suitable planning conditions. However, where justified, a s106 planning obligation could be used as a means of securing suitable mitigation and it should be noted that the standard Heads of Terms set out in the draft SPD are not intended to be exhaustive.

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<b>Comment by</b>	Quintain Estates & Developments PLC (Ms Anne Clements)
<b>Comment ID</b>	s1065
<b>Response Date</b>	12/12/11 17:10
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Letter
<b>Version</b>	0.11

**Please confirm your general view on the proposed Neutral  
SPD on s106 Planning Obligations**

**Please provide any specific comments on the document in the box below**

SPD on Planning Obligations and Delivery of Infrastructure

As noted above, the delivery of infrastructure to support development in Wembley will be a complex process, which is likely to bring together funding from existing Section 106 agreements, Community Infrastructure Levy (if adopted), and from future Section 106 agreements, as well as contributions from the public purse. It is the role of the Council to "orchestrate" the delivery of this infrastructure, bringing together funding sources and providers at the appropriate time. The Council will need to be clear to partners, both in the revised SPD on planning obligations, but also in specific Section 106 agreements

and work with developers to plan for infrastructure delivery. Also, it is important to have regard to paragraph B10 of Circular 05/2005, which states: "In some instances, perhaps arising from different regional or site-specific circumstances - it may not be feasible for the proposed development to meet all the requirements set out in local, regional and national planning policies and still be economically viable. In such cases, and where development is needed to meet the aims of the development plan, it is for the local planning authority and other public sector agencies to decide what is to be the balance on contributions by the developers and by the public sector infrastructure provided in its area supported for example by local taxation." In relation to the draft SPD we feel that it does not currently identify all of the significant issues facing developers, or provide the re-assurance that Section 106 requirements will be used sparingly and only in essential cases. In particular we feel that it needs to confirm more clearly: The circumstances in which Section 106 agreements will still be required; in the case of Wembley it could, for example, cross refer to the IIF, which (as we note above in relation to the list of infrastructure for CIL), clarifies which elements are expected to be covered by CIL, which by existing Section 106 and which by future Section 106. This includes items such as amenity open space, as mentioned in the S106 SPD. This will also allow a fairer assessment of viability of CIL on strategic sites; The approach to the use of planning conditions and working in partnership with developers; there is a major concern that as the link between contributions and specific items of infrastructure are broken, developers should not be faced with planning conditions (Grampian conditions) over which they have no control, for example the delivery of a new school or specific item of infrastructure in advance of occupation of a certain number of homes. The Planning Obligations SPD should confirm how the Council will address those issues and work with applicants to ensure that there is some level of guarantee that specific items of infrastructure will be delivered. That there will be no double counting between S106 contributions and the CIL charge. With reference to the detail of the Heads of Terms within the draft SPD we would also emphasise that the planting of street trees along frontages must be co-ordinated with utilities and other underground infrastructure. Where these are in existence street tree planting may not be possible or else prohibitively expensive. There are also a number of issues outside of the Charging Schedule and Draft SPD, but related directly to the implementation of CIL which would be of significance to QED, and which we consider it is important to raise. These include: Exemptions Policy: The Council is, in very strictly defined circumstances, allowed to offer an exemptions policy, but it must choose to do so. These could include land 'in lieu' situations as set out above and Section 73 applications where, as things currently stand these could result in a CIL requirement being imposed on top of an existing Section 106 agreement whereas it would be considered appropriate to implement the exemptions policy; Phasing of Payment: Under revised CIL regulations the Council will be allowed to set its own policy on the phasing of CIL payments, which could have significant impacts on developments depending on their funding structure, the prevailing market at the time payment is due and the phasing of development delivery. At a strategic level, QED is keen to understand how Brent intends to support delivery of infrastructure through the IIF, and how we can work with the Council to help ensure that the infrastructure is delivered in a timely fashion to suit the roll out of developments. Ultimately we would like to see the Wembley section of the IIF become a delivery plan, setting out transparently the programme for delivery, how resources will be applied, and how delivery can be jointly monitored. Ongoing dialogue with ourselves and other landowners will be critical, and we suggest that the Borough should establish a developer forum to test viability on key sites in Wembley and elsewhere. We are aware that this approach has already been accepted by at least one other CIL charging authority. We are keen to meet regularly with you to consider these issues before the next Draft is formally consulted upon in February/March 2012. We look forward to hearing further from you.

## Officers Response

QED suggest the SPD needs to confirm more clearly the circumstances in which S106 Agreements will still be required after the proposed introduction of CIL. As previously noted, the CIL Regulations limit the use of S106 Planning Obligations such that a planning obligation may now only constitute a reason for granting planning permission for the development if the obligation is:

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

The SPD also sets out Standard Heads of Terms which, whilst not exhaustive, do identify the most common planning issues that are most likely to be included within any S106 Agreement.

On the matter of double counting between S106 Planning Obligation and CIL, we would draw attention to CIL Regulation 123(2) which states that "A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure" and, as previously noted, reassure QED that we are undertaking a full audit of the position on triggered and untriggered S106 Planning Obligations to determine how funding can and could be allocated against the I&IF, as well as any implications for the list of infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL, and subject to CIL Regulation 123, which will be agreed and published following the adoption of the proposed Brent CIL Charging Schedule.

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<b>Comment by</b>	English Heritage ( Graham Saunders)
<b>Comment ID</b>	s1064
<b>Response Date</b>	12/12/11 16:17
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Letter
<b>Version</b>	0.7

**Please confirm your general view on the proposed SPD on s106 Planning Obligations** Neutral

**Please provide any specific comments on the document in the box below**

Thank you for seeking our views on the above documents. As the Government's adviser on the historic environment English Heritage is keen to ensure that the protection of the historic environment is fully taken into account at all stages and levels of the local planning process. This includes identifying opportunities where London's heritage assets can be enhanced through development activity. In general we have no comments to make at this stage in the development of the draft S106 Planning Obligations SPD. However we would seek to ensure that where planning contributions are gained, that they are used effectively in conserving and enhancing the Borough's heritage assets. It is acknowledged that S106 agreements should be based upon specific impacts of the proposed development. However, the Borough contains a breadth of heritage assets that may be directly or indirectly impacted by proposed developments. For example developments that result in the need for public realm and highway changes may coincide with the location of designated heritage assets such as conservation area and/or listed buildings. These changes could have an impact upon the significance of these assets including their setting. With this in mind we would suggest that the Heads of Terms includes a reference to any appropriate appraisal and/or management plan of any affected heritage assets (i.e. conservation area appraisal and management plans) as a basis in which to demonstrate that the mitigation measures used are appropriate. English Heritage would strongly advise that the Borough's own conservation staff are closely involved throughout the preparation of the above documents as they are often best placed to advise on: local historic environment issues and priorities, sources of data; and consideration of options relating to the historic environment. 1 WATERHOUSE SQUARE, 138 - 142 HOLBORN, LONDON, EC1N 2ST Telephone 020 7973 3000 Facsimile 020 7973 3001 [www.english-heritage.org.uk](http://www.english-heritage.org.uk) Please note that English Heritage operates an access to information policy. Correspondence or information which you send us may therefore become publicly available. Finally, we should like to stress that this opinion is based on the information provided by you. To avoid any doubt, this does not affect our obligation to provide further advice and, potentially, object to specific proposals, which may subsequently arise where we consider that these would have an adverse effect upon the historic environment.

**Officers Response**



Officers acknowledge the importance of Brent's heritage assets to the historic environment and consider it appropriate to make reference to this in general terms within the s106 SPD. Whilst in some instances it may be appropriate to use a s106 agreement to secure site specific mitigation against the impact of development on the historic environment, it is considered that in many cases it may be more appropriate to secure mitigation by way of a planning condition. It should be noted that the recommended Heads of Terms set out within the SPD are meant only as a guide for developers and are not in anyway meant to be exhaustive.

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<b>Comment by</b>	Solum Regeneration
<b>Comment ID</b>	s1063
<b>Response Date</b>	12/12/11 15:27
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Letter
<b>Version</b>	0.3

**Please confirm your general view on the proposed SPD on s106 Planning Obligations** Neutral

**Please provide any specific comments on the document in the box below**

I write on behalf of my client, Solum Regeneration, which was formed in July 2008 as a partnership between Network Rail and Kier Property to redevelop and regenerate a number of Network Rail owned sites, including Wembley Chiltern Embankments within the London Borough of Brent. Please accept this as Solum Regeneration's representations to the Brent Draft Planning Obligations SPD and the Community Infrastructure Levy (CIL) Draft Charging Schedule consultations. A summary of our representations is:

1. Both the Draft Planning Obligations SPD and the Community Infrastructure Levy Draft Charging Schedule necessitate a much more flexible approach in terms of impacts on development viability. They should, therefore, recognise the fact that market conditions may change since the initial viability work was carried out on behalf of the Council and explicitly state that development viability will be taken into consideration when the planning obligations and CIL payments are negotiated.

2. This flexible approach is supported by the Government's recent publication "Laying the Foundations: A Housing Strategy for England", which was launched on 21 November by the Prime Minister and is a radical new strategy to reignite the housing market and get the nation building again. Specifically paragraph 30 confirms that:

"The Government will also encourage a flexible approach to planning obligations, to safeguard against substantial and unexpected change in market conditions". I would be pleased to attend a meeting with you to discuss this representation in more detail if that is of assistance.

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<b>Comment by</b>	Greater London Authority ( Jonathan Aubrey)
<b>Comment ID</b>	s1069
<b>Response Date</b>	09/12/11 12:06
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Letter

**Please confirm your general view on the proposed Neutral  
SPD on s106 Planning Obligations**

**Please provide any specific comments on the document in the box below**

Brent Council Revised section 106 Supplementary Planning Document (SPD)  
**Urban design and place making**

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:

8.2 planning obligations

London Plan policy 8.2 planning obligations states under the heading planning decisions: C)  
Development proposals should address strategic as well as local priorities in planning obligations.

GLA believe there is need to include text relating to pooling of contributions for the provision of facilities related to proposed development. It is accepted that these deal with local arising issues, but there is a need to indicate that in some circumstances there are strategic obligations that may arise where section 106 would be part of a pooling of contributions to link development projects.

Point 1

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

No comment

Point 2

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.

GLA support this potential obligation

Point 3

Prior to any Occupation, repave 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

Needs to be account in certain circumstances that the footway adjoining the development is of poor quality. Should have an agreed benchmark standard and relate to wider pedestrian network quality.

Point 4

Adhere to a 'Permit-Free' scheme whereby occupants of the development would not be entitled to permits for any on street controlled parking zone.

GLA believe all transport related obligations should be grouped together for greater continuity (point 4,5 and 15)

TfL will respond to this point separately.

#### Point 5

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

TfL will respond to this point separately.

#### Point 6

Prior to any occupation to submit for approval and adhere to a servicing agreement

GLA agree with the obligation

#### Point 7

Prior to any occupation provide street tree planting along the public frontage of the site.

Should consider in addition to tree planting including stipulating an appropriate landscape design that fits with the local green space network.

#### Point 8

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 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 this may be provided off site or through cash in lieu contributions.

policy 3.13 affordable housing

policy 3.8 housing choice

Section 106 should include emphasis on provision of affordable family housing as a strategic priority as set out in policy 3.8 of the London Plan.

London Plan policy 3.13 affordable housing states in paragraph 3.74: cash in lieu contribution ring-fenced and if appropriate pooled?

London Plan policy 3.2, Para 3.75 states: In making arrangement for assessing planning obligations, boroughs should consider whether it is appropriate to put in place provisions for reappraising the viability of schemes prior to implementation. To take account of economic uncertainties, and in respect of schemes presently anticipated to deliver low levels of affordable housing, these provisions may be used to ensure that maximum benefit is secured over the period of the development.

Given the current economic situation the inclusion of text relating to this paragraph would be a useful addition to the section 106 SPD.

#### Point 9

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.

policy 5.2 minimising carbon dioxide emissions

GLA believe all sustainable energy related obligations should be grouped together for greater continuity (point 9, 10 and 16)

This should relate to London Plan policy 5.2 minimising carbon dioxide emissions for residential and non-domestic buildings which are more stricter and require a greater degree of commitment

This should relate to improvement on 2010 building regulations. For example on residential development for the period of the SPD this should be: 2010-13 improvement of 25% (code for sustainable homes level 4); 2013 ?16 improvement of 40%; 2016 ?2031 there should be zero carbon emissions.

Point 10

An appropriate reduction in the sites carbon emissions through on-site renewable generation, which has no detrimental effect on local Air Quality.

policy 5.2 minimising carbon dioxide emissions

This should relate to London Plan policy 5.2 minimising carbon dioxide emissions and policy 5.3 sustainable design and construction

Major development proposals meet the minimum standards outlined in the Mayor?s supplementary planning guidance on housing.

Point 11

JoinandadheretotheConsiderateContractorsscheme.

GLA agree with the obligation

Point 12

Provide public access through a community agreement should the development include suitable facilities.

GLA agree with the obligation.

TfL will respond to this point separately.

Point 13

Provide affordable employment or retail space within a development

policy 4.9 Small shops

GLA take the view the section 106 guidance would benefit from the inclusion of a bullet point that incorporates London Plan policy 4.9 Small shops relating to planning decisions: (A) In considering proposals for large retail developments, the Mayor will, and Boroughs should, consider imposing conditions or seeking contributions through planning obligations where appropriate, feasible and viable, to provide or support affordable shop units suitable for small or independent retailers and service outlets and/or to strengthen and promote the retail offer, attractiveness and competitiveness of centres (B).

Point 14

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

GLA agree with the obligation

Point 15

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.

TfL will respond to this point separately

Point 16

Design in and allow a future connection of the site to any Decentralised Heat / Energy Network (in areas with a proposed DHE Network).

policy 5.2 minimising carbon dioxide emissions

policy 5.3 sustainable design and construction

This should relate to London Plan policy 5.2 minimising carbon dioxide emissions and policy 5.3 sustainable design and construction

Point 17

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

GLA agree with the obligation

Omission

London Plan paragraph 4.35 states: taking account of strategic priorities for planning obligations (Policy 8.2), boroughs are encouraged to ensure cultural objectives are addressed in major development proposals.

Omission

Health and social Infrastructure provision linked to development

policy 3.2 Improving Health and Addressing Health Inequalities

London Plan policy 3.2 Improving Health and Addressing Health Inequalities

Has been established so that new development should be supported by necessary health and social infrastructure and planning obligations that are secured to ensure delivery of new facilities and services (policies 3.16, 3.17 and 8.2). This Plan also aims to create opportunities for employment and economic development; improve access to green and open spaces and leisure facilities (including using the planning system to secure new provision); support safe and sustainable transport systems (including walking and cycling); reduce road traffic casualties; improve air quality; reducing noise, increase access to healthy foods; create places for children to play; and ensure there is a good array of local services.

Omission

Student accommodation

policy 3.8 housing choice

London Plan policy 3.8 housing choice encourages student accommodation that is meeting a demonstrable strategic and local need.

Student accommodation should be secured as such by planning agreement or condition relating to the use of the land or to its occupation by members of specified educational institutions. If

accommodation is not robustly secured for students, it will normally be subject to the requirements of London Plan affordable housing policy

It is felt the Section 106 guidance should include specific mention relating to student accommodation given recent discussions relating to development pressures from this type of development.

Omission

health facilities and services and childcare provision

Policy 8.2 planning obligations

Policy 8.2 planning obligations part E) sets out a number of obligations that should be applied although the section 106 SPD addresses most of these it fails to provide them in relation to health facilities and services and childcare provision.

Omission

Cultural objectives

Policy 8.2 planning obligations

London Plan paragraph 4.35 states: taking account of strategic priorities for planning obligations (Policy 8.2), boroughs are encouraged to ensure cultural objectives are addressed in major development proposals.

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.

No comment

Infrastructure

Whilst the infrastructure required to mitigate the impact of new development and support sustainable growth will generally be delivered through the Community Infrastructure Levy (CIL), and other funding sources, it may still be possible to utilise powers under s106 to deliver specific infrastructure where this would be more appropriate. For example, where the development of exceptionally large site, or a small number of large sites within a particular locality, would likely give rise to specific infrastructure requirements, then the Council will consider using s106 agreements to secure infrastructure which would be provided by the site developer(s). Where the Council intends to use s106 powers to provide infrastructure this will be detailed in the CIL Regulation 123 List which will be published on the Council's website.

Should include text in relation to potential pooling of contributions when required from major infrastructure projects.

TfL will respond to this point separately.

## Officers Response

Given the restrictions on the pooling of planning obligations, set out under the CIL Regulation 123, it is considered that the use of pooled s106 contributions will be significantly scaled back in the future. This point is already set out in the proposed SPD under the heading "Infrastructure". Point 3 - Officers proposed to amend this point to ensure repaving is undertaken to a benchmark standard to be set by

the Council's highways department. Point 4 - Officers will review the order of the standard Heads of Terms to group together those which are on a related issue. Point 7 - Officers propose to amend this point to include wider landscaping of the public realm. Point 8 - Officers propose to amend the point to emphasise the importance of providing affordable family housing. The point is already made within the SPD that in exceptional circumstances cash in lieu may be accepted and it is proposed to make an amendment to refer to pooling although this will be subject to restrictions set out in CIL Regulations 123. Point 9 - The point seeks to set out the likely sustainability requirements in broad terms. Officers proposed to refer to the current standards and any revisions to these standards in the future. Point 10 - See above Point 13 - Officers agree that reference to relevant policy are important although it is proposed that these should be contained within the policy section of the document. Point 16 - See above Omissions - Policy CP23 of the borough's LDF Core Strategy sets out to protect existing community and cultural facilities, or to mitigate their loss where necessary. It is envisaged that s106 planning obligations will continue to provide an appropriate means of securing site specific compensatory mitigation against any loss of community or cultural facilities. It is envisaged that much of the health and social infrastructure required to support development will be funded through CIL as this would give the Council greater flexibility in terms of delivery. As such it is unlikely that s106 planning obligations will have a significant role in the delivery of such infrastructure in the future. Officer proposed to include a reference to s106 requirements that are likely to be associated with the provision of student accommodation within the standard Heads of Terms.

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<b>Comment by</b>	Highways Agency (Mr Patrick Blake)
<b>Comment ID</b>	s1062
<b>Response Date</b>	08/12/11 10:41
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Email
<b>Version</b>	0.8

**Please confirm your general view on the proposed SPD on s106 Planning Obligations** Neutral

**Please provide any specific comments on the document in the box below**

Thank you for your letter dated 28 October 2011 inviting the Highways Agency (HA) to comment on Brent's Community Levy Preliminary Draft Charging Schedule and Revised Section 106 Supplementary Planning Document (SPD). The HA is an executive agency of the Department for Transport (DfT). We are responsible for operating, maintaining and improving England's Strategic Road Network (SRN) on behalf of the Secretary of State for Transport. The HA will be concerned with proposals that have the potential to impact the safe and efficient operation of the SRN. We would be keen to have early discussions with Brent about any transport interventions that the Community Infrastructure Levy might contribute towards that could impact on the M1.

**Officers Response**

The representation makes no specific reference to the content of the proposed SPD

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<b>Comment by</b>	The Theatres Trust (Ms Rose Freeman)
<b>Comment ID</b>	s1061
<b>Response Date</b>	07/12/11 10:00

<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Email
<b>Version</b>	0.8

**Please confirm your general view on the proposed SPD on s106 Planning Obligations** Neutral

**Please provide any specific comments on the document in the box below**

Thank you for your letter of 28 October consulting The Theatres Trust on the CIL Preliminary Draft Charging Schedule and Revised S106 SPD. The Theatres Trust is The National Advisory Public Body for Theatres. The Theatres Trust Act 1976 states that 'The Theatres Trust exists to promote the better protection of theatres. It currently delivers statutory planning advice on theatre buildings and theatre use through the Town & Country Planning (General Development Procedure) (England) Order 2010 (DMPO), Articles 16 & 17, Schedule 5, para.(w) that requires the Trust to be consulted by local authorities on planning applications which include 'development involving any land on which there is a theatre.' Our comments are general and we have noted the inclusion of sui generis uses (theatres) in the table within the consultation letter. We are concerned that theatre buildings do not benefit appropriately under the terms of S106 and other agreements, and that it will increasingly be necessary to unlock new sources of funding to help pay for significant improvements to them. Theatres always need improvements to keep pace with public expectations and the needs of performers and producers. As CIL will eventually replace S106 agreements as the main tool for securing contributions for infrastructure we hope that the document will ensure that the loss of any community and cultural facility through redevelopment is satisfactorily compensated through substitution, replacement or regeneration of those facilities, and will ensure that adequate new facilities are provided to mitigate the increased demands on existing facilities and infrastructure which is likely to result from any new developments. Drivers Jonas had advised in February 2010 that 'The change to S106 obligations seek to remove their ability to provide for funding or the provision of infrastructure projects or types of infrastructure. If local authorities want to obtain funding for infrastructure they will have to produce a charging schedule and adopt CIL prior to April 2014, effectively making CIL mandatory.'

**Officers Response**

Policy CP23 of the borough's LDF Core Strategy sets out to protect existing community and cultural facilities, or to mitigate their loss where necessary. It is envisaged that s106 planning obligations will continue to provide an appropriate means of securing site specific compensatory mitigation against any loss of community or cultural facilities.

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<b>Comment by</b>	British Waterways (Mrs Claire McClean)
<b>Comment ID</b>	s10610
<b>Response Date</b>	06/12/11 10:10
<b>Consultation Point</b>	SPD s106 Planning Obligations ( <a href="#">View</a> )
<b>Status</b>	Processed
<b>Submission Type</b>	Email
<b>Version</b>	0.4



**Please confirm your general view on the proposed Neutral SPD on s106 Planning Obligations**

**Please provide any specific comments on the document in the box below**

With reference to the revised S106 Obligations SPD, I only have a few queries. Under standard Heads of Terms, one requires development "To provide compensatory measures for any under provision of amenity space, when developments are assessed against the Council's amenity space standards."

Would this therefore be available for towpath/canal environment improvements? Would this work on a site by site basis, or could contributions be pooled towards a larger project?

In the development of the Alperton Masterplan, which we were pleased recognises the existing and potential value of the Grand Union Canal running through it, reference was made to a pooled fund of contributions from the expected development within the area, that could be targeted towards improving the canal environment so that it could better meet the needs and expectations of the new and existing community. This would be far more effective than securing ad hoc contributions from the various developments lining the canal. Could you confirm how this might be achieved, and how the documents out for consultation might address this? British Waterways would be very happy to assist with any supporting information that could help with this.

For your information, British Waterways are to become the Canal & River Trust from April 2012. Our day to day operations, particularly with reference to our planning involvement, will not change, but we hope it will be an exciting change that will secure the future of our waterways and provide more opportunities for volunteering, engagement with our stakeholders and fundraising.

Please let me know if you would like to discuss any of my comments further.

**Officers Response**

The restrictions on the use and pooling planning contributions that would apply once CIL is adopted by would mean that the Council could only use planning obligations to secure site specific mitigation measures. General improvements to public open space, including the canal side/tow paths, is likely to be funded through CIL in the future although this will be subject to clarification when the Council publishes it's regulation 123 list.