

Section 106 Planning Obligations

SUPPLEMENTARY PLANNING DOCUMENT

To operate alongside Community Infrastructure Levy

Draft March 2014

Consultation ends Wednesday 14th May 2014

Local Development Framework Team
Department for Environment and Neighbourhood Services
Reading Borough Council
Level 8
Civic Centre
Reading RG1 7AE

Email: ldf@reading.gov.uk



www.reading.gov.uk



Reading
Borough Council
Working better with you

CONTENTS:

Page number

1.0	Purpose of this Guidance	3
2.0	Legislative and Policy Framework	3
3.0	Key Principles	4
4.0	Planning Obligations and CIL	5
	The Interaction between planning obligations and CIL	5
	Development mitigation and infrastructure delivery	5
	<ul style="list-style-type: none">• Open Space, Green Infrastructure, and Biodiversity	6
	<ul style="list-style-type: none">• Highways, Access and Transport	6
	<ul style="list-style-type: none">• Education	7
	<ul style="list-style-type: none">• Public Realm, Environmental Enhancements and Mitigation	7
	<ul style="list-style-type: none">• Leisure and Culture	8
	<ul style="list-style-type: none">• Community and Social Facilities	8
	<ul style="list-style-type: none">• Renewable Energy	8
	<ul style="list-style-type: none">• Economic Development Services and Infrastructure	9
	<ul style="list-style-type: none">• Flood Mitigation and Protection	9
5.0	Procedures	10
6.0	Monitoring and Expenditure	11
7.0	How to Comment	12
	APPENDIX 1: General Principles of Open Space Provision	13

1.0 Purpose of this Guidance

- 1.1 This Guidance sets out the Council's approach towards seeking planning obligations, alongside the introduction of the Council's Community Infrastructure Levy (CIL) Charging Schedule.
- 1.2 It is a general guide, as development proposals will be assessed on a site-by-site basis with the individual circumstances of each site being taken into consideration.
- 1.3 Section 106 planning obligations are also set out in the Council's adopted Employment and Skills Supplementary Planning Document (SPD) and Affordable Housing SPD (both 2013), so reference should also be made to those documents. This SPD, once adopted and once CIL is operational, will replace the Revised Section 106 Planning Obligations Supplementary Planning Document (November, 2013).

2.0 Legislative and Policy Framework

- 2.1 The relevant statutory framework for planning obligations is set out in:
- Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act;
 - Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended);
 - Paragraphs 203 to 205 of the National Planning Policy Framework (NPPF) March 2012.
- 2.2 The NPPF advises that planning authorities should consider the use of planning obligations where they could make an otherwise unacceptable development acceptable. They should only be used where it is not possible to address unacceptable impacts through planning conditions. Paragraph 204 (also Regulation 122(2) of CIL) states that planning obligations should only be sought where they meet all of the following tests:
- They are necessary to make a development acceptable in planning terms;
 - They are directly related to a development;
 - They are fairly and reasonably related in scale and kind to a development.

National policy (National Planning Policy Framework - NPPF), and other guidance documents are relevant.

- 2.3 Upon the adoption of a CIL, or by 6th April 2015, whichever is the sooner, the use of planning obligations must be scaled back. Once CIL is in place the pooling of Section 106 Agreement contributions, towards an item of infrastructure, will be limited to five planning obligations.
- 2.4 Development proposals should be considered in line with adopted Reading Borough Council's development plan policies:
- Core Strategy 2008;

- Reading Central Area Action Plan (RCAAP, 2009);
- Sites and Detailed Policies Document (SDPD, 2012)

2.5 The two overarching local planning policies are Core Strategy Policy CS9: Infrastructure, Services, Resources and Amenities, and SDPD Policy DM3: Infrastructure. Other policies provide specific and detailed justification for various types of planning obligation, e.g. CS16: Affordable Housing, CS29: Open Space, etc.

2.6 The Council's Infrastructure Delivery Plan (IDP) was originally published in July 2011, and is incorporated into the Sites and Detailed Policies Document (October 2012). It has been refined and used as evidence for the CIL Draft Charging Schedule March 2014. The IDP identifies social, green and physical infrastructure required to support development within the plan period to 2026.

3.0 Key Principles

3.1 The key principles for securing Section 106 planning obligations are as follows:

- Where relevant, to apply to any development of 1 dwelling or more and commercial developments of 100m² or more (Net additional floorspace based on Gross Internal Area);
- In those cases where a need is established for specific site related infrastructure, to make the development acceptable in planning terms;
- the obligation requirement must meet the relevant CIL Regulation 122(2) legal tests;
- Where a specific policy requirement needs to be met, e.g. the provision of open space in accordance with policy Core Strategy Policy CS29 due to the size of a proposal;
- To provide the obligations specifically required by policies for specific allocated sites, e.g. SDPD Policy SA2a;
- Infrastructure that is necessary to enable a site to be developed, such as a new access/ junction improvement;
- Infrastructure not identified for investment under CIL (on the Regulation 123 list);
- Where impacts on local infrastructure directly resulting from a development scheme need to be mitigated. Some of these may be physically off-site, but will be secured under Section 106 where they are clearly linked to the development site and meet the relevant legal tests, e.g. community facilities.
- Obligations can be used to prescribe the nature and use of development, compensate for loss or damage caused by development, or mitigate impact.
- It is not the role of planning obligations to deal with existing issues, but to mitigate and/ or compensate for the impact of development.
- This SPD will normally apply to all developments comprising a net addition of 1 dwelling or more and to all commercial floorspace comprising a net addition of more than 100 m² (Gross Internal Floorspace). This SPD may also apply to changes of use where there is an increase in intensity of use. In all cases planning obligations will be sought where the relevant tests are met (set out in Paragraph 2.2 above).

- In accordance with SPD policy DM3 development proposals will be expected to mitigate all relevant impacts, where these meet the relevant legal tests. Where for example, for reasons of viability, this will not be possible, then the Council will take into account the priorities as set in the policy when seeking to agree an appropriate range of measures.

4.0 Section 106 Planning Obligations and CIL

The Interaction between S106 planning obligations and CIL

- 4.1 Once CIL is operational it will be the main source of tariff based developer contributions towards infrastructure, beyond the immediate needs of the development site, to support the sustainable development of the Borough. It will be an appropriate delivery mechanism for infrastructure, which can be anticipated based on the impacts of population growth resulting from development, rather than site related infrastructure, which could not have been foreseen. There is also a provision in the CIL Regulations that a proportion of CIL be used for neighbourhood funding in those areas where development has taken place.
- 4.2 Section 106 will continue to operate alongside CIL and will be collected for affordable housing provision, which is outside the remit of CIL, and for site related infrastructure requirements. Some of these requirements might be physically off site, but where clearly linked to the development site and needed to make the development as proposed of that particular site acceptable in planning terms. Each Section 106 obligation must meet the relevant CIL Regulation legal tests, as set out above.
- 4.3 CIL and Section 106 cannot be used for the same item of infrastructure.
- 4.4 Further details about the CIL levy is within the Draft Charging Schedule March 2014 out for consultation until 9th May 2014 and should be read in conjunction with this Draft SPD. CIL will only be used to fund infrastructure on the Council's Regulation 123 list. This is a list of those projects or types of infrastructure that it intends to fund through the Levy. This list will apply unless the need for specific infrastructure contributions are identified in this SPD, and the planning obligations are sought in accordance with the relevant regulations. A number of strategic sites, allocated in local policy documents, also have requirements to provide specific infrastructure.

Development mitigation and infrastructure delivery

- 4.5 The following summarises the Council's intended approach to CIL and Section 106, once CIL is operational.

Open Space, Green Infrastructure, and Biodiversity:

Infrastructure Type	CIL	Section 106
Enhancement and management of and access to local outdoor recreation and open space directly serving the development, including provision in line with adopted site- specific policy.	x	√
Enhancement and management of and access to outdoor recreation, open space and water courses serving the Borough.	√	x
Site related ecological and biodiversity mitigation measures	x	√
Environmental improvements and access arrangements related to a development.	x	√
<p><i>Commentary</i> - Section 106 will be used for ecological mitigation/ remediation required as a result of specific development scheme, and providing for appropriate biodiversity mitigation and compensation.</p> <p>CIL will be used for the provision and improvements of public open space, unless the provision of new open space is made on-site in line with adopted policy.</p> <p>The general principles of open space provision are included at Appendix 1.</p>		

Highways, Access and Transport:

Infrastructure Type	CIL	Section 106
Strategic Borough wide transport improvements as set out in the LTP and accompanying rolling delivery plan.	√	x
Site related highway works, which may include: <ul style="list-style-type: none"> • Works to footways/cycleways • Raised kerbs • New junctions • Access roads within the site • Link roads • Traffic lights • Pedestrian crossings • Signage Where made necessary by the development and are not part of any transport programme.	x	√
Other site related transportation mitigation measures including car clubs, electric vehicle charging points, travel plans, which result directly from the development.	x	√

Commentary - The Council will use CIL to mitigate the cumulative impacts of development to fund projects identified on the CIL Regulation 123 list.

All site-specific impacts of development on transport and highways will be mitigated using a combination of S278 and Section 106.

For some allocated sites there are specific requirements, identified in adopted policy, related to wider strategic transport infrastructure.

Education:

Infrastructure Type	CIL	Section 106
Early years, primary and secondary education facilities	✓	✓

Commentary - Following the introduction of CIL the intention is that the Council will use CIL for education facilities, except for one strategic site at Green Park, where Section 106 will be for the provision of a new primary school on-site.

Public Realm, Environmental Improvements and Mitigation:

Infrastructure Type	CIL	Section 106
Improvements to public realm and green environment, including the implementation of a tree strategy, access to green space and improvements to landscapes and habitats, and street care enhancements including improvements to paving, and infrastructure for public safety, e.g. CCTV coverage.	✓	✓
Air quality monitoring	✓	x
Site related environmental mitigation measures, which may include: <ul style="list-style-type: none"> • Dealing with contamination issues • Climate change mitigation • Air pollution mitigation measures • Tree planting 	x	✓

Commentary - Site related environmental mitigation measures, to make a development acceptable in planning terms, which will be delivered through Section 106, e.g. green living wall/ green infrastructure. The Council will use CIL for public realm and environmental improvements resulting from the cumulative impacts of development. There may instances where such improvements will be necessitated by the development and provided on site or in close proximity to the site and these would be sought through Section 106.

Leisure and Culture:

Infrastructure Type	CIL	Section 106
Enhancement of access to and interpretation of Heritage Assets.	√	x
On-site heritage asset protection and enhancement resulting from a specific planning proposal.	x	√
Upgrading provision, including enhancement, access to and interpretation of strategic cultural, arts and sports centre provision.	√	x
The provision of public art.	x	√
<p><i>Commentary</i> - The majority of leisure and culture facilities will be funded from CIL. However, there will some sites where on-site mitigation measures will be required and these would be sought through Section 106. This would include a public art obligation, to be sought on major schemes and determined on a site-by site basis, in accordance with relevant legal tests, with the aim of making a positive contribution to the appearance of a scheme, the wider public realm and the amenities of the area.</p>		

Community & Social Facilities:

Infrastructure Type	CIL	Section 106
Provision of new facilities such as youth and community centres, other meeting places, and other community facilities.	√	√
<p><i>Commentary</i> - In the main the Council will secure provision of new community facilities through CIL, including the requirement for extension and upgrade of facilities resulting from the cumulative impacts of development. However, where a specific development generates the need for new provision in its own right then this will be sought through Section 106.</p>		

Renewable Energy:

Infrastructure Type	CIL	Section 106
The provision of wide area decentralised energy centres and retrospective connections from existing developments to link to these.	√	x
On-site decentralised energy provision in accordance with Sites and Detailed Policies Document Policy DM2 and site related infrastructure to link new developments to	x	√

existing energy centres.		
<p><i>Commentary</i> - The Council will seek the provision of decentralised energy provision on-site through Section 106. This would be in accordance with policy requirements (Policy DM2), which states that developments of more than 20 dwellings and or non-residential development of over 1000m² shall consider the inclusion of on-site decentralised energy provision. This along with those circumstances where a new development scheme links into an existing decentralised energy network will be secured through Section 106.</p> <p>Possible wide area decentralised energy facilities could be delivered using CIL receipts.</p>		

Economic Development Services and Infrastructure:

Infrastructure Type	CIL	Section 106
Construction skills and end user employment	x	√
Central Reading Incubator Business Space	√	x
Employment and Training Facilities	√	x
<p><i>Commentary</i> - Requirements for contributions towards construction skills and end user employment will be sought through Section 106 obligations from major schemes, as detailed in the Employment, Skills and Training SPD (April 2013).</p> <p>For any specific physical infrastructure related to economic development, including employment and training facilities would be funded using CIL receipts.</p>		

Flood Mitigation and Protection

Infrastructure Type	CIL	Section 106
Site related flood mitigation/ adaptation measures	x	√
<p><i>Commentary</i> - New development in flood risk areas of the Borough will be assessed against Core Strategy Policy CS35 and the Council's Strategic Flood Risk Area. There may be instances where development schemes will be acceptable in these areas depending on the nature of the proposed scheme and the level of flood risk, and where certain mitigation measures are provided. If these cannot be addressed on site or by way of condition, it is anticipated that a Section 106 Agreement may be needed for those matters, which make a building more resistant and resilient to climate change such as; Green Roofs, or incorporate raised floors.</p>		

5.0 Procedures

- 5.1 At present the handling of Section 106 planning obligations is undertaken in accordance with the Council's adopted Section 106 Procedure (September 2011)¹. This Procedure covers the entire Section 106 process, from request for contributions from developers through to the monitoring and collection of monies and the final allocation of receipts to specific projects.
- 5.2 In summary, the Council will assess each application individually, to determine whether an obligation is needed, and what matters it should address, and will justify the reasons for seeking an obligation/s.
- 5.3 Any requirement for a Section 106 will be raised with a developer as early in the process as possible. Details of the agreement will be recorded on the Council's Section 106 database. As the timetable for determining planning applications is 8 weeks for minor applications and 13 weeks for major applications it is advisable for heads of terms for Section 106 agreements to be agreed and documented prior to the submission of any planning application. The Council encourages pre-application discussions, one reason is to ensure that the process of agreeing, drawing up and signing agreements is well advanced and can be completed within the planning application determination period. Applications may be refused where agreements are not ready to be signed within the determination period.
- 5.4 The Council will use its reasonable endeavours to process Section 106 negotiations and agreements as quickly as reasonable. However, it is a complicated legal process and ample time needs to be available to complete the process. Developers will need to brief their own legal advisors early in the pre-application process.
- 5.5 Where an agreement is needed, developers will need to provide the following information:
- (i) Proposed heads of terms of the legal agreement;
 - (ii) Copies of the "title deeds";
 - (iii) In the event that there are any charges, mortgages or other securities secured on the land, the names and addresses of the charges/mortgagees/holders of the security (since it will be necessary for any such to be joined as parties to the agreement and/or consent to its terms or execute a 'Consent to Dealing' as appropriate);
 - (iv) An undertaking to pay the Council's appropriate legal costs in connection with the preparation of the legal agreement/unilateral undertaking;

¹ <http://www.reading.gov.uk/meetings/details/3357/> Item 19 – Section 106 Agreements Process (internal procedure)

(v) In the event that the applicants are represented by solicitors, the relevant contact address and name of solicitor/person dealing with the matter.

5.6 Details should be included as part of the application to ensure that it is clear what is being offered by the development so that interested persons are aware of the full picture. It is unlikely that applications can be determined with a favourable recommendation where such information is not provided before or at the same time as the application is submitted and registered.

5.7 Payment of contributions will generally either be sought upon commencement of development, or on occupation, depending on the type of obligation, unless it is agreed that an alternative stage in development is appropriate and acceptable. For larger scale proposals, the Council will (where appropriate) consider payment of contributions "phased" (dependent on material circumstances) according to (a) commencement, (b) different stages in implementation, (c) occupation and (d) phased completions on site, to be agreed by negotiation. Payments will (where appropriate) be index linked to the Retail Prices Index from the date of the agreement.

6.0 Monitoring and Expenditure

6.1 All Section 106 agreements are recorded on the Council's Section 106 database and there is a specific Officer within the Planning Section responsible for Section 106 monitoring. The Officer is responsible for regularly monitoring the implementation of development and on-going monitoring is undertaken throughout the year. However, the principal method used to identify Section 106 payments, that are overdue, is the Council's commitments monitoring which provides a snap shot of development progress every year. The results of the monitoring are checked against the Section 106 database, which has a comprehensive record of signed agreements and unpaid contributions, and the records for payments received.

6.2 All Section 106 payments received are recorded on the database immediately so any reports of developments reaching the trigger points for payment of contributions can be checked to see if any action is necessary.

6.3 Where a development has been commenced the Officer checks the obligations to determine whether they have been met in accordance with the trigger and terms of the agreements and chases these up in writing accordingly.

6.4 The Council publishes annual information on its website on Section 106 as part of its annual statement and accounts. This sets out the details and description of the scheme, Section 106 agreement number, amount brought forward into the accounting year, receipts within the accounting year, expenditure total, for what, and the amount to be carried forward into the next financial year.

7.0 How to Comment

7.1 The consultation on this SPD commences on Friday 28th March and representations should be made in writing no later than 5pm on Wednesday 14th May 2014. This can either be:

Via Email: ldf@reading.gov.uk; or

Via post: LDF Team, Reading Borough Council, Civic Offices, Reading RG1 7AE.

7.2 This document is available to view online **INSERT LINK** and at the Council's offices and all public libraries in Reading Borough.

APPENDIX 1: General Principles of Open Space Provision

In general, open spaces planning obligations will require the following main elements:

- In areas deficient in recreational open space, the provision of appropriate (defined below) new public open space, with a commuted sum to ensure funding for future maintenance to a high standard
- In areas with an adequate quantity of public open space, a financial contribution to improving existing open space to cater for additional use

New public open space must be:

- A minimum of 0.2 ha where the provision of a new neighbourhood park is required; in the case of very large developments, the provision of a new local park (minimum area of 1.0-2.0 ha) should be required
- Integrated, not overly fragmented, open space (in terms of both area and topography)
- Linked to adjacent local communities (not buried within the new development)
- Accessible to the general public and to people of all capabilities
- Not severed by roads
- At least in part, informal landscaping for both aesthetic and recreational purposes
- Appropriate, in that it satisfies the most urgent local need, whether formal play provision for children; youth facilities; sports grounds; green links; or informal landscaping

The rationale for these requirements is as follows:

- An integrated space is important for creating a sense of place and local 'ownership'.
- Tall buildings or vehicular access within the space tend effectively to separate the spaces and reduce the recreational value of the park.
- In smaller fragmented spaces, buildings may dominate the space.
- In smaller fragmented spaces, activity in the space may adversely affect adjacent properties.
- Open space scattered amongst buildings will appear less accessible to the general public (who will think it is a private open space 'belonging' to the development and not to the community).
- Open space scattered between buildings is more difficult to manage, less attractive and more subject to being shaded.
- Small scattered spaces do not adequately accommodate sizeable parks-scale trees without impacting upon neighbouring properties. Large trees contribute to pollution abatement and rain water absorption, as well as to sense of place.
- A long linear space or wide corridor is likely to create the same difficulties as fragmentation.
- Vehicular access cutting across open spaces used by children is hazardous as well as aesthetically weak. Pedestrian routes, however, may be integrated into public open space.
- Densely populated residential areas, inadequately provided for in terms of appropriately landscaped public open space, are less desirable places in which to live.

- The appropriate provision standards, size, proximity, and level and mix of use, are set out in Table 17.1.
- A variety of landscape types within the area will increase community value, whether informal play, formal plantings, formal play, etc. These best benefit from being within an integrated area.
- Isolated pockets of open space accessed solely by very steep slopes are unlikely to serve a recreational need and should not be included with the calculation of recreational open space provided.