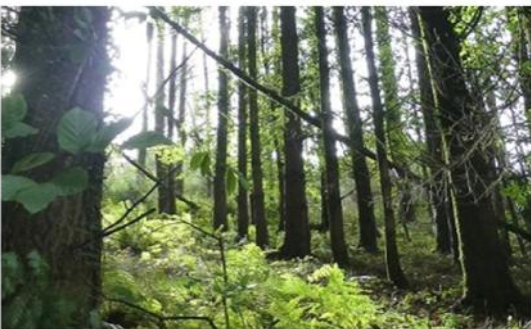


June 2017



East Devon Planning Obligations Supplementary Planning Document



Planning Obligations

Supplementary Planning Document - June 2017

This document is supported by:

- Strategic Environmental Assessment and Habitat Regulations Screening Report
- Equalities Impact Assessment
- Consultation Statement

These documents are available online at <http://eastdevon.gov.uk/planning/planning-policy/planning-obligations-supplementary-planning-document-spd/> and at the Council Offices in Sidmouth.

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1.0 Introduction

- 1.1 Development may place demands on existing infrastructure and generate a need for new infrastructure. When new homes are built their occupants will need to use roads, sewers, new play areas, community halls, new schools etc. Sometimes, private sector business will provide facilities and infrastructure, because there is money to be made in doing so, but for many essential facilities this will not be the case.
- 1.2 In the past, some development, particularly new house building, hasn't been accompanied by the timely provision of the necessary social, physical and community infrastructure. We need to ensure this doesn't happen in the future. The Local Plan will play a key role in identifying infrastructure requirements, ensuring that provision and investment by providers is co-ordinated with development.
- 1.3 In order to address the impacts of development Councils seek contributions from developers in the form of facilities, infrastructure or financial contributions. Contributions were historically collected through 'Section 106 Agreements' (after Section 106 of the Town and Country Planning Act 1990). The Government has now introduced the Community Infrastructure Levy (CIL) which allows Councils to raise funds from developers undertaking new building projects in their area, to be used to fund a wide range of infrastructure that is needed as a result of development. The Levy operates alongside traditional Section 106 Agreements as a means of collecting developer contributions. The Council sets out in the Infrastructure Delivery Plan <http://eastdevon.gov.uk/planning/planning-policy/infrastructure-provision-and-community-infrastructure-levy/provision-of-infrastructure/infrastructure-delivery-plan-idp/> which items of infrastructure are expected to be funded through the Levy and which will be secured through Section 106 Agreements. This provides clarity about the infrastructure required and ensures there is no double charging for the same item.
- 1.4 The critical document in introducing the Levy is the Charging Schedule, which sets out the charging rates (on a £ per SqM basis) for different types of development, potentially with different rates for different areas within the District. The Charging Schedule is underpinned by a robust evidence base on the impact of proposed Levy rates on development viability. The Charging Schedule can be viewed at <http://eastdevon.gov.uk/media/1680258/adopted-charging-schedule.pdf> . A summary is available later in this document.

2.0 Legislative and Policy Context

2.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It explains that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. This is supported by Planning Law¹.

2.2 Town and Country Planning Act 1990

The Act² states that planning obligations may:

(a) restrict the development or use of the land in any specified way (for example by imposing an age restriction on occupiers);

(b) require specified operations or activities to be carried out in, on, under or over the land (for example, on some sites development will only be acceptable if particular constraints can be addressed before, during or after construction. In circumstances where planning conditions (which would usually be imposed) cannot control issues that include flood risk, land contamination, access and disruption caused by construction works, planning obligations are likely to be sought as failure to address such issues is liable to result in planning permission being refused);

(c) require the land to be used in any specified way (for example as public open space);
or

(d) require a sum or sums to be paid to the authority on a specified date or dates or periodically (to clarify, negotiation over the level of contributions will take account of the costs and viability of the development, including any abnormal costs and other planning objectives that may affect the proposal. However, the Council also considers that costs incurred in delivering a sustainable, high quality development are to be expected, and should not reduce the ability of the site to contribute towards relevant planning objectives).

2.3 Planning obligations are usually entered into as part of planning applications to ensure that developers address additional community and infrastructure needs and mitigate the social, environmental and economic impacts of new development. They usually run with the land in perpetuity and may be enforced against the original covenantor, and

¹ The legislative framework for planning obligations is set out in Section 106 of the Town & Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act. Further legislation is set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 as amended. Government policy on planning obligations is set out in Paragraphs 203 to 205 of the National Planning Policy Framework (NPPF) (March 2012).

² Section 106 of the Town and Country Planning Act 1990 (as amended by Section 12(1) of the Planning and Compensation Act 1991) Note- the non-bold examples are provided for clarification by the authors of this guidance, they are not contained in the Act

anyone else that acquires an interest in the land, until such time as they are discharged or otherwise modified. Planning obligations can be secured by:

(a) Section 106 Agreements between local planning authorities, persons with a legal interest in a piece of land and any other interested parties.

(b) Section 106 Unilateral undertakings signed solely by parties with a legal interest in the land. These are appropriate when only the person with a legal interest in the land (and not the Council) needs to be bound by the agreement.

2.4 Community Infrastructure Levy Regulations

Further legislation is set out in the Planning Act 2008 (as amended) and Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

2.5 Regulation 122 includes the following tests that a planning obligation must satisfy:

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development;

(c) fairly and reasonably related in scale and kind to the development

2.6 The Government intends that CIL will be the mechanism for new development to contribute towards investment in a wide range of infrastructure that is needed as a result of new development, including strategic transport facilities, flood defences, schools, sports facilities and open spaces. Councils are no longer able to use a tariff-based approach to secure contributions through an SPD or pool Section 106 contributions from more than five developments to enable the provision of a single item of new infrastructure. Planning obligations may be used to provide affordable housing and site specific measures required to mitigate the impact of development.

2.7 It should be noted that, in 'Fixing our Broken Housing Market' the White Paper of 7 February, the Government commit to examining the options for reforming the system of developer contributions, including ensuring direct benefit to communities, with the findings being announced at Autumn Budget 2017.

2.8 East Devon Local Plan

The Council adopted the East Devon Local Plan in January 2016, which sets out the vision, strategy, objectives and development management Policies for the District up to 2031. Development that may require the provision of planning obligations should be made in accordance with the relevant policies of the East Devon Local Plan. This SPD supports the Local Plan, particularly strategy 50, and constitutes an important material consideration in the decision-making process.

- 2.9 Some local communities have produced, or are in the process of producing, Neighbourhood Plans. Once made, these plans form part of the development plan for the District and will carry the same weight as the Local Plan in decision making. Where a Neighbourhood Plan is made, 25% of any CIL raised in the Neighbourhood Plan area may be spent by the Parish Council responsible for producing the Plan in accordance with Government guidance. In areas without a 'made' Neighbourhood Plan, 15% of the CIL raised will be passed to the Parish Council to be similarly spent (up to a maximum £100 per council tax banded property in the parish, per year).

Strategy 50 - Infrastructure Delivery

The Council produced and consulted (in June/July 2013) on an Infrastructure Delivery Plan to set out how the implementation of Local Plan policies and proposals will be supported through the timely delivery of infrastructure improvements. It identifies schemes, sets out how much they will cost, indicates potential funding sources and establishes a funding gap. Developer contributions will be sought to ensure that the necessary infrastructure improvements are secured to support the delivery of development and mitigate any adverse impacts. The Council will introduce the Community Infrastructure Levy (CIL) alongside the Local Plan. The Infrastructure Delivery Plan will inform the Council's Regulation 123 List which will establish items of infrastructure to be funded in whole or in part through the Levy Through Section 106 Agreements and negotiations over site development and where otherwise not met through alternative committed schemes or proposals the Council will ensure that:

1. Infrastructure requirements that arise as a direct consequence of developments are met in full to serve the needs of the proposal and occupants and users.
2. The loss of, or adverse impacts on, any significant amenity or resource present on the site prior to the development is offset by the provision of alternative facilities that are of at least equal value.




Infrastructure provision should be phased to meet development and failure to provide or absence of relevant infrastructure will be grounds to justify refusal of permission.

Open space at Broadclyst



3.0 Purpose and status of the SPD

- 3.1 The SPD will provide clarity to developers, decision makers, stakeholders and local communities regarding the basis on which planning obligations will be sought when considering planning applications in East Devon. In the form of a legal agreement, planning obligations are secured to ensure that development mitigates the impacts of, and provides for the requirements arising from, development in a sustainable way.
- 3.2 The SPD details the obligations that may be required from different types and amounts of development and sets out the basis on which the level of obligation will be calculated, where appropriate. It complements and provides further guidance to the policy approach set out in the District Council’s East Devon Local Plan (Adopted January 2016) and will assist in securing the provision of high quality, sustainable new development supported by appropriate infrastructure provision. The SPD forms a material planning consideration in the determination of planning applications and will ensure that decisions are made in a consistent way.
- 3.3 The SPD will be produced in accordance with the following process:

SPD Process stage	What is involved?
<p>Stage 1 Development of evidence base</p> 	<ul style="list-style-type: none"> • Identification of the issues and collection of the information needed to prepare the SPD • Engagement with relevant stakeholders to decide on content and level of detail of the SPD
<p>Stage 2 Drafting of the SPD and consultation (Regulation 12 of Local Plan Regulations 2012)</p> 	<ul style="list-style-type: none"> • Drafting of SPD • Consultation with stakeholders and members of the public • Minimum of 4 weeks consultation
<p>Stage 3 Preparation of the SPD</p> 	<ul style="list-style-type: none"> • Formal consideration of points raised in Stage 2. • Amendment of the SPD as required and finalisation of the supporting documents in light of consultation. • Potentially further consultation
<p>Stage 4 Adoption of SPD by the Council (Regulation 14 of local Plan Regulations 2012)</p>	<ul style="list-style-type: none"> • Report to Strategic Planning Committee (for ratification by Cabinet). If Cabinet agree, then EDDC can adopt the SPD and produce an Adoption Statement

3.4 The SPD will be regularly reviewed, and updated as necessary, to ensure it remains consistent and in conformity with National policy and legislation and emerging Development Plan Documents comprising East Devon's Local Plan.

4.0 The Council's Approach to Planning Obligations and CIL

4.1 In determining planning applications, East Devon District Council has regard to the provisions of the development plan and any other material considerations.

CIL

4.2 This is a non-negotiable charge and is triggered by the commencement of development.

4.3 The following types of planning applications are liable to pay CIL:

- Applications for the creation of new dwellings. This includes agricultural workers dwellings, new-build holiday lets and student accommodation.
- Applications for extensions of 100 square metres or more to existing dwellings
- Applications for retail development in chargeable areas.

4.4 CIL is a tariff in the form of a standard charge on the above types of development, which in East Devon is set by the District Council to help the funding of infrastructure. The principle behind CIL is that most development has some impact on infrastructure and should contribute to the cost of providing or improving infrastructure.

4.5 CIL applies to new floor space and charges are based on the size, type and location of the new development. Developments of less than 100 square metres new build floor space will not be liable to pay CIL unless they result in the creation of a new dwelling.

4.6 Charges are calculated on Gross Internal Floor Area; refer to RICS 'Code of Measuring Practice' available at

<http://www.isurv.com/site/scripts/download.aspx?type=downloads&fileID=167> .



Redhayes bridge spans the M5 providing a link for cyclists and pedestrians

- 4.7 East Devon District Council will collect the levy, co-ordinate the spending of the funds and report this to the community annually.
- 4.8 CIL liable applications will be charged in accordance with the rates set out in the CIL Charging Schedule. This, and the different charging zones across the District, can be viewed at <http://eastdevon.gov.uk/planning/planning-services/planning-development-management/community-infrastructure-levy-cil/how-much-will-i-pay/#article-content> . CIL liable applications will require a CIL Information form to be valid.
- 4.9 Some types of development may be eligible for Relief, including affordable housing, charitable development and self-build housing. Conditions apply to exemptions and if they are not complied with, the CIL that would have been due will be clawed back.

Regulation 123 List

- 4.10 The Regulation 123 List <http://eastdevon.gov.uk/planning/planning-services/planning-development-management/community-infrastructure-levy-cil/> sets out the infrastructure which money raised through CIL will be used to fund in whole or in part. The local authority is not able to require planning obligations (S106 Agreements) to contribute towards any infrastructure on that list in addition to the CIL payment. "123" refers to the Regulation within the CIL Regulations which requires the list to be produced and does not mean it is a priority 1, 2, 3 list. The Infrastructure Delivery Plan (IDP) <http://eastdevon.gov.uk/planning/planning-policy/infrastructure-provision-and-community-infrastructure-levy/provision-of-infrastructure/infrastructure-delivery-plan-idp/> provides a guide to the specific projects that are required to deliver the Local Plan (only some of which will be funded in whole or part by CIL) and the priority for their delivery. The Strategic Planning Committee will determine the projects on which funding will be spent.

The design for a play area at Axminster, chosen by the local community



Preventing Duplication

- 4.11 The CIL Regulations restrict the use of pooled contributions towards items of infrastructure. Planning obligations can no longer be agreed in respect of a specific infrastructure project or a type of infrastructure through a Section 106 agreement or unilateral undertaking, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.
- 4.12 In respect of planning obligations secured prior to 6 April 2015; these can continue to be used to fund Infrastructure items.
- 4.13 In respect of affordable housing, which cannot be funded by CIL, there is no restriction in terms of the numbers of obligations that may be pooled, but due regard must be given to the wider policies and guidance on planning obligations set out in the NPPF and NPPG.
- 4.14 To ensure developers do not pay twice for the same items, the Council have published a Regulation 123 list of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL. These types of infrastructure cannot therefore be funded through new Section 106 planning obligations.
- 4.15 In order to increase transparency and certainty as to what infrastructure may be funded from CIL (and thus what may still be secured through planning obligations), the Council's Regulation 123 list will be reviewed and amended going forward to ensure that it represents an up to date list of Infrastructure to be funded by CIL. Any review of the Regulation 123 list will be informed by the latest Infrastructure Delivery Plan and subject to appropriate local consultation.

Planning Condition or Planning Obligation?

- 4.16 A planning condition may be imposed on a grant of planning permission to ensure that development is acceptable. Where it is not possible to address unacceptable impacts of development proposals through a planning condition the National Planning Policy Framework states that planning obligations may be used. Therefore, the Council will seek to use planning conditions in most instances and use planning obligations only where a condition will not suffice.
- 4.17 Planning obligations must be directly relevant to the proposed development.

- 4.18 Where a planning obligation is required it must be secured by legal agreement (under Section 106 of the Town and Country Planning Act 1990). Where the nature of the obligations required are relatively simple and it is not necessary for the Council to be a signatory. Applicants are encouraged to submit a Section 106 Unilateral Undertaking for consideration by the Council. Where a Unilateral Undertaking is not appropriate a Section 106 Agreement will be required, which will be drafted by the Council's Legal Team, unless otherwise agreed. The applicant will be required to pay the legal costs reasonably incurred in respect of preparing a Section 106 agreement or reviewing a Section 106 Unilateral Undertaking.
- 4.19 Applicants should agree with the Development Management Team the most appropriate mechanism to secure planning obligations at an early stage in the planning process.

The energy centre which provides the district heating system to Cranbrook



5.0 Matters to be addressed through Planning Obligations

- 5.1 It is extremely important that developers enter into pre-application discussion with the Councils Development Management Officers at an early stage about planning obligations that may be required for their development by the Council.



Many applications are required to contribute to mitigating the harm to the East Devon pebblebed heaths which can arise from new housing development

- 5.2 The summary table below provides an indication on the types of planning obligations that are often agreed in relation to new development in East Devon where such matters cannot be addressed through planning conditions. The table is purely a guide and does not include strategic infrastructure such as education facilities, strategic transport improvements or flood defences. Unless otherwise stated, policy references are to Policies and/or Strategies of the East Devon Local Plan. Please note that the specific infrastructure requirements of an expanded Cranbrook will be covered in the Cranbrook Plan (Development Plan Document) which will align with the guidance in this SPD. Where matters are not addressed in the Cranbrook Plan, the guidance in this SPD will apply.

Obligations	Requirement	Usual Due Date
On-site* Affordable Housing (designation, definition and prescription of) and/or off-site contributions	In accordance with Strategy 34 of the Local Plan, 50% on-site housing (as a proportion of the total number of units built) to be affordable on sites capable of accommodating 1 or more units (or the minimum threshold set out in Government policy) in all areas except Axminster, Exmouth, Honiton, Ottery St Mary, Seaton and major strategic 'west-end' sites, where 25% on-site housing will be sought. On	In phase with the delivery of market dwellings

Obligations	Requirement	Usual Due Date
	<p>rural exceptions sites at least 66% of housing is to be affordable.</p> <p>Tenure split of affordable housing: Target of 70% social or affordable rent and 30% intermediate. For rural exception sites the tenure should reflect the identified need from the Rural Housing Needs Survey. If non-policy compliant tenure splits are proposed, this will need to be justified and evidenced.</p>	
On-site Open Space	<p>On-site formal and informal Open Space (including play areas and allotments) will be sought through S106 Agreements in line with Strategy 43 of the Local Plan. Developments will be expected to provide open space on-site through S106 Agreements in line with the following thresholds:</p> <ul style="list-style-type: none"> • 9 dwellings or less will not be required to provide any specific open space typologies on-site, however developers may choose to make such provision. • 10 – 49 dwellings will be required to provide amenity open space on-site as per the open space standards. • 50 – 199 dwellings will be required to provide amenity open space, and children’s and youth play space on-site as per the open space standards. • 200+ dwellings will be required to provide for all open space typologies on-site as per the open space standards. <p>It may be necessary or desirable to provide more of certain typologies and subsequently less of others depending on site specifics and an appropriate layout and arrangement will be considered during the planning application process. Where a developer considers an alternative mix is more appropriate evidence should be submitted with an</p>	In line with development and no later than 75% occupations.

Obligations	Requirement	Usual Due Date
	<p>application to demonstrate the justification for an alternative approach.</p> <p>Developments which do not meet these requirements will be refused planning permission where the Council considers them capable of delivering the required open space on-site unless viability assessment proves otherwise.</p>	
Off-site Open Space	<p>Generally off-site contributions towards improvement/enhancement of existing/new open spaces will be delivered through CIL and therefore S106 Agreements will not be signed towards such contributions. However, in certain circumstances where the proposed development requires replacement provision off-site (such as an application to develop on existing open space), off-site contributions may be sought either through financial contribution or specific provision through S106 Agreement. Replacement provision will need to be identified by a red line on plans accompanying the planning application indicating the applicant's ownership of the two areas of land. However this may prove problematic for developers who do not at the time of application 'own' an area of land suitable in size location and type. That being the case early consultation with the LPA to discuss requirements relating to suitable alternative provision is highlight recommended. Replacement provision must be directly related to the site and be available to the same community as the lost facility.</p>	To be agreed on a case-by-case basis
Green Infrastructure	<p>In line with Strategy 5, on-site green infrastructure will be integrated with, and protected from the impacts of, development. It will be phased alongside housing delivery.</p>	To be agreed on a case-by-case basis
Public art	<p>In line with Policy D1, public art or contributions are likely to be sought when new development occurs in the form of major schemes that occupy prominent locations.</p>	In line with development
Trees; tree and other planting; landscaping	<p>In accordance with Policies D2 and D3, where it is not possible to address unacceptable impacts of a proposed development in relation to trees, planting and landscaping</p>	To be agreed on a case-by-case basis

Obligations	Requirement	Usual Due Date
	<p>through a planning condition ie where there is a long-term management issue, the Council will seek to agree the provision of mitigation measures to address these impacts through planning obligations on a case- by-case basis, reflecting the site and scheme characteristics.</p>	
<p>Habitat and ecological protection, creation and enhancement, including requirements arising out of Habitat Regulations Assessment (this excludes the Exe Estuary and Pebblebed Heaths European Sites which are mentioned in the Regulation123 List)</p>	<p>With regard to European wildlife sites, Section 61 of the Habitat Regulations requires the LPA to assess whether a significant effect is likely and, if the LPA considers it is, then they must undertake an Appropriate Assessment to consider whether or not the effect can be fully mitigated. The legislation says that LPAs must NOT grant consent for a development that would, either alone or in-combination with other developments, have a likely significant effect on a European wildlife site, unless full mitigation is provided. In East Devon a number of options exist to ensure that the legally required mitigation is delivered: on site mitigation and/or capital contributions through the CIL or via Section 106. The most suitable option for ensuring adequate mitigation will be discussed at the application stage.</p> <p>On other (non-European) sites, where it is not possible to address unacceptable impacts on habitats and ecology through a planning condition, the Council will seek to agree the provision of mitigation measures to address these impacts through planning obligations on a case-by-case basis.</p>	<p>Mitigation to be secured before development commences</p>
<p>Site specific roads, car parking, footways and cycle paths, footbridges, public transport stops, bus shelters, traffic calming, junction improvements, road improvements and other transport infrastructure excluding those</p>	<p>Site specific highway and transport requirements are determined on a case-by-case basis. Obligations include traffic orders (around £3,000), highway and junction improvements, bus stops and walking and cycling facilities.</p>	<p>Before development commences</p>

Obligations	Requirement	Usual Due Date
identified in the Regulation 123 List		
Travel planning (including measures to support and encourage modal shift)	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	To be determined in the S106 agreement
On-site renewable energy provision that primarily serves the development and/or off-site contributions (including Carbon Reduction Plans)	These are defined on a case-by-case basis, reflecting the site and scheme characteristics. In accordance with Strategy 40, provision for connection to a Decentralised Energy Network should be integrated into the design of larger new development (as specified in the Strategy).	To be determined in the S106 agreement
On-site drainage, sewerage and water management requirements provision (including the maintenance and management of sustainable drainage) and/or off-site contributions	These are defined on a case-by-case basis, reflecting the site and scheme characteristics. Sustainable Drainage Systems should be an integral part of the design of new development.	To be determined in the S106 agreement
On-site remedial action to deal with contaminated land	In most cases this would be addressed through a planning condition, however there may be occasions when land ownership is to be transferred or ongoing monitoring is required, when a Section 106 agreement is required. The requirement will depend on the scale and nature of the contamination. Where contamination is anticipated, a contaminated land assessment will be required as part of the planning application. Remedial action would usually be required before development commences unless contamination becomes apparent during development or occurs on part of the site which is to remain undeveloped, where the trigger may be before first occupation.	Before development commences

Obligations	Requirement	Usual Due Date
Neighbourhood Centres including A1, A3, A4, and A5 land uses	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	To be determined in the S106 agreement
Phasing of infrastructure for economic development purposes, including serviced land or buildings for B1, B2 and B8 land uses	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	To be determined in the S106 agreement
Other infrastructure which is directly related to the development and required to make the development acceptable in planning terms and which does not appear on the Regulation 123 List	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	To be determined in the S106 agreement
Land to enable delivery of infrastructure on-site	Where it is important to deliver specific infrastructure on an application site that serves a wider purpose than meeting just the needs of that application/site then the reservation and/or transfer of that land to enable delivery of that infrastructure in that location will be required through S106 Agreement. The infrastructure itself may be delivered by S106, CIL or other means.	In line with development, usually no later than 75% occupations.
Site wide masterplans that agree the spatial layout and land uses of sites including the location of specific infrastructure or land uses within the development site that	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	Before development commences

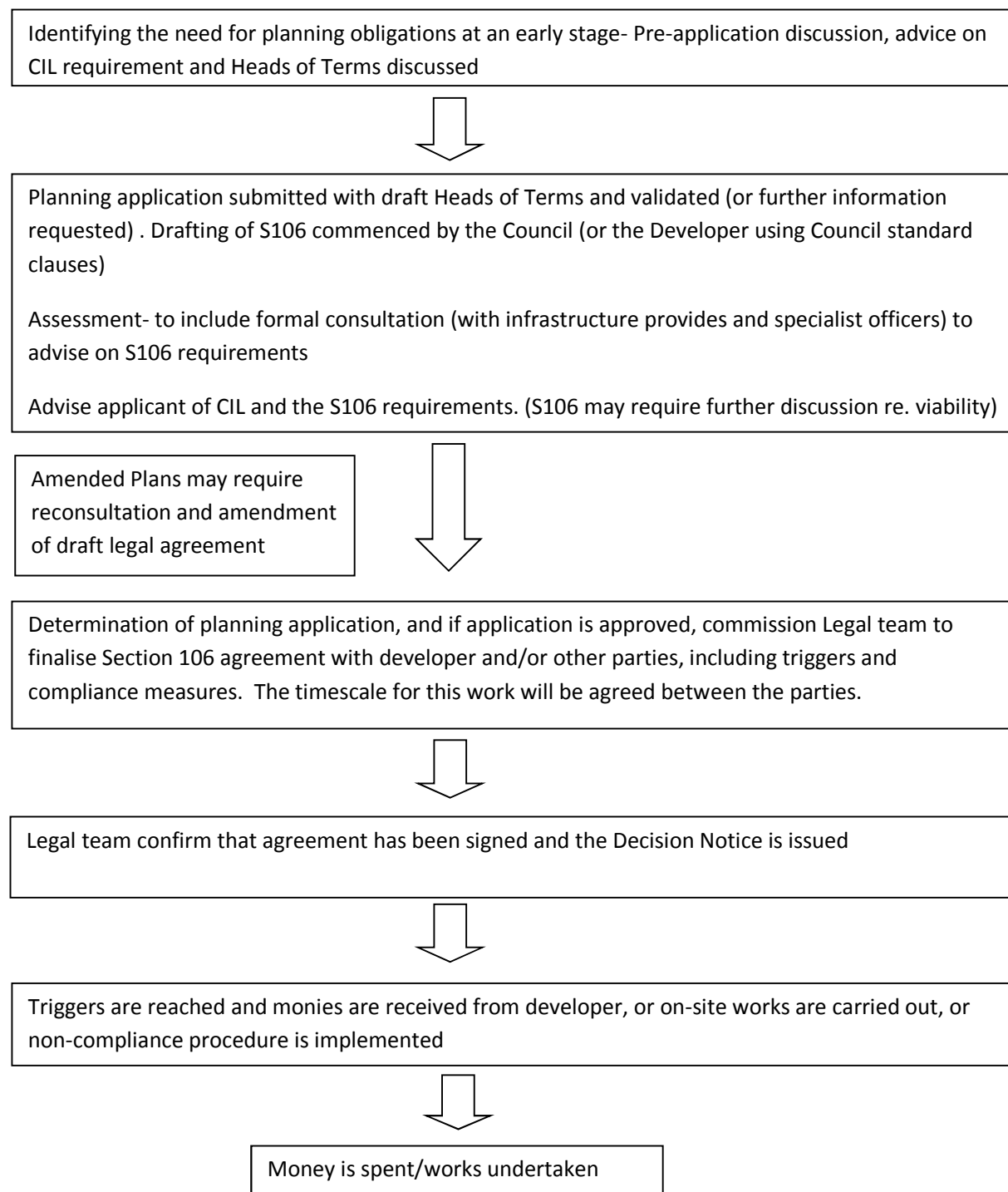
Obligations	Requirement	Usual Due Date
are essential to the delivery of a sustainable development		
Sheltered housing or extra care housing facilities	<p>A mix of dwellings on sites of 15 or over (Policy H2) that should include Care/Extra Care homes and other forms of specialist housing for older persons where the targets set out in Strategy 36 have not been met or a Care Needs Assessment establishes a need.</p> <p>Where extra care or sheltered housing is proposed under Strategy 36, obligations may control the occupation of the dwellings or the level of care to be provided.</p>	In line with development and no later than 75% occupations.
Accessible and adaptable homes	All affordable and 20% of market homes to meet part M4(2) of the Building Regulations, Category 2 accessible and adaptable dwellings (or any comparable updated nationally set standard (Strategy 36).	In line with development and no later than 75% occupations.
Phasing and timing of land uses and/or development on mixed use sites	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	Before development commences
On-site air quality management and monitoring, and/or off-site contributions to measures aiming for air quality enhancements	This would depend on the scale and nature of the activity. Where air pollution is anticipated, an air quality assessment will be required as part of the planning application. Remedial action would usually be required either before development commences or as part of a development scheme, where the trigger may be before first occupation.	Before development commences
Noise and other environmental amenity and heritage asset impact reduction	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	To be determined in the S106 agreement
Considerate construction or similar schemes to limit negative	These are defined on a case-by-case basis, reflecting the site and scheme characteristics.	To be determined in

Obligations	Requirement	Usual Due Date
environmental impacts during the construction process		the S106 agreement
Planning obligation monitoring and administration support contributions	This would depend upon the scale and nature of the development. Such as where a very large development is proposed to be delivered in several phases with a wide suite of planning obligations which would place an added burden on the local planning authority requiring additional resources to cover the administration and monitoring of the site above that already provided.	Before development commences
Overage where viability considerations deem it appropriate	Overage clauses will be required in all cases where viability assessments have been provided on an open book basis and clearly demonstrate the scheme is currently unable to provide the required affordable housing contributions. This will be capped at the amount required to deliver a policy compliant scheme.	To be determined in the S106 agreement
Management Companies	These are defined on a case-by-case basis, reflecting the site and scheme characteristics. Developers are expected to forward fund management arrangements to ensure there are sufficient funds to maintain them in the future.	To be determined in the S106 agreement

*On-site refers to anywhere within the red line on the map accompanying the planning application/Unilateral Undertaking/S106 Agreement. Off-site refers to anywhere outside of this line.”

6.0 Submitting the planning application- validation, assessment and determination

6.1 A summary of the planning obligations process that will be followed:



Validation

- 6.2 In order to reduce the delay in assessment of the planning application applicants should ensure that all information required to assess an application is submitted. Where the application does not accord with the Local Plan (and any Neighbourhood Plan) due to financial viability constraints, full information to illustrate the applicant's case will need to be submitted as part of the application in accordance with the Council's validation checklist and the application cannot be validated without it. The Validation Guidance Note may be downloaded here <http://eastdevon.gov.uk/planning/planning-permission/apply-for-planning-permission/general-validation-advice/> .

CIL

- 6.3 The CIL Additional Information Requirement Form must be submitted in order to validate the application.

Planning Obligations

- 6.4 Before planning obligations can be agreed, the Council will require the following:
- (a) Agreed heads of terms** supplied in electronic form for ease of circulation.
 - (b) Land Registry title documents** for the application site and any other land that needs to be bound by a planning obligation (for example where the use of adjoining land is to be restricted).
 - (c) A solicitor's undertaking to meet the Council's reasonable legal costs** in preparing and completing an agreement. The Council will be able to provide an estimate of costs once the heads of terms have been broadly agreed. The Councils' costs are to be paid whether or not the agreement is actually completed.
- 6.5 Where a planning obligation is required, the Council may refuse an application for planning permission if a legal agreement has not been completed by (or after) the date that the application is due for determination and the developer is responsible for the delays.
- 6.6 The signatories of a Section 106 agreement will be those with a legal interest in the land, East Devon District Council and, in some cases, Devon County Council and other organisations or parties (for instance Parish Councils taking on responsibility for public open space).
- 6.7 The Council has prepared model Section 106 agreements that are available on request. These cover the types of obligations most commonly encountered but may not be appropriate in all cases, and it should be noted that these documents are liable to change from time to time.

- 6.8 It is usual for the Council to prepare the draft agreement with the Developer meeting their reasonable costs. Developers may instruct their solicitor to draft a Section 106 Agreement but are strongly encouraged to use the Council's standard clauses as alternative wording is likely to result in additional costs being borne by the developer and delays.
- 6.9 Please note that negotiation of a Section 106 agreement does not indicate that the Council is minded to approve a planning application and the Council's costs will still need to be paid by the Developer where an application is refused. When the Council is minded to approve an application the decision notice will not be issued until the agreement has been completed.

The replacement community hall at Broadhembury



Assessing and determining the application

- 6.10 The Council will usually make information submitted as part of the planning application available to the public by publishing information on the webpage, this will ensure stakeholders have an opportunity to comment.
- 6.11 Where additional information is submitted during consideration of the application the Council reserves the right to reconsult the public which may delay determination of the application. Please note that amendments may require submission of a new CIL application (and liability may increase) as well as amended Heads of Terms.
- 6.12 At this stage, consultation will take place formally to ensure that S106 requirements are identified and are fully covered in the appropriate legal agreement.
- 6.13 Upon the completion of a Section 106 agreement, the Council's legal fees associated with the agreement's preparation will be payable. The Council will register the agreement as a Local Land Charge and the developer may, if covenanted within the

agreement, be required to register the agreement as a charge against the Title of the land. The Council will also update the statutory registers and send a copy of the completed agreement to all relevant parties including Council officers.

- 6.14 The Council will confirm the draft liability for CIL following the grant of planning permission and this is double checked and confirmed following the submission of a commencement notice. There are clear guidelines and process for CIL as defined by the Government. This is set out on <http://eastdevon.gov.uk/planning/planning-services/planning-development-management/community-infrastructure-levy-cil/> . Failure to comply with any of the process can incur surcharges and the loss of phased payments.

Appeals

- 6.15 Where an applicant pursues an appeal against the decision³ of the Council and a planning obligation is required by the Council, the draft Section 106 agreement or Unilateral Undertaking should be made available at the time the appeal is submitted in a form that is conditional upon the appeal being allowed. This will then be considered as part of any statement of common ground. This is without prejudice to the Council's position in respect of those refusal reasons which are unrelated to the contents of the obligation.



Affordable housing at Kilmington

³ Including appeals against non-determination of planning applications

Thresholds and Site sub-division

6.16 Different thresholds may apply to different obligations. In order to clarify what is expected, the most common requirements, and the thresholds at which they apply are set out in the tables below. In line with Government policy, affordable housing will only be sought on sites of 11 or more dwellings in urban areas, or 6 or more dwellings in the remainder of the district, although CIL and Habitat Regulations mitigation (depending on location) will apply from one dwelling upwards.

6.17 Urban Areas (defined in the 1985 Housing Act as the wards of- Exmouth, Honiton, Sidmouth and Seaton)

No of houses proposed	Requirements applicable
10 and under	CIL, Habitat Regulations Mitigation (depending on location)
11+	CIL, On-Site Affordable Housing, On-site open space, Habitat Regulations Mitigation (depending on location)

6.18 Rural Area (the remainder of the District, outside the wards of- Exmouth, Honiton, Sidmouth and Seaton)

No of houses proposed	Requirements applicable
5 and under	CIL, Habitat Regulations Mitigation (depending on location)
6+	CIL, Affordable Housing contribution (commuted sum- for calculator see http://eastdevon.gov.uk/planning/planning-services/planning-development-management/unilateral-undertakings-section-106-agreements-habitat-mitigation-and-affordable-housing-contributions/), Habitat Regulations Mitigation (depending on location)
11+	CIL, On-Site Affordable Housing, On-site open space, Habitat Regulations Mitigation (depending on location)

6.19 Where sites are subdivided so that developments fall below the thresholds at which contributions will be payable the Council will consider the site, and infrastructure/mitigation required, as a whole. This will prevent a situation arising where a series of applications on a given site or land area, each fall below policy thresholds but collectively exceed thresholds.



The Beehive Community Centre, Honiton

Viability

6.20 CIL contributions are fixed and non-negotiable, however, if an application is concerned about the viability of their scheme they can seek to have the amount of Section 106 reduced on viability grounds. In order to do this we would expect a full open book viability appraisal to be provided. We may use internal expertise and/or employ a specialist, such as the District Valuer, to advise on the viability appraisal, in which case the applicant can be expected to meet the Council's costs which will vary depending on the scale and complexity of the scheme. Costs will be agreed with the applicant before the work is commissioned. We have provided some guidance for applicants which set out the level of information we require. This can be found here –

- Viability Guidance Note One sets out what information will be required

<http://eastdevon.gov.uk/planning/planning-services/planning-development-management/viability-guidance-notes/viability-guidance-notes-1/>

- Viability Guidance Note Two explains what efforts should be taken to improve viability

<http://eastdevon.gov.uk/planning/planning-services/planning-development-management/viability-guidance-notes/viability-guidance-notes-2/>

- Guidance Notes three, four and five, relating to overage, vacant building credit and exception sites are available on the following page

<http://eastdevon.gov.uk/planning/planning-services/planning-development-management/viability-guidance-notes/>

6.21 Mitigation of effects on a European site, required by the Habitat Regulations, and associated CIL contributions are non-negotiable and cannot be reduced.

Overage

6.22 Strategy 34 in the adopted Local Plan requires that where a reduced contribution is agreed for viability reasons, an overage clause will be sought in all cases. Overage is a potential right to receive future payments in respect of land. In this case, it is applied when actual values exceed the estimated value used to calculate viability and therefore a development is more profitable than originally anticipated. This ensures that a fair proportion of the contributions is actually paid. Overage (also known as 'claw-back') clauses will therefore be applied to all planning permissions where viability information has resulted in a less than policy compliant amount of affordable housing being accepted. Overage will be applied to all applications, including single-phase developments, and will be applied without any periods of deferral or other restrictions.

Vacant Building Credit

6.23 Vacant building credit can be applied when a vacant building is being demolished or brought back into use. It can be applied where a building has not been abandoned. A credit, for the existing floorspace of a vacant building, can be given against the affordable housing requirement. The credit can be applied when calculating either the number of affordable housing units to be provided within the development or where an equivalent financial contribution is being provided. The credit is intended to incentivise brownfield development. In considering whether a scheme should be able to claim vacant building credit, the Council will consider:

- Whether the building has been made vacant for the sole purposes of re-development.
- Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.

6.24 The Council approach is that Vacant Building Credit (VBC) will be considered on a case by case basis and that, other than in exceptional circumstances, the following criteria shall be applied:

- VBC will only be granted where it would help to secure the redevelopment of vacant brown-field land or buildings
- VBC will not be granted where land has been purchased for redevelopment and a 'vacant' period of time is a normal part of the development process
- VBC will not be applied when the 'vacant' period is a policy requirement for demonstrating the land is no longer required for its current use

Viability at Outline

6.25 CIL regulations requires calculation of CIL liability to be based on actual net floor area. This poses a difficulty for any outline application where the actual net floor area is either not provided, or provided in relation to an indicative plan only. As it is the actual (and not an indicative) figure that would be needed to undertake the calculations in relation to CIL, exact costs for calculating CIL, and indeed for developing the scheme

remain unknown at outline stage. In these cases the amount of net floor area for the development will not be pinned down until the reserved matters application. This gives rise to issues in relation to proving viability when relying on an indicative scheme at outline stage. This highlights a clear tension around accepting reduced contributions due to viability on outline applications. There are two ways that this issue could be addressed:

- 1) Accept the use of viability appraisals at outline stage, and require the details of the scheme that justify the viability conclusions to be pinned down. For example, if a scheme was for 9 three bed houses with a total floorspace of 891 square metres, would have a viability appraisal prepared on this basis and the outline would pin this down. The completed scheme would then still need to be subject to viability appraisal on completion to assess whether or not any overage payment was due under a section 106 obligation.
- 2) Accept that at the moment the indicative viability indicates that there may be a viability issue with the scheme but this could only be confirmed at reserved matters stage, when full details of the scheme are known. A Section 106 agreement would be required that sets out the mechanisms by which the current viability appraisal would be tested, adjusted, or redone, as required at reserved matters stage. The Section 106 agreement would also then set out the requirement for a viability appraisal of the completed scheme, and how the assessment of any overage payment would be undertaken.

6.26 Applicants are encouraged to contact the Council at the earliest opportunity where viability is likely to be an issue, whether this relates to pre-application advice, an outline, detailed or full application. We are happy to provide advice and guidance before any viability work is commissioned or undertaken to help ensure it is comprehensive and robust.

6.27 In light of these issues, and the Council's approach to dealing with them applicants are strongly advised to consider the merit of committing resources to seeking to demonstrate viability at outline stage, recognising it may only be of limited value.

Construction at Cranbrook



Confidentiality

6.28 There is a strong public interest in financial viability appraisals being made available for scrutiny when relied upon to secure planning permission and, for this reason, the council will make this information publicly available. We consider that transparency is extremely important and the public benefit of publishing all aspects of a viability appraisal will generally outweigh any potential commercial harm to the applicant. If an applicant feels that some or all of the information should be kept confidential, then it will be necessary for the applicant to show how disclosure of that information would cause specific harm (in this context this means that 'it is more probable than not that some harm would be caused' - it will not be sufficient to say it might cause harm) to a legitimate economic interest. Applicants will need to identify to the Council what the economic interest is and how specific harm would be caused to it when the viability information is provided. This view will be taken into account, and balanced against the wider public interest in disclosure, when the council makes its decision about the publication of the viability appraisal.

Priorities

6.29 It is essential that developers enter into discussion with the Council's planning officers at an early stage about planning obligations that may be required for their development. It is not possible for this guidance to provide an overarching priority list of planning obligations that may be sought, because the relative importance of an obligation will be dependent on the development proposal being considered. In making the judgement, Planning Officers will have regard to the Development Plan; the Infrastructure Delivery Plan; adopted Neighbourhood Plans; advice from statutory consultees, the financial viability of the proposals if necessary; and individual site characteristics.

Self-build and Permitted Development

6.30 Some types of development may not require planning permission, or may qualify for exemption from CIL requirements. This could include self-build dwellings, dwellings built or converted as permitted development or large extensions to dwellings. In some cases, it may still be necessary to enter into a Section 106 agreement and mitigation under the Habitats Regulations may still be sought.

6.31 Where an exemption is granted, CIL may still be payable if the status of the building subsequently changes e.g. If a self-build house is sold within the first 3 years, or is not constructed as a self-build following the grant of planning permission.



Flood alleviation works at Feniton

7.0 Implementing Planning Obligations and non-compliance

7.1 The Council starts managing and monitoring planning obligations as soon as they are signed. A small fee may be incorporated into the agreement to cover monitoring and administration costs. This is a complex process which covers thousands of legal documents, all with multiple trigger points and obligations. EDDC employs a Planning Obligation Officer dedicated to overseeing this complex programme and ensuring the successful delivery of the obligations.

Triggers for the payment of Financial, or delivery of Non-Financial, Planning Obligations

7.2 During the negotiation process, trigger points for each obligation will be agreed upon between the developer and the Council. There are established trigger points which are suitable for S106 agreements and triggers selected in each case will be based upon the nature of the obligation and the stage at which the mitigation is required. The established trigger points, which the Council will encourage to be used in negotiations, are:

- The date that the agreement is signed;
- Upon or prior to commencement of the development (commencement is the Council's preferred trigger point)
- Upon or prior to practical completion of the development; and
- Upon or prior to occupation of the development

Delivering Non-Financial Contributions

- 7.3 The delivery of non-financial contributions, or in-kind obligations, will be monitored by the appropriate service areas responsible for project delivery, but the Planning Obligations Officer will be the primary point of contact. For example, where there is an Affordable Housing element to a legal agreement, the Council's Housing Needs and Strategy Team will monitor this section of the agreement to ensure that it is complied with.

Financial Obligations

- 7.4 Financial contributions will be collected in accordance with specific triggers as per the legal agreement and, if they fail to be paid, will be collected in accordance with the enforcement procedures set out later in this document.
- 7.5 Contributions will only be refunded where they were made under a bilateral agreement and weren't spent within given the timescale. The developer would then need to formally request a reimbursement.'

Price Index linking

- 7.6 Financial contributions will be index linked to allow for the fluctuation of prices between the date the agreement is signed and the date the payment is made. This is calculated based on the indexation adjustment of the relevant index, from the date the S106 agreement is signed to the expected date of payment. The additional amount paid on top of the financial contribution adjusts the contribution in accordance with inflation.
- 7.7 The method of indexation should be specified within the legal agreement and will usually either be the Retail Price Index (RPI) published by the Department of Trade and Industry (DTI), the Building Cost Information Service Index (BCIS) published by the Royal Institution of Chartered Surveyors (RICS) or the Consumer price index (CPI) published by the Office for National Statistics, depending on the nature of the contribution. In the event that the index shall decrease, the contribution shall not fall below the figure set out in the S106 agreement.
- 7.8 The Tender Price Index of Public Sector Building Non Housing (PUBSEC) measures the movement of prices in tenders for building contracts in the public sector in Great Britain.

Bonds

- 7.9 Planning obligations can include financial contributions, the provision of land, buildings or services and physical works. These requirements have been identified as necessary for development to proceed and it is reasonable that the Council should take steps to secure their delivery in the event of unforeseen circumstances such as a developer going into administration. For this reason the Council may require that some or all

planning obligations are secured through a performance bond. It is recognised that bonds can place a significant financial burden on developments. As such consideration may be given to alternative mechanisms for securing contributions where practicable and where there is confidence that such mechanisms will provide adequate security for the investment.

7.10 The Council will consider each planning obligation and bonding requirement on a case by case basis with consideration given to issues including:

- The nature and timing of the obligations.
- Structure of payment (s).
- Risk of non-delivery of the obligation and to the public purse.
- The value of the obligation and its importance.
- Development viability.

Interest and Enforcement of Obligations

7.11 Trigger points will vary for each individual obligation within the S106 agreement. The developer is bound to notify the Council upon commencement of the development. If the Council is not notified and obligations become overdue the Council may seek to enforce the obligation and charge interest on the amount outstanding. This clause requires interest to be paid when payments are overdue. As a final recourse, where obligations are not subsequently complied with, the Council may take legal action against those in breach of the S106 agreement. Non-financial obligations are also legally binding and non-compliance may also result in legal enforcement by the Council.

7.12 Late payments will be charged at an interest rate of 4% above the base lending rate. The interest due will be calculated after the indexed sum has been calculated.

8.0 Reporting of Section 106 and CIL Receipts

8.1 To ensure transparency, both EDDC and parish councils (where CIL has been received) must publish a CIL report on an annual basis. This must be done by 31st December after the financial year end.

8.2 To comply with this requirement, The Planning Obligations Annual Monitoring Report will outline the financial and non-financial obligations in a given year; those secured, monies received, obligations complied with and also any monies spent in accordance with S106 agreements or CIL. This report will be presented to Members and available to the public.

9.0 Appendix 1- Glossary of Terms

Acronym	Term	Description
	Adoption	<p>The procedure by which a plan becomes formal council responsibility. The Neighbourhood Planning Regulations also call this stage ‘made’ for the purposes of your Neighbourhood Plans.</p> <p>This is also the term used when a Council takes responsibility (and usually ownership) of a piece of infrastructure e.g. a road or play area</p>
	Affordable Housing	As defined in the NPPF but, specifically, housing for local people within East Devon that cannot afford to buy or rent within the open housing market. Eligibility is determined with regards to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.
	Allocation /Allocated Site	A piece of land that has had a particular use earmarked to it via the Neighbourhood Plan or Local plan. This might be for housing employment or another purpose such as amenity use.
	Bond	A debt security which can be used by the Council in the event that the Developer fails to provide the infrastructure required by a planning obligation.
BCIS	Building Costs Information Service Index	Administered by the Royal Institute of Chartered Surveyors it provides an Index identifying the inflationary % increase in the costs of construction year on year.
CIL	Community Infrastructure Levy	A charge that allows local authorities to raise funds from developers undertaking new building projects in their area. The money collected can be used to help provide a wide range of infrastructure that is needed as a result of development.
	Commencement of Development	Means the commencement of the Development by the carrying out of any material operation (as defined in Section 56 of the 1990 Act) but for the purposes of legal Agreements only shall not include operations consisting of site clearance, demolition works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial works in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the display of site notices or advertisements.

Acronym	Term	Description
EDDC/LP A	The Council	For the purposes of the SPD the Council is East Devon District Council, who are also the Local Planning Authority. This is distinct from Devon County Council or the Town and Parish Councils of East Devon.
	Consultee	In the case of planning obligations, this is a person, body or group consulted by the Council to help determine Heads of Terms for planning obligations, for example the Highway Authority or Environment Agency. In the case of a planning application, this is a person, body or group invited to comment.
	Developer	In the case of planning obligations and for the purpose of the SPD the Developer is the owner of a piece of land. Planning obligations that apply to a developer run with the land and apply to successive proprietors unless otherwise agreed
	Development	The carrying out of building, engineering mining or other operations in, on or over or under land, or the making of any material change in the use of any buildings or other land (Town and Country Planning Act, 1990, Section 55)
DV	District Valuer	Provides professional property and valuation advice for the public, private and third sector.
	Enforcement Action	The LPA may enforce a planning obligation by injunction or, where the developer is required to carry out works on the land and 21 days notice has been given, by entering the land, doing the works itself and recovering all reasonable expenses.
	Formal and Informal Open Space	Formal Open Space- sites which have a clearly defined boundary and which are gardened frequently. Usually accommodating higher than average visitor usage (e.g. sports pitches, church grounds, parks or gardens). Informal Open Space- usually areas for unsupervised outdoor children's play (e.g. open space within housing estates, equipped play areas, skateboard parks). This will include allotments.
PD	Permitted Development	The Town and Country Planning General (Permitted Development) Order is a statutory document that allows minor kinds of development (such as small house extensions) to be undertaken without formal planning permission.

Acronym	Term	Description
	Heads of Terms	The key issues identified during the initial assessment of a development proposal that will need to be addressed through planning obligations.
	Infrastructure	Publicly accessible assets, systems and networks including roads, electricity, sewers, water and education services.
	Local Plan	The name for a document (or collection of documents) prepared by the local planning authority for the use and development of land and for changes to the transport system. The adopted Local Plan forms part of the Statutory Development Plans for the area.
LPA	Local Planning Authority	East Devon District Council
	Material Consideration	Any issue that should be taken into account when deciding a planning application or an appeal against a planning decision. Planning policies will guide planning application decisions unless other material considerations associated with need, impact and local circumstance are considered to carry greater weight.
	Mitigate	In the case of planning obligations, actions to correct for the negative impacts and effects of a development.
	Neighbourhood Plan	A planning document created by a parish council or a neighbourhood forum, which sets out a vision for the neighbourhood area, and contains policies for the development and use of land in the area. Neighbourhood plans must be subjected to an independent examination to confirm that they meet legal requirements, and then to a local referendum. If approved by a majority vote of the local community, the neighbourhood plan will then form part of the statutory development plan.
NPPF	National Planning Policy Framework	Sets out the Government's planning policies for England and how these are expected to be applied through local planning policy and decision making.
NPPG	National Planning Policy Guidance	Sets out guidance to accompany and add detail on the implementation of the Government's planning policies
	Overage	Overage (also called clawback or uplift) is a potential right to receive future payments in respect of land. In this case, it is applied when actual values exceed the estimated value used to calculate viability.

Acronym	Term	Description
	Planning Condition	Guided by Circular 11/95, planning conditions impose restrictions on the grant of planning permission. Planning obligations should only be agreed where planning conditions are not sufficient.
	Planning Obligation	In the form of a legal agreement, planning obligations apply to an area of land and are secured to ensure that developers mitigate for the impacts of, and provide for the infrastructural requirements arising from, development.
	Policy	A concise statement of the principles that a particular kind of development proposal should satisfy in order to obtain planning permission.
RPI	Retail Price Index	The retail price index (in the UK) an index of the variation in the prices of retail goods and other items. Commonly used to measure inflation.
S106	Section 106	Planning obligation under Section 106 of the Town and Country Planning Act 1990, secured by a local planning authority through negotiations with a developer to offset the public cost of permitting a development proposal. Sometimes developers can self-impose obligations to pre-empt objections to planning permission being granted. They cover things like highway improvements or open space provision.
SPD	Supplementary Planning Document	Guidance which amplifies and provides more detail on the policies contained within the Local Plan. SPDs are subject to public consultation and are a material consideration in determining planning applications.
	Town & Country Planning Act 1990	Currently the main planning legislation for England and Wales is consolidated in the Town and Country Planning Act 1990: this is regarded as the 'principal act.'
	Trigger	The point (in terms of time or the extent of development) at which a planning obligation should be completed.
UU	Unilateral Undertaking	A Unilateral Undertaking is a simplified version of a planning agreement, which is relatively quick and straightforward to complete, and is entered into by the landowner and any other party with a legal interest in the development site.
	Viability	This is when a development proves to be economically feasible and sustainable in terms of the financial resources invested into it.

