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Planning Obligations Supplementary Planning Document



Consultation Statement

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Prepared by Officers of East Devon District Council

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1.0 Introduction

- 1.1 This document explains how East Devon District Council has undertaken community consultation and stakeholder involvement to produce the Planning Obligations Supplementary Planning Guidance (hereafter called SPD). It is a legal requirement for SPD to undergo public consultation¹, to take account of any comments which are made and to produce this statement.
- 1.2 In producing Development Plan Documents (such as the East Devon Local Plan) the Council follows the **Statement of Community Involvement** <http://eastdevon.gov.uk/planning/planning-policy/policy-work-whats-new/work-programme-and-consultations/> which sets out who, how and when consultation will occur. This guidance is SPD, and so is not legally required to comply with the Statement of Community Involvement, however it is sensible and consistent to use it as a model process for this document to follow.
- 1.3 Consultation responses are usually made public and can be viewed on the Council's website or at the main Council offices at Knowle. Comments may be summarised, or text redacted, where publication is considered discriminatory to Gypsies and/or Travellers.

2.0 The SPD process

- 2.1 Planning Obligations are an effective way of securing measures to overcome the negative impacts of generally acceptable development proposals on the environment, economy and community. Through East Devon's Local Plan (particularly Strategy 50) we seek to ensure new growth and development meets the needs of the community and is sustainable. In dealing with planning applications, local planning authorities consider each on its merits and reach a decision based on

¹ The Town and Country Planning (Local Planning) (England) Regulations 2012, part 5

whether the application accords with the relevant development plan, unless material considerations indicate otherwise. Where applications do not meet these requirements, they may be refused. However, in some instances, it may be possible to make acceptable development proposals, which might otherwise be unacceptable, through the use of planning obligations. Planning obligations can be used to mitigate the impact of development on the surrounding communities by, for example, providing affordable housing, employment training, improves the transport links, and enhancing the quality of open space.

2.2 The Planning Obligations SPD is intended to provide detailed guidance on the type and scale of planning obligations sought from new developments in East Devon. It also explains when the Community Infrastructure Levy will be collected and how it will be spent. The SPD, once adopted, will be a material planning consideration for use in guiding and determining planning applications.

2.3 Production of the SPD consists of four main stages:

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

2.4 After each consultation a report is made to the relevant Council Committee. These reports are available to the public in paper form and can be downloaded from the Councils website². They give details of the issues raised and links to the representations in full.

3.0 Who have we consulted?

3.1 In line with our commitment to early and meaningful community engagement, extensive public consultation was undertaken prior to the introduction of the Community Infrastructure Levy (CIL) on 1st September. This SPD built on/was informed by this consultation and our approach has been to use the Statement of Community Involvement (SCI) to guide all engagement activity.

² The Development Management Committee minutes are available at: <http://eastdevon.gov.uk/council-and-democracy/committees-and-meetings/development-management-committee/>

- 3.2 We have consulted with everyone on our consultee database who has previously expressed an interest in planning obligations and all representors for whom we hold an e.mail address. This includes the specific consultation bodies and general consultation bodies identified in our SCI as well as individual members of the public. We will do this at each stage of consultation.

Specific Consultation Bodies

Statutory bodies such as or specifically Natural England, Environment Agency and Highways Agency.

Neighbouring Town and Parish Councils and neighbouring County Councils and Local Planning Authorities.

General Consultation Bodies

Groups representing voluntary, racial/ethnic, religious, disability and business interests.

Specific groups representing certain interests (nationally and/or locally) for example covering environmental, health, education, transport, leisure, economic development and community need issues, equality groups.

Councillors / MP's.

Members of the public including residents of East Devon.

- 3.4 Recognising that many planning applications in East Devon are submitted by agents, we have presented the draft SPD to the East Devon Agents Forum, a group of planning professionals with a particular interest in development in East Devon.
- 3.5 We have also directly contacted Officers in the neighbouring authorities of Teignbridge and Exeter where the Local Authorities are involved in the delivery of habitat mitigation to learn from their examples of best practice.

4.0 How have we consulted ?

4.1 The CIL Charging Schedule

The production of the East Devon CIL Charging Schedule underwent two stages of consultation, both of which were subject to formal consultation:

- 1) The Preliminary Draft Charging Schedule
- 2) The Draft Charging Schedule

Consultation with the relevant bodies and an appropriate range of the public as set out in the regulations was undertaken at each stage. Targetted consultation was undertaken with various interested parties including a Developers Workshop (March 2012), meetings with the East Devon new Community Partners, Agents Forum (February 2013), Exmouth Town Council, EDDC Task and Finish Forum, Internal Officer meetings, and Infrastructure Provider meetings. A report was made to the relevant Council meeting following each stage of consultation. These have reported the representations made and the officer's suggested responses plus the ways in which the Charging Schedule has subsequently needed to be amended.

4.2 Specific consultation on the Planning Obligations SPD

The first consultation on the SPD was carried out between 28.11.16 and 16.1.17. Emails were sent to everyone on the Local Plan database (including statutory consultees, the public, neighbouring authorities, local Councillors, Parish Councils, interest groups, agents and landowners who have previously expressed an interest in bringing their land forward for development). Details were on our website and advertised by a press release.

4.3 A second round of consultation was undertaken between 5 April and 15 May 2017. Emails were sent to statutory consultees and those parties who responded to the previous consultation. Minor changes were made in response to this second round of consultation, however most responses related to matters already considered during the first stage of consultation.

5.0 Duty to co-operate

5.1 The Council must engage 'constructively, actively and on an ongoing basis³' during the preparation of plans when they relate to 'strategic matters'. Strategic matters are defined as development, including infrastructure, with a significant impact on at least two planning areas. All neighbouring authorities were consulted on the document.

³ Section 110 of the Localism Act 2011

East Devon Planning Obligations Supplementary Planning Guidance

Draft for Consultation from 28/11/2016 to 16/01/2017 Summary of Responses

These tables include a brief officer summary of comments received on the East Devon Planning Obligations SPD draft for consultation. For full details of responses received please see <http://eastdevon.gov.uk/planning/planning-policy/planning-obligations-supplementary-planning-document-spd/> .

Rep no.	Name	Comment/Summary of comment	Officer Response
18	Seaton Town Council	Supports document. Fully supports Sections 6.21 to 6.28 especially that there is a strong public interest in financial viability appraisals being made available for scrutiny when relied upon to secure planning permissions. STC consider that transparency is extremely important and the public benefit of publishing all aspects of a viability appraisal outweighs any potential commercial harm to the applicant.	Support Noted
34	Axminster Town Council	P12 - 4.2 With reference to the Site specific roads, car parking etc. bus shelters should be included and these should be suitable for use by elderly/disabled people. 4.2 When traffic orders are required the opportunity should be afforded to add into them any measures which would be beneficial elsewhere in the town and which otherwise would have to be deferred where D.C.C. was not making a traffic order itself for a single item. 4.2 With reference to travel planning consideration should be given to provision (possibly by E.D.D.C.) of additional car/cycle parking to serve Axminster Railway Station, accessed from Trafalgar Way with a pedestrian link to the station itself. P13- 4.2 With reference to other infrastructure provision of dog bins should be included. 4.2 With reference to land to enable delivery of infrastructure on-site consideration should be given to the inclusion of contributions towards items off-	Bus shelters added These suggestions are noted. The table is indicative of the types of issue which can be addressed through S106's rather than a comprehensive list and some of these issues would need to be raised in relation to specific planning applications. Support noted

		<p>site, such as roundabouts, which may form part of later improvement schemes which will complement the on site works.</p> <p>P17- 5.8 Strategy 50 no 1 – do these include healthcare and education or are they a separate issue.</p> <p>5.8 Strategy 50 no 2 – phased provision of infrastructure must be monitored and further development must be made dependent on timely delivery of this.</p> <p>P21- 6.16 It is recommended that in situations where these conditions cannot be met for sound reasons that the obligations can be transferred to provision/enhancement of facilities at the nearest available site.</p> <p>P25- 7.1 The application of a small fee is supported to enable effective monitoring of the process.</p> <p>P27- 8.1 Presumably the District Council will provide the necessary information to the Parish Councils to enable them to fulfil their obligations.</p>	Guidance will be available
124	South West Water	(2 responses) No comment	-
135	Colyton Parish Council	<p>Section 8.1 – the Parish Council does not receive regular S106 updates and is unlikely to be able to publish a CiL report on an annual basis if there is a similar lack of information.</p> <p>The Council would like to have these details on a regular basis in a format that could easily be formulated into a report for general consumption. EDDC has employed an extra staff member but this has not increased the information available.</p>	The CIL Regulations (62A) require Town and Parish Councils to publish a report including CIL receipts and CIL expenditure (amongst other things) for each year when they have received neighbourhood funds from CIL. If the Town/Parish Council have not received any money they do not need to publish a report.
261	Newton Poppleford and Harpford	<p>No particular comments.</p> <p>Leisure facilities, improvements to footpaths and traffic management measures to improve safety on School Lane and four Elms Hill should be included in the list of CIL projects. The Parish is preparing a neighbourhood Plan and this may throw up other requests for infrastructure in the Parish.</p>	
526	Woodland Trust	We are pleased to support the inclusion of 'trees' in the summary table (section 4.2, p.12), this should include new tree planting as well as retention of existing ancient and valued trees, and also ancient woodland.	Amend table at 4.2 to read 'Trees; <i>tree and other</i> planting; landscaping'

		<p>Benefits of trees and woods for local communities strongly supported by current national planning policy. The Woodland Trust believes that woodland creation is especially important because of the unique ability of woodland to deliver across a wide range of benefits – see our publication <i>Residential Development and Trees</i> - https://www.woodlandtrust.org.uk/publications/2015/07/residential-developments-and-trees/ including landscape and biodiversity (helping habitats become more robust to adapt to climate change, buffering and extending fragmented ancient woodland), for quality of life and climate change (amenity & recreation, public health, flood amelioration, urban cooling) and for the local economy (timber and woodfuel markets). http://www.woodlandtrust.org.uk/publications/2015/02/space-for-people/ Access Standard recommends: - that no person should live more than 500m from at least one area of accessible woodland of no less than 2ha in size - that there should also be at least one area of accessible woodland of no less than 20ha within 4km (8km round-trip) of people’s homes. Strongly support the use of tree planting as an obligation in this Planning Obligations SPD. We suggest the reference in the summary table at section 4.2, p.12 is amended to read (italic amendment) : ‘Trees; <i>tree</i> planting; landscaping’.</p>	
553	Equality and Human Rights Commission	<p>The Commission does not have the resources to respond to all consultations, and it is not our practice to respond to consultations on local plans or infrastructure projects unless they raise a clear or significant equality or human rights concern. Local, Parish and Town Councils and other public authorities have obligations under the Public Sector Equality Duty (PSED) in the Equality Act 2010 to consider the effect of their policies and decisions on people sharing particular protected characteristics. We provide advice for public authorities on how to apply the PSED, which is the mechanism through which public authorities involved in the planning process should consider the potential for planning proposals to have an impact on equality for different groups of people.</p>	Noted
1608	Cllr Jill Elson	<p>1. Contribution to Education should be a priority as general housing provides for the needs of families. Education is a priority for all young people and retraining of adults to ensure skills are upgraded to provide the workforce for the future. This is not only basic classrooms but also specialist rooms for science, technology, computing etc. This is in the economic plan of the Local Enterprise Partnership.</p>	These comments are noted and support the possible requirements in the table at 5.2 (4.2 in consultation version). The information will be used to inform the IDP/Regulation 123 list review and could assist Exmouth Town Council in prioritising their spending.

	<p>2. Affordable housing is vital in this area due to the high price of housing within East Devon. They should be on 'affordable rents' (80% of market rents) and low cost market homes. Many of our employers are saying they are unable to recruit due to the cost of housing within East Devon.</p> <p>3. 'Extra Care' housing is now vital as East Devon has one of the highest numbers of people over 75yrs and some vulnerable disabled people younger than that who need support. These must be true 'Extra Care' in that they will provide a minimum of 10 hours personal care up to 24 hour 7 days per week.</p> <p>4. Contribution to highway network to ease 'travel to work' and main highways to access main employment areas</p> <p>5. Contribution to public transport network to encourage increased use to travel to employment centres.</p> <p>6. Retirement homes specifically built for those over 55yrs should make a contribution to Social Care and Medical services.</p> <p>7. Environmental contributions to be sought towards maintaining our beaches, estuaries, wildlife, countryside parks.</p> <p>8. Flood prevention measures for those areas that have a high gross value.</p> <p>9. Contributions 'off site' from small developments towards improvement of community buildings (eg. village halls, community centres), play spaces, leisure activities helping toward Health and Well Being agenda.</p> <p>10. Contribution towards Play space/community centre or other in consultation with local Parish/Town Council in the larger developments. Large developments may have these within their overall scheme (350 homes plus for example)</p> <p>11. Supported housing is required for young people who have left care, vulnerable due to a disability and need help with maintaining a home. They can move on when assessed as able to manage a tenancy.</p> <p>12. To continue with policy of an overage clause if a developer is successful in proving his development is financially unviable at a specific time but as the economy improves becomes viable.</p> <p>13. Consultation with relevant Parish/Town Councils with Neighbourhood Plans to ask if they wish to use part of their 25% of CIL towards any of the above costs. This to be standard practice.</p> <p>My recommendation for 1,2,3 list for Exmouth is as follows.</p> <p>1. Contribution towards Exmouth Community College phase 2 scheme to help increase the capacity from 2500 to 2900 by 2019. (I declare an interest in this item as Chairman of Governors).</p>	<p>Suggestions for the CIL Regulation 123 list are noted. These comments will be considered in updating the list, which will be subject to a separate consultation in due course.</p>
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		<p>2. Dinan Way Extension as this has been accepted as needed since 1979. This will help towards reducing 'rat runs' through Exmouth Halsdon and Town Wards' – namely Rivemead Avenue, Featherbed Lane, Iona Avenue/Seymour Road, Gipsy Lane, Marpool Hill and Claremont Grove.</p> <p>3. Flood Prevention for the Colony and Exmouth seafront.</p> <p>4. Contributions to social care and medical care.</p> <p>5. Beach Management and Estuary to prevent 'overtopping' along seafront. Local seafaring community consider dredging should be re-introduced.</p> <p>6. Affordable Housing</p> <p>7. Extra-Care housing – 10 hour to 24 hour 7 day per week provision</p> <p>8. Supported Housing for adults from 18 to 55 yrs who need help and support to maintain a tenancy before 'moving on'.</p> <p>9. Contributions to upgrade existing play equipment/areas.</p>	
3209	<p>David Lock Associates on behalf of East Devon New Community Partners</p>	<p>Para 2.2 should refer to the Regulation 123 tests needing to be satisfied - for contributions to be necessary, directly related to development and fairly and reasonably related in scale and kind. Reference should also be made to the requirement in section 173 of the NPPF to the need to have careful attention to viability and costs before they are imposed on development and the central objective of the NPPF to boost the supply of new homes.</p> <p>PPG states LPA's "should be flexible in their requirements" and policy "should be clear that such planning obligations will take into account specific site circumstances". The need for flexibility in the application of the SPD guidance and the need to take account of site specific circumstances should be set out clearly and early in the East Devon SPD.</p> <p>Paras 3.14 and 3.15 refer to the Regulation 123 list that sets out what infrastructure is intended to be, or may be, wholly or partly funded by CIL and the text should be expanded and set out when and how this will be reviewed.</p> <p>A key aspect of the review process will be to undertake a review to ensure the most effective means of delivering infrastructure associated with the expansion of Cranbrook as anticipated in the Local Plan. To this end, and subject to the outcome of that review, the delivery of infrastructure is likely to be best achieved through a substantial reduction in the CIL rate for the expansion of Cranbrook and an amendment in the Regulation 123 list to ensure that infrastructure</p>	<p>These tests are set out in paragraph 5.5, but consider that the legislative and policy context should be towards the beginning of the SPD.</p> <p>Agree, add the following text at the end of para 3.15: "Any review of the Regulation 123 list will be informed by the latest Infrastructure Delivery Plan and subject to appropriate local consultation."</p> <p>Comments on the CIL rate and amended Regulation 123 list at Cranbrook are noted. However these issues will be considered separately through a review of the CIL Charging Schedule and Regulation 123 list. These comments will be considered in updating the list, which will be subject to a separate consultation in due course.</p>

	<p>delivered through section 106 mechanisms in Phase 1 of the development will continue to be so in the future expansion of the town.</p> <p>Paragraph 3.6 states that the calculation of CIL will be on the Gross Internal Floor Area as measured in the RICS Code of Practice. The code identifies that Garages are included in the internal floor area, this is incorrect as garages are not habitable areas and are clearly not part of the habitable fabric of a building and should by definition be excluded.</p> <p>Para 4.1 suggests that pre application discussions regarding planning obligations are essential. However, potential section 106 requirements may emerge through the consultation process on the submitted application. Moreover, the purpose of this SPD would appear to be to outline potential requirements. As such section 4.1 should instead point to the SPD as providing guidance for consideration by developers in drawing up proposals and perhaps suggest that EDDC would welcome early discussions. Such discussion should not be identified as essential.</p> <p>Paragraph 4.2 explains the table set out below which provides an indication on the types of planning obligations that are often agreed. That the table is said to be a guide is welcomed. Inevitably, the scale and kind of obligation must be considered on a site by site basis in the light of the development proposed and the national tests. It would be helpful if this were described in the SPD. Although only a guide, there are a number of items listed for which there is no policy justification. The summary table should therefore be clear where text is based on clear policy justification and where it is not; where it is not the text should clarify that such provision cannot be required. Eg the on-site affordable housing provision should make reference to Strategy 34, in the Local Plan which sets out the wider considerations and the scope in appropriate circumstances to negotiate an alternative mix.</p> <p>There should be a review mechanism and recognition that starter homes may be considered as affordable housing in light of the Government’s intention to introduce them.</p> <p>In relation to on site open space, consistency with regard Strategy 43 would also require that there should also be a “demonstrable need for such open space</p>	<p>4.1 Replace ‘essential’ with ‘extremely important’</p> <p>Refer to LP policy to clarify</p> <p>This is not yet a Policy requirement</p>
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	<p>in the vicinity, the last sentence of this section of the SPD should be amended to refer not only to viability but also to “or where there is no demonstrable need for such facilities in the vicinity”. Equally alternative justification may be provided to allow variation from the standards proposed - in particular and appropriate circumstances. The last sentence of the onsite open space provision might therefore be amended as follows: “Developments which do not meet ...unless viability assessment proves otherwise, <i>or there is no demonstrable need for the facilities in the vicinity or there are other good reasons or justification for doing so - for instance relating to the delivery of such facilities</i></p> <p>Recognition should also be made to the opportunity to improve sports and leisure provision - and that these are intended to be secured through CIL contributions. Where such improvements take place, the need for on-site provision may be adjusted.</p> <p>The approach to off-site open space provision should be clarified. As presently drafted, the Council’s Regulation 123 list suggests that all off site provision - irrespective of purpose or rationale - should be delivered through CIL.</p> <p>It is not appropriate, or practical, to require all off site provision to be provided before development commences. Nor is this fair or reasonable since, being CIL funded, it is not in the gift of the developer to guarantee the delivery of off-site infrastructure. As to need, the need for off-site infrastructure - in scale and kind - and the timing of its provision - will vary in each individual case - having regard to the range of provision in the vicinity already and a wide range of other factors. To require provision before the commencement of development in all cases will be contrary to the NPPF and EDNLP both in terms of the flexibility in demands in terms of contributions but in particular to the commitment to secure the early delivery of much needed new housing. There is no policy justification for delivery before development and this would be a case of creating new policy untested by an evidence base or in terms of viability. The reference to “before development commences” must be deleted</p> <p>With regard to public art, there is no policy requirement to include public art in development proposals. Indeed the provision of public art is clearly not necessary to ensure that development is acceptable. The provision of public art should be omitted from the SPD.</p>	<p>The table explains the circumstances in which off-site open space provision should be provided.</p> <p>Policy D1 states that we may seek to negotiate public art</p> <p>Protective measures will be required before commencement. Wording has been clarified.</p> <p>The text does not only relate to European wildlife sites. In any case, Beer Quarry Caves, The River Axe and the Branscome cliffs are all Natura 2000 sites not listed in the reg 123 list.</p> <p>Text amended to address this.</p>
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	<p>With regard to trees; planting and landscaping - there is no requirement for such planting or landscaping to be complete before development commences. This is not supported by policy and is not supported by an evidence base that justifies such provision in terms of planning or viability. It is contrary to the practice of the Authority in granting applications for planning approval - where the timing of planting is agreed by condition and never before development commences. The reference to “before development commences” should be deleted.</p> <p>With regard to the habitats and ecological protection creation and enhancement, arising from the HRA (but excluding those sites listed in the Reg 123 list), clarification should be provided. We are unclear what European sites other than those listed in reg 123 might be referred to in this section of the table. The need for this part of the table is therefore unclear. The term non-infrastructure contribution is not understood and should be explained and consulted upon as necessary.</p> <p>The timing of any provision should be a matter of negotiation and not be a requirement before development commences or before first occupation. The reference to the due date for ecological protection and enhancements must therefore be amended to refer to <i>“in accordance with a timetable to be agreed with the LPA”</i>.</p> <p>The timescale for site specific roads and other transport improvements should not be before development commences but as in other categories <i>“to be determined in the section 106 or highway agreement”</i>.</p> <p>While policy 38 of the Local Plan encourages consideration to be given to a broad range of aspects relating to sustainable construction and design, including renewable energy, no specific aspect is a requirement of the policy so it should not be anticipated that on-site renewable energy provision be an expectation of new development.</p> <p>The need for any phasing of infrastructure for economic development must not be predetermined, and in any event should be determined on a case by case basis. Any provisions must recognise the ability of the developers to reflect</p>	<p>Some of these comments have been addressed through changes to the table. Otherwise the text makes it clear that the table is indicative of the types of issues which may be covered by S106’s and is not absolute or all-encompassing</p>
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demand for economic development and must not be rigidly constructed. The SPD should recognise this.

For **land necessary to enable the delivery of infrastructure** on site to be addressed through the section 106 agreement then this would need to be consistent with the appropriate legal and policy tests - provision should be necessary and directly related to the development, as well as proportionate in scale and kind. This is set out in the NPPF and PPG and in Strategy 50 of the Local Plan which refers to infrastructure requirements that are a direct consequence of the development. While there may be other mechanisms to bring forward such land - including through negotiation and agreement - any section 106 obligation seeking to ensure that land required to serve a wider purpose than meeting the needs of the application site must demonstrably meet the legal and policy tests. It is unclear how some such elements would satisfy the necessary tests. This should be acknowledged in the SPD as well as the need to consider a variety of mechanisms to achieve this objective - other than section 106. The timing of delivery of any such land should only be by agreement in the section 106. The existing "when due" reference should be deleted, being far too specific without any reference to what is being planned.

The expectation that **land will be provided to enable the delivery of sheltered or extra care housing** goes beyond the expectation of the Local Plan policy. A fundamental requirement of SPD policy is that it does not extend or create new planning policy. As drafted the policy does so. To remedy the SPD reference it is suggested that there should be no specific *requirement* for Care/Extra Care but to highlight this as a matter for discussion with developers.

In any event and as a minimum:

- reference to land being part of the obligation should be deleted (delete "land to enable");
- reference should be given to a mix being "encouraged to include" rather than should include;
- reference to making provision where a Care Needs Assessment establishes a need" must be deleted as being contrary to the policy - Delete "or a Care Needs Assessment" establishes a need").
- any when due reference should be amended to be "in line with the development or in accordance with such triggers agreed in the section 106 development"

In line with the adopted validation checklist and LP Strategy 34, the Council is entitled to require viability information at validation stage if the application is seeking to argue viability as justification for a reduced provision eg of affordable housing. Without understanding the viability arguments being made it is not possible to assess any application which seeks to argue for a lower amount of affordable housing than the policy requires. The requirement is not to submit a planning obligation per se but to submit some information that explains how (which can be done often most easily with reference to a planning obligation) the scheme complies with Strategy 34

The NPPF and Planning Practice Guidance clearly set out the requirements and guidance for detailed viability testing at the decision making stage. The Section of the PPG entitled 'How should viability be

	<p>Any Accessible and Adaptable Homes should be provided in negotiation with developers having regard to Policy Strategy 36 and should be in line with the development or in accordance with such triggers agreed in the section 106 development.</p> <p>Regarding the phasing and timing of development, it will not normally be case that land uses or development would be phased. Where infrastructure elements need to be phased then these will be spelt out in an agreed section 106 agreement. The reference in the SPD should clarify.</p> <p>It is unclear why Air Quality Management and monitoring needs specific reference as part of the SPD. The need to consider air quality will be addressed in each application and mitigation measures as required set out through the planning application process. We question the need for a specific reference in the SPD.</p> <p>Paragraph 6.2 refers to the need where an application does not accord with the Local Plan due to financial viability constraints, for the application to demonstrate why, without which the application cannot be validated. This is contrary to the national planning practice guidance which, addressing the Making of Planning Applications, reminds all parties that <i>“The purpose of planning obligations is to make development acceptable in planning terms. This is about mitigation, rather than just identification, of any undesirable impact and is generally negotiated during the consideration of a planning application. So while it can be good practice to submit information about a proposed planning obligation alongside an application, it should not normally be a requirement for validation of a planning application”</i>. Planning Practice Guidance on Making an Application: Reference ID: 14-042-20140306. Accordingly the reference “and the application cannot be validated without it” should be deleted or substantially amended in accordance with national planning policy guidance.</p> <p>The same applies to the CIL Additional Information Form which we also believe is not required to validate a planning application.</p>	<p>assessed in decision-taking?’ clearly states that “This should be informed by the particular circumstances of the site and proposed development in question. Assessing the viability of a particular site requires more detailed analysis than at plan level.” The request for open book viability appraisals is therefore fully consistent with planning policy.</p> <p>Local Plan policy Strategy 34 has been adopted and requires overage to be applied in all cases when a less than policy compliant level of affordable housing has been accepted. The SPC report considered on Feb 20th 2017 (as mentioned above) provides further detail on this. Additional guidance on how overage works in practice will be provided on our website, including hopefully some model section 106 clauses. We have received several applications where numerous viability appraisals have been submitted. For example, there has been a particular issue for a scheme that has been subject to various design changes and amendments during the consideration of the planning application. As result numerous updated viability work was submitted.</p> <p>We have also experienced an issue in relation to changing viability on schemes as they move through from outline where a greater reliance is placed on assumptions, to viability assessment for detailed schemes, where there is more certainty. This has, for example, been a particular issue on a site that has changed hands between securing outline permission on the basis of one viability appraisal, and then a revised viability report has been then been submitted reflecting the scheme at detail (see also the comment in relation to viability at outline).</p>
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	<p>Paragraph 6.13 refers to the council's legal fees for the completion of a Section 106 legal agreement. Reference should be added here to the need for the fees to be reasonable and justified.</p> <p>The section on viability recognises the national and local policy expectation that a number of policy aspirations would have to be subject to viability. The need for all or any viability assessment to adopt an open book approach does not appear to be specific requirement of such assessments. The nature and structure or any assessment should be informed by the particular circumstances of the site and proposed development in question. The SPD may recognise that the expectation is simply that assessing viability should lead to an understanding of the scale of planning obligations which are appropriate.</p> <p>Whilst we understand that CIL contributions are non-negotiable and can't be reduced, it is our understanding that mitigation of effects on a European site may be achieved by a number of means and not necessarily through financial contributions.</p> <p>Whilst it is noted that Policy Strategy 34 seeks an overage clause where affordable housing falls below targets, viability assessment should generally should be based on current costs and values in decision-taking. Planning applications should be considered in today's circumstances as is indicated in the Planning Practice Guidance. The SPD should recognise that overage may not be appropriate - particularly in all circumstances. Moreover there is no reference in Paragraph 6.23 to the time limit on overage. It is unreasonable, in addition, to require overage to be an open ended commitment. Nor is there any reference to what constitutes a level at which it applies. There is no clear basis set out, and consulted on, and agreed with the development industry, to demonstrate that a workable or realistic form of overage could exist.</p> <p>We have substantial concerns about the need for this section of the SPD. It is inherent in any proposals that basic viability is tested prior to an application so the need for this section is questioned. In addition, S 106 agreements as a standard practice allow for a cascade mechanism in some form where viability is an issue and therefore the need for this within the SPD is unnecessary.</p>	<p>In practice, we actively work with applicants to try and identify and resolve any viability challenges at the earliest opportunities, and indeed we are required to consider viability at whichever stage we are to. However, even with a agreed viability at outline, or detailed stage, there is still nothing to stop an applicant seeking to vary the section 106 agreement after it is signed, and we have several examples where this has occurred.</p> <p>Government guidance states it should be submitted at the same time as the planning application.</p> <p>This is set out in 6.8 (as amended)</p>
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330 1	Nathaniel Lichfield for Bourne Leisure	<p>LPA should consider whether any mitigation measures can be sought in the first instance through planning condition rather than by planning obligation, in accordance with NPPF paragraph 203. The Company therefore requests that the Council carefully considers whether each of the issues included within the draft SPD could be better addressed through planning conditions and so could be removed from the document, or if this revised approach is not accepted for any reason, it is made clear within the document that Section 106 obligations will only be necessary where it is not possible to address unacceptable impacts through planning conditions.</p> <p>The planning obligations summary table para 4.2- Bourne Leisure welcomes the introductory text, which explains that the detail provided on the types of planning obligations that may be considered should be treated as guidance only. Therefore, the Company would like to ensure that this wording is retained in the approved Planning Obligations SPD.</p> <p>Off-site open space- The draft SPD states that, where required, any off-site open space contributions to be delivered via financial contribution or specific provision within a section 106 agreement will be due "[b]efore development commences" In circumstances where the new open space is not replacing existing facilities, Bourne Leisure considers that the timing of any off-site open space contributions not being delivered through CIL should be decided on a case-by-case basis, in order to allow for a judgement to be made on the timing of provision in relation to construction.</p> <p>Public art- 'Prominent locations' should be defined. Text should be amended to read "Public art or contributions are most frequently sought when new development occurs in the form of major schemes that occupie a prominent location-typically</p>	<p>4.2 introductory text amended to reflect this.</p> <p>Support noted</p> <p>Text amended to 'to be agreed'</p> <p>Policy D1 makes it clear that this is a matter for negotiation not an absolute requirement.</p> <p>Text has been reworded</p>

	<p>within the urban public realm, and would depend upon its relationship to the physical environment and its setting."</p> <p>Trees, planting and landscaping- In many cases, it will not be appropriate to deliver obligations in relation to trees, planting and landscaping prior to commencing development, given that construction work can cause disruption to the natural environment- and particularly for new planting. Hence, these elements are often provided at the end of the construction process (it is accepted that the details of major, structural works are frequently best agreed prior to development commencing, via condition). The necessary timing for each site and development should be considered on its own merits. This would be better dealt with by planning condition. It is suggested that the text be changed to</p> <p>"Where it is not possible to address unacceptable impacts of a proposed development in relation to trees, planting and landscaping 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, These are defined on a case by case basis, reflecting the site and scheme characteristics." (proposed amendments underlined)</p> <p>Habitat and ecological protection, creation and enhancement- The "Habitat and ecological protection..." section of the table on page 12 of the draft SPD is intended to provide an indication of the types of planning obligation that are often agreed in relation to habitat and ecological protection, creation and enhancement, including the requirements arising from the Habitats Regulations. However, the descriptive text in the second column of the table only considers mitigation in relation to European wildlife sites. Bourne Leisure therefore considers that a paragraph should be added to the table in relation to development not covered by the Habitats Regulations that has an impact on habitats and ecology. Suggested replacement wording "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>Bourne Leisure notes the Council's approach in providing flexibility on the timing of the delivery of mitigation relating to habitats and ecology, reflecting the variety of development types and circumstances in East Devon. Whilst some new</p>	<p>Text has been reworded</p> <p>Support noted</p>
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	<p>developments will have an impact on habitats and ecology during construction, others will only affect biodiversity once the development is occupied.</p> <p>Other planning obligations</p> <p>The Council states within the draft SPD that several types of planning obligation will be defined on a case-by-case basis, including:</p> <ol style="list-style-type: none"> 1 Highway and transport requirements (Table p.12, "Site specific roads, car parking..."); 2 Travel planning measures (Table p.12, "Travel planning..."); On-site renewable energy provision (Table p.12, "On-site renewable energy provision"); 4 On-site drainage, sewerage and water management requirements (Table p.12, "On-site drainage..."); 5 Other infrastructure which is required to make the development acceptable in planning terms and which does not appear on the Regulation 123 list (Table p.13, "Other infrastructure..."); 6 Site wide masterplans (Table p.13, "Site wide masterplans, etc."); 7 Noise and other environmental amenity (Table p.14, "Noise..."); and, 8 "Considerate construction" or other schemes to limit negative environmental impacts during construction (Table p.14, "Considerate construction... "). <p>Bourne Leisure agrees with the Council's pragmatic approach in defining these types of planning obligation on a case-by-case basis, in order to reflect individual site and scheme characteristics.</p> <p>Viability appraisals- The Council indicates it will promote transparency in publishing viability appraisals, but its commitment to providing confidentiality for the commercially sensitive elements of an appraisal is unfortunately unclear. Bourne Leisure therefore requests that paragraph 6.27 of the draft SPD is amended as follows:</p>	<p>Support noted</p> <p>The Council's position is that viability assessments should be made public unless the applicant requests confidentiality and makes it clear which sections are confidential.</p>
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		<p>"There is a strong public interest in financial viability appraisals being made available for scrutiny when relied upon to secure planning permission. We consider that transparency is extremely important and the public benefit of publishing all aspects of a viability appraisal outweighs any potential commercial harm to the applicant. However, the Council will maintain confidentiality for the commercially sensitive elements of a viability appraisal, whether or not this has been requested by the applicant. Applicants are, however, advised to identify elements of a viability appraisal which could undermine their commercial position with the council through the pre-application process. The Council may require redacted versions of the information, or may carry out the redaction. The Council will advise the applicant whether the sufficient information has been made available to assess the viability of the proposed scheme."</p>	
334 7	PCL Planning	<p>The relationship between planning obligations and the Council's CIL should be made clearer within the introduction of the SPD, as it establishes the basis of what planning obligations can lawfully be sought by the Council. We would suggest that direct reference to the CIL regulations and supporting planning practice guidance cited above is referenced upfront within section 1.0 of the document.</p> <p>Paragraph 3.10 states that "<i>whilst CIL can also be spent on other infrastructure projects which are not identified on this [Reg 123] list, it serves as a good guide as to what CIL money may be spent on</i>". This is incorrect. CIL Regulation 123 (4) (definition of 'relevant infrastructure') is clear that where a charging authority has published a list of infrastructure that it intends to be funded by CIL receipts, it can only be spent on those infrastructure projects/ types of projects. This sentence should therefore be omitted. We do however support the recognition later in this paragraph and at paragraph 3.14 that infrastructure identified on the Regulation 123 List cannot be funded through planning obligations, to prevent 'double counting'.</p> <p>Paragraph 3.21 is incomplete.</p> <p>Paragraph 4.1 states that "<i>it is essential that developers enter into pre-application discussions</i>" with the Council about planning obligations which may be required by their development. This is simply not the case. Whilst it may be</p>	<p>Agree: delete the second sentence in paragraph 3.10.</p> <p>This has been rectified.</p> <p>Amended to read 'extremely important'</p> <p>In some cases the open space may be of community benefit but not be open to the general public</p>

		<p>desirable/ recommended by the Council that applicants engage with officers prior to the submission of an application, there is no statutory requirement to do so. This paragraph should therefore be amended to accord with the advice set out in planning practice guidance ref. ID: 23b-024-20150326.</p> <p>In the ‘obligations’ table at paragraph 4.2, it should be made clear in the second and third columns relating to on/off-site open space, that these comments relate to areas of <i>public</i> open space.</p> <p>Paragraph 6.7 refers to the Council’s model Section 106 agreements which it states “<i>can be made available on request</i>”. For the sake of greater transparency and timeliness in agreeing planning obligations, these templates should be made available on the Council’s website rather than need to be requested from the Council.</p> <p>Paragraph 6.9 of the document states that “<i>the 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</i>”. It would be unreasonable for a S106 agreement to be advanced unless an officer recommendation of approval is likely, and this should be reflected in this text.</p> <p>In relation to viability, paragraph 6.21 should make clear that should the Council look to employ a specialist to advise in reviewing viability appraisals, that this would be agreed with the applicant if they are expected to meet the costs for this work.</p> <p>In the bullet points presented at paragraph 7.2, it is stated that the Council’s ‘preferred’ trigger point for planning obligations is ‘prior to commencement of development’. This would not be an appropriate trigger point for a number of obligations and this comment is at odds with the recognition at paragraph 7.10 that trigger points vary between individual obligations. This reference should therefore be removed.</p>	<p>The agreements are being prepared by our Legal Team and will be available on line shortly.</p> <p>This is a factual statement and it would be unreasonable not to make developers aware.</p> <p>This is a factual statement, and reflects the Council’s preferred position.</p> <p>The council currently utilises both in house and external viability advice. At present the DV is commissioned on a case by case basis, although we are exploring the merits of Service Level Agreement with the DV. The points raised here will feed into the wider considerations in relation to accessing specialist viability advice. It is not considered appropriate to include this specific matter in an SPD on planning obligations, as it is a procedural issue.</p>
371 2	Sustainable Places,	Response advising consultation has been passed to the Sustainable Places Team.	No further response received.

	Environment Agency		
374 3	Natural England	<p>Para 3.10. The last sentence states that the Strategic Planning Committee will determine the projects (from the Regulation 123 list) on which funding will be spent. It is suggested that clarification is provided here regarding provision for mitigation of effects on European sites. This should state that some projects will be necessary to ensure effects on European sites are mitigated and that their funding will therefore be essential in order for development to proceed.</p> <p>Green Infrastructure should be included in the table at Section 4.0, as it's importance is recognised in Local Plan Strategy 5, and NPPG.</p> <p>Table entry for 'Habitat and ecological protection'. The last sentence of the explanation against this project type and particularly the reference to a "non-infrastructure contribution" is confusing. It is suggested that this sentence is simplified. Wording along the following lines could be considered: "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>Para 6.22. It is suggested that the wording in this sentence be made clearer through addition of the word "associated" before "CIL".</p> <p>We concur with conclusion set out in para 1.3 which states that the SPD is unlikely to have a significant effect on the environment or a negative impact on any Natura 2000 sites and therefore will not need to be subject to SEA or Habitat Regulations Assessment (HRA).</p>	<p>Noted, the Council will prepare a report relating to CIL governance and spending in due course, which will detail mitigation on European sites.</p> <p>Agree</p> <p>The text should be included in the table.</p> <p>Add 'associated' to text</p> <p>Support noted, SEA HRA are not required.</p>
512 2	Rapeys on behalf of the Crown Estate	<p>Table at para 4.2- note and support the principle that a number of obligations are to be defined on a case-by-case basis reflecting site and scheme characteristics.</p>	<p>Support noted</p> <p>Support noted</p>

	<p>Support the principle of providing draft heads of terms information upfront to allow discussions to take place early in the planning process in accordance with Paragraph: 025 Reference ID: 23b-025-20150326 of the Planning Practice Guidance (PPG) which confirms that discussions about planning obligations should take place as early as possible.</p> <p>Support that S106 does NOT have to be completed prior to consideration of the application at Committee, and no deadline for agreement, although the expectation is as quickly as possible.</p> <p>Paragraph 6.8 proposes that the Council will ordinarily draft the legal agreement and that developers should use standard clauses as use of alternative wording will result in additional costs to the developers. Whilst the PPG encourages Local Authorities to use standard forms and templates, there is no requirement for the Local Authority to prepare the agreement. We consider that the wording of this paragraph, which suggests that use of alternative wording would result in fines for developers who use them, is not in accordance with government guidance which confirms that each agreement must be dealt with on a case-by-case basis.</p> <p>Overage payments referred to in Strategy Policy 34 relate to provision of affordable housing.</p> <p>The draft SPD indicates that overage would be payable where actual values achieved exceed assumed values applied when assessing the viability position. This is a very simplistic way of looking at viability. The viability of any development is a function of values and costs and it is perfectly possible that any increase in sales revenues is offset by a corresponding increase in build costs, whether this relates to the base build cost or abnormal development costs. The scheme is only more viable if the appraisal based on the known assumptions generates a higher land value than that generated from the appraisal which supported the original viability assessment. Furthermore, given that the revised appraisal would only be able to be undertaken once all the units on the development had sold, it would not be possible to provide a higher provision of affordable housing at this stage and any overage would need to be in the form of a payment. The possibility of a developer having to pay a LPA a future payment is likely to have funding implications. In any event, the issue of overage has to</p>	<p>Support noted</p> <p>No change- The text does not suggest developers will be fined, it simply points out that use of alternative wording is likely to lead to additional developer costs (as they will be paying for bespoke clauses to be written) and delays.</p> <p>See comments in response to Planning Issues on behalf of Churchill Retirement Properties (6753) in relation to overage and David Lock (3209) about open book assessments, and further detail set out in the SPC of 20th Feb 2017.</p>
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		<p>be dealt with on a case-by-case basis and only if the affordable requirement is NOT met. The SPD should make this clear at the very least.</p> <p>Paragraph 6.25 identifies, quite reasonably, that CIL liabilities are calculated on actual net floor area which are often not fully known at outline application stage. Three options are identified to address this. We do not support option 2 (refusing to concede any reduction on contributions) as this is an overly negative approach. It also presents a false impression to Councillors about the likely level of affordable housing and other financial contributions to be achieved from a scheme.</p> <p>Support in principle Paragraph 6.27 which notes that there is strong public interest in financial viability appraisals being made available but allows some redaction of elements of the viability appraisal which could undermine an applicants commercial position.</p>	<p>Support noted</p>
<p>612 8</p>	<p>Blue Cedar Homes</p>	<p>Welcomes SPD in hope it will provide greater certainty to development process.</p> <p>Paragraph 6.23 of the draft SPD conflicts significantly with National Planning Practice Guidance and numerous recent planning appeal decisions in relation to the appropriate use of overage. It also contradicts EDDC's own Viability Guidance Note 2. Specifically paragraph 6.23 which refers to Strategy 34 of the Local Plan. Policy "Strategy 34" does not explicitly state that overage will be sought in all cases. It states that overage will be sought, without confirming scenarios- ie whether overage will apply before the development commences or if the development is not completed after a certain time. It does not clarify the scenarios where overage will be sought either.</p> <p>Overage may be appropriate for larger multi-phase development, but NPPG (para 17) prohibits the use of affordable housing overage for single-phase development that can be commenced and completed in relatively short time scale. It is clear that the NPPG does not support the blanket application of "overage" provisions of the type suggested by the current draft SPD. Where a scheme is a single-phase development which is to be delivered in the short term, the NPPG considers that the viability should be assessed once, on the determination of the application. EDDC's own Viability Note 2 (which sits outside</p>	<p>Support noted</p> <p>See comments in response to Planning Issues on behalf of Churchill Retirement Properties (6753) in relation to overage and David Lock (3209) about open book assessments, and further detail set out in the SPC of 20th Feb 2017. This report included a clear explanation in relation to the circumstances that supported the use of 'delayed overage clauses in the past, and why they are no longer appropriate.</p> <p>The Council remains of the view the Strategy 34 allows us to apply overage in all cases and to do so, in the way that we do in East Devon, does not conflict with the NPPF, PPG or any other planning guidance.</p> <p>Additional guidance on how overage works will be provided on the Council's website alongside the current Viability Guidance Notes</p>

	<p>of this SPD) is more consistent with the NPPG as it implies that overage clauses are appropriate on larger multi- phase developments.</p> <p>Overage clauses present significant funding risks to development. You may be aware that the imposition of an overage clause on BCH's proposal for an enabling development at Rolle College (Outline Planning Permission 16/0787/MOUT) has meant that BCH is unable to secure development finance for new playing pitch upgrades, new access and facilities at the former Rolle College grounds. Effectively this circa £800,000 improvement package for the pitches is unable to come forward (subject to the outcome of a current planning appeal- against EDDC's decision to refuse 16/0227/VAR). Please see Appeal Statement attached to this representation as well as Appendices 8 & 9 which highlight the funding difficulties that overage can bring to developments.</p> <p>Notwithstanding the application of overage to the above proposals, it has become apparent that EDDC does allow for 'delayed' overage provision for smaller developments as noted from District's Agreement of a delayed overage trigger for development of 19 dwellings at Rockbere (14/0300/MFUL).</p> <p>Because the draft SPG is silent on the treatment of overage between single-phase and multiple phase development, policy "Strategy 34" cannot be implemented consistently and in accordance with national planning guidance and national case law. The draft SPD should be amended to acknowledge the guidance set out at Paragraph 17 of the NPPG in relation to overage and single-phase development.</p> <ul style="list-style-type: none"> • Amend Paragraph 6.23 to confirm that, in line with advice set out in the NPPG, EDDC will seek overage only on schemes that require phased delivery over the medium and longer term. Paragraph 6.23 must also state that overage will not be sought on single phase development whereby development will be completed within 24 months from commencement of development. <p>If the changes above are not made to the document the SPD will be contrary to national guidance and numerous recent planning appeal decisions relating to overage (See Appendix 3- Case Law- Overage on Single Phase Developments).</p>	<p>As the Rolle College playing fields application is currently subject to an ongoing planning appeal, many of the points being made here are contested, and currently before a planning inspector. The results of this appeal and any resulting recommendations for updated policy or practice will be reported to Members in the usual way.</p> <p>The Viability Guidance notes are provided for Guidance and do not form part of the Development Plan. They are provided in the form precisely so they can be updated as required, but as they do not include any policies, but only explain how the policies work in practice, this is felt to be entirely appropriate. Any policy changes could only be made through the Local Plan, and revisions to the SPD would require full public consultation. The guidance notes explain the policy and the SPD not the other way round.</p>
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		<ul style="list-style-type: none"> Delete hyperlinks to both Viability Notes at Page 22 -If EDDC choose to change Viability Notes 1& 2 following adoption of the SPD, these changes would not require consultation and scrutiny and could allow for 'back door' amendments to the document. Any relevant guidance from Viability Notes 1& 2 should be brought within the text of the SPD. If guidance in relation to overage changes through new national policy or other circumstances then, new circumstances should be weighed against the SPD once adopted. 	
6154	Policy Team, South Somerset District Council	No comments.	-
6200	Barton Wilmore on behalf of Taylor Wimpey	<p>The consultation SPD is not accompanied by a viability report. In the absence of a viability assessment it is difficult to comment on the soundness of the SPD and the proposed contributions within it.</p> <ul style="list-style-type: none"> Affordable housing- The SPD repeats the same Affordable Housing requirement as set out in Strategy 34 of the East Devon Local Plan (25% for Honiton) On-site open space- The contributions proposed are a duplication of what is set out in Strategy 43 of the East Devon Local Plan. The SPD states that open space contributions are due in line with development and no later than 75% of occupations. This requirement needs to be supported by robust viability testing to justify this requirement and ensure that it will not stifle deliverability of schemes, as required by the NPPF. Off-site open space- The proposed requirement for any off-site open space contributions to be due before development commences could have a negative impact on the delivery of planning applications, particularly in the case of large strategic sites where there may be multiple housebuilders delivering the site. Public art- More information and detail is required on how and when public art will be sought. 	<p>The contributions have already been agreed. They are not being consulted upon.</p> <p>The table at 4.2 sets out examples of the types of planning obligations that are often agreed in East Devon it does not establish new requirements. Therefore, most requirements/thresholds are already established in Local Plan policy or other legislation.</p>

- Trees; planting; landscaping- The requirement for trees, planting and landscaping to be delivered before development commences is unrealistic and not justified. Further detail and viability testing is required if this is to be proposed.
- Habitat and ecological protection- No comment
- Site specific roads, car parking, footways etc- The SPD proposes that site specific highway and access is due before the development commences. This is inappropriate and will harm site delivery, particularly of larger residential sites. A more effective and commonly used approach is for the contributions to be phased with trigger points.
- Travel planning- No comment
- On-site renewable energy- No comment
- On-site drainage- No comment
- On-site remedial action to deal with contamination- This contribution duplicates what is already set out in East Devon Local Plan Strategy EN16
- Neighbourhood centres- No comment
- Phasing of infrastructure for economic development- No comment
- Other infrastructure not on the 123 List- No comment
- Land to enable delivery of infrastructure onsite- The requirement for infrastructure to be delivered no later than 75% of occupations is unsubstantiated and is not supported by any explanation or justification for this. Evidence of robust viability evidence required.
- Site wide masterplans that agree the layout spatial layout and land uses- The inclusion of a requirement for a Masterplan as a planning obligation is unusual, as this would already form part of the planning application. This requirement needs to be justified so that its purpose can be understood.
- Land to enable the delivery of sheltered housing- The requirement for land to enable the delivery of sheltered housing to be delivered no later than 75% of occupations is unsubstantiated and is not supported by any explanation or justification for this. Evidence of robust viability evidence is required.
- Accessible and adaptable homes- The obligation is a duplication of what is already required by East Devon Local Plan Strategy 36, and the requirements of Building Regulations Part M4(2), so its purpose is unclear.

- Phasing and timing of land use- no comment
- On-site air quality- This obligation and the requirement for air quality assessments seems to be a duplication of what is already covered by East Devon's planning application validation requirements, and mitigation would generally be controlled a by planning condition, not planning obligation.
- Noise- No comment
- Considerate construction- No comment
- Planning obligation monitoring- It would be helpful to see a detailed breakdown of proposed costs for monitoring
- Overage where viability considerations deem it inappropriate- It would be helpful to have clarification on how the capped amount required to deliver a policy complaint scheme is defined and whether, the council's viability assessment, the developer's viability assessment or through open book negotiations between both parties.
- Management companies- No comment

2.4 Our general observation of the table of proposed obligations is that many of them are duplications of policy requirements already contained in the East Devon Local Plan, and often where this is not the case the requirement simply states that obligations will be defined on a case-by-case basis. As such, in its current form it is difficult to see how the SPD meets its own objective of providing clarity to developers on how and when planning obligations will be sought.

2.5 In addition, it is difficult to comment on the proposed obligations and the potential impact on the deliverability of sites in the absence of a viability assessment, formulas for calculating obligations and evidence of how the proposals have been tested to justify the requirements proposed. Paragraph 153 of the NPPF is clear that supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery.

2.6 In relation to ensuring viability and deliverability of development, the NPPF (2012) is clear that, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a

		<p>willing land owner and willing developer to enable the development to be deliverable. This must be taken into account in taking the Planning Obligations SPD forward. At this stage the SPD is not supported by a robust evidence base to justify the obligations or triggers proposed and evidence supporting the assessment should be proportionate, using only appropriate available evidence.</p> <p>2.7 We consider that the Planning Obligations SPD does not comply with national policy on deliverability of development and the role of local plans, as set out above. The SPD does not contain sufficient evidence and justification to support the Planning Obligations and triggers proposed. As such the SPD in its current form is not justified or effective and is therefore unsound.</p>	
6324	Planning, Transport and Environment, Devon County Council	<p>DCC is responsible for providing critical infrastructure items required to support new development. Paragraph 4.2 states that strategic transport improvements and education facilities are not included within the SPD, but doesn't clarify the reasons for this. Additional text should be included here to explain that developments will still contribute towards these items, but that this will be achieved through CIL (through inclusion on the 123 list) rather than S106. The term 'strategic transport improvements' requires further explanation as to what it is intended to encompass. It is agreed that strategic transport improvements should not be included in the SPD, as these are included on the 123 list, but there still remains uncertainty within the SPD as to what qualifies as strategic transport improvements (and is therefore covered by CIL) and what may be requested under S106.</p> <p>DCC has some concerns regarding the approach to education provision. Education is identified on the CIL 123 list and appears to include education provision at Cranbrook. DCC understood that education provision at Cranbrook would be funded under S106 and not through CIL but this does not appear to be the case as things stand but may be considered as part of the proposed CIL Review .</p> <p>The CIL and S106 details do not currently therefore provide any certainty over education provision that is required to mitigate development. DCC requires further certainty that requests for CIL funding will be supported. This is partly facilitated through the current IDP review and the priorities placed upon education items, but further detail should be given in the SPD to explain this.</p> <p>The SPD does not refer to any other items of infrastructure for which DCC is responsible. Most requests made will be for education and transport purposes</p>	<p>Comments on the CIL Regulation 123 list are noted, but this will be subject to separate consultation, informed by an updated Infrastructure Delivery Plan. These comments will be considered in updating the list.</p>

		<p>but the SPD should acknowledge that requests may also be made for libraries, youth provision and health.</p>	
<p>675 3</p>	<p>Planning Issues on behalf of Churchill Retirement Properties</p>	<p>We note in paragraph 6.8 that the Council will take responsibility for drafting the S106 agreement. This must be done quickly and without delay in order not to hold up development post planning.</p> <p>Viability (paragraphs 6.21 and 6.22)- It is suggested that a “full open book” appraisal is provided. Using an “open book” approach runs contrary to accepted practice. As planning permissions run with the land, it is only appropriate to use generic viability appraisals that use industry acceptable inputs. This position is supported by the RICS guidance (Financial Viability in Planning) which states in paragraph 2.5.2 that applications should disregard the applicant as planning applications “run with the land”. Inputs to the Financial modelling should “disregard either benefits or disbenefits that are unique to the applicant”. It goes on to say that “the aim should be to reflect industry benchmarks as applied to the particular site in question”. This contradicts the requirement in the SPD.</p> <p>RECOMMENDATION: Paragraph 6.21 to omit reference to “open book viability appraisal” and replace with “In order to do this we would require an assessment of the viability based on industry accepted inputs, assumptions and benchmarks”.</p> <p>Overage- The inclusion of an overage clause on <u>all</u> developments is contrary to best practice and guidance and it has been established through a number of significant appeal decisions that confirm that it an overage should not apply to small scale single phased developments.</p> <p>Restrictions in relation to start on site timeframes were considered more appropriate in such cases.</p> <p>The use of overage clause on small, single phased schemes introduces uncertainty to the development process and also restricts commercial activity making it difficult for residential developers to secure funding and adversely affecting land value.</p> <p>RECOMMENDATION:</p> <p>Replace the requirement in Paragraph 6.23 for an overage clause on <u>all</u> developments and replace with an acknowledgement that an overage clause</p>	<p>See comments in response to David Lock (3209) about open book assessments</p> <p>Viability Appraisals consider the use of the land and the scheme proposed, and not the applicant. PPG makes specific reference to older person’s housing stating “ the specific scheme format and projected sales rates may be a factor in assessing viability”.</p> <p>The inclusion of overage clauses on all developments was the subject of a paper to Strategic Planning Committee on Feb 20th 2017. This paper clearly sets out the council’s rationale behind overage. It was endorsed by members. The drafting of this paper was in part informed by the comments received in response to the SPD, and it was originally planned that both papers would go to the same committee. Although t his was not possible, members can be assured that officers considered the SPD responses when drafting the report to SPC.</p> <p>As explained in the SPC report, the use of overage clauses in the way East Devon apply them, does not introduce uncertainty or require a re-appraisals . They rely instead on a Development Account of actual costs and values submitted at the completion on the scheme. Overage is only payable on any super-profit, and this in fact ensures the developer’s percentage profit is not undermined.</p> <p>To assist clarity additional guidance on how overage works will be provided on the Council’s</p>

for small and single phased developments is inappropriate and that a re-appraisal should be considered where there is a longer term, multi phased development. Care should be taken when drafting such re-appraisal provisions in order that they do not result in earlier phases becoming uncertain as to the amount of the development to be provided on site.

Vacant Building Credit- It might be advantageous to add the following explanation about how VBC works:
Calculation of Vacant Building Credit

The target percentage of affordable housing should be recalculated to take into account the two gross floor areas (the original building and the proposed replacement building) to arrive at a net affordable housing target. This will be the revised maximum target for that site.

The formula to arrive at this is straightforward: A = Area affordable housing target (%)

Coefficient=1-(Existing building area / Proposed building area) Net affordable housing target = A x Coefficient

So, by way of example, a vacant retail building in Sidmouth of 865m² which is being redeveloped for 26 dwellings with a gross internal floor area of 1,607.1m² would normally have a policy target percentage for affordable housing of 50%. The calculation of the revised target for this site would be as follows:

Policy target affordable housing (A)	-	50%		
Coefficient	-	1-(865/1,607.1)	=	0.46176342
Net affordable housing target (A x coefficient)	-	23.09%		

Therefore the revised target percentage is 23.09% which will remain unaltered if the proposed GIA remains the same, for example, but the number of

website alongside the current Viability Guidance Notes

The application of Vacant Building Credit, was also covered in the report on viability considered at the Strategic Planning Committee on Feb 20th 2017. The paper clearly sets out the council's approach to VBC, and member re-endorsed the principles behind how it will be applied.

To assist clarity additional guidance on how VBC works in practice will be provided on the Council's website alongside the current Viability Guidance Notes.

Again members can be reassured that officers considered the SPD responses in relation to VBC when drafting the report to SPC

The Council's position is that viability assessments should be made public unless the applicant requests confidentiality and makes it clear which sections are confidential.

		<p>dwelling changes. This also simplifies the calculation where flatted developments have common areas that have to be taken into account in the overall internal area.</p> <p>Viability at Outline- Churchill Retirement Living is not likely to submit an outline planning application.</p> <p>Confidentiality- While we understand the need for the public to be confident that planning obligations are being negotiated in a professional manner, there is also a need to maintain commercial confidentiality. This is especially the case where local authorities are seeking an open book approach. There is a conflict here between the council's requirement for open book viability and a need for viability appraisal being made available to the public. In an open book scenario the amount of redactions would make the viability assessments that could be published virtually meaningless. The council are more likely to get support from developers if the principles of generic, industry benchmarks and assumptions are required in development viability appraisals.</p>	
720 7	Cranbrook Town Council	<p>SPD doesn't address Cranbrook specific issues (despite Cranbrook accounting for around half East Devon's new development) but focuses on smaller sites. The purpose of the SPD is to offer clarity to developers and Cranbrook Town Council fully supports that principle. However, the SPD could offer greater clarity on how future planning obligations will be delivered in the specific case of Cranbrook, how the adopted charging schedule might be applied in the case of Cranbrook and whether obligations will fall under Section 106 or Community Infrastructure Levy (CIL) arrangements. Also, should clarify how key infrastructure might be brought forward early and, where appropriate, a mechanism for bringing about changes to a previously agreed obligation. With a development which has been in existence for some four years at Cranbrook and which will carry on for at least another fifteen, there is need to have scope for change as the needs of the town change. The situation in Cranbrook is quite different from other smaller developments in existing settlements and the SPD does not appear to address that fully.</p> <p>Specific examples of where the SPD fails to address and be relevant to the development at Cranbrook are: - Paragraph 3.19 of the SPD states that planning obligations must be directly relevant to a proposed development. Cranbrook Town Council queries how this</p>	<p>It is agreed that Cranbrook requires specific guidance and the text has been amended to state that this will be provided through the Cranbrook Plan DPD. Where matters are not addressed in the Cranbrook Plan, this SPD will apply.</p> <p>Comments on the CIL Regulation 123 list are noted, but this will be subject to separate consultation, informed by an updated Infrastructure Delivery Plan. These comments will be considered in updating the list.</p>

	<p>policy statement relates to the delivery of East Devon District Council's Regulation 123 list of infrastructure which draws from CIL contributions to finance infrastructure projects across the district.</p> <ul style="list-style-type: none"> - On page 13 the SPD states that "Site wide masterplans [...] agree the spatial layout and land uses [...] including the locations of specific infrastructure" before development commences. Cranbrook Town Council would endorse this policy but would appreciate confirmation whether it will apply to all future planning applications for Cranbrook and if so, how delays will be avoided. - Paragraph 5.8 of the SPD makes general reference to the percentage contribution from CIL to town and parish councils dependent upon the existence of a neighbourhood plan and Cranbrook Town Council questions how relevant this is to Cranbrook. - Section 8 relates to obligations of both East Devon District Council and parishes to publish an annual CIL report. Cranbrook Town Council remains unclear how will this relate to and apply in Cranbrook where many of the traditional town facilities are being provided as part of the initial construction process. <p>The table at 4.2 needs a strong evidence base and clear policy for each of the listed obligations rather than consideration on a case by case basis.</p> <p>The non-compliance procedure could be strengthened; penalties should include a percentage of the capital value of the total development and the right to seize assets to cover costs, without the need for a court order and bailiff seizure as existing penalties are not sufficient to work.</p> <p>There is so much guidance to be taken into account now, it is difficult to put it into practice. The consequence is little or no checks and balances at the time of delivery and the consequential delays and difficulties which arise when there is subsequent realisation that the detail has not strictly been observed.</p> <p>The Planning Obligations SPD is available in a number of libraries across East Devon but not in Cranbrook, please can planning consultation documents be made available in hard copy in Cranbrook library in the future.</p> <p>There appears to be an incomplete glossary of abbreviations in which explanations of e.g. LPA and NPPG are missing.</p> <p>The correct use of apostrophes and relative pronouns should be reviewed and a consistent use of capital letters applied throughout the document.</p>	<p>Agree re availability of documents in Cranbrook library. We have amended our procedures to ensure this happens in future.</p> <p>These have been added</p> <p>The statutory consultees agree that SEA is not required. Development to which the SPD applies may require SEA as part of the planning application process</p>
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7647	Persimmon Homes	<p>Paragraph 1.3 and Paragraph 3.10 of the Supplementary Planning Document (SPD) The Regulation 123 List .</p> <p>The IDP lists the delivery of the Axminster North South Relief Road as an item which is key to the delivery of its strategy for Axminster. Yet the Regulation list ("Regulation 123" List) as at April 2016 does not list it as a key project which is inconsistent. Recent discussions with the Council and DCC Highways have indicated that the road could be funded by CIL so it should be listed as a specific item in the 123 list .The 123 list is a document capable of being amended as part of the implementation of the plan and this consultation provides the opportunity to revise the Regulation 123 List and include the road as a specific priority one project funded by CIL.</p> <p>Para 2.2 should refer to the Regulation 123 tests needing to be satisfied - for contributions to be necessary, directly related to development and fairly and reasonably related in scale and kind. Reference should also be made to the requirement in section 173 of the NPPF to the need to have careful attention to viability and costs before they are imposed on development and the central objective of the NPPF to boost the supply of new homes.</p> <p>The need for flexibility in the application of the SPD guidance and the need to take account of site specific circumstances should be set out clearly and early in the East Devon SPD.</p> <p>Paragraph 3.6 states that the calculation of CIL will be on the Gross Internal Floor Area as measured in the RICS Code of Practice. The code identifies that</p>	<p>Comments on the CIL Regulation 123 list are noted, but this will be subject to separate consultation, informed by an updated Infrastructure Delivery Plan. These comments will be considered in updating the list.</p> <p>Reference to the three ‘tests’ for planning obligations are set out in paragraph 5.5 in the draft SPD. Agree that reference to NPPF 173 would be useful in the policy context chapter.</p> <p>Unsure of reference to maps in Appendix I.</p>

	<p>Garages are included in the internal floor area, this is incorrect as garages are not habitable areas and are clearly not part of the habitable fabric of a building and should by definition be excluded.</p> <p>There should be a review mechanism and recognition that starter homes may be considered as affordable housing in light of the Government's intention to introduce them.</p> <p>Proposed Approach to CIL.-: Residential Development The maps supplied in Appendix I are welcomed .How does the council intend to respond where an applications spans two charging schedule area .Will the rate be averaged out? The map showing the residential charging zone areas are diagrammatic and in some areas it is unclear if land falls within urban envelope or the countryside area. This is especially true at Axminster where the policy map as drafted under Strategy 20 is capable of amendment as is allowed for in the Planning Performance Agreement that accompanied the Planning Applications. To add clarity on this the maps should be at a more detailed level, the council should amend the map format to show this.</p> <p>The council's approach to sites which fall within an area that spans these designations is unclear as to how apportionment would work .Sites don't necessarily fall within arbitrary lines drawn diagrammatically . The map based approach allows transparency in this regard and the better interpretation of policy.</p> <p>Strategy 50 -Infrastructure Delivery . The comments set out above concerning paragraph 1.3 and 3.10 apply equally to Strategy 50 The IDP is capable of being updated and some 4 years have elapsed since the previous one was prepared. The 123 list and the IDP are part of the essential monitoring process and projects are capable of being added to it. This consultation provides the opportunity to do so Axminster Strategy 20 identifies the Relief Road as a key part of the policy and we object to the fact that the Current 123 list does not refer to it.</p> <p>Instalments Policy.</p>	<p>Incorrect – the latest currently published IDP is from March 2015. Comments on the CIL Regulation 123 list are noted, but this will be subject to separate consultation, informed by an updated Infrastructure Delivery Plan. These comments will be considered in updating the list.</p> <p>The council has received several applications where applicants are seeking to make viability arguments at outline, including on outline applications where all matters are reserved. In such cases assessing viability on an indicative scheme seems of very limited value. For example</p>
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		<p>We would welcome further involvement on the instalments policy referred to in the consultation and would favour an approach based on completions not commencement of development. Larger sites will require a longer lead in to deliver essential infrastructure and the definition of commencement at the point of a start on site might involve essential infrastructure which is needed many months before homes are delivered. The Policy should allow instalments to be paid at thresholds of actually completed homes. We disagree with the view that if it were based on occupations this would remove an incentive to complete developments.</p> <p>Viability at Outline stage It is inherent in any proposals that basic viability is tested prior to an application so its need is questioned. In addition S 106 agreements as a standard practice allow for a cascade mechanism in some form where viability is an issue and therefore the need for this within the SPD is unnecessary.</p> <p>Overage (6.23) There is no reference in Paragraph 6.23 to the time limit on overage. It is unreasonable to require overage to be an open ended commitment .Nor is there any reference to what constitutes a level at which it applies. It would be nonsense in terms of policy if it was applied at unreasonably small amounts of increase in value and administration costs could outweigh the benefits if the bar was set too low. We urge the council to rethink this element of the SPD .The policy has to be reasonable and directly related to the development hence there seems no mechanism which has been set out to show what those thresholds of value are.</p>	<p>it is very difficult to assess costs and values for a scheme, or consider options that may help improve viability, when even the floor space (and therefore also the CIL liability) is unknown. This experience justifies the need to highlight this issue in the SPD. The wording of the SPD has been reviewed and revised to express this more clearly.</p> <p>We are also working actively with applicants and potential applicants to seek to resolve the challenges around overage at outline on a case by case basis</p>
771 5	Collier Planning on behalf of Baker Estates Ltd	<p>SPD provides useful guidance for developers, landowners and local communities alike.</p> <p>Concerned that paras 6.25 and 6.26 suggest that the level of planning obligations associated with a development may not be able to be established at an outline application stage because the exact costs for calculating CIL, and developing the scheme, are unknown so such decisions would need to effectively be deferred to the reserved matters stage.</p>	<p>Support noted</p> <p>This may be the case.</p> <p>See comments in response to Planning Issues on behalf of Churchill Retirement Properties (6753) in</p>

		<p>Accept Local Plan requirement for an overage clause but reference to “in all cases” should be deleted from the draft SPD as it is not consistent with the Local Plan or national guidance which makes it clear that overage clause will only be justified within phased development, not all developments as currently suggested within the draft SPD. Secondly, consideration of viability assessments within outline applications should be considered on the basis of the circumstances that apply at the time of the decision.</p> <p>We recommend that further guidance is provided within the SPD as to how the Council intends to apply such overage clauses, in what situations and within what parameters.</p> <p>While we recognise that the precise level of CIL will not always be able to be established at an outline stage, we would generally support the first of the three options set out within paragraph 6.25 which would require the use of viability appraisals at outline stage based as firmly as possible on what is known at that stage and for those to be accepted. It is not always possible for all of the matters upon which such viability appraisals have to be based to be pinned down as paragraph 6.25 then suggests would need to occur and we would be opposed to any such requirement.</p> <p>Again, this could have serious repercussions for the actual delivery of development, particularly housing developments, because an outline planning permission often triggers the requirement for a developer to acquire a site from a landowner. It would be commercially untenable for a developer to proceed with the acquisition of a site if the overall level of planning obligations are not able to be quantified at that stage.</p> <p>We strongly recommend that paragraphs 6.25 and 6.26 of the draft SPD are reconsidered.</p> <p>In respect of paragraph 6.27, there is a fine balance to be struck between demonstrating transparency and maintaining commercial confidentiality and we would urge the Council to again reconsider the content of this paragraph carefully. As currently drafted it has the potential to limit the scope by which decisions, as to what information should be placed in the public domain, can be made on a case by case basis which is what we consider would be a more appropriate approach.</p>	<p>relation to overage and David Lock (3209) about open book assessments, and further detail set out in the SPC of 20th Feb 2017.</p> <p>Additional guidance on how overage works will be provided on the Council’s website alongside the current Viability Guidance Notes</p> <p>The Council's position is that viability assessments should be made public unless the applicant requests confidentiality and makes it clear which sections are confidential.</p>
771 6	Redrow Homes		Agreed- text has been reordered

<p>West Country Ltd</p>	<p>General structure- Section 5 provides the legislative and policy context for the application of obligations and the Community Infrastructure Levy. If this were presented after the introduction, paragraphs 3.17 and 3.18 could be removed as they replicate section 5.</p> <p>2.1- The last sentence of para 2.1 states that "planning obligations (via a s106 as opposed to CIL which is for the purposes of this document, not considered an obligation in the same way as a negotiated settlement under s106) are secured to ensure that development mitigates the impacts of, and provides for the requirements arising from, development in a sustainable way." A further narrative is required to clarify to all parties that planning obligations should only be sought where it is not possible to address the unacceptable impacts through a planning condition. Suggest inserting textual references to the content of paras 203 and 204 of the NPPF at the end of this paragraph or redraft the opening para of the current Section 5 to refer to these paragraphs and move Section 5 forward in the document, thereby supporting removal of 2.1.</p> <p>3.10- Insert 'to contribute to' after '(S106 Agreements)'</p> <p>3.11- This paragraph should not be written in the future tense, replace 'may' with 'can'. It replicates para 5.6 and should be removed in favour of restructuring the document.</p> <p>3.15- It is agreed that the Council should act in a transparent manner and review and amend the Council's Regulation 123 List. However, the para fails to advise as to the frequency of the review. This should be included within the SPD.</p> <p>3.17- This is considered superfluous given the legislative and policy section (Section 5) within the document. If retained, clarification is required in order to be consistent with the Glossary at the rear of the Draft in relation to the use of the term "open space". This is poorly defined as drafted and offers ambiguity in the application of the obligations.</p> <p>3.17- The example provided in relation to mitigating the impact of development would apply only to the largest of development schemes capable of making contributions towards increased public transport provision without detriment to the overall viability of the scheme (in such cases contributions are generally</p>	<p>The legislation is provided in a footnote to this section.</p> <p>Agreed</p> <p>Restructure para.</p> <p>Para updated.</p> <p>Review of the Regulation 123 list will be subject to latest circumstances and evidence, which will vary over time. It is therefore not possible to prescribe the frequency.</p> <p>Sections 3.17 and 3.18 have been deleted as the document has been reordered.</p> <p>Text has been clarified</p>
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	<p>significant and require detailed contractual positions to be secured with bus providers). A more relevant example in the document could be the on-site creation of new habitats to mitigate the impact caused to nature conservation interests.</p> <p>3.18- The second bullet point within this paragraph implies that there are circumstances where planning conditions cannot control issues relating to flood risk, land contamination, access and disruption caused by construction. These are precisely the type of issues which Local Planning Authorities regularly apply planning conditions in order to make an otherwise unacceptable development acceptable. If these issues cannot be dealt with by condition, it is questionable whether planning permission should be issued. This issue is at the heart of para 203 and 204 of the NPPF. Remove references as stated under the second bullet point and replace with reference to "the delivery of community benefits or equipped play space linked to the phased completion of a housing development".</p> <p>3.18- The last bullet point presents the Councils' view that increased costs incurred by developers should be expected in order to deliver a sustainable and high quality development and that these increased costs should not reduce the ability of the site to contribute towards relevant planning objectives. This is considered to present an over-simplification of the economic viability of development projects and will be tested through the preparation of viability impact assessments/viability appraisals. If sales values cannot be achieved, and the cost of delivering the scheme is high, the ability of the development to proceed will be prejudiced.</p> <p>3.21- The sentence ends abruptly. Add the word process?</p> <p>4.2- The supportive text which introduces the main table confirms that the table is "purely a guide" and therefore has no formal status. As such, there are numerous references within the table which appear to over-simplify the delivery of planning obligations. The column "when due" contains ambiguous references which are not appropriate in all circumstances: "before development commences" in relation to the provision of public open space, for example. The "when due" column should be replaced by a supportive paragraph which confirms that obligations which meet the tests set out in legislation and the</p>	<p>No change- this is a statement of the Council's position.</p> <p>Done</p> <p>The table has been amended to reflect many of the representors points.</p>
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	<p>NPPF will be determined and delivered on a case-by-case basis. Other examples include: When referring to the tenure split, this applies to the proportion of housing which fall under the "affordable" category. References to "open space" should use "Formal and/or informal public open space". On site formal and/or informal public open space should only be required where it has been demonstrated that there would remain a clear deficiency in provision in the relevant catchment area around the application site. How is "the community" defined in relation to the benefit which shall derive from any replacement formal and/or informal public open space? Public Art: How is "in line with development" defined and how will it be applied? Public art should be considered on a case-by-case basis or embedded into the design, negating the need for a S106. On-site remedial actions to deal with contaminated land would be covered by a condition (extending to the boundary of the application site and therefore land within the control of the applicant) and as set out within a technical written scheme of investigation and compliance.</p> <p>Land to enable the delivery of on-site infrastructure implies that this shall be completed prior to the occupation of 75% of the housing units (or commercial premises). Phasing plans as required by condition, or obligations, will specify the trigger point and therefore there is no need for a reference to a particular percentage in this case.</p> <p>Highly sustainable developments can be delivered without specific uses of land to be identified to meet sustainable targets or performance. How sustainable development is defined and brought forward is a matter for the applicant and the identification of land for such uses is not a pre-requisite in all cases.</p> <p>Accessible and adaptable homes can be addressed by condition.</p> <p>Noise and heritage impacts can be addressed by condition.</p> <p>5.8- Insert reference to circumstances where monies can be returned to the applicant in the event that financial contributions are not expended by the Council.</p>	<p>Text amended to clarify</p> <p>Flow chart amended to reflect comments.</p> <p>Resources do not allow us to do this as a matter of course. If a developer requests confirmation it is provided.</p>
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	<p>6.1- The flow chart appears inconsistent with paras 6.8 and 6.11 and requires clarifications to be made in other areas.</p> <p>The flow chart fails to identify the drafting of the s106 agreement - acknowledged as generally being a responsibility of the Council, or, when undertaken by a developer, encouraged to follow Council templates.</p> <p>The third, smaller box within the flow diagram refers to amendment of the legal agreement. At this stage of the process (prior to determination of the application), the legal agreement will generally be at the Heads of Terms stage and the Council's legal team not yet appointed (by virtue of the potential abortive costs in drafting an agreement relating to a planning application which might then be refused at Committee).</p> <p>Reference to "any amended plans will require reconsultation" is misleading. Minor amendments dealing with matters of factual accuracy for example would not be required to be reconsulted: this is within the gift of the Council and therefore suggest the rewording to refer to "may require reconsultation."</p> <p>The last flow diagram box should include reference to the Council confirming to the applicant/ developer that the financial contribution it made under CIL or s106 has been expended as intended.</p> <p>6.5- Add a reasonable time period after a favourable resolution at Committee to resolve s106 drafting and engross the same. This could be "6 months, or otherwise agreed between the parties". Notwithstanding this, EDDC are requested to consider how it prescribes these procedures to comply with paragraph 205 of the NPPF.</p> <p>6.8- If it is usual for the Council to prepare the s106, this action should be specified within the flow chart under paragraph 6.1: this would also specify that the agreement can be drafted by the developer as may be required.</p> <p>6.16- As drafted, this paragraph implies that paragraph 204 of the NPPF refers to the CIL Regulations "Tests of Lawfulness". This is not accurate. Parag 204 of the NPPF refers to the tests which apply to planning obligations. While there is</p>	<p>Amended to reflect a timescale to be agreed between the parties.</p> <p>Agreed</p> <p>Text has been amended</p> <p>Text clarified</p> <p>Text clarified</p> <p>Not agreed- the Council will consider the requirements of a whole site to avoid a situation where subdivision avoids the need for contributions, not necessarily by different parties.</p> <p>Para 6.21 relates to viability and the Viability guidance to applicants which addresses the representors point.</p>
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	<p>an obligation to pay any CIL, CIL is not a planning obligation as set out by s106 of the Planning Act.</p> <p>6.17- Reference is made to affordable housing and "tariff style" contributions. This is ambiguous in that affordable housing is delivered by s106 and not CIL. It is not clear what is meant by the term "tariff style contributions".</p> <p>The Draft SPD (para 6.18 tables), by reference to CIL applying to schemes comprising one or more dwellings, appears to set out the CIL thresholds and not the requirements of s106. This requires clarification.</p> <p>6.20- In the event of contiguous parcels of land being progressed separately via full planning applications by each controlling interest, the delivery of affordable housing, or other obligation, would only be justified in the event that the Council had demonstrable evidence that each part of the phased development scheme was to come forward by each separate party: it would be unreasonable to impose onerous obligations on the first part of the scheme in the event that subsequent phases do not materialise. The paragraph should be clarified in the context that the Council has demonstrable evidence that confirms subsequent phases of a development will be brought forward by different parties.</p> <p>6.25- Options 1 and 3 are appropriate. Option 2 is not supported. There is not just one type of Outline application, some have more detail than others. There can also be details of scale and appearance set out in approved documents (e.g. DAS) which allow viability to be undertaken even where the application is say Outline with all matters reserved, for example.</p> <p>6.27- The last sentence advises that the Council will advise whether sufficient information has been made available to assess the viability of the proposed scheme. This is retrospective advice after submission. Given that the Council require Viability Assessments to be submitted to enable validation of the application, the onus should be on the Council to provide clear advice as to the requirements of the assessment at the pre-application stage. Reference should be made to the Council offering constructive pre-application advice in relation to the content of a Viability Assessment to enable the validation of the application and an expedient determination of the same.</p>	<p>Option 2 has been deleted and the section reworded to make it more positive.</p> <p>Minor text amendment made to clarify that the guidance cannot provide an overarching priority list of planning obligations as this will vary by site.</p> <p>This sets out the established trigger points usually used by the Council. Text does not require amendment to accommodate unusual situations.</p>
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771 7	Cavanna Homes	<p>Paragraph 6.23 of the draft SPD conflicts with National Planning Practice Guidance and planning appeal decisions in relation to the appropriate use of overage as it will be sought in all cases. In addition it contradicts EDDC's own Viability Guidance Note 2.</p>	<p>See comments in response to Planning Issues on behalf of Churchill Retirement Properties (6753) in relation to overage and David Lock (3209) about open book assessments, and further detail set out in the SPC of 20th Feb 2017.</p>

	<p>Policy “Strategy 34” does not explicitly state that overage will be sought <i>in all</i> cases. It states that overage will be sought, without confirming scenarios – i.e. whether overage will apply before the development commences or if the development is not completed after a certain time. It does not clarify the scenarios where overage will be sought either.</p> <p>Whilst acknowledging that overage could be appropriate for larger multi-phase development, National Planning Practice Guidance excludes the use of affordable housing overage for single-phase development that can be commenced and completed in reasonably short time scales.</p> <p>This national guidance provides a structure for Local Authorities including East Devon to comply with and does not support the blanket application of “overage” provisions of the type suggested by the current draft SPD. Where a scheme is a single-phase development which is to be delivered in the short term, the NPPG considers that the viability should be assessed once, on the determination of the application.</p> <p>May I suggest that Paragraph 6.23 of the draft SPD is amended in order to advise, in line with advice set out in the NPPG, that EDDC will not seek an immediate affordable housing overage clause. In addition EDDC needs to confirm no overage will be sought for single-phase developments that are likely to be commenced and completed within 24 months, but that a delayed trigger clause may be applied beyond 24 months to allow for potential overage in cases that extend beyond a single phase.</p>	<p>Additional guidance on how overage works will be provided on the Council’s website alongside the current Viability Guidance Notes</p>
<p>Devon and Somerset Fire and Rescue Service</p>	<p>Not necessary to comment</p>	

APPENDIX 2- Second Consultation

East Devon Planning Obligations Supplementary Planning Guidance

Draft for Consultation from 05/04/2017 to 15/05/2017 Summary of Responses

These tables include an Officer response to the comments received in respect of the East Devon Planning Obligations SPD revised draft for consultation. For full details of responses received please see <http://eastdevon.gov.uk/planning/planning-policy/planning-obligations-supplementary-planning-document-spd/>.

Rep no.	Name	Officer Response
97	Blackdown Hills AONB	No Comments
124	South West Water	No Comments
164	Sport England	We have a playing pitch strategy which addresses the recreational needs of the District. Work is ongoing on a delivery plan for this. The other comments are noted and will feed into the CIL and 123 list reviews in due course.
553	Equality and Human Rights Commission	No Comments
1963	DCC	SUDS drop the Urban to reflect change in terminology. Add IDP to 6.29, but note this is not a decision making document. The process for reviewing CIL and the reg 123 list is being undertaken as part of the CIL review. The process for allocating CIL receipts falls outside the scope of this SPD more info can be found here (cttee report link)
3209	David Lock	Point 3. The guidance should be read as a whole and includes a section on viability. The purpose of para 2.1 is to provide a brief introduction to the subject. Point 4. It is clear from the document as a whole that it promotes a flexible approach to contributions. They are calculated on a sit by site basis against policy. Point 5 The Council's maintains its position that the RICS guidance should be used when considering gross internal area. This position is supported by CIL appeal decisions. Links Point 6. The process for reviewing CIL and the reg 123 list is being undertaken as part of the CIL review. Point 7. Work on the Cranbrook DPD is ongoing and includes work on delivery. Three Dragons have been appointed to undertake the CIL review and a viability review of the emerging Cranbrook DPD. Partnership working will continue to be essential to the delivery of Cranbrook. Point 8. The SPD must be read as a whole. The flow chart at 6.1 already addresses this point.

Point 10. The points were made, and considered, previously in consultation. Members did not feel that the table required amendment.

Point 11. Starter homes and affordable housing

Although the Housing and Planning Act 2016 provides a statutory framework for the delivery of starter homes, at the moment, starter homes are not included within the definition of affordable housing. Although the Government has signalled that expect Starter Homes to fall within the definition of affordable housing, as yet no amendments to guidance or legislation have occurred to facilitate this. In fact, the publication of the [Housing White Paper 2017](#) indicates that the original proposed definition of a Starter Home will now be changed, but is unclear as to what exactly it will be changed to. Therefore, there is currently no way of pinning down what counts as a Starter Home in a legal agreement seeking to include them. It is possible other housing products, such as Rent to Buy, may be included within the definition of affordable housing. If the definition was amended is the NPPF this would then form part of the Development Plan. If changes were made to other guidance this, this could potentially become a material consideration. However at present the SPD needs to reflect current policy.

Points 12-14. The first point is noted but Strategy 43 addresses this point and must be read in conjunction with the guidance. Para 2.5 of the guidance already sets out that provision must be reasonable in scale and kind. The SPD is a District-wide document, whilst delivery issues at Cranbrook are noted it is a matter for the Cranbrook DPD, the determination of the Cranbrook planning applications and their accompanying S106 agreements and any reviews of these.

Point 15 change 'most frequently' to 'likely to be' to aid clarity

Point 16 and 17. Mitigation of Habitat Regs toward Infrastructure is collected through CIL. Non-infrastructure mitigation can now be paid for up front (to avoid legal complication and delay of the UU process) to fully mitigate the impact and to be consistent with Teignbridge and Exeter as our joint authorities. The Habitat Regs require mitigation to be in place before development is occupied. The SPD can't update the DPD but the next DPD will be informed by this new approach.

Point 18. This is the usual requirement and the SPD is District-wide, the terminology recognises this may not always be the way forward.

Point 19. The policies are clear that this applies on a case by case basis.

Point 20. The table flags up a possible issue, it is clear that this applies on a case by case basis.

Point 21. Para 2.5 of the guidance already sets out that provision must be reasonable in scale and kind. The SPD is a District-wide document, whilst delivery issues at Cranbrook are noted it is a matter for the Cranbrook DPD, the determination of the Cranbrook planning applications and their accompanying S106 agreements and any reviews of these. In some instances it may be appropriate for development to make land available beyond that directly related to the development, if this was negotiated it would result in a CIL credit.

Points 22-24. To aid clarity, 'under Strategy 36' should be added to the text. Otherwise, the LP Strategies and table in the SPD are clear and do not require amendment.

Points 25-27 The table flags up a possible requirement, it is clear that this applies on a case by case basis. AQM is an issue in some parts of the District.

		<p>Point 30- The Cranbrook DPD will include clarification on where the Cranbrook policies apply and where other LP policies apply. Para 5.2 of this SPD reflects this current intention.</p> <p>Points 31-35. The validation checklist has been updated to reflect the SPD. If an applicant is seeking to argue viability in relation to Strategy 34, the validation checklist requires that this is identified in writing as part of the application process. This is required to ensure compliance with Strategy 34, which requires ‘evidence to demonstrate why provision is not viable or otherwise appropriate’ therefore some information (usually a viability appraisal) is required to show compliance. Viability information is not required if no viability argument is being made.</p> <p>Point 36. For clarity, the word reasonable should be added to 6.4c</p> <p>Points 37-39. Additional guidance notes on viability will be uploaded to the website. Links to these will be added to the SPD. Where applicants are unwilling to submit open book viability assessments, the NPPF and NPPG allow for reference to typical sites and industry benchmarks. The Council remains committed to promoting site specific viability appraisals wherever possible as these can usefully highlight not only viability, but also delivery, issues. However, for further clarity the word require will change to expect in 6.20 of the SPD. The Habitat Regs mitigation can be made up of several parts, on-site mitigation has to be provided on site, SANGS can be on-site, but if not a contribution to off site provision is required, non-infrastructure is provided through a contribution, therefore there will still be an element of financial contribution required in all cases.</p> <p>Points 40-43. An additional guidance note on overage has been prepared. Model legal agreements will also shortly be added to the website. The Council’s position on overage remains unchanged and the recent appeal and cost decision APP/U1105/W/316/5906 support our consideration of overage in all cases of a less than policy compliant scheme under Strategy 34.</p> <p>Points 44-45. Unfortunately the Council has received viability arguments for schemes with all matters reserved. This section of the SPD intends to flag up the challenges of undertaking detailed viability in these cases and is proactive and enabling in considering the viability of indicative schemes. The model S106 agreements will also provide information on how this works in practice.</p> <p>Point 46. This is not limited to pre-application, discussions about planning obligations should form an early part of consideration of any planning application to avoid subsequent delays.</p> <p>Late payment charges are considered reasonable and are in line with standard contract terms.</p>
3301	Lichfields on behalf of Bourne Leisure	<p>Public Art- this may be appropriate in any location so it is not considered necessary to amend the text to refer to urban areas as suggested.</p> <p>Viability appraisals- In relation to the publication of viability appraisals the wording of the SPD has been informed by elected members expressed wish for increased transparency. The wording has been prepared in conjunction with the Council’s Freedom of Information Officer and is intended to reflect the outcome of legal challenges to requests for viability appraisals</p>

		under FOI/EIR. The FOI/EIR are weighted in favour of disclosure. Agree to add text saying “Applicants may also wish to provide a viability appraisal summary for publication on our website.”
3347	PCL Planning for Client Group	<p>Point 1. It isn’t clear which sentence the representation wishes to delete. However, in any case, the paragraph (and the SPD) should be read as a whole and makes sense.</p> <p>Point 2. The text has already been amended to reflect this point and pre-application discussions are encouraged.</p> <p>Point 3. Not all open space will be public, for example sports pitches may be managed by clubs and open space within developments may be available to residents only. Access to some open space is secured through a community use agreement.</p> <p>Point 4. Section 106 agreements reflect the individual characteristics of a site. It is therefore more appropriate to prepare a model S106 agreement which reflects the relevant issues to avoid confusion. Model clauses on overage are being prepared and will be added to the website.</p> <p>Point 5. Ultimately it is a Council decision to grant planning permission and costs incurred will need to be paid. The Council responds to applications received, irrespective of their merits and policy compliance. This can generate significant work and costs. Furthermore, the decision is informed by consideration of the application so the Officer will not be in a position to predetermine the application at the outset.</p> <p>Point 6. Agree that it is reasonable to add to 6.20- “Costs will be agreed with the applicant before the work is commissioned”.</p> <p>Point 7. There is no conflict between 7.2 and 7.10- each application will be considered individually on a case-by-case basis but the Council’s preferred trigger point is prior to commencement and this will be used as the starting point for negotiations.</p>
5122	Rapleys for the Crown Estate	<p>5.2- It was considered by Members that policy references weren’t necessary and could be confusing. The SPD should be read as a whole with the Local Plan.</p> <p>6.1- The validation checklist has been updated to reflect the SPD. If an applicant is seeking to argue viability in relation to Strategy 34, the validation checklist requires that this is identified in writing as part of the application process.</p> <p>6.22- An additional guidance note on overage has been prepared. Model legal agreements will also shortly be added to the website. The Council’s position on overage remains unchanged and the recent appeal and cost decision APP/U1105/W/316/5906 support our consideration of overage in all cases of a less than policy compliant scheme under Strategy 34.</p> <p>6.25- Unfortunately the Council has received viability arguments for schemes with all matters reserved. This section of the SPD intends to flag up the challenges of undertaking detailed viability in these cases and is proactive and enabling in considering the viability of indicative schemes. The model S106 agreements will also provide information on how this works in practice.</p> <p>6.28- In relation to the publication of viability appraisals the wording of the SPD has been informed by elected members expressed wish for increased transparency. The wording has been prepared in conjunction with the Council’s Freedom of Information Officer and is intended to reflect the outcome of legal challenges to requests for viability appraisals under FOI/EIR. The FOI/EIR are weighted in favour of disclosure. Agree to add text saying “Applicants may also wish to provide a viability appraisal summary for publication on our website.”</p>

6128	Blue Cedar Homes	<p>The Council's position on overage remains unchanged and the recent appeal and cost decision APP/U1105/W/316/5906 support our consideration of overage in all cases of a less than policy compliant scheme under Strategy 34. Blue Cedar Homes submitted a further appeal decision after the consultation closed. We have reviewed this appeal decision and nothing within it changes our view. The Blue Cedar Homes appeal and its implications will be reported to Members of the Development Control Committee. This would give Members the opportunity to consider the decision and the Officers view that this doesn't change the implementation of the policy.</p>
6294	Tetlow King Planning for South West HARP Planning Consortium	<p>Thresholds- the wording of our adopted Local Plan policy means that the thresholds in national policy are the thresholds that apply locally. The SPD can't change Local Plan policy.</p> <p>Overage- An additional guide on overage is being prepared.</p> <p>Affordable Housing Definition- Although the Housing and Planning Act 2016 provides a statutory framework for the delivery of starter homes, at the moment, starter homes are not included within the definition of affordable housing. Although the Government has signalled that expect Starter Homes to fall within the definition of affordable housing, as yet no amendments to guidance or legislation have occurred to facilitate this. In fact, the publication of the Housing White Paper 2017 indicates that the original proposed definition of a Starter Home will now be changed, but is unclear as to what exactly it will be changed to. Therefore, there is currently no way of pinning down what counts as a Starter Home in a legal agreement seeking to include them. It is possible other housing products, such as Rent to Buy, may be included within the definition of affordable housing. If the definition was amended in the NPPF this would then form part of the Development Plan. If changes were made to other guidance this, this could potentially become a material consideration. However at present the SPD needs to reflect current policy.</p>
	Planning Issues Ltd for Churchill Retirement Living	<p>Vacant Building Credit- An additional guidance note on Vacant Building Credit is being prepared, reflecting the decision of Strategic Planning Committee. The SPD reflects this decision so no change is needed.</p> <p>Open Book Approach- It would seem that this respondent may be misunderstanding what the Council means by an open book appraisal. As an applicant they have submitted a confidential viability appraisal which included an 'open book valuation of alternative use value' and an accompanying viability appraisal. This appraisal used inputs that were justified with reference to industry standards and norms. In the Council's view, this is an open book appraisal. The issue arises where applicants are unwilling to submit any figures at all. We recognise that in such circumstances NPPF and NPPG allow for reference to typical sites and industry benchmarks. The Council remains committed to promoting site specific viability appraisals wherever possible as these can usefully highlight not only viability, but also delivery, issues.</p> <p>Overage- The Council's position on overage remains unchanged and the recent appeal and cost decision APP/U1105/W/316/5906 support our consideration of overage in all cases of a less than policy compliant scheme under Strategy 34.</p>
	Cranbrook Town Council	<p>The Cranbrook DPD will include clarification on where the Cranbrook policies apply and where other LP policies apply. Para 5.2 of this SPD reflects this current intention.</p>

		As the LDS states, the SPD is likely to be adopted ahead of the DPD and, because the SPD is so important- and applies across the whole District- it cannot wait for the Cranbrook DPD to 'catch up'.
	Collier Planning for Baker Estates Ltd	The Council's position on overage remains unchanged. A recent appeal and cost decision in relation to Blue Cedar Homes appeal, and its implications for overage will be reported to Members of the Development Control Committee.
	Jillings Heynes Plannig for Heritage Homes	Vacant Building Credit- An additional guidance note on Vacant Building Credit is being prepared, reflecting the decision of Strategic Planning Committee. The SPD reflects this decision so no change is needed.
	Tibbalds for Pegasus Life	An additional guidance note on overage has been prepared. Model legal agreements will also shortly be added to the website. The Council's position on overage remains unchanged. A recent appeal and cost decision in relation to Blue Cedar Homes appeal, and its implications for overage will be reported to Members of the Development Control Committee.