

Planning Obligations Guidance

*Adopted
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1. Introduction

- 1.1 This factual update of the SPD ensures that it remains relevant guidance that supports the adopted Bexley Local Plan (2023).
- 1.2 The London Borough of Bexley (the Council), through planning policies adopted in the Bexley Local Plan (2023) and the wider Development Plan framework, seeks to ensure that growth and development meets the needs of the community and is sustainable.
- 1.3 Growth in Bexley will result in increased pressure on local infrastructure, services and facilities, creating demands for new provision. The Council and developers have a responsibility, through the planning process, to manage the impacts of growth and ensure that all development supports existing communities and contributes to the creation of safe, sustainable, liveable and mixed communities.

What are planning obligations?

- 1.4 Planning obligations may be sought in addition to any necessary planning conditions attached to a planning consent. Planning obligations, a Section 106¹ (S106) agreement or unilateral undertaking², are legal agreements between local planning authorities and applicants/all parties with an interest in the land, which is the subject of the planning consent. They are intended to make development acceptable in planning terms.
- 1.5 The reason for planning obligations is that, in most cases, the proposed development has an impact beyond the boundary of the site. Planning obligations can be used to prescribe the nature of development (e.g. by requiring that a given portion of housing is affordable); or to secure a contribution from a developer to compensate for loss or damage (e.g. enhancements to open space); or to mitigate a development's impact (e.g. through increased or improved public transport provision or other infrastructure improvements). The use of planning obligations is an effective process by which the Council will seek to ensure that growth and development, whether individually or cumulatively³, meets the objectives of sustainable development as promoted in local, regional and national policies.

The purpose of this Supplementary Planning Document (SPD)

- 1.6 The purpose of this document is to establish a transparent, fair and consistent process for negotiating, applying and monitoring planning obligations. It has been prepared as part of the Local Development Framework as a 'Supplementary Planning Document'

¹ Section 106 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004.

² A unilateral undertaking is where a legal document containing planning obligations offered by all parties with an interest in the application site and accepted by the Council, which is enforceable by the Council, but without the need for the Council to agree the terms.

³ Cumulative development is created by the gradual build-up of successive smaller developments.

(SPD) to support the implementation of planning obligations policies within the adopted Local Plan. The relevant Local Plan policies are set out in Section 2 of this SPD.

1.7 The SPD seeks to provide greater clarity and certainty around the Council's procedures for the use of planning obligations, particularly in terms of:

- the range of planning obligations likely to be sought;
- the types of development likely to attract planning obligations;
- the form and scale of planning obligations;
- the protocols for negotiating and calculating contributions; and
- how planning obligations are secured and monitored.

1.8 The intention is that the SPD will:

- assist developers, landowners and other stakeholders with understanding the infrastructure requirements that may be sought to cope with additional demands arising from new development;
- manage more effectively the legal arrangements for negotiating and securing Section 106 agreements or the giving of unilateral undertakings;
- allow for more timely and cost-effective decisions on applications involving Section 106 agreements or unilateral undertakings;
- enable planning obligations to be considered from the earliest stages of the proposed development process; and
- contribute to the achievement of sustainable development within the London Borough of Bexley.

Status of the SPD

1.9 This Planning Obligations Guidance SPD has been updated to supplement the policies and proposals of the adopted Local Plan and the London Plan (2021). This SPD is therefore a material consideration when the Council considers making decisions on planning applications. It has been prepared in line with the requirements of the Planning and Compulsory Purchase Act 2004 and associated regulations and guidance on Supplementary Planning Documents.

The structure of the SPD

1.10 The following sections are included within this SPD:

- **Section 2:** sets out the background and legislative / policy basis within which planning obligations operate;
- **Section 3:** identifies the range of planning obligations the Council may seek for specific types of development and the Council's expectations of the scale and form of planning obligations;
- **Section 4:** outlines the procedure for negotiating and completing a legal Section 106 agreement or giving a unilateral undertaking to the Council;
- **Section 5:** details the review and monitoring procedures for the SPD.

Consultation

- 1.11 In 2008, the draft SPD and supporting documents, including Sustainability Appraisal Reports, Planning Obligations Statement, model unilateral undertaking and legal agreements were published for a six-week public consultation period. The adopted SPD (from 2008) incorporated feedback received through the consultation process and remains a material consideration in the determination of planning applications. This updated version (2026) of the SPD has been prepared to align the document with current legislation, national planning policy, the London Plan and the adopted Bexley Local Plan.

Key contacts

- 1.12 For any enquiries about planning applications for development in Bexley and for planning obligations that may be required, please contact:
- Development Management
Email: DevelopmentControl@bexley.gov.uk
- 1.13 For more information about this SPD or planning policy affecting planning obligations please contact:
- Email: ldfteam@bexley.gov.uk
- 1.14 Information about submitting planning applications can also be found on the Council's website.

2. Policy context

Legislative and national guidance

- 2.1 The legislative basis for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended, which provides local authorities with the opportunity to enter into planning agreements to secure contributions in connection with the development and use of land and for developers to give unilateral undertakings when making a planning application.
- 2.2 Government policy and guidance on the application and use of planning obligations is set out in the National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG), together with relevant legislation and case law.
- 2.3 There are certain broad principles in Section 106 itself as to what may be included within a planning obligation. These principles are supplemented by Regulation 122 of the Community Infrastructure Levy Regulations 2010; Regulation 122 provides that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation meets the following three tests:
 - necessary to make the proposed development acceptable in planning terms;
 - directly related to the proposed development;
 - fairly and reasonably related in scale and kind to the proposed development.
- 2.4 The NPPF, PPG, and Regulation 122 establishes the principles for the use of planning obligations, which are fundamental to the London Borough of Bexley's approach to planning obligations:
 - Planning obligations are to be used to ensure development accords with national, regional and local level planning policies;
 - Planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold;
 - A planning obligation may only be used as a material consideration to the planning decision;
 - Planning obligations may be used to make development acceptable, which would otherwise be unacceptable in planning terms; and
 - A planning obligation will not be used to resolve existing deficiencies or lack of capacity in existing facilities.
- 2.5 Acceptable development will not be refused permission because the applicant is unwilling or unable to offer unrelated benefits, nor will unacceptable development be permitted because of unrelated benefits offered by an applicant.
- 2.6 Where there is a choice between imposing planning conditions and entering into a planning obligation to manage the impacts of a new development, the use of a planning condition is always preferable.

The introduction of a Community Infrastructure Levy

- 2.7 The Government introduced the Community Infrastructure Levy (CIL) through the Planning Act 2008, with the detailed framework subsequently established through the Community Infrastructure Levy Regulations 2010 (as amended). The purpose of CIL is

to help fund infrastructure required to support growth and development. Planning authorities are given discretionary powers to implement CIL within their authority to help fund infrastructure needed to support growth and development. Guidance on the operation and implementation of CIL is set out in national planning policy, including guidance on the relationship between CIL and Section 106 planning obligations.

This includes:

- defining who among landowners and developers is liable to pay CIL;
- the requirement that CIL will still be payable whether or not the land increases in value as a result of the development;
- arrangements for deciding the amount of CIL to be levied locally, including having regard to the actual or expected costs of infrastructure and development viability evidence;
- set out the basis on which CIL is or can be levied (e.g. per dwelling, per unit of floorspace);
- ensuring that CIL collected is applied to funding infrastructure to support growth and development;
- arrangements for collecting, enforcing and applying CIL.

2.8 This SPD will operate alongside side The London Borough of Bexley's CIL Charging Schedule. However, the requirements of this SPD may need to be reviewed periodically to ensure consistency with any changes to published regulations for CIL legislation, policy or guidance. Details of the Council's CIL Charging Schedule and Infrastructure Funding Statements are available on the Council's website.

Regional and local policies

2.9 In addition to the statutory development plan, applicants should have regard to:

- The London Plan (2021) - Spatial Development Strategy for Greater London; and
- Bexley Local Plan (2023).

Applicants should also have regard to any relevant supplementary planning documents, evidence base documents, and emerging policy documents. These do not form part of the statutory development plan; however, they may constitute material considerations in the determination of planning applications and may be afforded weight as appropriate.

The London Plan (2021)

2.10 Policy DF1 of the London Plan (2021) sets out the Mayor's approach to planning obligations. Development proposals are expected to provide the infrastructure and mitigation necessary to support sustainable development and comply with Development Plan policies. Applicants should take these requirements into account from the earliest stages of site acquisition and scheme design. Where viability constraints arise, priority should be given to affordable housing and essential public transport improvements, followed by other infrastructure such as health, education, affordable workspace, cultural and leisure facilities where appropriate. Planning

obligations will also be considered by the Mayor in determining applications of potential strategic importance.

- 2.11 In addition, Policy DF1 encourages boroughs to adopt a clear and transparent framework for negotiating planning obligations, having regard to Development Plan policies, infrastructure priorities, development viability, and the relationship between Section 106 obligations and CIL. The policy also supports the use of robust viability assessments only where site-specific circumstances justify further viability testing.

Changes to the Mayor of London's powers

- 2.12 The Town and Country Planning (Mayor of London) Order 2008 (as amended), together with the GLA Act 1999 (as amended) sets out the powers the Mayor has in relation to planning decisions in London. The powers extend to direct refusal or approval of certain strategic planning applications, to take over the determination of applications of potential strategic importance, and to become a party to Section 106 agreements where appropriate, including acting as lead negotiator in any Section 106 planning agreements. The categories of development that must be referred to the Mayor, together with the relevant procedures and thresholds, are subject to periodic amendment through legislation and national planning reforms.
- 2.13 The Mayor expects referable planning applications to be accompanied by a statement, where a London Borough is inclined to grant permission, outlining any conditions the Council is seeking to impose and, as applicable, a draft of any planning obligations the Council proposes to enter into and the details of any proposed planning contributions. This enables the Mayor to consider whether the proposed obligations appropriately support the implementation of London Plan policies and mitigate the impacts of development.

Bexley Local Plan (2023)

- 2.14 The adopted Local Plan requires applicants to provide or contribute to infrastructure and community facilities, necessary to make development acceptable in planning terms. Planning obligations and conditions may be used to secure mitigation and infrastructure to support sustainable growth, including affordable housing, transport improvements, public realm and open space enhancements, community infrastructure, environmental improvements and other site-specific measures. The Local Plan supports the use of planning obligations to mitigate the impacts of development and support sustainable communities.
- 2.15 The requirements for major development sites may also be identified in site allocations, development briefs, masterplans, supplementary planning documents and other adopted strategies or guidance.
- 2.16 Relevant Local Plan policies include, where applicable:
- Policy SP2 and Policies DP1–DP6, relating to housing delivery, affordable housing, housing mix and specialist accommodation;

- Policies SP3 and SP4 and Policies DP7–DP10, relating to employment growth, town centres, regeneration and economic development;
 - Policies SP5 and SP6 and Policies DP11–DP14, relating to design quality, placemaking and heritage;
 - Policies SP7, SP8 and SP9 and Policies DP15–DP21, relating to social and community infrastructure, open space, green infrastructure, biodiversity and environmental enhancement;
 - Policies SP10–SP13 and Policies DP22–DP29, relating to transport infrastructure, parking, sustainable movement, waste management, water infrastructure and environmental protection; and
 - Policies SP14 and Policies DP30–DP33, relating to climate change mitigation, energy infrastructure, flood risk management and sustainable drainage.
- 2.17 In applying the policies of the Local Plan and the requirements of this SPD, the Council will also draw upon other relevant policies of the London Plan (2021), supplementary planning documents, Infrastructure Funding Statements, infrastructure evidence, adopted strategies and other material considerations.

Supplementary Planning Documents

- 2.18 The Council has a number of adopted supplementary planning documents, which sit alongside the Local Plan.
- Relevant supplementary planning documents and guidance include:
- Design Guide SPD Part 1 and 2 (adopted January 2025 and June 2026), which provide design guidance for new development across the Borough;
 - Erith Western Gateway Development Framework SPD (adopted 5 January 2012 and updated June 2026);
 - Planning Obligations Guidance SPD (adopted 26 July 2008), which will be factually updated by this document;
 - Sustainable Drainage Design and Evaluation Guide.
- 2.19 The Council may also prepare and adopt additional guidance documents to support the implementation of Local Plan policies and infrastructure delivery priorities.
- 2.20 All adopted and emerging planning documents, including the Bexley Local Plan, supplementary planning documents and supporting evidence base documents, can be found on the Council's website.

Bexley Corporate Priorities and Other Strategy Documents

- 2.21 The Council and its partners have adopted a range of strategies that support sustainable growth, communities, economic development, environmental improvement and improved health and wellbeing across the Borough. These include the Bexley Corporate Plan (2022–2026), the Bexley Economic Growth Strategy (2026), Bexley's 2050 Vision. Many of the spatial elements of these strategies are reflected within the adopted Bexley Local Plan (2023).

These strategies collectively support:

- delivering sustainable growth and high-quality development across the Borough
- securing inclusive economic growth, investment and job creation
- improving transport connectivity and accessibility
- promoting healthier communities and improved access to health and wellbeing services
- ensuring a high-quality, safe and attractive environment; and
- strengthening cultural, creative and community opportunities that support wellbeing and social inclusion.

2.22 The planning system is an important mechanism for helping to deliver the Council's wider strategic objectives. Where appropriate and directly related to development, planning obligations may be sought in accordance with the approach set out in the following section.

3. Bexley's approach to planning obligations

Planning obligations that may be sought

- 3.1 The SPD does not list every possible type of development that might be subject to a planning obligation or prescribe every circumstance in which a planning obligation might be sought. Rather, the SPD focuses on development of a scale and type provided for by the Local Plan, and the types of contribution likely to arise as a result of applying the Local Plan policies relevant to the whole Borough.
- 3.2 In accordance with national policy and guidance, the Council will consider each application on its merits against relevant policy, guidance and other material considerations. Where appropriate, this would include an assessment of the development impacts. Where planning obligations are considered necessary, these are likely to include the following:
- Affordable Housing;
 - Transport, Access and Public Realm Improvements (including cycling, walking, town centre, public safety and public art);
 - Education;
 - Employment Training;
 - Health Services and Facilities;
 - Open Space, Sports and Leisure Facilities;
 - Community Facilities and Services and
 - Professional, Legal and Monitoring Fees.

The Council's approach to obtaining planning obligations is set out on its website and is regularly reviewed and updated. Further information on each of the obligation types identified above, including relevant guidance, requirements and supporting information, is available on the Council's website.

- 3.3 Relevant policies in the Development Plan provide the basis and justification for seeking the above-mentioned planning obligations commonly sought by the Council. However, this list should not be considered exhaustive. Depending on the merits of the proposed development, other obligations not described in this SPD may also be sought. These may include obligations toward climate change mitigation and adaptation; cultural provision; flood defences; green infrastructure; historic environment; utilisation or goods and services of SME⁴ and local businesses. Where planning obligations are required to manage the specific impacts arising as a result of the development, they will need to be negotiated on a case-by-case basis, taking account of the requirements of this SPD where appropriate.

⁴ SME: Small Medium-sized Enterprise

Qualifying developments and planning obligations sought

- 3.4 As a general guide, Table 3.1 (on page 15) indicates the range of planning obligations that will normally be sought for the types and scale of planning applications listed. For other types of development, not listed in Table 3.1, planning obligations will continue to be negotiated on an application-by-application basis.
- 3.5 Thresholds above which planning obligations will be sought have been derived from the relevant Development Plan policies. Financial testing and viability were also considered to ensure the scale of development and appropriate threshold would be able to carry the obligations sought. The fact that a development falls below the thresholds in Table 3.1 does not necessarily mean that such development would not be the subject of appropriate planning obligations needed to manage any specific requirements arising as a result of the development.
- 3.6 Where development sites are subdivided or developed in phases so that the separate planning applications fall below the thresholds for which obligations may be sought, the Council will, as far as possible, consider sites in their entirety. Similarly, proposals which are judged as underutilising land resulting in underdevelopment will be resisted and a revised scheme will be sought.

Relative priorities

- 3.7 Whilst planning obligations should be seen as a package of measures required to offset the impacts of a development, the Council recognises that in cases where financial viability is an issue, priority needs to be given to those obligations necessary to manage the most significant impacts of the development.
- 3.8 Taking account of the London Plan (2021), Local Plan policies, supplementary planning documents, and the aims and objectives of the Council's corporate priorities and wider community strategies, the Council will, seek to secure contributions towards those planning obligations with a high priority, in the first instance, as listed in Table 3.1. Climate change measures may also be secured through planning obligations on some sites. Where this is the case, they will be included in the high priority requirements listed in Table 3.1.
- 3.9 However, the Council will retain the flexibility to negotiate the priority given to planning obligations, based on the identified local needs that may be required in relation to the development of a particular site. The Council considers that this approach balances the benefits of a formulae-led approach (providing greater certainty) with the benefits of a more site-specific tailored approach.

Recovery of administration costs

- 3.10 All development requiring planning obligations, is required to contribute towards the costs associated with monitoring and enforcement of Section 106 agreements and unilateral undertakings, as well as the legal and other professional costs incurred in preparing individual Section 106 agreements and approving unilateral undertakings.

Planning or development briefs

3.11 There are a number of sites or areas in the Borough where development requires more detailed guidance than contained in the Local Plan. Where planning briefs are prepared, planning obligations specific to the site or area will be identified based on development plan policies and this SPD.

Table 3.1 Qualifying development and planning obligations sought

Type of qualifying development	Use classes ⁵	Obligation types ⁶	Priority
Residential			
Applications for 5 to 9 dwellings , (including as part of mixed-use schemes ⁷)	C3	• Transport and Access	High
		• Education • Health • Open Space, Sports and Leisure Facilities • Community Facilities and Services	Medium
Residential developments of 10 dwellings or more⁸ (including as part of a mixed-use scheme)	C3	• Affordable Housing • Transport and Access	High
		• Education and Training • Health • Open Space, Sports and Leisure Facilities • Community Facilities and Services	Medium
Residential educational institutions			
Purpose-Built Student Accommodation and residential educational institutions creating 25 or more bedspaces..	Sui Generis /C2	• Transport and Access	High
		• Health • Open Space, Sports and Leisure Facilities • Community Facilities and Services	Medium
Town Centre, Retail, Leisure, Food and Beverage and Commercial uses			
All applications which include the creation of 500 m² or more additional floorspace in town centre uses	Use Classes E(a), E(b), E(c), E(d), E(e), F1, F2 and Sui	• Transport and Access • Employment Training	High
		• Public Realm Improvements • Open Space, Sports and Leisure Facilities • Community Facilities and Services	Medium

⁵ Use Classes are defined by the Town and Country Planning (Use Classes) Order 1987 (as amended). References reflect the current Use Classes Order, including Class C3 (Dwellinghouses), Class C2 (Residential Institutions), Class E (Commercial, Business and Service), Class F1 (Learning and Non-Residential Institutions), Class F2 (Local Community Uses), Class B2 (General Industrial), Class B8 (Storage or Distribution), and relevant sui generis uses.

⁶ In addition to these obligation types, climate change mitigation and adaptation are key considerations. New development should accord with relevant policies relating to sustainable design, energy efficiency, biodiversity, and environmental performance in the London Plan (2021), Bexley Local Plan (2023), and associated guidance.

⁷ Mixed-use development refers to proposals incorporating more than one main use within the same site or building, typically including residential and commercial uses. In such cases, the relevant obligation types for each use may apply.

⁸ Affordable housing requirements will be applied in accordance with the London Plan (2021), the Bexley Local Plan (2023), national policy, and any other relevant guidance in force at the time the application is determined.

	Generis uses appropriate to town centres		
Industrial, Storage, Distribution and Other Employment Uses			
All applications which include the creation of 500 m² or more additional floorspace.	Use Classes E(g), B2 and B8	• Transport and Access • Employment and Skills Training	High
		• Public Realm Improvements • Open Space, Sports and Leisure Facilities • Community Facilities and Services	Medium

The level of contribution to be sought

- 3.12 Detailed guidance relating to specific types of obligations will be published separately on the Council's website and updated periodically as required. Where appropriate, this may include formulae, standard charges or other guidance to assist applicants in assessing likely planning obligations. Any formulae or standardised approaches will be used as a basis for discussion and negotiation, having regard to the scale, nature and site-specific impacts of the proposed development. Applicants are encouraged to refer to the guidance available on the Council's website when preparing development proposals and assessing potential planning obligation requirements.

Basis for calculation of contributions

- 3.13 Where applicable, planning obligations for residential development should be based on a 'per dwelling' basis taking account of any existing occupiable dwellings on the site. This approach enables obligations to be considered at outline application stage where the size of individual dwellings may not be defined. For residential institutions (e.g. hospital, nursing home), obligations should be assessed on a 'per bedspace' or 'per student' basis.
- 3.14 The obligations for non-residential developments relate to the net increase in gross internal area (GGIA) in square metres in those uses, except for employment training which is on a Full Time Equivalent (FTE) employee basis.
- 3.15 Floorspace and new dwellings, including changes of use, will be assessed on the basis of the net increase, with the exception of affordable housing, which will continue to be assessed as a gross requirement. Mixed-use developments are to be assessed on the basis of both the number of residential units and the total net increase in gross internal area (GIA) of floor space to be provided.
- 3.16 Some mixed-use development may not result in any net increase in commercial floorspace; however, there may be an intensification of uses which require mitigating measures being imposed by a Section 106 agreement. In such cases, the intensification of commercial use will be assessed on the basis of the net increase in employee numbers and traffic movements, including foot traffic.

- 3.17 Where one or more of the individual land uses that make up a mixed-use development fall below the thresholds set out in Table 3.1, the Council may still require planning obligations to be secured to manage any cumulative impacts arising as a result of the development. In such circumstances, planning obligations will need to be negotiated on a case-by-case basis, taking account of the requirements of this SPD where appropriate.

Planning obligations and CIL guidance

- 3.18 Bexley does not provide an automated public planning obligations calculator whilst CIL liability is calculated in accordance with the Council's adopted CIL Charging Schedule, associated regulations, and supporting guidance published by the Council. Applicants are responsible for assessing likely CIL liability through the application of the relevant rates to the chargeable floorspace within their proposal.
- 3.19 S106 planning obligations are not subject to a standardised calculator and are negotiated on a case-by-case basis. The nature and scale of any planning obligations sought will depend on the proposed development, its site-specific impacts, and the requirements of the Development Plan and other material considerations. Applicants are therefore expected to consider both CIL and potential S106 obligations at an early stage in the planning process and to engage with the Council where necessary to clarify requirements.

Existing facilities

- 3.20 The Council has generally established formulae and standards which relate only to the additional needs that will arise from development. In accordance with national requirements and planning policy contributions will only be sought to accommodate the demand that new development will place on existing facilities. The Council's objective is not to compensate for any lack of existing facilities, but to ensure that the additional demand generated by development is appropriately mitigated.

On-site provision

- 3.21 In accordance with national planning policy, there is a presumption that infrastructure provided through planning obligations should be provided 'in-kind' and 'on-site.' There will, however, be circumstances where provision will be other than on-site and the Council will either require the provision of such facilities on an appropriate alternative site or a payment in-lieu, depending on the infrastructure requirement and the specific features of the development. Situations where the development is of such a small scale that on-site provision is not physically possible will be included within this requirement.
- 3.22 Where the developer makes appropriate provision on-site of particular services or facilities, the level of contribution required will be reduced or waived. Any reduction will normally be calculated by the application of the formula for that particular service.

Maintenance payments

- 3.23 Where contributions are secured through planning obligations towards the provision of facilities, it may be appropriate for the applicant to make provision for the

maintenance of those facilities. Such payments may be for an agreed period, typically secured through a commuted sum covering a defined timeframe (for example 20 years), although this will vary depending on the nature of the infrastructure. Where an asset is intended for wider use the maintenance costs and other recurrent expenditure associated with the developer's contributions should be borne by the authority responsible for the asset

- 3.24 Where temporary funding of facilities is necessary to support its initial operation prior to it becoming established, payments should be time limited and not be required in perpetuity by planning obligations.
- 3.25 For all maintenance payments, the London Borough of Bexley and the developer will need to negotiate the form, duration and level of the of payments to be made.

Pooled contributions

- 3.26 As set out in national policy, where the combined impact of a number of developments will create a demand for infrastructure, it is reasonable for the contributions to be pooled. This will allow infrastructure to be secured in a fair and equitable manner.
- 3.27 Individual developments may have an impact on the capacity of local infrastructure, but not sufficient to justify immediate provision of new infrastructure. In such circumstances, the Council will require a contribution towards the cost of the future provision of such infrastructure. Such contributions will be pooled to enable the infrastructure to be delivered when it is required.
- 3.28 Where infrastructure is provided in advance, by the Council or other service providers to allow development to come forward, developers may be required to contribute to the relevant proportion of those costs.

How money will be spent

- 3.29 The Council has an established programmes and strategies for delivery of infrastructure, services and facilities required to support growth across the Borough.. The performance of these programmes is monitored and reported through the Council's service planning and performance reporting frameworks, including delivery updates on infrastructure and services funded through planning obligations. Contributions will normally be applied to services, following an assessment of the needs of each development, taking account of the priorities noted in Table 3.1. Where necessary, this will be specified in the Section 106 agreement.
- 3.30 In the event that contributions have been made towards a specific infrastructure project and the planning obligation requires that infrastructure to be provided or the contribution formally committed to a scheme within an agreed timeframe, the Council will arrange to return the unspent money if the agreed timeframe is not met.

The Council's commitments and covenants

- 3.31 The Council will generally use 'best' or 'reasonable' endeavours to secure any necessary new and improved services to serve the development. The Council, in certain circumstances, may make more specific covenants, to help ensure the provision of a facility at a particular time. Where appropriate, the Council will liaise

with external service providers, including NHS partners and other relevant statutory bodies, in relation to the provision of relevant services and facilities. Where that body is not a co signatory to the legal agreement a funding agreement will be established between the Council and the recipient of the contribution to ensure funds are spent in an appropriate and timely manner.

Monitoring of planning contributions and compliance

- 3.32 The Councils planning obligations officers monitor planning obligations. Annual updates on planning obligations and the community infrastructure levy will be provided in the Infrastructure Funding Statements (IFS) and other corporate reporting mechanisms, as appropriate. The monitoring will detail:
- information relating to agreements entered into, this will include details of the development site, the obligations agreed, the relevant dates or timing for completion of each obligation, and the receipt of payment;
 - details of spend against the financial contributions received; and
 - updates on the implementation and completion of schemes funded from financial contributions.
- 3.33 The Council will monitor obligations and/or financial contributions to ensure that they are undertaken or paid at the agreed trigger points. If there is a failure to comply with the planning obligations, appropriate steps and actions will be taken to ensure compliance with the agreement.
- 3.34 An accurate record of the scheme content is required to be submitted by the applicant.
- 3.35 The Council's obligation towards monitoring its own performance in relation to the completion of infrastructure and service provision is addressed in Section 5 of this SPD.
- 3.36 The Council will use monitoring reports on planning obligations to assess the effectiveness of this SPD through monitoring reports and Infrastructure Funding Statement as set out in Chapter 5.

4. Procedure for dealing with planning applications and planning obligations

Introduction

- 4.1 The Council's objective is to make the handling of planning applications more efficient, speed up decision-making and provide clear guidance to applicants seeking planning permission. The Council, working closely with planning applicants and other stakeholders, will seek to ensure:
- a high standard of service; and
 - that applications subject to planning obligations are determined within the relevant national statutory determination periods where possible.

Overall procedure for agreeing planning obligations parallel to consideration of planning applications

- 4.2 Figure 4.1 (page 24) details the actions required to be undertaken by the applicant and the Council at the pre-application and application stages of the planning application process.
- 4.3 Figure 4.2 (page 26) outlines the procedure for agreeing planning obligations (whether unilateral undertakings or Section 106 agreements) and identifies the steps required to be taken before and during the consideration of a planning application. The main objectives are to ensure that, as far as possible:
- all appropriate information is provided by applicants and is available from the date of submission of the application (this information should enable the Council and consultees to respond properly to applications); and
 - prior to applications being presented for determination, the content of the proposed planning obligations and/or other appropriate legal documents is detailed (where approval is recommended); such that
 - the time taken to negotiate a planning obligation, after determination by the Planning Committee (assuming a delegation is given to the Head of Development Management to grant planning permission subject to a satisfactory Section 106 agreement) is kept to a minimum.
- 4.4 The main stages of negotiating and agreeing planning obligations are:
- pre-application discussions;
 - submission of the planning application;
 - appraisal, negotiation and agreement of a related planning obligation; and
 - post-decision resolution.

Stage 1: Pre-application discussions

- 4.5 Prior to submitting a planning application, the applicant should fully consider the impacts of the proposed development and any planning conditions or obligations to mitigate those impacts.
- 4.6 The Council recognises that, for major applications ⁹, early engagement with officers is important for establishing the likely scope of the planning obligations and how requirements of this SPD may apply. At the pre-application stage Council officers can advise, without prejudice, on the nature and scale of facilities and services required to be provided, including contributions, in accordance with the Local Plan, the London Plan, and other relevant material considerations. The Council charges for pre-application advice in accordance with its adopted fee schedule. Pre-application advice will assist applicants in preparing the Statement of Planning Obligations. Council officers can also advise on whether financial information should be submitted with proposals for major developments.
- 4.7 For planning applications that are referable to the Mayor of London, the Greater London Authority and Transport for London also offer a pre-application advice service.

Planning Obligations Statement

- 4.8 During the pre-application stage, applicants should identify which planning obligations will apply to their proposal and will need to review this SPD, in particular, in order to prepare a draft Planning Obligations Statement. Where available, the Council may publish guidance notes or template documents on its website to assist applicants in preparing this information.
- 4.9 Where relevant obligations require the provision of facilities, applicants should establish the nature and scale of facilities which will be required to be provided in relation to their development proposal. Where relevant obligations require payment of financial contributions, the applicant should identify the level of contributions applicable to their proposed development. Major developments may be submitted in accordance with an adopted Planning Brief or masterplan framework where the priority of contributions to be sought would be listed.
- 4.10 This information should be put into a Statement of Planning Obligations to be submitted to the Council along with the planning application. The Statement should also indicate whether the applicant proposes to deliver the planning obligations in the form of a unilateral undertaking or in the form of a Section 106 agreement. The Statement should include the proposed Heads of Terms (the main aspects) of a legal agreement and suggested wording for the appropriate clauses.
- 4.11 In the case of applications where this SPD requires only the payment of financial contributions, applicants are encouraged to submit a unilateral undertaking appended to their Statement of Planning Obligations, to be submitted with their application. Where a unilateral undertaking is not appropriate, applicants can (if they wish) amplify the Statement of Planning Obligations by submitting a draft Section 106 agreement. This draft agreement may, if it is drafted by a solicitor or other

⁹ Major development has the meaning set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) or any successor legislation

professional person and reflects any pre-application discussions with Council officers, reduce the time taken to negotiate the agreement.

Title information

- 4.12 When a planning obligation needs to be entered into in connection with a development proposal, title information should be submitted to the Council with the application. In respect of registered land, this should consist of up-to-date official copies of the register and title plan from HM Land Registry, covering all registered interests in the application site. In respect of unregistered land, this should be a certified copy of the root of title and any conveyances referred to therein. This should be prepared by a solicitor, licensed conveyancer or other professional person.
- 4.13 The Council's starting point in the negotiation and approval of a planning obligation is that all parties with an interest in an application site should be bound into a planning obligation (that is, should be a party to it). That includes those with a freehold and/ or leasehold interest, interest under a conditional contract or an option, as well as other occupiers, chargees and mortgagees. Where relevant, other public bodies may be a party to the obligation. An applicant must therefore ensure, to the Council's satisfaction, that there is no risk to the Council (as enforcing authority) that a party with an interest will be excluded. Where a planning obligation is required, satisfactory title information will normally be requested during the preparation of the Section 106 agreement. Planning applications will not be validated unless the relevant ownership certificates have been correctly completed. Where a planning obligation is required, satisfactory title information will normally be requested during the preparation of the Section 106 agreement
- 4.14 Planning obligations are binding legal obligations which are set out in a Section 106 agreement signed and sealed by all of the relevant parties and are attached to land and run with change of ownership. In certain circumstances, planning obligations can be given by a unilateral undertaking, made by the applicant and all those with an interest in the site.
- 4.15 Planning obligations (whether made by a Section 106 agreement or given as a unilateral undertaking) are binding on 'successors in title' of the parties, unless the obligation has been satisfactorily discharged, and affect all those with an interest in the land to which it relates.

Stage 2: Submission of planning application

- 4.16 In addition to the Statement of Proposed Planning Obligations, where developments are likely to need to enter into a Section 106 agreement with the Council, the following information should be submitted with the planning application:
- written confirmation that the applicant will meet the Council's reasonable legal and monitoring costs associated with the preparation and completion of the agreement; and
 - contact details for any solicitor or legal representative acting on behalf of the applicant.

- 4.17 All documents submitted with an application must be in accordance with relevant legislation, national requirements and planning policy. Once the planning application has been validated, the Council will contact the applicant (or their agent) to discuss the likely timescales to prepare the draft agreement. In circumstances where the Mayor of London will be responsible for negotiating and signing the Section 106 agreement in consultation with the Council, the applicant is encouraged to engage with the Greater London Authority (GLA) as well as the Council at the pre-application stage.

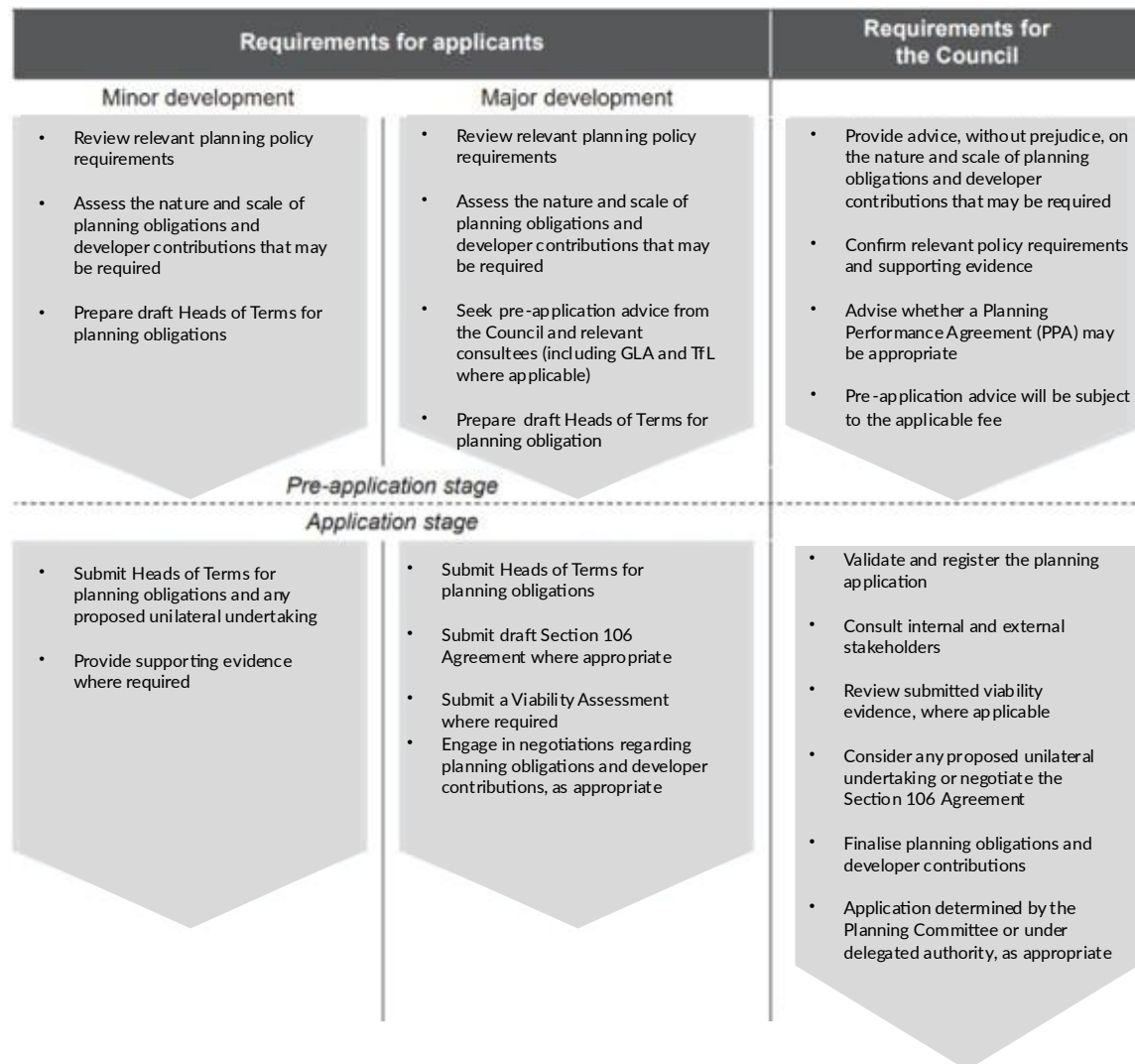


Fig. 4.1 Council and applicant requirements during the planning application process

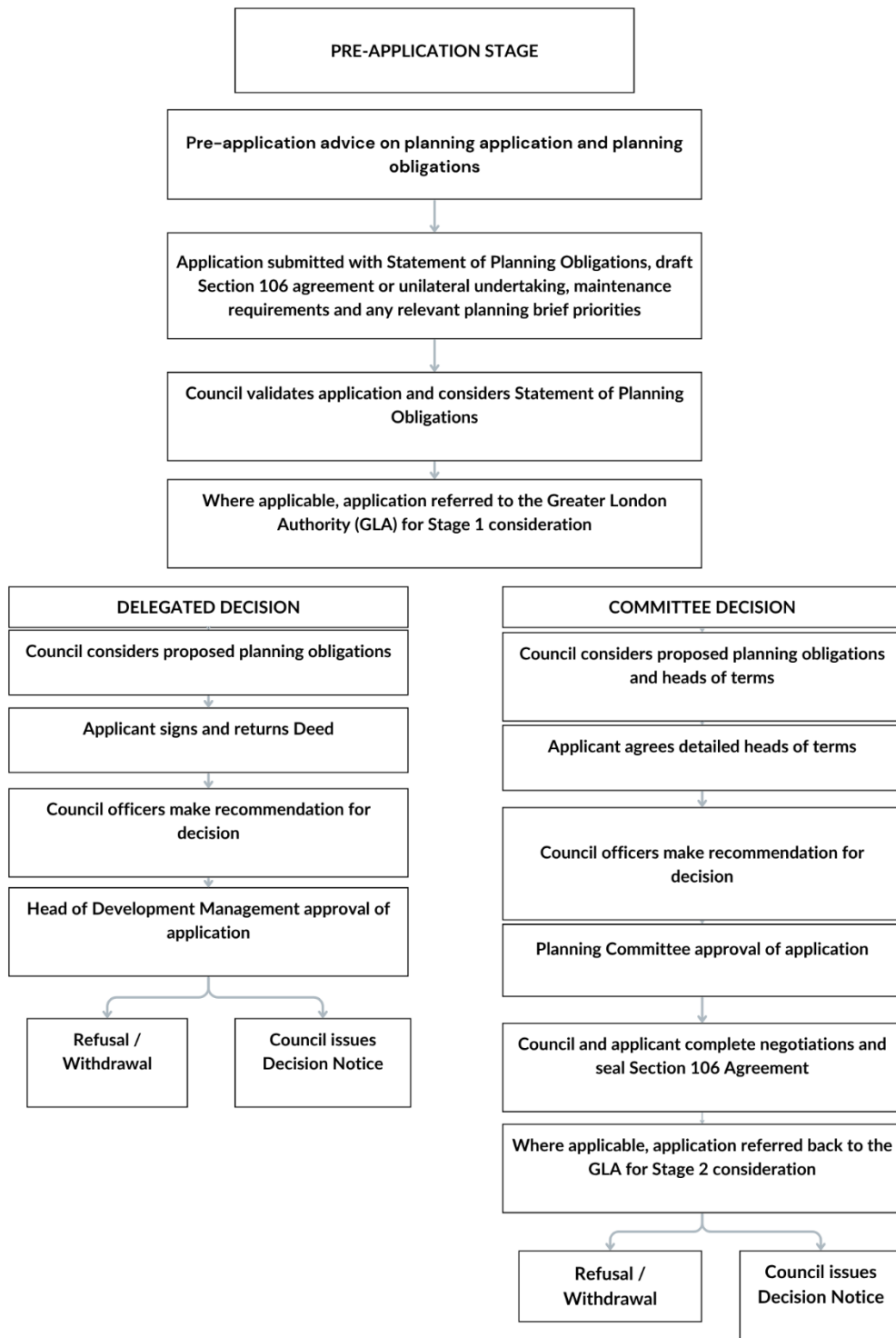
Stage 3: Appraisal, negotiation and agreement of planning obligations

- 4.18 Appropriate consultation, where necessary, will be undertaken in relation to the development proposal. The Mayor of London may determine strategic planning applications and consultations on such applications will, therefore, include the Greater London Authority (GLA) and Transport for London (TfL)

4.19 As part of the process for consulting on and negotiating planning obligations, the Council's planning case officer will:

- obtain, from Legal Services, legal advice as to the scope of permissible planning obligations and the content and form of the proposed agreement/undertaking; and
- if relevant, because viability is raised by an applicant, obtain, normally from an appropriate external consultant,, valuation advice as to land and development values with any associated costs covered by the applicant.

Fig. 4.2 Procedure for agreeing planning obligations



¹⁰ Includes a unilateral undertaking in lieu of S106 agreement where appropriate.

Delegated and Committee decisions on planning applications

- 4.20 In the case of planning applications to be determined under delegated authority¹¹, the Council will not consider applications for approval unless a planning obligation (in the form of a unilateral undertaking, a Section 106 agreement or planning agreement) has been signed as a Deed and returned to the Council.
- 4.21 Any applications that are reported to the Planning Committee will include the content of any planning obligation along with all other material considerations and the completed Section 106 agreement or unilateral undertaking will then be placed on the Local Land Charges Register. A final draft of any agreed S106 will be placed on Part 1 of the Planning Register and when completed will be placed on Part 2 of the Planning Register. In the case of major planning applications, the Council will not consider applications for approval unless the applicant agrees to the detailed heads of terms to be reflected in a planning obligation.
- 4.22 If it becomes clear that the Council cannot recommend approval of a planning application, the discussions on the planning obligation may be suspended. The applicant may then be invited to withdraw the application, or the application may be refused. Where issues arise following a resolution to grant planning permission, the Council will determine the appropriate course of action, which may include exercising delegated authority to refuse the application or referring the matter back to Planning Committee for reconsideration, subject to the Council's constitution and scheme of delegation.

Timing of payment

- 4.23 To meet the additional demands from developments as they arise, it is important that planning obligations take effect at the right time.
- 4.24 Generally, the Council will seek payment of contributions, required by means of a planning obligation, in full, on commencement of development, except on Council owned sites where payments in lieu of Section 106 contributions are made on completion of the sale with a Development Agreement. The reason for a Development Agreement is that, where the Council is the landowner, it cannot legally enter into Section 106 agreement with itself. However, in preparing the Development Agreement, the Council will seek to secure planning obligations in accordance with the requirements of this SPD and to publish those elements of the Development Agreement that relate to planning obligations.
- 4.25 For large development schemes, with a long build-out period, the Council and applicant will negotiate alternative arrangements in the Section 106 agreement for the timing of provision or contributions (i.e. phased payments tied to development 'triggers').

¹¹ The Planning Committee has delegated authority to determine some planning applications the Head of Development Management

Indexation of Contributions

- 4.26 Contributions sought from developers will normally be index-linked in the Section 106 agreement. This will take account of the:
- Building Cost Information Service (BCIS) published by the Royal Institute of Chartered Surveyors (RICS);
 - any other appropriate index;; and
 - any additional costs which may arise from inflation
- 4.27 Indexing will commence from the date of grant of permission, unless the specific nature of the contribution dictates otherwise
- 4.28 The nominal rate for contributions payable under a planning obligation will be set at the time of application.

Consideration of viability issues

- 4.29 The Council will seek full contributions. If an applicant considers that the applicable obligations in this SPD cannot be fully provided because to do so would render the proposed scheme unviable, the applicant should submit an 'open book'¹² viability assessment to the Council.
- 4.30 Where it is not possible to secure all the obligations sought at the desired level of provision, the Council will seek to secure those obligations with a 'high' priority in full, whilst contributions to the medium priority objectives will be sought on a pro-rata basis.
- 4.31 Following further negotiation with the applicant, an independent consultant with appropriate expertise may be appointed, where necessary, to advise on matters such as viability assessment. In line with national policy, the role of the independent consultant is to facilitate or contribute to the negotiation process, and not to arbitrate. However, it is the responsibility of the parties involved to agree the outcome of the planning obligation negotiations. The final determination of the planning application remains with the Council as local planning authority. The Council will require that its reasonable costs associated with the appointment of an independent consultant are met by the applicant.

Stage 4: Post-decision resolution

- 4.32 Following the decision to grant planning permission, subject to a Section 106 agreement being finalised, Legal Services and the planning officer, in liaison with the applicant's solicitors or other representatives, will issue a final draft for approval and signature by all parties.

¹² An open book appraisal means providing the valuations undertaken to show the likely cost and value of the proposed development. Where necessary, the Council may agree that the appraisal is reviewed by a nominated third party valuer.

- 4.33 On completion and signing of the binding legal agreement, planning permission will be formally issued. The completed agreement will then be registered as a Local Land Charge against the land and a copy placed on the Local Land Charges Register.

5. Review and monitoring of the SPD

5.1 The Council will assess the performance of relevant planning obligations policies within the Local Plan as part of its Annual Monitoring Report (AMR). However, it is appropriate to also ensure the effectiveness of this SPD is monitored and reported on. The Council has therefore established the following set of monitoring requirements in respect of this SPD:

- the level of contributions being achieved and compliance with the requirements of this SPD;
- monitoring time taken for decisions where a planning obligation has been agreed as part of the application; and
- monitoring of delivery (i.e. the completion of obligations including those to be undertaken by delivery agents other than the developer).

5.2 In addition, these indicators monitor the effectiveness of the SPD:

- Number of completed planning obligations (Section 106 agreements and unilateral undertakings):
 - This indicator monitors the total number of completed planning obligations following adoption of the SPD, calculated on an annual and cumulative basis.
- Number and type of planning obligations secured:
 - The SPD provides a framework for securing planning obligations across different service areas in relation to a range of development types. This indicator monitors obligations secured by service area, as defined in paragraph 3.2 of this SPD, and where relevant by service area priority where viability is a consideration. It also includes site-specific obligations secured in accordance with paragraph 3.3 of this SPD.
- Percentage of qualifying developments where planning obligations have been secured on approved planning decisions:
 - This indicator monitors the proportion of qualifying developments where planning obligations have been secured as part of approved planning permissions. Monitoring will help inform the ongoing assessment of the effectiveness of the SPD in supporting the delivery of planning obligations in line with relevant policy requirements.

5.3 To take into account significant changes in circumstances that would affect the appropriateness of the requirements in this SPD, the document will be reviewed periodically. The review will take account of:

- changes in local infrastructure needs and service requirements;
- adoption or review of the London Borough of Bexley Local Plan and any associated Development Plan Documents or Supplementary Planning Documents;
- updates to the London Plan (2021) or its replacement;
- changes to national planning policy and guidance;
- indexation and cost changes affecting contributions; and
- the operation and potential evolution of the Community Infrastructure Levy (CIL) alongside Section 106 planning obligations.

