



Strategic Environment Cabinet  
Committee

Wednesday, 27 March 2024

Dear Councillor

You are advised that the attached documents form part of the main agenda papers for this meeting.

Please ensure you bring them with you to the meeting.

Yours faithfully



S Walsh  
Assistant Director  
(Organisational Development & Democratic Support)

**List of documents attached**

5. Developer Contributions Guide

(Pages 3 - 24)

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## Gravesham Borough Council S106 Developer Contributions Strategy and Guide- DRAFT

### Foreword

Gravesham is a diverse and growing Borough which has seen many changes throughout its recorded history. In order to accommodate this growth, the services and infrastructure we have to support this growth needs to be sustained and enhanced.

Our Administration made a commitment to residents in its 2023 Manifesto to:

*'ensuring that planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as S106 agreements are invested in the Borough and ensure, where development work occurs and is permitted, that the maximum benefit from developer contributions can be achieved, to provide the infrastructure the area currently needs, as well as that which will be required by the development itself. That all funding obtained is only to be spent in Gravesham to benefit the residents. This is to secure community infrastructure improvements from any developments for things such as affordable housing, schools, GP Surgeries, open spaces, outdoor play areas and other community facilities.'*

This strategy seeks to bring to life this manifesto commitment ensuring that Gravesham Borough Council has a duty to ensure that necessary development is not at the expense of or detriment to existing residents and businesses and that all funding achieved is spent within the Borough on the priorities of local residents and where possible this should be named or highlighted projects, except where there are cross boundary developments where we would work in partnership with others to achieve the necessary infrastructure.

Gravesham Borough Council is committed to ensuring that all planning obligations collected by the Council in its role as the Local Planning Authority are spent correctly in accordance with the relevant agreement. We reserve the right to check that all monies raised have been spent correctly and that that this should be about additionality where possible not about plugging gaps in revenue budgets.

We commit to seeking the maximum possible benefit from developers to the Borough and where this policy conflicts with existing Government or local policy we commit to seeking to change this through our own governance and policy process or by lobbying those that do have the power to make decisions so that schemes that do want to come forward should but should not be at the expense of local residents.

**Cllr Shane Mochrie-Cox**

**Deputy Leader of the Council and Cabinet Member for Strategic Environment**

## Vision

The vision of the strategy is: That planning obligations and contributions commonly known as s106 shall be sought for all applications where this meets the tests set out in legislation and that the maximum is sought to ensure infrastructure and services are not impacted by new development. We shall also ensure that all obligations and funding gained will be spent in the Borough correctly and such agreements cannot be used to address existing shortfalls in infrastructure or service provision such as revenue budgets. Where this policy and strategy requires amendments to the local development plan or legislation seek to amend these plans formally or lobby for the changes if they are in the gift of others such as HM Government.

## Strategic Aims

- 1) That S106 agreements shall be sought for all developments providing they meet the legislative tests.
- 2) That the maximum shall be sought to mitigate the effects of any developments
- 3) That all obligations under s106 agreements are spent/enacted within the Borough in line with the agreements.
- 4) That locally defined infrastructure and service priorities take precedence.
- 5) That GBC shall lobby for legislative changes to ensure that there are powers and accountability for these obligations.

## Governance Status of this Policy

This Strategy and Guide does not have the force of a statutory planning document as this is reserved to the development plan. However, Gravesham Borough will adopt it as policy subject to member views at the Strategic Environment Cabinet Committee and decision of the Cabinet Member and this policy will inform the direction of the Officers and partners towards amending the local plan in regards to s106 and associated planning obligations.

It states what is required to meet the local plan policy on infrastructure provision in respect of county services. KCC will use it as a basis for its responses to Local Planning authorities in relation to infrastructure planning for local plans and planning application consultations.

## What are developer contributions

Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106 agreements, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development. S106 agreements are often referred to as 'developer contributions' along with highway contributions and the Community Infrastructure Levy. Such agreements cannot be used to address existing shortfalls in infrastructure or service provision such as revenue budgets.

Gravesham Borough Council by this policy states that it remains committed to S106 agreements rather than moving towards a Community Infrastructure Levy to ensure the maximum level of flexibility is available for local residents in the impacts of developments on

communities and the wider Borough rather than set formulaic amounts that CIL provides without any oversight on that levy.

A Unilateral Undertaking is a simplified version of a s.106 agreement and is entered into by the landowner and any other party with a legal interest in the development site. They can assist in ensuring that planning permissions are granted speedily, which benefits both applicants and the Council.

Separately, an applicant can also enter into a section 278 agreement (or s278) with Kent County Council. Section 278 refers to a section of the [Highways Act 1980](#) that allows developers to enter into a legal agreement with the County council (in its capacity as the Highway Authority) to make permanent alterations or improvements to a public highway, as part of a planning approval.

The common uses of developer contributions are to secure affordable housing, and to specify the type and timing of this housing; and to secure financial contributions to provide infrastructure. However, these are not the only uses for a s106 obligation. A s106 obligation can (this is not an exhaustive list):

- restrict the development or use of the land in any specified way;
- require specified operations or activities to be carried out in, on, under or over the land;
- require the land to be used in any specified way; or
- require a sum or sums to be paid to a specific body, on a specified date or dates or periodically.

A s106 obligation can be subject to conditions, it can specify restrictions definitely or indefinitely, and in terms of payments the timing of these can be specified in the obligation.

If the s106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. In case of a breach of the obligation the Council utilise mediation and legal clauses set out within the s.106 agreement to take relevant action and if appropriate can recover expenses incurred.

The planning obligation is a formal document, a deed, which states that it is an obligation for planning purposes, identifies the relevant land, the person entering the obligation and their interest and the relevant local authority that would enforce the obligation. The obligation can be a unitary obligation or multi party agreement.

### [Purpose of this document](#)

This document sets out the Council's approach to seeking developer contributions for infrastructure, service or environmental improvements required as a result of new development. It is aimed at developers, agents and the general public, and seeks to provide people with a better understanding of when planning contributions will be sought and how they will be used.

All development has the potential to impact on the environment, and place pressure on

local infrastructure and services. Where the development itself cannot directly mitigate these impacts, the planning system can be used to ensure that developer contributions can be secured to mitigate against any adverse impacts, subject to viability considerations.

In Gravesham such planning contributions have typically been secured through legal agreements with developers (known as unilateral or Section 106 agreements) to secure provision towards necessary infrastructure or other benefits.

## Legal Tests

The legal tests for when you can use a s106 agreement are set out in regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 as amended. The tests are:

- necessary to make the development acceptable in planning terms.
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

As well as the legal tests, the policy tests are contained in the National Planning Policy Framework (NPPF, September 2023):

*57. Planning obligations must only be sought where they meet all of the following tests:*

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

*b) directly related to the development; and*

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

*58. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.*

This section of the NPPF is expanded upon by the Government's Planning Practice Guidance, in reference to Development Management decisions, the PPG sets out the scope for when viability assessments should be used in relation to decision making (Paragraph: 007 Reference ID: 10-007-20190509):

*Where up-to-date policies have set out the contributions expected from development, planning applications that fully comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Policy compliant in decision making means that the development fully complies with up to date plan policies. A decision maker can give appropriate weight to emerging policies.*

*Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); or where a recession or similar significant economic changes have occurred since the plan was brought into force.*

This document therefore aims to provide developers, agents and applicants with:

- An overview of the Council's approach to securing mitigation through planning conditions, planning obligations (Section 106 agreements)
- Guidance on the type and nature of planning obligations that may be sought, and the basis for charges.

The document provides further information on the implementation of policies in the Local Plan Core Strategy (2014) which relate to the impacts of development and affordable housing. The key policies relating to infrastructure and affordable housing are:

- Policy CS10: Physical and Social Infrastructure
- Policy CS11: Transport
- Policy CS12: Green Infrastructure
- Policy CS13: Green Space, Sport and Recreation
- Policy CS16: Affordable Housing

### Governance – Roles, Responsibilities and Procedures

s.106 agreements and any viability assessments produced to inform decision making will be made accessible via the Council's website. Unless there is commercially sensitive information or personal data within these documents, un-redacted versions will be published in accordance with government guidance.

The content of the S.106 agreement is agreed between the relevant parties and the Council, with a planning officer acting on behalf of the Council under delegated authority. The S.106 Legal Agreement is prepared by the council's solicitors on the instructions of a planning officer, and the applicant(s) for the relevant planning application will be required to pay the solicitor's fees, and the solicitor fees of other relevant parties. The council's solicitor may at times instruct an external solicitor to prepare a S.106 Legal Agreement on the Council's behalf, in such instances the applicant(s) will also be required to cover the external solicitor's fee.

Where an applicant submits a viability assessment to the Council as part of a planning application (including applications for varying agreed S.106 Legal Agreement's) the Council will appoint an independent assessor to scrutinise the viability assessment in line with RICS guidance on viability. This independent assessor will be commissioned at the applicant(s) expense, with the applicant(s) required to cover the independent assessor's fee.

For the avoidance of doubt should there be conflict in this strategy with any legislation or statutory guidance then the legalisation and statutory guidance has precedence however if it

is not one of the above or as part of the local plan then this strategy has precedence and if in conflict with the local plan then this shall be sought to be changed.

### Negotiation of s.106 agreements – Pre-application stage

Developers are encouraged to begin pre-application discussions with the local planning authority as soon as possible. The Council offers a paid pre-application advice service, details of which are available on our website.

As part of the pre-application advice system, the Council strongly urges the use of Planning Performance Agreements (PPA) for major schemes (including new housing, employment and mixed use schemes). These are voluntary agreements between the local planning authority and an applicant, aimed at delivering high quality, sustainable development that is based on a clear vision and set of development objectives.

A PPA will deal with several issues including s106 agreement negotiations. It is the ideal avenue for considering what a s.106 agreement should include (or the unilateral undertaking should offer if the developer chooses that route), considering the CIL regulations tests. Entering a PPA does not, of course, guarantee the outcome of a planning application, but it does guarantee the availability of resources via an agreed project plan and work programme.

If a developer does not wish to enter a PPA, paid pre-application discussions with the Council can still take place. However, discussions related to s.106 agreements would be charged separately, and in addition to the pre-application fee set out on the Council's website.

### Negotiation of s.106 agreements – Planning application stage

If an applicant has chosen not to pursue a pre-application and PPA, once a planning application has been submitted to the Council and validated, a case officer will be appointed. The case officer will work with the developer and other relevant parties, to identify what obligations need to be included in the s106 agreement. Officers will have due regard to the strategic and policy framework of the council in regards to negotiations and identification of obligations. This is currently a delegated power under the constitution but will be kept under review.

Initially, the obligations will be expressed as Heads of Terms. These are the issues on which contributions are based and around which the details of the obligations are negotiated by the interested parties.

Heads of Terms and their justification in accordance with the CIL regulations tests will be set out in any delegated/committee report written by the case officer. The report will set out a Indicative timescale for completion of the s106 agreement. If a unilateral undertaking has been submitted, it will similarly be assessed against the CIL regulations tests in the committee report.

An obligation, whether set out in an s106 agreement or a unilateral undertaking, can only be a material planning consideration if it meets the CIL regulations tests. When a planning



application has been resolved to be granted subject to a s106 agreement, the Council will send appropriate formal instructions to its solicitor. If not already provided, the developer will need to provide certain information to the Council's solicitor so that the legal agreement can be agreed between the applicant(s) legal representative, and the legal representatives of other relevant parties. The information required is:

- Name and contact details of the applicant
- Name and contact details of the applicant's solicitor.
- Name and contact details of the land owner's solicitor (if different).
- Address and post code of the land involved.
- A current copy of the title to the land involved (i.e. all the land within the application's red line).
- A solicitor's undertaking to meet the Council's costs of preparing the agreement.

If the application is for outline planning permission, it may not be possible at that stage to fully detail the obligation particularly, say, if it is a payment relating to the number of homes provided. At that time the Council will want to agree with the applicant how the obligation payment will be calculated, with the precise calculation left until full details of the development are provided at the reserved matters stage.

It should be noted that failure to complete the s106 agreement within the given timescale will result in the application being refused.

Third party requests for planning obligations, will be considered on a case by case basis, based on the evidence provided by the third party (such as the County Council) to support their request.

### [Template agreements](#)

The Council provides an s106 agreement template on its website (s106 Templates). The Council strongly advises developers to use the standard wording to avoid delay in the negotiation process. If the standard wording is used, this should help the developer to submit a draft s106 agreement with the planning application.

### [Charges for monitoring of obligations](#)

The Council has a schedule of monitoring charges, which is set out on the Council's website. In relation to strategic sites and mixed-use sites, bespoke monitoring charges will be negotiated.

### [Timing and triggers for action or payment](#)

The s106 agreement or unilateral undertaking will set out the relevant timings and trigger points. Development related trigger points should be used (such as prior to commencement or prior to first occupation) rather than fixed dates. Fixed dates can become irrelevant if there is slippage in the development programme. On larger developments, the phasing of payments (such as for the provision of school places) may be acceptable where this is compatible with infrastructure delivery.

If a developer considers that there is a case either for later or lower payment or later on-site delivery, this needs to be supported by evidence at the planning application stage. The case officer will need to set out a reasoned and evidenced justification in their delegated or committee report. Similar justifications will be required from any infrastructure or service provider if it considers earlier or higher payment or earlier on-site delivery is necessary.

### Monitoring

The Council's monitoring officer is responsible for logging all obligations and associated trigger points. The monitoring officer will act on all trigger points to ensure that obligations are met. The monitoring officer will check that all payments are made in a timely manner, are that third parties are notified of relevant trigger points being reached where required. Each party to the s.106 agreement will be accountable for ensuring any planning obligations they obtain via a s.106 agreement is spent in accordance with the CIL regulations and the requirements set out within the s.106 agreement.

The monitoring officer will also check that the transfer of land and/or buildings to third parties takes place on time and any agreed contributions paid (such as for future maintenance).

Most s106 agreements include a "pay back" clause. This means that if the money is not spent within a set period, it must be paid back to the developer with interest. Prior to releasing any initial money to a third party, the Council will require evidence of impending project delivery. This also applies if the council finds that s106 monies gathered on behalf of others has not been spent in accordance with the relevant agreement. The council reserves the right to inform the appropriate signatories to the agreement and or any others including authorities and Kent Police should fraud be suspected by those receiving any s106 benefit or indeed from developers who are suspected of not keeping to the agreement.

If the developer becomes aware of any reason why trigger points may not be able to be met, it is the developer's responsibility to contact the monitoring officer immediately.

Planning obligations sought by the Borough Council on behalf of third parties (such as the County Council) must be delivered/spent in line with the relevant s106 agreement. No monies will not be handed to a third party by the Borough Council until clear evidence is provided to the Borough Council that the monies obtained are required to support delivery of a project in line with the relevant agreement.

### Index-linking of payments

Unless otherwise agreed, all payments will be index-linked. Indexation will be calculated from the date the relevant project / service costs were ascertained to the date of payment. The Council's monitoring officer will be able to provide details of the amount due.

## Development viability

Planning obligations are negotiated between the Council and developers, on a case by case basis. Where developers believe that viability is an issue, applicants will need to make a submission to the Council which should include the following:

- A financial viability appraisal setting out how they are not able to meet the full policy requirements (including the amount and tenure of affordable housing) deemed necessary to be secured through a Section 106 agreement. The viability appraisal should be completed in accordance with RICS guidance on Financial viability in planning: conduct and reporting and should include:
  - Quantity surveyors cost assessment
  - Market evidence of sales rate and site value
  - Development and sales programme (where relevant)
  - Details of any exceptional development costs
- A statement outlining the benefits and risks of not meeting the policy requirements and the site being delivered immediately.

The issue of viability will normally be dealt with at application stage. However, applicants can request that the Council review the financial viability of a development following planning permission being granted. An example of which is where developments are expected to be phased over a number of years and circumstances may have changed since planning permission was granted.

The Council will seek independent advice to review the financial appraisal which has been provided, with the cost being met in full by the applicant. The Council will consider potential benefits of a scheme by weighing these against the resulting harm from the potential under provision or delayed provision of infrastructure and other obligations such as affordable housing.

Based on independent financial viability findings and other evidence, planning obligations may be deferred/phased, or discounted, where this would not make the development unacceptable in planning terms.

The due weight of viability decisions are made by the authority and the authority reserves the right to determine this weight given on a case by case basis on an open and transparent basis but requires this same openness from those seeking to enter into agreements and reserves the right as per the above in any instances of bad faith.

## Overages policy

It is the policy of this authority that should any developer that wishes to mitigate or minimise their S106 obligations then we shall seek to add, where applicable and at our discretion, an overages clause so that in the event that the viability assessment is incorrect and that viability changes on an open book basis then the authority shall seek to recoup additional payments on a taper basis.

## Planning Obligations

This section aims to set out the variety of contributions that might need to be considered as part of negotiations on planning applications that require a s106 obligation. They are not meant as an exhaustive list, but as a means of a guide to assist in those conversations. Each application and scheme will be different and therefore innovative design and place making will still be needed.

These guidelines should be seen as a starting point or a minimum standard, which is open to negotiation based on each individual case. This recognises the complexities that some sites have over others and the planning balance that the local planning authority must weigh up.

The information below sets out a summary of what may be required from a typical major development scheme. This is provided as an illustration only:

### Air quality, noise, odour (Mitigation and/or monitoring)

Local authorities in the UK have a responsibility under Local Air Quality Management (LAQM) legislation to review air quality. Where concentrations exceed national objectives, measures should be put in place to reduce emissions, and be reported in the local Air Quality Action Plan (AQAP). Most such Action Plans are designed to address difficulties in complying with national objectives for either NO<sub>2</sub> or PM<sub>10</sub>.

In some instances, it may be necessary to seek developer obligations towards improvement measures either via direct delivery of a project or via a financial contribution to a project serving a wider local area.

The Council may for example require developers to offset the air quality impacts of their development through a standard financial contribution to air quality action. In this context, capital funding for example may be sought for the purchase and installation of monitoring equipment; action planning; and the enforcement of air quality planning conditions.

For developments where an overall significant impact to local air quality is determined a damage cost contribution can also be sought, utilising guidance published by the Department for Environment Food and Rural Affairs. The calculation should be undertaken to determine an appropriate sum to be spent on mitigating the impact on air quality.

In relation to noise and odour, the Environmental Protection Team recommends suitable planning conditions or planning obligations that should be sought, if the Local Planning Authority is minded to approve a planning application. Planning obligations in this respect, can include for example covering costs associated with monitoring or the imposition and delivery of noise and odour management plans.

### Climate Change

The Council declared a climate emergency in 2019 along with much of the world. Developments should seek to mitigate the impact of climate pressures within the Borough within their development and help the Borough reach net zero by 2030. Where planning obligations need to be collected under Section 106 of the Planning and Country Act 1990

(commonly known as section 106 agreements) to allow new developments to comply with local planning policy where it is not feasible or practical to achieve all necessary climate change measures at the development site.

## Archaeology

In most cases, the investigation and recording of archaeological remains are covered by planning condition, in consultation with Kent County Council's Archaeological Service. However, in some circumstances a planning obligation may be necessary and could cover, for example, the deposit and storage of archaeological artifacts, as well as their public display (physical or digital).

## Heritage, Art and Culture

Gravesham is an historic Borough and has many assets including listed buildings and art and cultural assets. Where appropriate and depending on the development. The Council may seek contribution towards the preservation of our heritage and our art and culture.

## Affordable housing

The existing Local Plan Core Strategy addresses the requirement for affordable housing within the Borough at states:

*The provision of affordable housing will be required on all new housing developments of: 15 dwellings or more or on sites of 0.5 hectares or more in the urban area; and 3 units or more or on sites of 0.1 hectares or more in the rural area.*

*The amount of affordable housing to be provided by private housing development sites above the threshold will be 30% in the urban area and 35% in the rural area.*

*The Council will seek an affordable housing mix of 70% affordable rented and social rented accommodation and 30% intermediate housing.*

*Development will be subject to site viability and a tenure mix necessary to meet local needs and achieve a successful sustainable and socially inclusive development.*

*In the Green Belt, limited affordable housing in a sustainable location for a proven and justified local community need will be supported. Such units once constructed will be occupied by people with a proven local community connection. This includes affordable rural workers dwellings. In all cases, permissions granted under this policy will be restricted to those uses in perpetuity.*

Since the adoption of the Local Plan Core Strategy (September 2014) the National Planning Policy Framework (NPPF) has been revised a number of times, with the latest revision (December 2023) defining affordable housing as follows:

*Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions<sup>81</sup>:*

*a) Affordable housing for rent: meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).*

*b) Starter homes: is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.*

*c) Discounted market sales housing: is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.*

*d) Other affordable routes to home ownership: is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.*

Affordable housing constitutes a number of 'products' which are intended to meet the needs of eligible households whose needs are not met by the open market. Affordable housing is primarily delivered through new-build development, with development proposals that meet the requirements of Local Plan Core Strategy Policy CS16 having to make on site provision for affordable housing provision

There are various ways that affordable housing can be provided. National policy sets out that the presumption is that affordable housing will be provided on the application site (without public subsidy) so that it contributes towards creating a mix of housing.

In exceptional circumstances, off-site provision or a financial contribution in lieu of on-site provision (of broadly equivalent value) may be accepted.

Where a developer proposes to work in tandem with an affordable housing provider, the Council would expect that this should be one of the Council's existing Registered Social Landlord (RSL) partners.

Since each development is different, negotiations vary from application to application, with matters such as viability and material considerations such as the House of Commons: Written Statement (HCWS50). However, the following matters are likely to be those that will need to be incorporated into the legal agreement for the provision of affordable housing:

Matters to be included in the legal agreement:

1. The definition of affordable housing
2. The number, tenure and mix of affordable housing
3. The location of the affordable housing on site via an attached plan
4. The timing of the construction of the affordable housing
5. The arrangements to ensure that such provision is affordable for both initial and subsequent occupiers of the affordable housing
6. The occupancy criteria to be used for determining the identity of prospective and successive occupiers of the affordable housing, and the means by which such occupancy shall be enforced

If off-site provision or a financial contribution in lieu of on-site provision is accepted instead, details regarding this provision will be set out within the legal agreement.

The Council may also seek to obtain direct delivery of traveller sites, self and custom build development as part of a development or seek a financial obligation to the delivery of such development.

### Burial land / facilities

The Borough's population profile has changed, with more people residing in the Borough and living longer. The cultural and religious profiles of residents within the Borough have changed alongside this with internal and international migration over time also changing the profile of residents living the Borough. This has placed additional demands on the Borough's finite burial plots and has necessitated a need to expand provision with Thames View Crematorium and Cemetery being built and opened on 9th January 2017.

When existing provision is unable to meet demand generated by new development, the Council will seek financial contributions for the provision of additional land and facilities.

### Community safety

All developments are expected to design out crime and be compliant with Policy CS19 which requires all new development to meet anti-crime standards and for the layout of new development to create safe and secure environments, whilst providing surveillance to minimise opportunities for crime and vandalism.

The current National Planning Policy Framework (NPPF), which sets out the Government's planning policies for England, which is under review, highlights the need to create safe and

accessible environments where crime and disorder and the fear of crime do not undermine quality of life or community cohesion.

Section 17 of the Crime and Disorder Act 1998 (as amended) requires all local, joint and combined authorities (as well as National Parks, the Broads Authority and the Greater London Authority) to exercise their functions with due regard to their likely effect on crime and disorder, and to do all they reasonably can to prevent crime and disorder. Crime for these purposes includes terrorism.

Kent Police employs Designing Out Crime Officers (DOCOs) work with architects, developers and comment on relevant planning applications, to ensure Secured by Design principles are incorporated into Development Proposals.

Such matters are predominantly covered through the imposition of planning conditions, as part of a permission to ensure that the proposal does not compromise community safety. However, in some circumstances the Council may negotiate a financial contribution towards the delivery of community safety measures, that contribute towards addressing crime prevention issues in relation to proposals where such issues are likely to be significant.

### Community facilities

Community centres and services can act as a social focus for new communities, and they may play an important part in the development of new relationships for residents. A community centre might act as a hub for a variety of public and private uses and where there is an identified need for a new centre or hall a variety of infrastructure providers might be interested in accessing space.

Community centres and facilities can provide for a co-location of many services such as: blue-light services (with access to lockable storage space for equipment); health services (with access to private consulting space); libraries (with potential to support roll-able shelving for books or storage for digital project work); play space for early years education groups; community meeting groups; and youth clubs.

Where community centres or halls are required, the transfer of land and buildings might be dealt with via a S106 agreement. Where existing centres or halls can expand or improve their provision to meet additional demand, it may be appropriate to provide financial contributions for off-site provisions.

### Economic development

Gravesham experiences above-average levels of unemployment especially youth unemployment and associated deprivation in comparison to some other parts of Kent and the wider South East. There is, therefore, a need to ensure that appropriate skills are developed and that local people, particularly the unemployed and socially excluded, have the ability to access the new jobs being created by new development.



The Council will therefore seek to address this by requiring relevant developments to either adopt, and implement, an approach to recruitment and employment for a proportion of all posts during both the construction and if appropriate operational phases of the development to be prioritised for residents of the Borough, and/or require an appropriate contribution to be made to an employment training scheme.

All developments as per the design guide are expected where possible to have tenure mix and provide where possible opportunities for new jobs and employment at various skills and educational level as well as flexible and expandable spaces. Where this is not possible this could be mitigated with a contribution towards other job creation and employment schemes elsewhere in the Borough.

Businesses are part of Gravesham's community and there will be an expectation that there will be timely social contribution to the Borough especially in terms of its upkeep and management of the development and surrounding areas.

### Education

The NPPF sets out that the Government attaches importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Great weight should be given to the need to create, expand or alter schools; and work with school promoters to identify and resolve key planning issues before applications are submitted.

The National Planning Practice Guidance (PPG) on Planning Obligations states that: "Plans should support the efficient and timely creation, expansion and alteration of high- quality schools. Plans should set out the contributions expected from development. This should include contributions needed for education, based on known pupil yields from all homes where children live".

The NPPF also sets out that decision makers should consider existing or planned/ committed school capacity and whether it is sufficient to accommodate proposed development within the relevant school place planning areas. Developer contributions towards additional capacity should be sought, if required. This should include all school phases age 0-19 years, special educational needs (which could involve greater travel distances) and both temporary and permanent needs.

Annual pupil projections are undertaken by Kent County Council, using live birth, health and pre- school data, and take into consideration recent admission trends within Gravesham.

The level of education contributions required from a development are calculated by Kent County Council and are based on estimated pupil yield which takes into consideration the proposed housing mix and size of units (bedrooms) proposed. In addition to this should land be required for the construction of a new school or expansion and associated open spaces, contributions are sought by Kent County Council for the purchasing of such land, unless it is provided at no cost to the local authority as part of a s106 agreement.

At present the County Council have advised that future development in the Borough will require the provision of a new Secondary School, as well as the expansion of SEN provision.

### Environment

The NPPF recognises that the planning system should contribute to and enhance the natural environment, by minimising impacts on biodiversity and providing net gains where possible. It suggests that development should be directed at land of lower environmental value and that planning policies should consider biodiversity at a landscape level, identifying local ecological networks and promoting the preservation, restoration and re-creation of Priority Habitats.

Within the NPPF, there is a clear hierarchy enshrined within the principles by which biodiversity can be conserved and enhanced within the planning system. This states that, for a planning application to be acceptable, significant harm should be avoided if possible, adequately mitigated if not, and compensated for only as a last resort. It stresses the need to encourage the incorporation of biodiversity in and around developments and the importance of habitats that are considered irreplaceable, such as ancient woodland and veteran trees.

It is required and anticipated that the majority of ecological impacts will be avoided or mitigated through careful site selection and thoughtful design, but where this is judged not to be possible, or further effort is required to achieve net gain in biodiversity, a contribution can be made to enable approved schemes of compensation or enhancement to be achieved.

Contributions would normally be made through a Section 106 agreement, with collateral agreements between the developer and an offset provider, landowner or site management body. The level of contribution will be determined by the requirements of achieving the conservation objectives set out within the approved scheme, and are likely to include both capital investment and ongoing management costs over an agreed time period.

In England, Biodiversity Net Gain is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

Developers must deliver a BNG of 10%. This means a development will result in more or better quality natural habitat than there was before development. BNG rules affect developers of major developments (since Feb 2024), developers of small sites (from 2 April 2024) and developers of nationally significant infrastructure projects (from Nov. 2025).

Unless exempt (e.g. existing planning applications, variations of planning permission, householder applications, self and custom build applications), developers in England are required to provide 10% BNG on all habitats within the redline boundary of their development, whether or not they are impacted. Separate arrangements apply to on-site irreplaceable habitat. For off-site gains and significant on-site gains, developers must maintain the habitats created or enhanced for a minimum of 30 years, with these responsibilities will be set out in a legal agreement.

Separately, in Gravesham we have the Thames Estuary and Marshes Special Protection Area and Ramsar site which is an internationally important landscape, for nature conservation and wintering wildfowl. Every year around 250,000 waders and waterfowl travel thousands of miles to spend winter on the North Kent coast, feeding and resting on the marshes in preparation for the long return journey to their breeding grounds in the spring.

In recent years, the number of birds using these sites has declined and studies show that this could be due to people using the Thames estuary and marshes for recreation. An increase in residential development is likely to lead to an increase in recreational use. In 2015, the Planning and Regeneration Committee agreed to adopt a tariff for all planning applications which result in a net increase in dwellings within a 6km radius of the sites.

If a development is proposed, which will result in a net increase in residential accommodation and the site lies within 6km of the SPA or Ramsar site, a developer is required to contribute £314.05 per dwelling. (This fee is subject to inflation and will increase annually, and varies between C1, C2, C3, C4 and certain Sui Generis development), to mitigate the impacts of their development. Such contributions are secured through appropriate legal agreements.

### Flood defence and drainage

The National Planning Policy Framework states that:

*Plans should take a proactive approach to mitigating and adapting to climate change, taking into account the long-term implications for flood risk, coastal change, water supply, biodiversity and landscapes, and the risk of overheating from rising temperatures<sup>56</sup>. Policies should support appropriate measures to ensure the future resilience of communities and infrastructure to climate change impacts, such as providing space for physical protection measures, or making provision for the possible future relocation of vulnerable development and infrastructure.*

When determining planning applications, local planning authorities are required to ensure that flood risk is not increased elsewhere. With development only considered appropriate in areas at risk of flooding, where proposals are informed by a site-specific flood risk assessment.

Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
- any residual risk can be safely managed; and

- safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

Site specific measures can include the use of such as land raising, raised floor levels, restrictions on ground floor uses, enhancement or provision of flood defences and flood evacuation plans. On certain sites, sustainable urban drainage techniques can be employed to manage water effectively. It should be noted that SUDS are a statutory requirement for new development under the Flood and Water Management Act, with Kent County Council acting as the Lead Flood Authority in this regard.

Measures to address flooding and drainage are mainly secured through the use of conditions in consultation with the relevant authorities (e.g. the Environment Agency and Kent County Council as appropriate). However, such measures can also be secured through a legal agreement, when it is appropriate to do so, and this varies from proposal to proposal.

### Healthcare

The need for new health service facilities in connection with new development is assessed by NHS Kent and Medway ICB. Their assessment takes into account the capacity of existing primary care/acute facilities provision and the demographic nature of the area.

The scope of health care infrastructure requests may include capital provision and/or related funding and provision of services. The ICB assess the implications of each proposal on delivery of services and if they are of the opinion that the proposal will have a direct impact which requires mitigation, the ICB will request direct delivery or the payment of an appropriate financial contribution which is secured via a legal agreement, and varies from application to application.

### Libraries

Provision of libraries within Kent is the responsibility of Kent County Council, who have a duty to provide a comprehensive and efficient library service for everyone who lives, works, or studies in the Borough.

Kent County Council acknowledge the need to continue to meet the changing needs of service users and to cope with additional demand brought about by new development, through the provision of additional book stock and equipment.

Where improvements and/or new provision is required to mitigate the impact of new developments, financial contributions are sought by Kent County Council.

### Open Space, sports and recreation

Open space is defined in national planning guidance and the Local Plan Core Strategy as open spaces of public value, which offer important opportunities for sport and recreation and can act as a visual amenity. Open space includes amenity green space, parks and recreation grounds, play space, natural green space, outdoor sport space and allotments.

The NPPF recognises that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and wellbeing of communities. In addition, the provision of sufficient open space, of appropriate quality and accessibility, plays an important role in the sustainability of communities. As such, where development would result in the loss of existing open space or an intensification of use through new development, development will be required to provide open space either on-site, or where this is not feasible, to make a contribution to improve facilities off-site.

New major development, will be required to either incorporate open space within their development site or if this cannot be achieved, contribute towards meeting local needs off-site. Contributions will be sought based on the assumed number of residents that will be accommodated in the development.

Sport England's Playing Pitch Calculator will be used to estimate sport and recreation needs. With the calculator utilised in part to ascertain the contribution to be made by new development to provision of new or expansion of leisure facilities and/or services within the Borough.

### Transport, highways and parking

Kent County Council is the Local Highway Authority in Kent and is also responsible for the Public Rights of Way in Kent. National Highways (a Government arms length agency) are responsible for the Strategic Road Network. Both the County Council and National Highways are consulted on relevant planning applications that may have an impact upon their networks (for National Highways this includes the proposed route of the Lower Thames Crossing).

In response, the County Council and/or National Highways may request mitigation measures in the form of works to the highway, provision of active travel planning measures and/or financial contributions towards strategic transportation projects.

Where mitigation is required, this must be fully funded and delivered directly by the developer. The developer will be required to enter into a S278 Agreement with the Highway Authority to deliver the works. All work within or affecting the highway will be subject to technical approval by the Highway Authority prior to commencement on site.

Contributions for highway works will only be taken in exceptional circumstances such as for large scale strategic transportation schemes, with more than one funding source, which have been identified through the Local Plan process and included in the associated Infrastructure Delivery Plan or otherwise agreed to by Kent County Council and/or National Highways. This may occur for example where more than one development in an area generates the need for a specific local highways scheme which cannot be delivered by an individual development. Such contributions can be secured through a S106 or S278 agreement.

When the Highway Authority takes on assets from developers it incurs maintenance costs for the life of the assets, and replacement costs at the end of their useful life. Commuted sums to cover these costs are required from the developer. These sums are secured through

both Section 278 and Section 38 agreements, but any agreement that includes the transfer of an asset to the Highway Authority may require such a contribution.

Matters related to travel plans, securing public transport provision, as well as other sustainable modes of transport e.g. cycling and walking can be secured through either a planning condition or obligation.

Cars and parking still remain a key and essential part of the transport infrastructure. Where development proposes an impact on local parking infrastructure then this should be mitigated either within the development to ensure that there is no impact or that this is mitigated through a s106 agreement.

### Site / public realm improvements

Direct delivery or financial contributions may be sought towards improvements to the street scene which may include: hard and soft landscaping;

street furniture;

signage;

public art.

On-site improvements may also be sought by condition.

Anticipated improvements and their maintenance may be set via delivery and management plans that are delivered via planning conditions and/or via a legal agreement.

### Sustainable drainage systems (SuDS)

Kent County Council is the Lead Local Flood Authority and is a statutory consultee in planning for all major development in relation to the management of surface water drainage.

The inspection and monitoring of drainage works during construction can be covered by planning condition. Whilst each development is assessed on a case by case basis, a planning obligation may be necessary to cover the future maintenance and adoption of the SuDS in the new development, this is dealt with on a case by case basis.

### Social care

The NPPF requires local planning authorities to plan for a mix of housing to meet the needs of different groups in society including but not limited to older people, people with disabilities, young people and families with children. LPAs have a responsibility to make such provision both through the local plan policies and when determining planning applications.

Kent County Council has a duty to protect vulnerable groups. People might need social care or support because of their age, health, or disability, or because they are caring for others. A key priority for KCC is enabling residents to live safely and independently in their own communities for as long as possible. Making a difference every day – KCC's strategy for Adult Social Care 2022 to 2027 (April 2022) sets out KCC's ASC strategy, in conjunction with

Framing Kent's Future – Our Council Strategy 2022-2026, Priority 4: New Models of Care and Support.

New developments should reflect the social care needs of its users if they are to be sustainable developments. The assessment of those needs are derived from the general prevalence in the population of likely social care infrastructure demands that new development would create and how they can be met in a given location and circumstance. The needs may be met by direct provision of purposefully designed space or by a contribution through planning obligations.

KCC will direct contributions towards the following infrastructure areas to meet its priority of supporting independent living:

- Specialist housing – including extra care and supported living accommodation
- Digital technology systems and home adaptation equipment
- Adapting community facilities to make them accessible for all, so clients can access support services and facilities safely and comfortably and be active and engaged in their communities;
- Sensory facilities – including the innovative technology to reduce stress and anxiety or encourage sensory development and social engagement, or exterior facilities including sensory gardens
- Changing Places with additional features beyond standard accessible toilets to meet the needs of people with a range of profound disabilities, and their carers, usually located in or near a popular public area.

### Waste Management

The Council is the waste collection authority within the Borough and seeks the provision of waste receptacles which are used by occupants in new developments for kerbside collections. It is the responsibility of the developer to ensure that all the relevant bins and sufficient storage space is provided for each property. The costs of new receptacles are met by residential developers outside of the planning system.

Developments may also be required to support the development of community recycling points and the provision of collection vehicles, where additional demand is created that cannot be met through existing resources. Financial contributions or the delivery of specific assets can be secured through a legal agreement.

As Waste Disposal Authority, Kent County Council is responsible for disposal of waste collected by the Borough Council. The county council achieves this via a network of waste transfer stations and household waste recycling centres. Where capacity is reached and demands from new development will exacerbate the function of the County Council's facilities, Kent County Council will seek financial contributions towards the expansion of existing or delivery of new sites, secured through a legal agreement.

At present Kent County Council have advised that the facility at Pepperhill has reached capacity and that further investment paid for by development is needed to meet the additional demand from new development.

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