



# **BRENTWOOD LOCAL PLAN**

## Draft Planning Obligations

## Supplementary Planning Document

November 2022

## Table of Contents

1. The purpose of this document .....	4
What are the role and status of Supplementary Planning Documents? .....	5
Consultation .....	5
2. Policy Background .....	5
A. National Policy Context .....	5
B. Corporate Objectives .....	6
C. Brentwood Local Plan 2016-2033 .....	6
D. Infrastructure Delivery Plan .....	7
E. CIL .....	8
F. Two-tier Local Government System .....	8
G. Other Statutory Bodies .....	9
3. Infrastructure Types .....	9
A. Strategic Transport Infrastructure .....	12
Policy background .....	12
The Council's approach to funding its strategic transport infrastructure .....	12
The cost and funding gap of strategic infrastructure .....	13
Apportionment .....	13
Non- allocated development .....	14
B. Important Place-making Infrastructure Requirements .....	14
C. Site Specific Infrastructure Requirements .....	14
Housing .....	15
Transport, Highways, and Access .....	31
Flood Protection and Water Management .....	34

Early Years, Childcare and Education .....36

Health and Social Wellbeing.....36

Carbon Reduction and Renewable Energy .....38

Natural Environment Mitigation .....40

Green and Blue Infrastructure .....45

Public Realm and Public Art .....56

4. The Council’s Approaches to Secure Contributions .....61

Unilateral Undertakings .....61

B. Section 106 Agreements.....62

    Retrospective Contributions .....62

    Monitor and Manage.....62

C. Section 278 Agreement.....64

D. CIL.....64

5. Considerations in drafting a Section 106 Agreement Framework .....64

    Cost and payment of strategic infrastructure contributions .....65

    Works in kind .....66

    Provision of land, costs of providing the land and equalisation agreement.....67

    Review and indexation .....67

    Trigger points.....68

    Conditions.....68

    Access provisions .....68

    Statutory agreements .....68

    External funding.....68

    Reimbursement to forward funder(s).....69

Reimbursement of unspent contributions .....	69
Access to adjacent land.....	69
Sites of multiple ownership .....	69
Negotiations/ Viability .....	70
Escrow agreement and bonds.....	72
Payment for specialist study.....	72
6. Implementing this Planning Obligations SPD .....	73
A. Monitoring and Enforcement of Obligations.....	73
B. Monitoring Fees .....	73
C. Reporting on the Use of Section 106 Obligations and CIL.....	74
D. Exempt development.....	74
E. Payment management.....	75
7. Appendix A: Glossary .....	76
8. Appendix B: The Open Space Calculator .....	78

# 1. The purpose of this document

- 1.1. The Brentwood Local Plan 2016 – 2033 (the Local Plan) sets out the strategic objectives and spatial strategy for Brentwood. The Council places great importance on delivering its planned growth and on providing appropriate infrastructure to ensure development mitigates its own impact and brings wider benefits to the communities who live and work in the Borough.
- 1.2. To support the Local Plan, this Planning Obligations Supplementary Planning Document (SPD) serves the following purposes:
  - a. It provides a robust framework to secure the delivery of necessary infrastructure generated by planned and increment growth in a holistic and coherent manner;
  - b. It sets out detailed guidance and a clear position to developers, landowners and stakeholders, regarding the scope and scale of planning obligations applicable to different types and quantum of development; and
  - c. It supports and supplements the Local Plan policies and once adopted, it becomes an important material planning consideration for the Council when determining planning applications.
- 1.3. It should be noted that not all the obligation types within this SPD will apply to all types of development. This SPD has been produced to apply to varying types and scales of development, but proposals will be assessed on a case-by-case basis with the individual circumstances of each site being taken into consideration.
- 1.4. The content of this SPD will be kept under periodic review; amendments may need to be made in order to take account of changing circumstances.
- 1.5. Other documents that provide guidance on planning obligations, for example, the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy SPD and Essex County Council (ECC)'s Developers Guide to Infrastructure Contributions (DGIC) (2020 or as amended) should be read in conjunction with this document. Developers should refer to ECC's latest DGIC which provides details on the scope and range of contributions towards infrastructure which ECC may seek from developers and landowners in order to mitigate the impact that development may have on ECC services and infrastructure and make development acceptable in planning terms.

## What are the role and status of Supplementary Planning Documents?

- 1.6. SPDs supplement the Local Development Plan and are intended to provide further detail to policies. SPDs do not introduce new policies or requirements but rather assist in the interpretation and application of existing policies and proposals and should help applicants prepare planning applications. They are a material consideration in decision making.

### Consultation

- 1.7. This document is available for public comment for a six-week consultation period, between 8 December 2022 – 19 January 2023.

## 2. Policy Background

### A. National Policy Context

- 2.1. The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended.
- 2.2. Paragraphs 55 to 58 of the National Planning Policy Framework (NPPF) published in July 2021 and Regulations 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) set out the Government's policies on planning obligations.
- 2.3. The NPPF advises that planning authorities should consider the use of planning obligations where they could make an otherwise unacceptable development acceptable. They should only be used where it is not possible to address unacceptable impacts through planning conditions.
- 2.4. The CIL Regulation 122 sets out what a planning obligation can constitute and paragraph 57 of the NPPF re-iterates that planning obligations should only be sought where they meet all the following tests:
  - i. necessary to make the development acceptable in planning terms;
  - ii. directly related to the development; and
  - iii. fairly and reasonably related in scale and kind to the development.

- 2.5. Previously, under the CIL Regulations introduced in 2010, Local Planning Authorities (LPAs) were not able to pool more than five planning obligations together towards a single piece of infrastructure or infrastructure ‘pot’. However, the government recognised issues associated with this restriction and removed the pooling restriction via the 2019 amendments to the CIL regulations.

## B. Corporate Objectives

- 2.6. The [Corporate Strategy 2020-2025](#) sets out five priority areas for Brentwood Borough Council:

- i. Growing our economy
- ii. Protecting our environment
- iii. Developing our communities
- iv. Improving housing
- v. Delivering an efficient and effective council

- 2.7. The provision of planning obligations, through this SPD, seeks to address the above priorities, particularly the first four.

## C. Brentwood Local Plan 2016-2033

- 2.8. Development proposals should be considered in line with the Brentwood Local Plan 2016 – 2033 (the Local Plan). Proposals which require planning obligations should be considered in accordance with the relevant policies.

- 2.9. The overarching reasoning and justification for requiring planning obligations are set out in the relevant Local Plan policies, in particular:

- i. Strategic Policy MG05: Developer Contributions
- ii. Strategic Policy BE08: Strategic Transport Infrastructure
- iii. Policy BE12: Mitigating the Transport Impacts of Development
- iv. Strategic Policy HP01: Housing Mix

- v. Policy HP04: Specialist Accommodation
- vi. Policy HP05: Affordable Housing
- vii. Policy PC05: Brentwood Town Centre
- viii. Policy PC11: Education Facilities
- ix. Policy NE02: Green and Blue Infrastructure
- x. Policy NE05: Open Space and Recreation Provision
- xi. Strategic Policy NE08: Air Quality
- xii. Strategic Policy NE09: Flood Risk

- 2.10. In addition, site specific policies in Chapter 9 set out the amount and type of development provided within each site allocation, as well as what specific supporting infrastructure and other requirements are needed for each site.
- 2.11. Other policies within the Local Plan provide specific and detailed justification for various types of planning obligations and will be referred to in the relevant sections of this SPD.
- 2.12. The Local Plan must be read as a whole when considering development proposals.

## D. Infrastructure Delivery Plan

- 2.13. The Brentwood Infrastructure Delivery Plan (IDP) has been undertaken to provide the Council with the understanding of infrastructure deficit in the context of planned growth and inform the Brentwood Local Plan 2016 – 2033. The IDP Part B (Schedule) provides a list of required infrastructure to deliver Brentwood’s growth over the Plan period. Information on the indicative phasing, costing, delivery mechanism, priority ranking, and relevant site allocations of identified infrastructure can also be found in Part B.
- 2.14. The IDP by its very nature is a ‘snapshot in time’ as the information provided by infrastructure providers will naturally date and alter over time, reflecting changing needs. Therefore, the IDP should be viewed as a ‘live document’ and information should be treated as indicative



rather than prescriptive. The Council will keep the IDP under review and update it where information becomes available. Applicants should refer to the latest version of the IDP, available on the Council's website.

- 2.15. Although the IDP does not form part of the development plan, its latest version will be a material consideration when determining planning application against Policy MG05: Developer Contributions of the Local Plan.

## E. CIL

- 2.16. The Council is currently preparing a Community Infrastructure Levy (CIL). In May 2022, it launched the CIL Viability Assessment Stakeholder Workshop and invited comments on the draft Viability Assessment. This work informed the final draft charging schedule, which was published for public consultation from the 12 October to 9 November 2022. The Council is aware of the proposed changes to CIL (and indeed to the system of S106 obligations generally) in the Levelling Up and Regeneration Bill, however the final outcome of these proposed changes is unknown at present. The Council will continue monitoring the progress of the Bill and take appropriate actions as required.
- 2.17. In considering appropriate CIL rates, the Council has taken into account development viability and contribution requirements from site allocations. It is envisaged that there would be no unacceptable financial burden on landowners/ developers as a result of CIL introduction.

## F. Two-tier Local Government System

- 2.18. The Council operates within a two-tier local government system. Essex County Council (ECC) has a statutory role as the highway and transportation authority, appropriate local authority for education, minerals and waste planning authority (MWPA), lead local flood authority (LLFA), lead advisors on public health, the provision of libraries and adult social care. As such, if a planning obligation is sought for contributions covering these matters, then ECC should be party to the Section 106 (S106) agreement.
- 2.19. An overriding principle regarding infrastructure contributions is that applicants are expected to contribute to the infrastructure that is required to mitigate their developments, as well as cumulative impacts, and any other developments benefitting from the infrastructure should contribute towards it. It should not be for the public purse to fund these necessary mitigation measures and there should be no financial risk for the Council or Infrastructure providers such as Essex County Council.

## G. Other Statutory Bodies

- 2.20. Statutory bodies and organisations will be consulted on relevant planning applications<sup>1</sup> and the Council will give significant weight to the advice of the key statutory consultees on specialist technical issues where it may have limited expertise. In some cases, the statutory consultees may request planning contributions and the S106 agreements may involve them. The statutory consultees include (but not limit to):
- a. Environment Agency;
  - b. Natural England;
  - c. Historic England;
  - d. National Highways (NH). In Brentwood, NH is the highways authority responsible for the strategic road network including the M25 Junctions 28 and 29, and Lower Thames Crossing;
  - e. Mid and South Essex Integrated Care Board (ICB) which is an NHS body covering Brentwood Borough under a new partnership between the organisations that meet health and care needs (the Integrated Care System) across mid and south Essex.
- 2.21. A full list of statutory consultees on applications for planning permission is set out in the Planning Practice Guidance<sup>2</sup>.

## 3. Infrastructure Types

- 3.1. Different types of infrastructure will require different approaches to securing them. The exact approach to securing the mitigations through S106 planning obligations or other legal agreements will be agreed through development management process on an individual site by site

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<sup>1</sup> Please note: Planning law prescribes circumstances where local planning authorities are required to consult specified bodies prior to a decision being made on an application. However, not all statutory consultees are consulted on all planning applications. The circumstances for statutory consultation are set out in the Development Management Procedure Order: <http://www.legislation.gov.uk/uksi/2010/2184/article/20/made>

<sup>2</sup> Paragraph: 030 Reference ID: 15-030-20190722

basis (detailed guidance and considerations for different approaches are set out in Chapter 4). This chapter provides guidance on what types of planning obligations and funding mechanisms the Council will use to fund the below types of infrastructure:

- i **Strategic transport infrastructure** requirements (category 1 and 2 in the IDP);
- ii **Important Borough-wide infrastructure** required for sustainable growth and place-making in the Borough (category 3 in the IDP);
- iii **Site-specific infrastructure** requirements to make development acceptable in planning terms (where these are specific to Local Plan allocated sites and also support wider objectives, they have been identified and assigned 2 in the IDP accordingly; many will only be known as applications come forward and be assessed against the Local Plan policies).

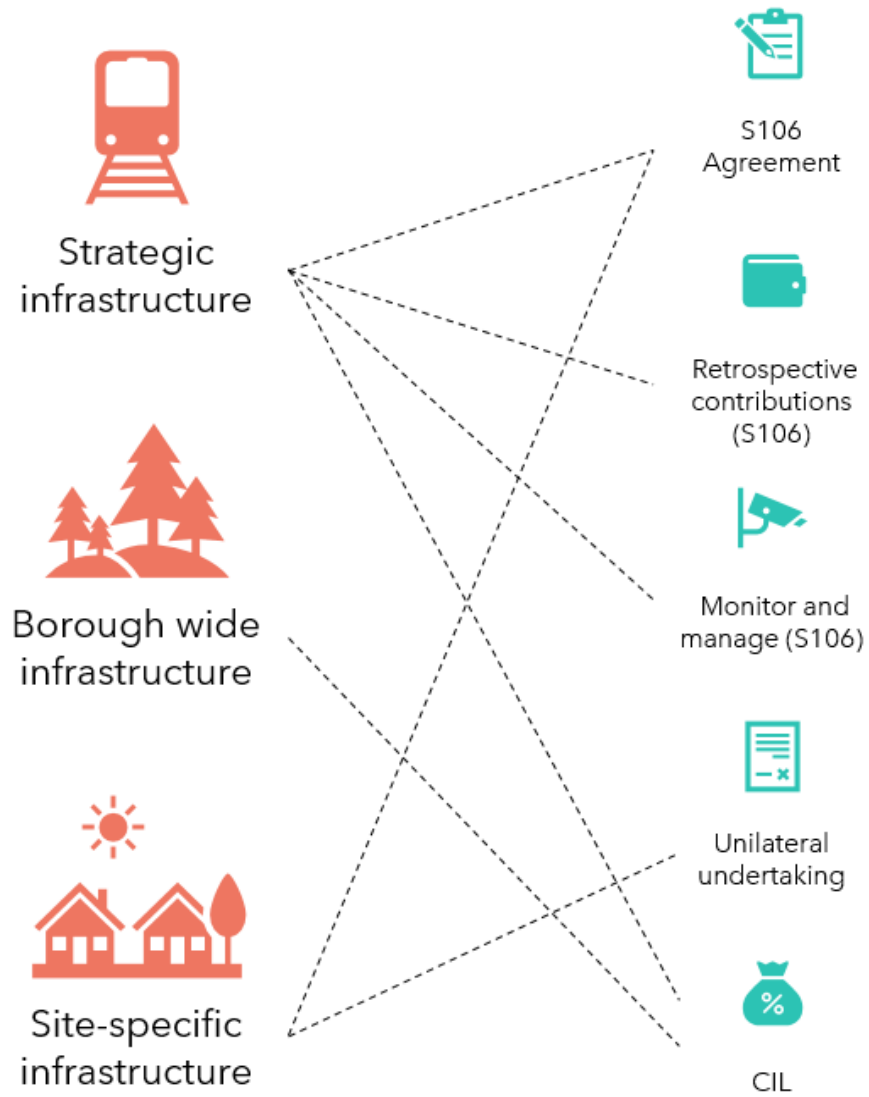
3.2. The categorisation of infrastructure types above is informed by the IDP priority ranking, summarised below:

- i Category 1: strategic transport infrastructure that are critical to the delivery of the Local Plan, the provision of which must be in place at the right time to support development.
- ii Category 2: necessary infrastructure to mitigate the impacts arising from development or to support wider strategic or site-specific objectives which are set out in planning policy or are subject to a statutory duty. It enables development to come forward in a way that is both sustainable and acceptable in planning terms. Development may be able to commence ahead of its provision.
- iii Category 3: important Borough-wide infrastructure that is required for sustainable growth and place-making, development may be able to commence ahead of its provision.
- iv The IDP does not concern site-specific infrastructure unless it falls under category 1 and 2 above.

3.3. Developer contributions will be sought towards category 1, category 2, and site-specific infrastructure, whilst CIL would be primarily used to fund category 3 infrastructure. However, the ability to fund the same piece of infrastructure using both S106 and CIL monies is not precluded.

3.4. Details of what funding mechanism is expected to apply to required infrastructure is set out within the IDP Part B.

Figure 1: The types of planning obligations and mechanisms the Council will consider using to fund its different types of infrastructure



## A. Strategic Transport Infrastructure

### Policy background

- 3.5. The requirements relating to strategic and necessary transport infrastructure are underpinned by Policy MG05 Developer Contributions, Policy BE08 Strategic Transport Infrastructure, Policy BE12 Mitigating the Transport Impacts of Development and site-specific policies in the Local Plan.

### The Council's approach to funding its strategic transport infrastructure

- 3.6. Funding for strategic and necessary transport infrastructure schemes will be secured primarily through S106 agreements to mitigate, support and facilitate planned growth.
- 3.7. For some strategic transport infrastructure, such as the A127 link road, the mitigation measures need to be in place or at least planned early on, because it may take time for the design, technical issues and feasibility of a project infrastructure to be finalised. Monies need to be secured so that funding is available when the detailed design is ready to enable delivery. Since no public funding has been secured or identified at this point in time, it will therefore be necessary to obtain funding from alternative sources and to collect developers' contributions retrospectively for these projects. (More details are discussed in **Chapter 4**, particular the 'Retrospective Contribution' section)
- 3.8. For other strategic transport infrastructure, the identified measures may not be required early on in the Plan period but are still strategic infrastructure that may need to be in place at the right time to support planned growth.
- a. The first challenge with this type of infrastructure is that, whilst mitigations have been identified to support planned growth in Brentwood, the infrastructure itself also accommodates the demand of the wider region. Whilst National Highways confirms that Brentwood is not required to address traffic from the wider region, there will need to be a holistic approach in the planning and delivery of this infrastructure to avoid piecemeal improvements.
  - b. Another challenge associated with this type of infrastructure is that the identified mitigation measures have been modelled under the worst-case scenario assumptions; considering there is a desire to move towards more sustainable forms of travels, there is a need to generate more evidence of development's impact on the strategic road network and to positively challenge developers to keep their traffic impacts well below the worst-case scenarios.

- c. As such there needs to be a more innovative and bespoke approach in securing S106 contributions to this type of infrastructure. (More details are discussed in **Chapter 4**, particularly the 'Monitor and Manage' section)
- 3.9. In addition, Section 278 (S278) agreements may be relevant for specific transport schemes to be arranged through the highway authorities (Essex County Council and National Highways). Where necessary, the County Council and National Highways may require developers to enter into a S278 agreement to fully pay or make contributions towards mitigation measures that address the individual and cumulative impacts of the development scheme on the highway network. In some cases, a developer may be required to carry out the works in lieu of payment.
- 3.10. The Local Plan is clear that the timely delivery of strategic and necessary infrastructure is central to sustainable growth. In some instances, delivery in advance of all contributions having been collected may be required.

### The cost and funding gap of strategic infrastructure

- 3.11. The Council will seek to apportion the costs to fund strategic infrastructure as required through S106 obligations.
- 3.12. The Council acknowledges that the costs and funding gaps of infrastructure are likely to change from time to time. As a live document, the IDP is subject to a flexible regime of review. The Council will update the IDP where new or updated information becomes available and make amendments to the IDP and the level of funding gap on this basis.
- 3.13. At this moment in time, no external funding has been made available towards the identified strategic and critical infrastructure. There is a realistic expectation that sources of external funding may become available where required and that the necessary steps have been taken to access this funding and address the funding gap. Further details on potential sources of external funding are set out within Chapter 15 of the IDP. However, the Council must ensure that growth will still be deliverable if funding turns out not to be forthcoming. As such, a worst-case scenario where external funding is not available has been assumed in calculating the developer contributions to inform site viability and ensure that critical projects can and will be delivered to support planned growth. Where external funding becomes available, the IDP will be updated to reflect the remaining funding gap. Further guidance on when external funding becomes available is discussed in **Chapter 5** (Considerations in Drafting Section 106 Agreement) of this document. It should not be assumed that any identified infrastructure costs or funding gaps are to be covered by the Council or Statutory Bodies such as Essex County Council and National Highways.

### Apportionment

- 3.14. The approach to apportioning the costs of strategic and necessary infrastructure to the Local Plan site allocations is discussed in Chapter 15 of the IDP.

- 3.15. Based on this apportionment methodology, a worksheet detailing indicative developer contribution for each site allocation against each infrastructure requirements has been drawn up. This will be set out in the forthcoming IDP Part C. The IDP Part C should be used as a guidance only, the precise level of contributions will depend on the quantum, mix and location of the proposal, the existing capacity of the infrastructure and available funding at the time the application is submitted. This should be the subject of detailed consideration at the pre-application or application stage.

### Non- allocated development

- 3.16. Where development is proposed on non-allocated sites in the vicinity of the identified strategic and necessary infrastructure and development will benefit or be acceptable due to the said infrastructure, landowners and developers of those sites may also be required by the Council to contribute towards the cost of such strategic infrastructure via a S106 agreement. The Council shall determine on a case-by-case basis, in line with the statutory tests for planning obligations, whether such contributions or a proportion thereof, should be payable.

## B. Important Place-making Infrastructure Requirements

- 3.17. Important place-making infrastructure in the context of this SPD is category 3 items in the IDP.
- 3.18. The Council intends to fund place-making infrastructure primarily via CIL. This is because whilst CIL is an effective tool to generate income towards the provision of infrastructure, one notable issue with CIL is that revenue is contingent upon development being brought forward, and payments may be phased so as not to impact negatively upon development cash flow, and in turn, viability. CIL revenues are therefore volatile and uncertain as they are linked to new developments and the receipts may change with the economic cycle. The incremental nature in which it is collected means that it cannot solely be relied upon to fund the Borough's strategic infrastructure in its entirety.

## C. Site Specific Infrastructure Requirements

- 3.19. Site specific infrastructure requirements are to make a development proposal (that would not be acceptable otherwise) acceptable in planning terms and will be determined on a case-by-case basis, in consideration of relevant policies, and secured via S106, S278 or other legal agreements.
- 3.20. Site specific infrastructure requirements are underpinned by the Local Plan policies, and its supporting evidence base documents. These requirements apply to development on allocated as well as non-allocated sites.

3.21. The following tables in this section set out the obligation types which may be required as part of any S106 agreement, the policy background to requiring such obligations, when the obligation is expected to be provided, any exceptions and any other relevant information. The exact approach to securing site-specific infrastructure will be agreed through the development management process. Obligations set out in this section may not otherwise be secured through a planning condition. As is the case for obligations, conditions will be used to make development acceptable which would otherwise be considered unacceptable. Conditions will typically apply to on-site works such as public realm improvements or issues relating to the design of development. For clarity, impacts which the Council will seek to address through condition have been included following each thematic section. This is not an exhaustive list of matters which the Council may seek to address via condition.

## Housing

Obligation	Criteria	Justification	Policy background
Provision of on-site affordable housing	<p>H1. Policy HP05 requires the provision of 35% of the total number of residential units to be provided and maintained as affordable housing within all new residential development sites which comprise of 10 or more residential units. The 35% applies across the whole development; it does not only apply to the part of the development above the threshold.</p> <p>H2. Schemes that provide 100% affordable housing may not require S106 agreements subject to there being a registered provider; approved nomination agreement; and the units to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative housing provision in the Brentwood Borough.</p> <p>H3. Where there is a proposal to increase the number of residential units on a site following grant of permission, for example a non-residential ground floor use subsequently secures planning permission for additional</p>	<p>To address the need for affordable housing in the Borough in accordance to Policy HP05 and evidenced in the Council's SHMA.</p> <p>To comply with Policy BE15 which requires development to ensure that "buildings and places are designed in a way that everyone regardless of their ability, age, income, ethnicity, gender, faith, sexual orientation can use confidently, independently, with dignity and without engendering a sense of separation or segregation"</p>	<p>Policy HP05: Affordable Housing</p> <p>Policy BE15: Planning for Inclusive Communities</p>



Obligation	Criteria	Justification	Policy background
	<p>residential dwellings, the Council will apply Policy HP05 to the total number of residential dwellings on the site, if the increase in the number of units take the total on site to 10 units or more. In instances where the initial proposal has been built, the additional proposed dwellings would be required to 'offset' the affordable housing requirement across the whole site.</p> <p>H4. As set out in the Written Ministerial Statement published on 24 May 2021, National policy on the requirement for First Homes does not apply where local plans are adopted under the 'transitional arrangements', as applies to the Brentwood Local Plan 2016-2033. As such the First Homes requirement is not applied when considering planning applications, and will be considered as part of the future Local Plan reviews.</p> <p>a. Planning obligations will be used to secure the following elements related to the provision of affordable housing:</p> <ul style="list-style-type: none"> <li>• the number of units;</li> <li>• the size and type of units;</li> <li>• tenure of units;</li> <li>• location of units;</li> <li>• parking provision; affordable units should be provided with sufficient parking spaces for by the same standards with non-affordable units.</li> </ul> <p><b>Layout and clustering</b></p>		

Obligation	Criteria	Justification	Policy background
	<p>H5. The Council recognises that grouping together a number of affordable homes is practical from a construction and management perspective yet it is vital that the goal to achieve mixed, inclusive and sustainable communities is not undermined. As such, affordable housing should:</p> <ul style="list-style-type: none"> <li>a. be dispersed in more than one single parcel or to a certain extent throughout a development to ensure that new communities are both mixed and sustainable, except in schemes where the overall number of residential dwellings is below 15 units;</li> <li>b. be designed in a way that on sites incorporating 30 or more dwellings, affordable housing are provided in groups of no more than 15% of the total number of dwellings being provided or 12 affordable dwellings, whichever is the lesser. Where separate phases of the development adjoin each other, careful consideration should be given to the location of clusters in adjacent permitted or developed parcels to avoid creating an overall cluster of more than 12 dwellings. For example, two clusters of affordable homes divided simply by an estate road would not be considered acceptable;</li> <li>c. the location of affordable units within a scheme should not be to the detriment of the wider creation of inclusive and mixed communities, for example by locating the</li> </ul>		

Obligation	Criteria	Justification	Policy background		
	<p>affordable units to prevent access to communal amenity space.</p> <p><b>Design</b></p> <p>H6. Affordable housing units should be designed to the same high quality and sustainability standards as market housing. The Council encourages the early involvement of Registered Providers in site discussions when there is still an opportunity to influence the design of a scheme. On mixed tenure schemes, the affordable housing must be of the same style and materials so as to appear visually consistent and indistinguishable from the market housing.</p> <p><b>Phasing</b></p> <p>H7. The delivery of the affordable housing must keep pace with that of market housing. On larger schemes, the Council will ensure that affordable housing is delivered in phases in parallel with the development of market housing, and will control phasing in the S106 agreement. The Council will not support the phasing of a development which sees the affordable housing being delivered in the later stages of the site’s development taking into account site specific viability.</p> <table border="1" data-bbox="629 1337 1144 1423"> <tr> <td data-bbox="629 1337 887 1423">Market Housing - Occupied</td> <td data-bbox="887 1337 1144 1423">Affordable Housing - Completed and</td> </tr> </table>	Market Housing - Occupied	Affordable Housing - Completed and		
Market Housing - Occupied	Affordable Housing - Completed and				

Obligation	Criteria	Justification	Policy background								
	<table border="1" data-bbox="629 252 1144 485"> <tr> <td></td> <td>Transferred to AHP</td> </tr> <tr> <td>&lt;25%</td> <td>25%</td> </tr> <tr> <td>&lt;50%</td> <td>50%</td> </tr> <tr> <td>&lt;75%</td> <td>75%</td> </tr> </table> <p data-bbox="577 571 730 596"><b>Submission</b></p> <p data-bbox="577 639 1189 916">H8. Detailed plans submitted to the Council for planning consideration should clearly show the phasing, location and layout of all affordable dwellings within the development, including parking spaces and wheelchair adaptable units. The affordable housing provision should not be disproportionately concentrated above non-residential uses.</p>		Transferred to AHP	<25%	25%	<50%	50%	<75%	75%		
	Transferred to AHP										
<25%	25%										
<50%	50%										
<75%	75%										
Off-site delivery	<p data-bbox="577 986 1189 1337">H9. There will be a strong presumption in favour of the affordable homes being provided on site. There may however be some circumstances in which the Council is willing to accept an off-site delivery by the developer, subject to robust evidence (further guidance on viability evidence is provided in Chapter 5) and subject to the Council’s satisfaction that its objective of creating mixed and balanced communities being met.</p> <p data-bbox="577 1342 1189 1442">H10. This will require the provision of 35% of total dwellings as affordable housing in a location related to the main development site, and</p>	<p data-bbox="1227 970 1794 1458">The Council’s default position is that affordable housing requirements should be delivered on the site of the planning application that it applies to, in order to create communities that are mixed and balanced. However, the Council acknowledges that there will be circumstances where a developer is unable to meet the full quota of affordable housing without prejudicing the delivery of housing on the site. In accordance with Policy HP05, part 4, the Council will “only accept off-site provision [...] where it can be robustly demonstrated that on-site provision is not possible and that, in the individual case and to the satisfaction of the</p>	Policy HP05 Affordable Housing								

Obligation	Criteria	Justification	Policy background
	<p>within Brentwood Borough’s administrative area.</p> <p>H11. Appropriate financial contributions may also be sought for off-site provision where necessary to ensure that the dwellings provided can be made available to meet local needs.</p>	<p>Council, the objective of creating mixed and balanced communities can be effectively and equally met through either off-site provision or an appropriate financial contribution in lieu or a combination of the two.”</p>	
<p>Commutated payment in lieu of on-site provision of affordable housing</p>	<p>H12. In very exceptional circumstances where a developer is unable to provide appropriate levels of affordable housing on-site or off-site, a commuted sum may be accepted where it is clearly demonstrated that it is a more appropriate approach and would result in higher overall quantum of affordable housing compared to on-site delivery.</p> <p>H13. The commuted sum will be calculated as follows:</p> <p style="padding-left: 40px;">Commutated sum = 55% x Open Market Value.</p> <p>H14. The calculation of the commuted sum will be based on the proposed mix of market housing and will assume the affordable housing proportionately reflects the market mix of housing in terms of the bedroom size of the market housing proposed and the mix of flats and houses. The floor area in sqm for each property size will reflect the Nationally Described Space Standard (as set out in Policy HP06).</p> <p>H15. If a commuted sum in lieu of on-site affordable housing is agreed by the Council, the</p>	<p>As above, par 4 of Policy HP05 states that the Council will only accept “an appropriate financial contribution in lieu of on-site provision where it can be robustly demonstrated that on-site provision is not possible and that, in the individual case and to the satisfaction of the Council, the objective of creating mixed and balanced communities can be effectively and equally met through either off-site provision or an appropriate financial contribution in lieu or a combination of the two.”</p>	<p>Policy HP05 Affordable Housing</p>

Obligation	Criteria	Justification	Policy background
	<p>commuted sum will need to be paid prior to commencement of the development.</p> <p>H16. Outline planning applications that include a commuted sum in lieu of on-site affordable housing will include the formula for calculating the commuted sum in the S106 agreement, using this guidance. Full planning applications, where the market mix of residential dwellings is agreed, will state the commuted sum amount and be index linked.</p>		
Mid and late-stage viability reviews	<p>H17. Mid and late-stage review mechanisms will be secured via a s106 agreement for all residential development where the minimum policy requirement level of affordable housing is not being provided.</p> <p>H18. Late-stage reviews will be carried out at the point at which 75% of private residential units have been sold or let.</p> <p>H19. For larger schemes which are being delivered over multiple phases, mid stage review mechanisms will also be secured.</p> <p>H20. In the event that on-site affordable housing units was not policy compliant, then any surplus developer profit identified through viability reviews will, in the first instance, result in a clawback commuted sum on the additional units.</p>	<p>Viability reviews are necessary to ensure that affordable housing delivery is maximised as a result of any future improvement to a scheme's viability. This is particularly relevant in Brentwood where there has been a consistent uplift in the value of properties for market sale and rent. In light of planned growth and infrastructure, it is expected that this trend will continue.</p> <p>The Council expects that any surplus identified through viability reviews, including late stage reviews, to result in additional affordable housing units on-site. This will help deliver the Local Plan strategic objectives regarding creating a mixed and balanced communities.</p>	Policy HP05 Affordable Housing
Provision of Specialist Accommodation	<p>H21. On sites where Specialist Accommodation will be required as per policy HP01 and HP04, the Council will seek to secure a S106 obligation</p>	<p>To meet an identified local need, as per the latest evidence and Policy HP01 and Policy HP04 requirements.</p>	Policy HP01 Housing Mix

Obligation	Criteria	Justification	Policy background
	<p>which sets out the amount, type, size, mix and where necessary, priority mechanisms of the Specialist Accommodation to be provided in perpetuity. Further detailed requirement for each identified type of Specialist Accommodation is set out below.</p> <p>H22. The S106 agreement will seek to secure that Specialist Accommodation for the above group is made available before occupation of 50% of market housing provision, to ensure timely delivery of the Specialist Accommodation.</p> <p>H23. For new development of more than 100 dwellings, the Council will also consult Essex County Council (ECC) to seek advice on their priority Specialist Residential Accommodation needs, including Independent Living for older people and adults with disabilities. The Council will also refer to their latest Position Statement regarding Independent Living Programme for Older People.</p>	<p>The SHMA 2016 Part 2 and the Gypsy and Traveller Accommodation Assessment forms the main Evidence Base for the Council's assessment of Specialist Accommodation provision. These identified the following Specialist Accommodation requirements of the following groups in the Borough:</p> <ul style="list-style-type: none"> <li>• Older persons;</li> <li>• People with disabilities;</li> <li>• People wishing to build their own homes;</li> <li>• Gypsies, Travellers and Travelling Showpeople;</li> <li>• Family households.</li> </ul> <p>Further information on the characteristics of suitable sites/buildings for older people and adults with learning disabilities is available in the Essex County Council's Developers' Guide to Infrastructure Contributions (2020 or as amended).</p>	<p>Policy HP04 Specialist Accommodation</p> <p>Site specific policies</p>
<p>Provision of accessible and adaptable housing, and wheelchair user dwellings</p>	<p>H24. To ensure compliance with policy HP01 requirements regarding M4(2) and M4(3) standards, planning conditions will be used to ensure the housing needs of older persons and people with disabilities will be met. Where deemed necessary, the Council may also impose restricting occupation to persons requiring specialist accommodation.</p> <p>H25. Development proposals within the Ingatestone and Fryerning Parish boundary will also need</p>	<p>Policy HP01 requires development proposals of 10 or more (net) additional dwellings to provide M4(2) accessible and adaptable dwellings, unless it is built in line with M4(3) wheelchair adaptable dwellings is required. Additionally, on developments of 60 or more (net) dwellings the Council will require a minimum of 5% of new affordable dwellings to be built to meet</p>	<p>Policy HP01: Housing Mix</p>

Obligation	Criteria	Justification	Policy background
	<p>to ensure compliance with Policy 2 of the Ingatestone and Fryerning Neighbourhood Plan regarding M4(3) standards.</p>	<p>requirement M4(3) wheelchair accessible dwellings standard.</p> <p>In addition, development proposals within the Ingatestone and Fryerning Parish boundary will need to comply with the Ingatestone and Fryerning Neighbourhood Plan. Policy 2: Design for New Developments of this plan requires development proposals of 20 or more dwellings the IFNP requires 5% to be built to meet requirements M4(3) wheelchair accessible dwellings standard.</p>	
<p>Provision of self-build and custom build homes</p>	<p><b>Amount, type, and mix</b></p> <p>H26. The Council will seek to secure a S106 obligation which sets out the amount, type, mix and priority mechanisms that the self-build or custom housebuilding must achieve.</p> <p>H27. At the time a planning application is submitted, the Council will review the preferences of the people on the register to advise developers and landowners on the type of self and custom housebuilding required.</p> <p><b>Priority mechanism</b></p> <p>H28. The priority mechanism will include a restrictive marketing period of 3 months. In this 3-month period a household containing at least one adult that lives or works in the administrative area of Brentwood Borough Council that can demonstrate, to the satisfaction of the vendor, that they have the financial means to purchase</p>	<p>Policy HP01 sets out that on development sites of 100 or more dwellings the Council will require a minimum of 5% self-build homes which can include custom housebuilding.</p> <p>This section ensures that self-build and custom housebuilding provision are delivered in a way that meets local need whilst comply with Policy HP01.</p>	<p>Policy HP01: Housing Mix</p> <p>Site specific policies</p>



Obligation	Criteria	Justification	Policy background
	<p>a serviced plot at the advertised price, will be given priority over other potential self and custom build purchasers that do not live or work in Brentwood.</p> <p><b>Design Code</b></p> <p>H29. Sites with multiple serviced plots or other forms of self-build and custom housebuilding provision, will be required to be supported by a Design Code at outline or full planning stage. Design Codes will vary depending on the amount of development proposed and the context of the site. They will need to be agreed by the Council prior to the marketing of any self-build and custom build plots. The implementation of a Design Code will be secured through a planning condition rather than a planning obligation.</p> <p><b>CIL exemption</b></p> <p>H30. The CIL Regulations 2010 (as amended) defines self-build housing for CIL exemptions purposes as housing built or commissioned by a person and occupied by that person as their sole or main residence for the duration of the claw back period (3 years).</p> <p>H31. Qualifying self-build developments will be required to accept liability for CIL and declare that their development is intended to be self-build, prior to the commencement of development.</p>		

Obligation	Criteria	Justification	Policy background
	<p><b>Reverting back to market housing</b></p> <p>H32. Plot providers reverting self-build and custom housebuilding back to market housing will be responsible for the full CIL liability, if CIL is adopted by that time in the Borough. If the dwelling is sold or let within three years of completion, the Council will claw back the CIL liability.</p> <p><b>Marketing</b></p> <p>H33. The S106 agreement will seek to secure that self-build and custom housebuilding provision will need to be made available and actively marketed before occupation of 50% of market housing provision.</p> <p>H34. Providers of self-build and custom housing building will be required to market appropriately serviced plots and ensure they remain available for at least 36 months at a price which is comparable to other serviced plots marketed in the administrative area of Brentwood in the same 36-month period. If after 36 months a serviced plot has been made available and actively marketed but has not sold, the plot can either remain on the open market or be built out by the Developer in accordance with other relevant Local Plan policies.</p> <p><b>Other consideration</b></p>		

Obligation	Criteria	Justification	Policy background
	<p>H35. Self-build and custom housebuilding will not be considered as part of the affordable housing obligations, irrespective of whether the accommodation is subject to suitable restrictions on occupation and price, because it is meeting a different identified housing need.</p>		
<p>Provision for Gypsy, Traveller or Travelling Showperson</p>	<p>H36. Gypsy, Traveller or Travelling Showperson sites will need to provide a suitable living environment for the proposed residents, with mains water, electricity supply, drainage and sanitation to be available on-site or be made available on-site. Sewerage should normally be through mains systems, however, in some locations this may not always be possible and in that case suitable alternative arrangements can be made. All sanitation provision must be in accordance with current legislation, regulation and British Standards. Specifically designated play area should be provided that meets the normal Council standards.</p> <p>H37. Applicants should refer to the Essex Design Guide regarding design, layout and density of traveller sites and where appropriate, relevant legislation.</p> <p>H38. The term ‘pitch’ refers to the space required on a site to accommodate a Gypsy and Traveller household and are typically residential. There is no set size for an individual pitch. They can vary like house sizes depending on the number of family members. A pitch, however, must meet the licensing requirements to prevent</p>	<p>To provide clarity to Policy HP10 (part 1) which requires essential services to be available or made available on Gypsy and Traveller caravan sites and sites for Travelling Showpeople.</p> <p>To provide clarity to Policy HP09 and HP10 with regards to the term ‘pitch’ and ‘plot’.</p>	<p>HP09: Sub-Division of Pitches or Plots</p> <p>Policy HP10: Proposals for Gypsies, Travellers and Travelling Showpeople on Windfall Sites</p> <p>Site specific policies</p>

Obligation	Criteria	Justification	Policy background
	<p>overcrowding and be large enough to provide at least all the following:</p> <ul style="list-style-type: none"> <li>a. hardstanding for one static caravan;</li> <li>b. hardstanding for one travelling caravan;</li> <li>c. two parking bays for larger vehicles;</li> <li>d. an amenity building containing a kitchen, lounge and dining area, shower and utility room; and</li> <li>e. separate toilet facilities;</li> <li>f. an external shed;</li> <li>g. a secure enclosure for metal gas bottles; and</li> <li>h. clothes drying area.</li> </ul> <p>H39. The term 'plot' refers to the space required on a site to accommodate a household of Travelling Showpeople, and therefore can comprise mixed uses of residential and storage.</p> <p>H40. The area of land set aside for accommodation by one family unit and the area of land set aside for the storage and maintenance of equipment collectively forms a single plot. The storage and maintenance space can sometimes be a communal area, however, for security reasons there may be a preference for them to form part of individual plots.</p>		
Provision of other forms of Specialist Accommodation	H41. Where Specialist Accommodation is identified for adult social care (as identified by Essex County Council) a priority mechanism for households that reside, work or have strong family connections with persons living in the	Policy HP01 (part 4) states that "On development sites of 100 or more dwellings the Council will require [...] provision for other forms of Specialist Accommodation taking account of	Policy HP01: Housing Mix  Policy HP04: Specialist Accommodation

Obligation	Criteria	Justification	Policy background
	<p>administrative area of Brentwood Borough from whom they require support, will be prioritised for a period of three months.</p> <p>H42. The Council will consult Essex County Council (ECC) to seek advice on their priority Specialist Residential Accommodation needs.</p>	<p>local housing need in accordance with [...] Policy HP04 [...]"</p> <p>Policy HP04 (part 1a) is clear that development should meet demonstratable need.</p>	
<p>Vacant Building Credit (VBC)</p>	<p><b>Required evidence</b></p> <p>H43. In order to apply for the VBC seeking reduced affordable housing contribution, the following information will need to be provided by the applicant to demonstrate that the building is genuinely vacant:</p> <ul style="list-style-type: none"> <li>a. Evidence that any building within the red line application boundary is a 'vacant building'. It should be demonstrated that every reasonable attempt has been made to secure an occupier through marketing over a minimum continuous period of 6 months.</li> <li>b. The whole building must be vacant to apply for the VBC; and</li> <li>c. Evidence that any building within the red line application boundary is not an 'abandoned building' or artificially made vacant solely for the purpose of redevelopment.</li> </ul> <p>H44. To determine whether the building is truly vacant the Council will consider the condition of the building and its suitability for occupancy as well as the length of time the building has not been used. The Council will also take into account whether the building has been used for any other purposes.</p>	<p>The VBC is intended to provide an incentive for development on brownfield sites containing vacant buildings.</p> <p>The Ministerial statement issued on the 28th November 2014 stated that where a vacant building is brought back into lawful use or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of the relevant vacant building when the local planning authority calculates any affordable housing contribution. Affordable housing contributions will be required for any increase in floorspace.</p> <p>The vacant building credit only applies where the vacant building has not been abandoned.</p>	<p>Policy HP05: Affordable Housing</p>

Obligation	Criteria	Justification	Policy background
	<p>H45. Information on the existing Gross Internal Floor Area (GIFA) and the proposed GIFA need to be provided. GIFA is the area of a building measured to the internal face of the perimeter walls at each floor level. The Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice will be used for the purposes of assessing VBC.</p> <p>H46. For wholly residential schemes the total proposed GIFA will be the GIFA of the sum of all dwellings. Where flatted development is proposed the GIFA will include all communal and circulation areas. For mixed use schemes, only the GIFA of the proposed residential elements will be included. However, floor space with headroom of less than 1.5m is excluded from the GIFA calculation.</p> <p>H47. The Council will determine on a case-by-case basis whether a building is vacant or abandoned. Outline planning applications may present challenges in quantifying whether the vacant building credit will be applicable as the actual number of dwelling or size of dwellings may be determined during Reserved Matters applications. The Council will scrutinise planning applications to ensure that sites are not artificially subdivided to avoid the thresholds in Policy HP05.</p> <p><b>Calculation</b></p> <p>H48. A financial credit, equivalent to the existing gross floor space of any vacant buildings within the red line boundary of the application site</p>		

Obligation	Criteria	Justification	Policy background
	<p>brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. The Council will apply the following formula to calculate the revised affordable housing percentage:</p> <div style="border: 1px solid black; background-color: #fff9c4; padding: 5px; margin: 10px 0;"> <p>Revised affordable housing requirements                      = 35% x (1 - existing vacant gross internal area/proposed gross internal area)</p> </div> <p>H49. The number of affordable dwellings will be calculated to two decimal points and rounded to the nearest whole number.</p> <p><b>Example:</b></p> <ul style="list-style-type: none"> <li>• The proposal:                             <ul style="list-style-type: none"> <li>a. 25 dwellings proposed @ 75m<sup>2</sup></li> <li>b. Total floorspace 1,875m<sup>2</sup></li> <li>c. Existing building on site 200m<sup>2</sup></li> <li>d. Normal affordable housing requirement: 35% or 10 dwellings</li> </ul> </li> <li>• Revised affordable housing requirements:                      = 35% x (1 - 200/1875)</li> </ul>		

Obligation	Criteria	Justification	Policy background
	<ul style="list-style-type: none"> <li>= 31.2%</li> <li>= 7.81 units out of 25 units</li> <li>• The total affordable units required is 8.</li> </ul>		

## Transport, Highways, and Access

Obligation	Criteria	Justification	Policy background
Provision or payment of highway work	<p>T1. All development proposals will be assessed on their own merits in relation to the impact they have upon the highway network, against relevant Local Plan overarching transport policies and site-specific policies. There are no types of development which are exempt from necessary highway infrastructure obligations.</p> <p><b>Timing / triggers of provision or payment:</b></p> <p>T2. The developer is required to implement the agreed highway infrastructure works in such a way that the works can be adopted by the highway authorities once it has been agreed that they are built to an adoptable standard. In general, the developer is obliged to submit suitable detailed engineering drawings to the highway authorities prior to any commencement of the development on site, for the highway authorities' approval.</p> <p>T3. Unless otherwise agreed, before occupation of a development, the developer is usually</p>	Essex County Council (ECC) and National Highways as the highway authorities for Brentwood Borough area and are consulted on planning proposals that affect their highway network. They provide advice on the scope of obligations for highway infrastructure works where it is considered that there is a need to mitigate the impact of new development(s) on the highway network.	<p>Policy MG05: Developer Contributions</p> <p>Policy BE08 Strategic Transport Infrastructure</p> <p>Strategic Policy BE09: Sustainable Means of Travel and Walkable Streets</p> <p>Policy BE10: Sustainable Passenger Transport</p> <p>Policy BE11: Electric and Low Emission Vehicle</p> <p>Policy BE12: Mitigating the Transport Impacts of Development</p>



Obligation	Criteria	Justification	Policy background
	<p>obliged to implement the approved scheme and the highway authorities will issue a certificate of practical completion. The developer will still have responsibility for maintaining the highway works for a minimum of 12 months and to carry out any remedial works required since the issue of the certificate of practical completion. After the 12-month period, or when the remedial works have been satisfactorily completed, a certificate of adoption will be issued, and the works adopted by the highway authorities.</p> <p>T4. Developers will be required to pay fees to cover ECC's and NH's costs incurred in approving the detailed engineering drawings, processing and advertising Traffic Regulation Orders, and for inspecting the highway works and issuing the relevant certificate. Details of these fees are to be included in a S106 agreement.</p> <p>T5. Where appropriate, a S278 Agreement under the Highways Act can be entered into between the developer and the Highway Authorities. This agreement enables a developer to carry out works on a public highway and is separate to a S106 agreement. The full details of the processes will be set out in any relevant S106 or S278 Agreements.</p> <p><b>Maintenance plans / payments</b></p> <p>T6. Where the infrastructure works include items with the possibility of a major maintenance requirement e.g. traffic signals or where the</p>		<p>Policy BE13: Parking Standards</p> <p>Site specific policies</p>

Obligation	Criteria	Justification	Policy background
	<p>works are beyond the usual ECC or NH specification, the highway authorities require a commuted sum from the developer to maintain that infrastructure. Where the highway authorities take on assets from developers, there is a requirement for maintenance costs for the life of the assets, and replacement costs at the end of their useful life. Further information on this matter is available in Essex County Council's Developers' Guide to Infrastructure Contributions (2020 or as amended).</p> <p><b>Other consideration to be included as part of the obligation</b></p> <p>T7. Where a developer intends to carry out works to/ in the public highway they will be required to provide third party insurance.</p> <p>T8. Developers will be required to enter into a bond for an amount specified by ECC or National Highways to ensure that the highways works are completed to their satisfaction, should the developer default on any of its obligations in relation to the works. This bond will vary dependent on the works required. The bond can be a formal bond with an approved third-party surety or it can be a deposit in cash to ECC or National Highways.</p> <p>T9. Land compensation bonds will be required where there is a possibility of existing properties being affected by new highway development, e.g. by increased noise resulting</p>		

Obligation	Criteria	Justification	Policy background
	from new highway development, including the possibility of a reduction in value.		

## Flood Protection and Water Management

Obligation	Criteria	Justification	Policy background
Provision or payment of works relating to flood protection and SUDs	<p>F1. Policies NE09 and BE05 form the basis for seeking contributions for flood protection and surface water drainage infrastructure. In some cases, it may necessitate the use of planning obligations and Grampian conditions.</p> <p>F2. Only where proposals demonstrate that it is not feasible to achieve full policy compliance within its site boundary or by way of condition, will delivery of, or contributions towards, strategic off-site SuDS projects be considered. In this instance, it is anticipated that a S106 agreement may be needed. These may need to alleviate any/all forms of flood risk and such techniques could include: Flood alleviate controls - new or enhanced provision such as flood plain, levees, reservoirs; bio-retention areas; wetlands; channels; detention basins; ponds; infiltration/filtration; green roofs; permeable paving.</p> <p>F3. ECC as the LLFA only adopt SuDS in exceptional circumstances and further guidance is contained in ECC's SuDS Design Guide.</p>	<p>Policies NE09 and BE05 seek to ensure that development is not carried out in locations that are at risk of flooding and that developers look to incorporate sustainable drainage solutions within their developments.</p> <p>Policy NE09 requires development to incorporate appropriate mitigation measures to address flood risk and where possible, reduce flood risk overall. Policy BE05 requires relevant developments to achieve a greenfield runoff rate to avoid any increase in surface water flood risk or adverse impact on water quality. As per the drainage hierarchy set out in Policy BE05, proposals are required:</p> <ul style="list-style-type: none"> <li>• in the first instance, to achieve this through infiltration measures;</li> <li>• secondly attenuation and discharge to watercourses, and if these cannot be met, through discharge to surface water only sewers.</li> </ul>	<p>Policy BE05 Sustainable Drainage</p> <p>Strategic Policy NE09 Flood Risk</p> <p>Site specific policies</p>

Obligation	Criteria	Justification	Policy background
	<p>G1. SuDS is an important part of the Green and Blue Infrastructure; as such, Policy NE02 (part 4) regarding maintenance plan will also apply to the provision of this type of space on-site. Refer to further guidance on Green and Blue Infrastructure maintenance plan in this document.</p> <p><b>Timing / triggers of provision or payment:</b></p> <p>F4. There is no general rule for the timing of payments as each scheme will be judged on a case-by-case basis. Should off-site works be required, it is expected these would be in place prior to the first occupation or completion of the development.</p> <p><b>Maintenance plans / payments</b></p> <p>F5. Where ECC is not the SuDS adoption body, the Council will work with developers to identify an alternative SuDS adoption body which could include a Water Authority or private management company. The Council will work with the developer to secure the long-term maintenance of all flood risk protection and water management through a combination of planning obligation, planning condition and commuted sum payment, guaranteeing their long-term maintenance.</p>	<p>This section provides clarity on when a S106 agreement may be required towards off-site SuDS projects.</p> <p>The Essex SuDS Design Guide sets out practical guidance for new development to promote SuDS.</p>	

## Early Years, Childcare and Education

Obligation	Criteria	Justification	Policy background
Provision or contributions towards education facilities	<p>E1. Developers should refer to ECC’s latest DGIC for guidance relating to education contributions, which incorporates early years and childcare, primary, secondary, post 16 and Special Educational Needs, and school transport.</p> <p>E2. Developers should also refer to ECC’s <a href="#">Garden Communities and Planning School Places Guide</a> which provides additional detail pertinent to larger developments including non-financial obligations regarding the environment around schools.</p>	<p>Policy PC11 is clear that developments that generate a need for additional education facilities should make appropriate provision for their timely delivery as part of the development or through financial contributions if appropriate and in accordance with ECC’s DGIC.</p> <p>ECC’s DGIC provides information on education contributions including how to calculate demand from new housing development and additional requirements for education sites and the surrounding environments. It also explains ECC’s statutory responsibility to make suitable travel arrangements free of charge for eligible children, which depending on the location of a development, may require a developer contribution.</p>	<p>Policy PC11: Education Facilities</p> <p>Site specific policies</p>

## Health and Social Wellbeing

Obligation	Criteria	Justification	Policy background
Provision or payment of healthcare infrastructure	<p>S1. The Council will consult the Mid and South Essex ICB for their specialist advice regarding the capacity of existing healthcare infrastructure, whether and when planning</p>	<p>Where a proposed development is likely to have a negative health impact or an impact on the services of the healthcare facilities operating within the vicinity of the application site,</p>	<p>Policy MG05: Developer’s Contribution</p>

Obligation	Criteria	Justification	Policy background
	<p>obligations may be required and how contributions will be calculated.</p> <p>S2. Where proposed development generates the need for additional healthcare infrastructure, which includes health and well-being measures, investment in existing premises or services, may be required through S106 agreements.</p> <p>S3. Where proposed development, on its own or in conjunction with other proposed development in the area, generates the need for a new primary healthcare facility or service, such as a new GP surgery and other new healthcare infrastructure and services, the cost and timing of this provision will be secured through S106 agreements and the location of the facility identified through the master planning and planning application process.</p> <p><b>Timing / triggers of provision or payment</b></p> <p>S4. The timing for the provision of healthcare facilities or financial mitigation will be considered on a case-by-case basis, with the specific requirements being set out within any S106 agreement reflecting the need for healthcare infrastructure to be in place in a timely fashion to support the health and wellbeing of existing and new residents. It is likely to be linked to phases of a development, with facilities being required either upon a certain level of units being completed, or when</p>	<p>contributions may be required, in accordance with Policy MG05.</p>	

Obligation	Criteria	Justification	Policy background
	a certain threshold of occupation at a development is reached.		

### Carbon Reduction and Renewable Energy

Obligation	Criteria	Justification	Policy background
Carbon reduction and carbon offsetting contribution (allowable solutions contribution)	<p>R1. To ensure development comply with Policy BE01 part (1), the Council will consider the use of planning conditions that refer to the current version of Part L Building Regulations at the time of construction commencement.</p> <p>R2. A financial contribution will be required where renewable technologies provision target and carbon dioxide emissions reduction targets are not achieved on-site. A rate of £378 per tonne of carbon dioxide each year for a period of over 30 years will be applied as the basis of calculating the financial contribution. This price is index linked to inflation; and the Council will review the recommended carbon offset price and adjust this rate as necessary. This rate is aimed at encouraging developers to provide renewable energy on-site where possible instead of offsetting. This price will be kept under review and may change to reflect the most up to date carbon prices from a nationally recognised carbon pricing mechanism particularly at points where the Building Regulations or the SAP (Standard Assessment</p>	<p>The Local Plan's approach to reducing carbon dioxide emissions in the built environment can be summarised in three step:</p> <ul style="list-style-type: none"> <li>the first step is to focus development in sustainable locations to reduce greenhouse gas emission;</li> <li>the second step is to require carbon emission reduction on-site and energy efficiency via construction standards; and</li> <li>the third step is to require renewable energy provision on-site.</li> </ul> <p>Policy BE01 requires to major development to achieve at least a 10% reduction in carbon dioxide emissions above the requirements of Part L Building Regulations as well as 10% of the predicted energy needs of the development from renewable energy. Policy BE01 is clear that where on-site provision of renewable technologies is not appropriate, or where it is clearly demonstrated that the policy target</p>	Strategic Policy BE01: Carbon Reduction and Renewable Energy

Obligation	Criteria	Justification	Policy background
	<p>Procedure) regime (and therefore standard carbon factors) change.</p> <p>R3. With the exception of sites where cash-flows are demonstrated to be a challenge, and very large sites where it is reasonable to phase contributions in parallel with the build programme, payment should be made prior to the commencement of development.</p> <p>R4. The Council will consider including within planning conditions a requirement for as-built SAP measurements to be submitted, to ensure predicted performance standards are achieved. SAP is the government's recommended method system for measuring the energy rating of residential dwellings.</p> <p>R5. When drafting the S106 agreement, the Council will consider claw back additional carbon offset contributions where the predicted energy performance standards are not achieved. The requirement for a carbon offsetting payment will be informed by an assessment of the completed development.</p>	<p>cannot be fully achieved on-site, 'allowable solutions contributions' via S106 or CIL will be required.</p> <p>Every effort should be made to comply with policy requirements regarding reductions in emissions, and provision of renewables through on-site measures. Only when this is not achievable would the Council accept carbon offsetting contribution.</p> <p>Planning obligations will be used to fund projects where offsetting benefits are retained locally including local community energy projects. This is to ensure that proposals still deliver and contribute towards the Local Plan strategic objectives.</p>	



## Natural Environment Mitigation

Obligation	Criteria	Justification	Policy background
<p>Financial contribution for natural environment mitigation</p>	<p>N1. Natural environment mitigation measures will be considered on a site-by-site basis. Where issues are localised and small scale, it is appropriate to deal with them by way of planning conditions. There may be circumstances where schemes require environmental mitigation measures to be included within an S106 agreement.</p> <p>N2. Natural environment matters which may be included in a Section 106 Agreement include, but are not limited to:</p> <ul style="list-style-type: none"> <li>a. major contamination issues;</li> <li>b. biodiversity offsetting and net gain;</li> <li>c. ecological mitigation/ remediation;</li> <li>d. climate change mitigation, including tree planting and new woodlands;</li> <li>e. Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS);</li> <li>f. environmental enhancements;</li> <li>g. archaeological investigations, access and interpretation where the site potentially provides significant habitats and wildlife;</li> <li>h. repair and re-use of building or other heritage assets where the site potentially provides significant habitats and wildlife.</li> </ul> <p>N3. Further details on some of the above issues are provided below.</p>	<p>Policy NE01 is clear that (only) when natural environment impacts are not fully mitigated, compensatory measures will be considered. Part 1 of Policy NE01 states that: “The Council will require development proposals to use natural resources prudently and protect and enhance the quality of the natural environment. All proposals should, wherever possible, incorporate measures to secure a net gain in biodiversity, protect and enhance the network of habitats, species and sites (both statutory and non-statutory) and avoid negative impacts on biodiversity and geodiversity. Compensatory measures will only be considered if it is not possible fully to mitigate any impacts.”</p>	<p>Policy NE01: Protecting and Enhancing the Natural Environment</p>

Obligation	Criteria	Justification	Policy background
Biodiversity offsetting and biodiversity net gain	N4. Guidance on biodiversity net gain will be set out in a forthcoming SPD.	<p>Policy NE01 part (1) states that “all proposals should, wherever possible, incorporate measures to secure a net gain in biodiversity [...] Compensatory measures will only be considered if it is not possible fully to mitigate any impacts.”</p> <p>Biodiversity net gain is now a mandatory requirement from the Environment Act 2021 to deliver the minimum 10% net gain.</p> <p>The Essex Local Nature Partnership Planning and BNG working group are considering to prepare a guidance on this matter for Essex area. The Council may adopt this work when it is completed.</p>	Strategic Policy NE01: Protecting and Enhancing the Natural Environment
RAMS	N5. Planning obligations will be sought in accordance to Policy NE01 and the Recreational Disturbance Avoidance and Mitigation Strategy SPD which provides the scope of RAMS, the legal basis for RAMS and the level of developer contributions being sought for strategic mitigation and how and when applicants should make contributions.	<p>To comply with the Council’s responsibilities to protect habitats and species in accordance with the UK Conservation of Habitats and Species Regulations 2017.</p> <p>Policy NE01 part (4) states that “New residential development within the Essex RAMS and Epping Forest SAC Zones of Influence will be required to provide appropriate on-site measures for the avoidance of, and/or reduction in, recreational disturbance on European Designated Sites through the incorporation of recreational opportunities, including the provision of green space and footpaths in the proposals. Proposals will be required to follow the mitigation hierarchy by seeking to avoid</p>	<p>Policy NE01: Protecting and Enhancing the Natural Environment</p> <p>Recreational Disturbance Avoidance and Mitigation Strategy SPD</p>

Obligation	Criteria	Justification	Policy background
		<p>creating recreational impacts first and foremost, with mitigation measures considered separately to avoidance.”</p>	
<p>Delivering, or contributing towards air quality</p>	<p>N6. Addressing air pollution issues (including exposure) from new and proposed developments should follow the below hierarchy:</p> <ul style="list-style-type: none"> <li>a. Addressing air pollution at the design and construction stage;</li> <li>b. Mitigation of residual impacts;</li> <li>c. Offsetting air pollution.</li> </ul> <p>N7. When preparing evidence to demonstrate compliance to Policy NE08 part (1) and (2), developers should fully address each step and embed it in their development, before moving on to the next.</p> <p><b>Mitigation measures</b></p> <p>N8. If, after better design principles have been used, the detailed Air Quality Assessment still indicates that the air pollution levels do not fully satisfy Policy NE08 part (1) and (2), proposals will include how this will be addressed through mitigation measures in how the development is used, operated and maintained. This require the details of mitigation measures to be included in an agreement so that a robust legal mechanism is in place to ensure appropriate mitigation is carried out.</p> <p>N9. In some cases, this may also require financial payments towards the Council’s relevant action</p>	<p>Air quality has a significant role to play in health and wellbeing, with poor air quality contributing towards illness and reduced life expectancy.</p> <p>Policy NE08 part (4) states that mitigation should be provided on-site unless it can be demonstrated that it is inappropriate, and that off-site provision will deliver equivalent or wider benefits.</p>	<p>Strategic Policy NE08: Air Quality</p>

Obligation	Criteria	Justification	Policy background
	<p>plans or sustainable transport measures that would address the cumulative impacts on air quality. Each site will be considered on its own merits.</p> <p>N10. Mitigation may also be secured via the delivery of air quality monitoring technology, collection and analysis of air quality data, and ongoing maintenance of the equipment.</p> <p>N11. Where technology is to be located on-site, provision for this will be secured through s106 agreement. This will include the provision of, and maintenance access to, air quality monitoring equipment.</p> <p>N12. The specific location of air quality monitoring technology will be determined through discussions with the Council's Environmental Health team, and access in perpetuity will be secured through the s106 agreement for monitoring and maintenance purposes.</p> <p><b>Off-setting</b></p> <p>N13. In some circumstances, it may not be possible to fully mitigate air pollution impacts within the development site, especially for those in sensitive locations; in this case, an offsetting approach can be taken.</p> <p>N14. The Institute of Air Quality Management provides a methodology to quantify the costs associated with pollutant emissions from transport (See The Land-Use Planning &amp; Development Control: Planning For Air Quality, 2017). The Council will refer to this methodology (or its latest update) as a basis</p>		

Obligation	Criteria	Justification	Policy background
	<p>for defining the financial commitment required for the offsetting emission reductions or the contribution provided by the developers as 'planning gain':</p> <ol style="list-style-type: none"> <li>a. Identify the additional trip rates (as trips/annum) generated by the proposed development (as provided in the Transport Assessment);</li> <li>b. Assume an average distance travelled of 10 km per trip;</li> <li>c. Calculate the additional emissions of NO<sub>x</sub> and PM<sub>10</sub> (kg/ annum), based on</li> <li>d. emissions factors in the Emissions Factor Toolkit, and an assumption of an average speed of 50 km/h;</li> <li>e. Multiply the calculated emissions by 5, to assume emissions over a 5-year time</li> <li>f. frame;</li> <li>g. Use the HM Treasury and Defra IGCB damage cost approach to provide a valuation of the excess emissions, using the currently applicable values for each pollutant; and</li> <li>h. Sum the NO<sub>x</sub> and PM<sub>10</sub> costs.</li> </ol> <p>N15. This will provide funding for the Council's measures to improve local and wider air quality as well as local communities' environment projects that aim to achieve the same objectives.</p>		

## Green and Blue Infrastructure

Obligation	Criteria	Justification	Policy background
Green and Blue Infrastructure (GBI) on-site provision, enhancement and/or restoration	<p><b>GBI assessment, pre-planning and design</b></p> <p>G2. To assist the Council in assessing planning applications against Policy NE02, proposed major development should follow the steps below:</p> <ol style="list-style-type: none"> <li>a. undertake relevant surveys and site assessment, including landscape and visual impact assessment where appropriate;</li> <li>b. clearly identify existing and future GBI constraints and opportunities within or in proximity to the development sites; where pre-application advice was given, how design revision has addressed pre-application advice;</li> <li>c. submit a GBI plan and landscape strategy drawing as part of the application, which should include an indication of the site's context, access and connections to the existing GBI, any potential impacts to the existing GBI and mitigation measures, proposed palette of planting and hard landscape materials;</li> <li>d. consider the creation of multi-functional spaces that can enable other requirements, such as the provision of outdoor sport, SUDs, renewable energy sources, and climate change amelioration, to be met. The Council may require a composite plan, indicating existing and proposed planting, lighting, drainage and levels information, to</li> </ol>	<p>Policy NE02 is clear that Brentwood's network of GBI will be protected, enhanced and managed. Part (2) of this policy sets out that:</p> <p>"New development is expected, where possible and appropriate, to maximise opportunities to <b>enhance</b> or <b>restore</b> existing GBI provision and/or <b>create new provision</b> on site that connects to the wider GBI network. Its design and management should also respect and enhance the character and distinctiveness of the local area."</p> <p>Figure 8.1 in the Brentwood Local Plan sets out the GBI typology found in Brentwood.</p>	Strategic Policy NE02: Green and Blue Infrastructure

Obligation	Criteria	Justification	Policy background
	<p>ensure that there are no conflicts between these elements;</p> <p>e. submit a Management and Maintenance Plan for the entirety of the GBI (more details on this below).</p> <p><b>Enhancement and restoration</b></p> <p>G3. Where a proposed development has an impact on the existing GBI in its proximity, applicants should set out the mitigation measures to meet Policy NE02 requirements. In some cases, an improvement to quality may be more appropriate than an addition to green space. A commuted sum may be sought towards the enhancement and restoration of existing GBI. This will be determined on a case-by-case basis. For open space enhancement, see later sections of this table.</p> <p><b>On-site provision</b></p> <p>G4. All activities relating to site clearance and building phases; existing vegetation – trees and hedgerows should be protected during development.</p> <p>G5. On-site GBI provision must ensure that there is no obstruction of the public rights of way unless a legal order has been put in place that provides a suitable alternative route for temporary diversions and complies with legal tests and ECC's requirements regarding Public Path Order for permanent diversions.</p>		

Obligation	Criteria	Justification	Policy background
	<p>G6. Outdoor sport and open space, as well as SUDS, are an important part of GBI. Further guidance to on-site provision and commuted sum for outdoor sport and open space is provided below.</p> <p><b>Planning approval and discharge of conditions</b></p> <p>G7. Tree protection will be secured by condition.  G8. Applicant may wish to apply for a Public Path Order if required, to ensure this is planned in within the required timescale.  G9. When revised plans are submitted, all amendments should be clearly highlighted to assist the Council's assessment within the required timescale.  G10. Detailed planting plans submitted to discharge a landscape condition, should include full plant schedules detailing quantity, size, type and specification of all planting, including grass specification.</p>		
On-site provision of outdoor sport and open space	<p>G11. All residential development proposals, including care home development, comprising more than 10 housing units or more than 1,000 sqm gross internal area floorspace are required to provide around 41 sqm per person for the following types of space:</p> <ol style="list-style-type: none"> <li>Outdoor sport</li> <li>Children's playing space</li> <li>Allotments and community gardens</li> <li>Formal open space</li> <li>Informal and natural open spaces</li> </ol>	<p>Access to good quality open space is essential for health and well-being. In the first instance, development should deliver on-site open space requirements as set out in Policy NE05 and relevant evidence.</p> <p>Part (3) of this policy and paragraph 8.58 refer to the Council's adopted open space standards, Figure 8.2 and 'any subsequent update'. However, the Council's previous standards have become outdated and Figure 8.2 of the</p>	<p>Strategic Policy NE02: Green and Blue Infrastructure</p> <p>Strategic Policy NE05: Open Space and Recreation Provision</p> <p>Site specific policies</p>



Obligation	Criteria	Justification	Policy background
	<p>f. Amenity greenspace</p> <p>G12. Children’s playing space in this context refers to equipped play area. Provision for children’s playing space will not be required for studio or 1-bedroom units or developments specifically and exclusively marketed for the over 65’s. Where these are included in the proposed development, the Council’s Open Space Calculator (set out in <b>Appendix B</b>) automatically adjusts the above 41 sqm requirement.</p> <p>G13. Definitions for each space type above are provided in the Glossary of this document.</p> <p>G14. All non-residential development proposals of 1,000 sqm and above are required to provide a minimum of 6 sqm per additional FTE employee for amenity greenspace.</p> <p>G15. <b>Table 1</b> illustrates requirements for each category of open space, the likely maintenance costs (for on-site and off-site provision) and capital costs and improvement costs (for off-site provision).</p> <p>G16. Developers are encouraged to use the Council’s Open Space Calculator as a guidance (available online, a screenshot showing an example using this Calculator is provided in <b>Table 2</b>). This provides an approximate calculation of the space required on-site, and/ or commuted sums required by the Council, based on occupancy rates assumptions presented in <b>Table 3</b>. The Calculator also tests whether the proposal is policy compliant in different scenarios. When</p>	<p>Local Plan only details some of the open space requirements.</p> <p>This section provides clarity for part (3) of this Policy and expands on Figure 8.2 regarding the amount and type of provision required as part of new development.</p>	

Obligation	Criteria	Justification	Policy background
	<p>using the Open Space Calculator, if the exact number (and size) of dwellings are unknown, applicants should estimate the total number of dwellings by applying a minimum density of 35 dwellings per hectare (dph) and the approximate size of the dwellings. This will provide an initial guide of the likely open space requirements which can be revisited for the reserved matters application. The Calculator does not include SuDS commuted sums which may be required in addition to the open space commuted sums.</p> <p>G17. The Calculator should be used as a guidance only, the precise mix and types of the above space provision will depend on the nature and location of the proposal, the existing provision in the surrounding area and the quantity/ type of open space and playing pitches needed in the area. This should be the subject of detailed consideration at the pre-application or application stage.</p> <p>G18. Where a proportion of on-site provision is made, a pro-rata reduction will be made in calculating the level of the off-site contribution, as shown in the Calculator.</p> <p>G19. Outdoor sport and open space are considered a type of GBI. As such, Policy NE02 (part 4) regarding maintenance plan will also apply to the provision of this type of space on-site.</p> <p><b>Maintenance payments</b></p> <p>G20. Maintenance contributions will be required for all open space provided on-site when</p>		

Obligation	Criteria	Justification	Policy background
	<p>responsibility for the long-term maintenance resides with Brentwood Borough Council or a Parish Council. This will be calculated according to the landscape layout and quantified elements to be provided by the developer and will be required for 25 years after completion.</p> <p>G21. The Council's preference is for all open spaces to be transferred to and adopted by the Council with a commuted maintenance sum. If a developer chooses to retain open space, it should be maintained by a recognised not-for-profit management trust. Where appropriate, and following negotiation between the relevant parties, open space can also be transferred to a Parish Council.</p> <p>G22. Adoption of open space would take place after any construction and development maintenance liability periods have expired.</p> <p><b>Self-managed open space</b></p> <p>G23. Should a developer wish to self-manage open space, the Council would require public access agreements and an agreed maintenance specification and inspection regime, secured through a legal agreement. In addition, the Council would require a conditional performance bond issued by a reputable financial institution in favour of the Council, to a specified indexed linked amount that has been agreed (informed by the Open Space Calculator). This would enable the Council to call upon the bond in the event of the owner of</p>		

Obligation	Criteria	Justification	Policy background
	the open space becoming financially unviable or failing to comply with its management and maintenance obligations under the Section 106 agreement.		
Green and Blue Infrastructure (GBI) maintenance plan	<p>G24. Where GBI (including outdoor sport and open space) is provided on-site, before or concurrent with the submission of the application, a Management and Maintenance Plan for the entirety of the GBI should be submitted to and approved in writing by the Council.</p> <p>G25. This shall include:</p> <ul style="list-style-type: none"> <li>a. details of who will be responsible for the management and maintenance of the entire GBI, including broad long term design objectives; and</li> <li>b. details of who will be responsible for the management and maintenance of allotments.</li> </ul> <p>G26. The Management and Maintenance Plan for the entirety of the GBI should be accompanied by a schedule for the implementation of the proposed works and a Phasing Plan and implemented in accordance with it in perpetuity.</p>	Policy NE02 (part 4) sets out that “proposals should provide appropriate specification and maintenance plans for the proposed green and blue infrastructure throughout the life of the development.”	Strategic Policy NE02: Green and Blue Infrastructure
Improvements to existing open space in the local area of the development	G27. There may be instances where <b>all</b> residents of the proposed development can access the existing outdoor sports amenity green space, facilities/playing pitches and provision for children and young people in the local area of the development. ‘In the local area’ in this	Policy NE05 part (1) is clear that all open spaces, will be protected and where necessary enhanced <b>to ensure access to</b> a network of high-quality provision and opportunities for sport, play and recreation within the borough.	Strategic Policy NE02: Green and Blue Infrastructure

Obligation	Criteria	Justification	Policy background
	<p>context is defined below unless otherwise agreed with the Council:</p> <ul style="list-style-type: none"> <li>a. within 1.6 km walking distance to an outdoor sports facility/ playing pitch;</li> <li>b. within 100 m walking distance of a children’s playing space;</li> <li>c. within 2 km walking distance of an amenity green space;</li> <li>d. within 1 km walking distance to three other different types of open space.</li> </ul> <p>G28. In this instance:</p> <ul style="list-style-type: none"> <li>a. If the Council deems the existing outdoor sport and open spaces in the local area have capacity to meet development’s demands in full, and they are of sufficient quality standards, no contribution towards quality improvements will be required.</li> <li>b. If the Council deems the outdoor sport and open spaces within the local area can only meet part of development’s needs, or they need improvements to accommodate additional demands, a proportionate contribution towards quality improvements, provision and maintenance will be required by way of a commuted sum using the Council’s Open Space Calculator.</li> </ul> <p>G29. If <b>not all</b> the residents of the proposed development can access outdoor sport and open space within the distance outlined above, the applicant should proceed to calculate their remaining open space requirements using the Council’s Open Space Calculator.</p>	<p>Policy NE05 part (2) sets out that new development where appropriate, <b>enhance</b> existing provision that will serve the new and existing community:</p> <p>This section provides clarity in terms of accessibility and the assessment requirements as set out in Policy NE05, and where contribution to improvements would be required as per Policy NE02.</p>	<p>Strategic Policy NE05: Open Space and Recreation Provision</p>

Obligation	Criteria	Justification	Policy background
<p><b>Commuted sum in lieu of on-site provision (including maintenance)</b></p>	<p>G30. Where the above requirement cannot be met in full, a commuted sum in lieu of on-site provision will be required. Table 1 sets out the Council's rates to provide, improve and maintain off-site provision.</p> <p>G31. For other sport contribution, developers should refer to Sport England's Playing Pitch New Development Calculator, Sport England's latest capital costs.</p> <p>G32. As mentioned above, developers should refer to the Council's Open Space Calculator as a guidance. This provides an approximate calculation of the space required on-site, and/ or commuted sums required by the Council, based on occupancy rates assumptions presented in <b>Table 3</b>.</p> <p><b>Timing / triggers of provision or payment</b></p> <p>G33. In the case of a large-scale development, it may be that the payments or provision would be phased to meet the proportional impact of each phase. Trigger points for payments or provision will be included in the legal agreement, as will the period in which any contribution will have to be spent.</p>	<p>Policy NE05 recognises that on certain sites, in particular smaller sites, it may not be feasible to deliver such spaces within the site boundary, and that a contribution towards off-site delivery may be required in full or in part as appropriate.</p>	<p>Strategic Policy NE02: Green and Blue Infrastructure</p> <p>Strategic Policy NE05: Open Space and Recreation Provision</p>

Table 1: On-site outdoor sport and open space requirements and how the Council calculates commuted sum in lieu of on-site provision and maintenance

RESIDENTIAL DEVELOPMENT							
Outdoor sport and open space requirements		ha per 1,000 population	sqm per person	Capital costs per sqm	Maintenance costs per sqm over 25 years	Improvement costs	Justification
SPORT	Outdoor Sport	3.15	31.5	£72.00	£14.40	£57.60	<ul style="list-style-type: none"> <li>The Local Plan, Figure 8.2</li> <li>Playing Pitch Strategy 2018 – 2033 (2018)</li> <li>Sport, Leisure and Open Space Assessment (2016)</li> <li>CIL and Local Plan Viability Appraisal (2022)</li> <li>Review of Council's costs data</li> </ul>
OPEN SPACE	Children's Playing Space (per child) (*)	0.13	1.3	£220.00	£44.00	£176.00	
	Allotments and Community Gardens	0.18	1.8	£25.00	£2.00		
	Formal Open Space	0.21	2.1	£40.00	£8.00	£32.00	
	Informal and Natural Open Spaces	0.21	2.1	£13.00	£2.60		
	Amenity Greenspace	0.22	2.2	£20.00	£4.00	£16.00	
<b>Total</b>		<b>4.1</b>	<b>41</b>				
EMPLOYMENT DEVELOPMENT							
Open space requirements		ha per 1,000 additional employee	sqm per additional employee	Capital costs per sqm	Maintenance costs per sqm over 25 years	Improvement costs	Justification
OPEN SPACE	Amenity Greenspace	0.6	6	£20.00	£4.00	£16.00	As above
<b>Total</b>		<b>0.6</b>	<b>6</b>				

(\*): Contributions towards children's play provision will not be required for studio or 1-bedroom units or developments specifically and exclusively marketed for the over 65's.

**Table 2: An example of a residential development using the Open Space Calculator (available on the Council's website)**

This form provides an approximate calculation of the space (or commuted sums in lieu of open space and outdoor sport) that is required by the Council. This should be used as a **guidance only**.

**Only enter your development details in the red box**

**Site area (ha)**  ha

**Property Mix**

1 bedroom	<input type="text" value="4"/>	4%
2 bedroom	<input type="text" value="36"/>	36%
3 bedroom	<input type="text" value="30"/>	30%
4 or more bedrooms	<input type="text" value="30"/>	30%

**Total properties** (excluding sheltered, retirement and extra care)  units

**Total population** (estimated)  people

**Total children** (estimated)  children

**% of on-site open space requirements against total site area**

**Density**  dph

**Scenario 1: on-site requirements are met in full**

Development provides this amount of space for outdoor sport and open space on-site, in line with policy requirements. The detailed break-down is as follows:

Outdoor sport	<input type="text" value="9,009.00"/>
Children's playing space (equipped)	<input type="text" value="140.40"/>
Allotments and Community Gardens	<input type="text" value="514.80"/>
Formal Open Space	<input type="text" value="600.60"/>
Informal and Natural Open Spaces	<input type="text" value="600.60"/>
Amenity Greenspace	<input type="text" value="629.20"/>

The above outdoor sport and open spaces are then transferred to and adopted by the Council and the developer pays the Council a commuted maintenance sum of:

Alternatively, developer chooses to retain this open space, and it will be maintained by a recognised not-for-profit management

This is policy compliant

**Scenario 2: on-site requirements are met in full, with variation to the mix of open space types**

Development provides this total amount of space for outdoor sport and open space on-site. However, the breakdown of each type of open space is different than the indicative standards. (Fill in the red boxes below with your estimated provision for each type to check if it meets the total quantum required)

11,650.00 sqm in total	
comprising of:	
Outdoor sport	<input type="text" value="9,000.00"/>
Children's playing space (equipped)	<input type="text" value="150.00"/>
Allotments and Community Gardens	<input type="text" value="500.00"/>
Formal Open Space	<input type="text" value="500.00"/>
Informal and Natural Open Spaces	<input type="text" value="1,000.00"/>
Amenity Greenspace	<input type="text" value="500.00"/>

The above outdoor sport and open spaces are then transferred to and adopted by the Council and the developer pays the Council a commuted maintenance sum of:

Alternatively, developer chooses to retain this open space, and it will be maintained by a recognised not-for-profit management

This appears to meet the quantum required, however, the types of space and quantum of each type needs to be agreed by the Council

**Scenario 3: no on-site provision is made, commuted sum is required**

No on-site provision is made, as such developers are required to make this financial contribution for the Council to provide an equivalent amount of outdoor sport and open spaces to meet the additional demands off-site, and maintain this space over 25

This can make development policy compliant. To be discussed with the Council.

**Scenario 4: no on-site provision is made, but demands can be met by improvements to the existing facilities**

No on-site provision is made; however, there is sufficient capacity and provision in the locality to meet the total open space needs of development. In this instance, the Council will require a contribution towards the improvements of such space over 25

This can make development policy compliant. To be discussed with the Council.

**Scenario 5: insufficient on-site provision, remaining demands to be met off-site via a commuted sum**

Development provides some space on-site; but it does not meet the requirement in-full, and there is no capacity in the local green space to meet additional demands. (Fill in your estimated provision below).

Types of space	On-site provision (sqm)	Shortfall (sqm)
Outdoor sport	<input type="text" value="5,000.00"/>	4,009.00
Children's playing space (equipped)	<input type="text" value="150.00"/>	-9.60
Allotments and Community Gardens	<input type="text" value="500.00"/>	14.80
Formal Open Space	<input type="text" value="500.00"/>	100.60
Informal and Natural Open Spaces	<input type="text" value="1,000.00"/>	-399.40
Amenity Greenspace	<input type="text" value="500.00"/>	129.20
<b>Total</b>	<b>7,650.00</b>	<b>3,844.60</b>

In this instance, the developers are required to contribute towards the provision and maintenance of off-site space an amount of:

This takes into account any on-site surplus provision against the standards. This amount has been offset:

This can make development policy compliant. To be discussed with the Council.

**Scenario 6: insufficient on-site provision, remaining demands to be met via improvements to the existing facilities**

Development provides some space on-site; although it does not meet the requirement in full, there is capacity in the local area to meet the remaining demands. (Fill in your estimated provision below).

Types of space	On-site provision (sqm)	Shortfall, to be met by existing local provision (sqm)
Outdoor sport	<input type="text" value="5,000.00"/>	4009.00
Children's playing space (equipped)	<input type="text" value="150.00"/>	-9.60
Allotments and Community Gardens	<input type="text" value="500.00"/>	14.80
Formal Open Space	<input type="text" value="500.00"/>	100.60
Informal and Natural Open Spaces	<input type="text" value="1,000.00"/>	-399.40
Amenity Greenspace	<input type="text" value="500.00"/>	129.20
<b>Total</b>	<b>7,650.00</b>	<b>3844.60</b>

In this instance, the developers are required to contribute towards the improvements of existing facilities in the local area an amount of:

This takes into account any on-site surplus provision against the standards. This amount has been offset:

This can make development policy compliant. To be discussed with the Council.

**Scenario 7: insufficient on-site provision, demands to be met via both off-site provision and improvements to the existing facilities**

Development provides some space on-site; however, unmet demands will have to be met via both off-site provision and improvements to the existing facilities.

In this instance, please contact the Planning Development Management Team. The pre-application service allows for an opportunity to discuss the proposed development with the future Planning Officer who will assess your application.

N/A



**Table 3: The Open Space Calculator’s assumptions on occupancy rates expected from new development**

Property size	Number of people	Number of children
1 bedroom	1	0
2 bedroom	2	0.5
3 bedroom	3	1
4 bedroom	4	2

## Public Realm and Public Art

Obligation	Criteria	Justification	Policy background
Provision of or contributions towards public realm	<p><b>On-site and off-site provision</b></p> <p>P1. S106 agreements may require the following issues to be addressed in respect of on-site and off-site public realm improvements:</p> <ul style="list-style-type: none"> <li>a. improvements to paving, street furniture<sup>3</sup>, signage, lighting and planting on public highway and other space directly adjoining the site;</li> <li>b. planting and any associated paths and boundary treatment directly relating to the site;</li> <li>c. financial arrangement for their management;</li> <li>d. access and use restrictions/ assurances;</li> <li>e. adoption of the improvements;</li> <li>f. financial contribution towards the required off-site improvements;</li> </ul> <p>P2. Contributions will be sought from schemes that are deemed to have a significant adverse</p>	<p>Public realms make an important contribution to the local distinctiveness of an area.</p> <p>Policy BE14 and Policy BE15 require development to create safe, inclusive, attractive and accessible environment that supports our residents and communities via, among other requirements, well designed public space.</p> <p>Policy BE08 requires development proposals, where appropriate, to provide reasonable and proportionate contributions to public realm around Brentwood railway stations. Policy PC05 requires development proposals contribute to the enhancement of public realm around Brentwood Town Centre.</p> <p>Other Local Plan policies also set out that the provision of SUDs, digital communication infrastructure, public transport uses should be</p>	<p>Strategic Policy BE08: Strategic Transport Infrastructure</p> <p>Strategic Policy BE14: Creating Successful Places</p> <p>Strategic Policy BE15: Planning for Inclusive Community</p> <p>Policy PC05: Brentwood Town Centre</p>

<sup>3</sup> See Glossary

Obligation	Criteria	Justification	Policy background
	<p>impact upon Brentwood Town Centre. Obligations will include:</p> <ul style="list-style-type: none"> <li>a. details of how proposed links with Brentwood Town Centre would be designed, delivered and their timescales; and/or</li> <li>b. financial contributions to measures that would mitigate any identified significant adverse impacts to the centre.</li> </ul> <p>P3. Where financial contributions are sought, these will be based on the level of the adverse impact from the scheme, and will take into account the degree to which these have been offset by improved linkages and other approaches.</p>	<p>facilitated by the provision and design of public realm on site.</p> <p>This section provides clarity on these requirements.</p>	
<p>Provision or contributions towards public art</p>	<p><b>On-site provision</b></p> <p>P4. The following will be expected to prepare a Public Art Strategy and deliver public art on-site. The delivery of public art will be secured through condition:</p> <ul style="list-style-type: none"> <li>a. residential developments of more than 50 dwellings; or</li> <li>b. other development including office, manufacturing, warehouse and retail development with a floorspace of 5,000sqm or more; or</li> <li>c. developments at gateway or landmark locations or highly visible routes.</li> </ul> <p>P5. Although public art is a broad term that includes both art activities and art integrated into physical form and function, for the purpose of this SPD, public art only refers only to the latter. As such public art in the context of this SPD refers to projects that have a physical and</p>	<p>Policy BE14 places importance on attractiveness of development in creating successful places. It requires proposal to provide a comprehensive ‘design approach that delivers a high quality, safe, attractive, inclusive, durable and healthy places’.</p> <p>Paragraph 5.130 of the Local Plan goes on to state that “Proposals should either enhance local distinctiveness or seek to introduce distinctiveness to poor quality areas”.</p> <p>This section provides clarity on how development can deliver ‘attractive’ and ‘successful’ places or ‘enhance local distinctiveness’ via the use of public art. Public art is intended to enhance and develop the quality, distinctiveness and future heritage of an area. It celebrates and enhances the identity of</p>	<p>Strategic Policy BE14: Creating Successful Places</p>

Obligation	Criteria	Justification	Policy background
	<p>permanent outcome, integrated into the form, function, style or content of a place, space or building. These will range from projects where artworks have been incorporated into the design or masterplanning of buildings, townscapes or landscapes to the design and making of individual physical elements within them. Such work can include:</p> <ul style="list-style-type: none"> <li>a. large scale three-dimensional artworks such as site specific sculpture; gateway and water features; wayfinding signage; kinetic works; landmarks (including artworks incorporated into landmark buildings); architectural sculpture, land art; commemorative works such as memorials, inscriptions, plaques, artist designed street furniture such as fencing, paving, railings, security screening, tree grills, lighting, seating, bollards, markers and milestones;</li> <li>b. integrated two and three-dimensional works such as architectural glass, door furniture, painted works, mosaic / ceramic murals.</li> </ul> <p>P6. Public art works should consider environmental impacts, be durable, sustainable and of high-quality construction requiring very little if any maintenance.</p> <p>P7. The Public Art Strategy should:</p> <ul style="list-style-type: none"> <li>a. contain a Management Plan consisting of a summary of the knowledge, skills, time and budget allowed for public art project management;</li> <li>b. demonstrate how the strategy supports the local creative and cultural sector i.e. by using local artists or suppliers;</li> </ul>	<p>a place to increase local sense of pride, including aspects of its heritage.</p>	

Obligation	Criteria	Justification	Policy background
	<ul style="list-style-type: none"> <li>c. explain the commissioning process, artist briefs; explain how the brief responds to relevant local strategic ‘cultural and creative’ priorities, if any;</li> <li>d. explain the nature and purpose of the public art intervention and its relationship to the site including anticipated aims and benefits;</li> <li>e. set out the process for community liaison and engagement – both undertaken and proposed;</li> <li>f. indicate the Public Art Programme priorities set in the context of the phasing of the development and likely costs;</li> <li>g. explain the ownership, maintenance and decommissioning scheme;</li> <li>h. contain a statement indicating the responsibility for future care and maintenance this will be addressed as details of the Public Art Programme are developed.</li> </ul> <p>P8. On strategic allocations, the commissioning of public art works should involve professional art organisations and include stakeholder and community engagement.</p> <p>P9. Where a developer is willing to make a contribution to public art and is unable to achieve an appropriate scheme on site, the Council will encourage developers to make financial contributions to support public art initiatives in suitably prominent locations nearby where artworks would contribute to the existing local character, including the character and appearance of the historic environment and its assets, and thereby enhance the</p>		

Obligation	Criteria	Justification	Policy background
	<p>neighbourhood of the development. Where it is judged that off-site provision is appropriate, contributions will be sought to support this. The sums would be guided by the costs of the initiatives. The timing and trigger points of payment will be determined on a case-by-case basis.</p> <p>P10. Further information on this matter is available in Essex County Council’s Developers’ Guide to Infrastructure Contributions (2020 or as amended) and the Essex County Council Public Art Strategy.</p> <p><b>Maintenance plans / payments</b></p> <p>P11. Where there is an obligation to deliver public art within a S106 agreement, the Council will expect the delivery of the public art in accordance with the agreement and for this responsibility not to be transferred to the Council. Subject to discussion with the Council, consider transfer of ownership of permanent works after completion to the Council or an appropriate community body.</p>		

## 4. The Council's Approaches to Secure Contributions

### Unilateral Undertakings

- 4.1. Section 106 Agreements (S106) and unilateral undertakings (UU) are types of planning obligation under Section 106 of the Town and Country Planning Act 1990. They are legal agreements between the local authority and the developer. The land itself, rather than the person or organisation that develops the land, is bound by the S106 agreements. They are a legal charge on the land, so their obligations transfer automatically with any change in ownership.
- 4.2. A unilateral undertaking is a legal deed, entered into by the landowner and any other party with a legal interest in the development site. Unilateral undertakings can assist in ensuring that planning permissions are granted speedily, which benefits both applicants and the Council. However, unlike S106 agreements they don't have to be entered into by the local authority.
- 4.3. A unilateral undertaking comes into effect when planning permission to which they are linked is granted although as with S106 agreements the relevant obligations are usually conditional on development being commenced.
- 4.4. Where financial contributions are known at an early stage and the package of planning obligations is relatively straight forward, namely involving commuted payments for affordable housing or permit free obligations, applicants are encouraged to submit a unilateral undertaking with their application. The intention is that the unilateral undertaking can be included with the suite of documents associated with the planning application.
- 4.5. While S106 agreements are often prepared following Planning Committee, the draft form of unilateral undertaking can usually be agreed prior to Planning Committee (the heads of terms may need to be changed following Planning Committee decision on the application) thereby avoiding delays in getting a final decision.
- 4.6. Unilateral undertakings will not usually be appropriate for major applications including applications for 10 or more new dwellings.
- 4.7. Where a planning obligation will not be covered by a Unilateral Undertaking, applicants will still be required to enter into a S106 agreement. This type of legal agreement will need to be entered into by the applicant, the Council and anyone else who has an interest in the land forming the application site.

## B. Section 106 Agreements

- 4.8. Developers will be expected to make S106 contributions towards items of strategic and necessary infrastructure as identified in the most up to date IDP Part B, as well as any other site-specific infrastructure requirements arising from development proposals.

### Retrospective Contributions

- 4.9. There will be instances where contributions shall be payable retrospectively. Even if the strategic infrastructure has been fully or partially built or provided as at the date the relevant S106 agreement is entered into, the S106 agreement will require payment of retrospective contributions to recognise the benefit which the relevant development is obtaining from the relevant infrastructure. In those instances, consideration in terms of cost, apportionment, provision of land, reimbursement, external funding, and viability, etc. would still be consistent with guidance set out in this document.
- 4.10. As discussed in **Chapter 3**, the types of infrastructure that would benefit from this approach are those that:
- a. are of strategic nature or of critical importance to support the Local Plan, and
  - b. need to be in place or at least planned early on, prior to all relevant development taking place; and
  - c. is not funded by public funding.
- 4.11. Key considerations in drafting a S106 agreements regarding retrospective contributions are discussed in **Chapter 5**.

### Monitor and Manage

- 4.12. The Council will continue to explore other alternative approaches to the conventional 'predict and provide' approach in planning for and delivering strategic transport infrastructure. A potential option being the 'monitor and manage' approach, which would involve preparation of a Traffic Monitoring and Management Plan (TMMP) and collection of appropriate monitoring data to assess whether the road network is operating according to the worst-case scenario baseline.
- 4.13. The principles of this approach can be summarised as follows: development proposals for site allocations will demonstrate how vehicle trip generation would be lower than the target set in the TMMP. This target is intended to positively challenge developers to pursue a creative approach to reduce transport impacts of their development. Developer contributions towards the package of transport mitigations will be due in line with the Infrastructure Delivery Plan or the outcome of the TMMP. In other words, if development fails to reach its target, contributions

towards mitigation would be triggered. Development proposals for non-allocated sites will also have due regard to the TMMP. Such proposals will bring about vehicle trip generation over and above the target set out in the TMMP.

- 4.14. In this approach, the Council would be responsible for the monitoring of vehicle trip credits (unless agreed otherwise) and the collection of developer contributions, along with funding from all relevant public sources. The cost of monitoring is to be funded by developers.
- 4.15. There may be instances where some developers achieve their trip target, whilst others fail to do so. In this case, there may be a need to update the identified mitigation measures and associated costs. The Council will liaise with National Highways and ECC to consider undertaking necessary assessment to inform the IDP and subsequently, contributions from responsible development sites.
- 4.16. Under this approach, there is a need to manage exposure and counterparty risk. As such, the Council may require the mitigation contributions be paid in advance by developers into escrow accounts; this money will be held in the escrow accounts for an agreed period of time after the completion of development, to be used towards mitigation works should development fail to reduce its impacts.
- 4.17. Escrow accounts can be useful when contributions are requested on a per unit basis or when S106 payments are required only at trigger points. When an escrow agreement is entered into, an escrow account is opened to ring-fence the money for the mitigation work and developer is obliged to pay either all or a percentage of the total sum into an escrow bank account. Before the commencement of development, developer will provide an estimated cost based on its anticipated impacts and the rates / percentage that it expects to pay into the escrow account, for the approval of the Council. During the phases of development, the developer will make escrow payments into the escrow account on the basis of the rates and periods agreed. Appropriate arrangements, including review mechanisms, need to be in place to manage the expenditure of such funds. In the event that the balance of the escrow bank account exceeds any current demand or anticipated demand for payment, the escrow sum will be determined by the agreed review mechanism. A chosen firm of solicitors will act as the neutral third party, constrained from dealing with the money other than in accordance with the strict instructions agreed in advance by the parties concerned.
- 4.18. The Council may also consider to secure planning obligations through performance bonds (contract bonds), as it is reasonable for the Council to take steps to secure the delivery of mitigation, in the event of unforeseen circumstances such as a developer going into administration whilst the transport impacts of its development are not reduced.



## C. Section 278 Agreement

- 4.19. Where necessary, the Council will require developers to enter into a S278 agreement (Highways Act 1980) to fully pay or make contributions towards the carrying out of works to the highway impacted by their development schemes. In some cases, a developer may be required to carry out the works in lieu of payment.

## D. CIL

- 4.20. In addition to the above contributions, development will be liable to pay CIL as and when CIL is adopted in the Borough, to fund Borough wide place-making infrastructure as discussed in **Chapter 3**.

# 5. Considerations in drafting a Section 106 Agreement Framework

- 5.1. The Council will set out a consistent approach to planning applications via a S106 agreement template, so that regardless of when development sites come forward, this will provide clarity and certainty for developers and landowners over the obligations they will be expected to enter into.
- 5.2. It should be noted that this template is separate to ECC's S106 template, which only focusses on the contributions ECC has requested. ECC's template agreement is provided in the DGIC, with a separate schedule for each type of contribution. ECC's template should also be considered as a starting point to avoid delays and unnecessary expense.
- 5.3. The S106 agreement template will contain a "Part 1" (Strategic Infrastructure) and a "Part 2" (Site Specific Infrastructure) which will respectively set out the provisions which the Council will expect to be included in S106 agreements relating to the development. The framework S106 agreement will state that "Part 1" provisions are expected to be included as standard across all development sites with adjustments limited to those that are minor development not forming part of a wider. "Part 1" will include the following consideration:
- i. Cost and payment of strategic infrastructure contributions
  - ii. Works in kind
  - iii. Provision of land, costs of providing the land and equalisation agreement

- iv. Review and indexation
- v. Trigger points
- vi. Conditions
- vii. Access provisions
- viii. Statutory agreements
- ix. External funding
- x. Reimbursement to forward funders
- xi. Reimbursement of unspent contributions
- xii. Access to adjacent land
- xiii. Sites of multiple ownership
- xiv. Negotiations/ Viability
- xv. Escrow agreement and bonds
- xvi. Payment for specialist study

### **Cost and payment of strategic infrastructure contributions**

- 5.4. As discussed above, developers will be expected to make S106 contributions towards items of strategic infrastructure as identified in the most up to date IDP Part B. The amount of contributions payable will be determined by the Council on a consistent and proportionate basis in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended or replaced) and will be informed by the IDP and other available relevant evidence and guidance.
- 5.5. In some instances, such contributions shall be payable retrospectively; even if the strategic infrastructure has been fully built or provided as at the date the relevant S106 agreement is entered into, the S106 agreement will require payment of those contributions. Early delivery of

certain items of infrastructure may be beneficial or necessary in order to unlock or facilitate development. The contributions may be paid in instalments to be agreed in the relevant S106 agreement and the payment date(s) for payment of the contributions will also be agreed in the relevant S106 agreement.

Where contributions to strategic transport infrastructure are secured under the monitor and manage approach, the Council will require the cost of monitoring to be funded by developers.

## Works in kind

- 5.6. Where it is appropriate to do so, the Council will secure contributions by means of planning conditions and works-in-kind.
- 5.7. The Council will be open to discussing the possibility of the developer constructing all or part of those items. Any developer proposing to carry out works in kind is encouraged to discuss their proposals with the Council, ECC (in relation to County matters) and other landowners in the allocation area at the earliest possible opportunity - the Council will expect such discussions to have taken place prior to the submission of any planning application.
- 5.8. The applicant will be expected to include with the planning application an allocation-wide deliverability appraisal which shall reflect any agreements entered into by landowners and include the proposed delivery arrangements for the strategic infrastructure including the nature, scale and timing of delivery and a proposal as to how the landowner will be appropriately compensated by other landowners in the allocation area in respect of the proposed works in kind (such compensation may be monetary, through the provision of land or through agreement to meet or offset any S106 obligations otherwise falling to be met by the relevant landowner/developer or a combination thereof). If such agreements have not been made, the S106 agreement may restrict development until such agreements have been entered into and/or set out an expert determination provision to resolve any dispute between landowners.
- 5.9. Any works in kind proposals which are agreed by the Council (and County Council, in relation to County matters) will be subject to the developer agreeing appropriate fall-back provisions, including step-in rights for the Council or County Council (in relation to County matters), to ensure the delivery of infrastructure when it is needed. The decision on whether to accept infrastructure works in kind shall be at the Council's discretion, bearing in mind all relevant circumstances. Where the Council does permit works in kind the developer will be expected to obtain the approval of the Council (and where appropriate to its functions the County Council) to the detailed design of those works, obtain all necessary consents and enter into all statutory agreements required, provide the Council (and where appropriate to its functions the County Council) with suitable collateral warranties in relation to the design and construction of those works and provide appropriate security, including bonds, where reasonably required to help guarantee the performance of those works. The developer will also be expected to transfer the ownership of such works (including the freehold ownership of the land on which the works are built) to the Council (or the County Council in relation to County infrastructure) when required by the Council.

## Provision of land, costs of providing the land and equalisation agreement

- 5.10. The Council and ECC will not pay the relevant landowner/ developer for the cost of land on which an item of strategic infrastructure shall be built, whether that item is identified by the IDP or proposed by the landowner / developer.
- 5.11. Landowners will need to have regard to the role their land has within the wider context of Local Plan growth, the wider allocation as well as the need to achieve a coordinated approach to development and delivery of associated infrastructure. There may be a need to take into account instances where one developer has provided land and/or delivered infrastructure which will be used by a number of sites; in this instance, the Council will require land equalisation agreements between developers to be in place to achieve holistic spatial objectives.
- 5.12. In relation to land on which it is identified in the IDP that an item of strategic infrastructure shall be built, there shall be a presumption in favour of that item of strategic infrastructure being provided on that land. In relation to land on which a landowner or developer proposes that an item of strategic infrastructure will be built (where it is not identified as such by this SPD), the Council will expect the developer to have discussed and agreed such proposal with the Council (and ECC in relation to County matters) prior to the submission of any planning application. Where multiple landowners are involved, they should agree an equalisation mechanism amongst themselves to ensure a fair apportioning of the burden of providing land for infrastructure. In both cases, the applicant(s) should include with the planning application an allocation-wide deliverability appraisal which shall reflect any equalisation agreements entered into by landowners and include the proposed delivery arrangements for the strategic infrastructure including the nature, scale and timing of delivery and a proposal as to how the landowner will be appropriately compensated by other landowners in the allocation area for the loss of that strategic infrastructure land as development land (such compensation may be monetary, through the provision of land or through agreement to meet or offset any S106 obligations otherwise falling to be met by the relevant landowner/developer or a combination thereof).
- 5.13. If such agreements have not been made, the Council may consider, via S106 agreement, restrict development until such agreements have been entered into and/or set out an expert determination provision to resolve any dispute between landowners.

## Review and indexation

- 5.14. All payments set out in S106 agreements will be indexed from the date that costs were agreed or from the committee date when it was resolved that planning permission should be granted subject to a S106 agreement using an appropriate index. The legal agreement will set out the choice of index and/or the indexation calculation.
- 5.15. Where specific costs have been referenced in this SPD, these costs will be indexed from the date of publication.

## Trigger points

- 5.16. In order to allow developers to spread the cost of their contributions and to maintain a revenue stream, the trigger points for payments prior to commencement and/or completion will be agreed through the development management process. Guidance on trigger points of site-specific contributions are set out in **Chapter 3, section C** of this document. Guidance on trigger points of the contributions ECC has requested are set out in ECC's DGIC.
- 5.17. Trigger points for mitigation measures falling under the monitor and manage mechanism will be informed by the TMMP.

## Conditions

- 5.18. The Council may, where appropriate, use pre-commencement and/or pre-occupation conditions on planning permissions to prevent development and/or occupation of relevant phases of the development in advance of the necessary strategic infrastructure being in place.

## Access provisions

- 5.19. Landowners/developers will be expected to provide access to the Council (or County Council as appropriate) and their contractors for the purpose of enabling the Council (or County Council) to construct the strategic infrastructure works at nil cost.

## Statutory agreements

- 5.20. The Council and County Council may require conditions to form part of any planning permission or obligations in a S106 agreement requiring the landowners/developers to enter into highways agreements to secure adoption of any roads or other public rights of way forming part of the strategic infrastructure and/or any other planning or infrastructure agreements that may be required at the relevant time.

## External funding

- 5.21. Where funding is to be provided by external bodies for the provision of infrastructure: there will be a provision in the legal agreement between the Council and the landowner / developer providing a mechanism to off-set or pay back the correct proportion of the contribution paid by the landowner/developer towards the same infrastructure as appropriate. It may not be possible to assess this until all the relevant infrastructure has been delivered and comprehensive final costs of delivery are known.

## Reimbursement to forward funder(s)

- 5.22. Where forward funding has taken place in order to ensure the early provision of infrastructure: the Council will use reasonable endeavours to secure S106 contributions retrospectively with the grant of planning permissions post-dating the provision of such infrastructure so as to reimburse the forward funder(s) of the infrastructure.

## Reimbursement of unspent contributions

- 5.23. In relation to provisions regarding the repayment of unspent and uncommitted strategic infrastructure S106 contributions: once all funding requirements and obligations have been met, the Council will act consistently in deciding whether or not to include such provisions. Any reimbursement will be proportionate and subject to the development to which it relates being policy compliant and all other infrastructure needs of that development having been met; if not then any reimbursement monies due in respect of that development may first be applied by the Council towards making that development policy compliant.

## Access to adjacent land

- 5.24. Where a parcel of land within a development site is the subject of a planning application for development, the landowner/developer will be expected to ensure that the development is designed in such a way as to facilitate vehicular and pedestrian/bridleway access from that land to adjacent parcels of land to ensure appropriate site-wide connectivity. This will ensure that the development site can move forward on a viable comprehensive basis. The safeguarding of suitable land for access to adjacent parcels of land will be protected through S106 agreements.

## Sites of multiple ownership

- 5.25. A site of multiple ownerships are likely to be developed through a number of planning applications coming forward at different times. The submission of numerous applications at different stages can present a challenge in securing the funding and land for the infrastructure that would be required by the comprehensive development and shared by all users.
- 5.26. In this case, the Council will take a holistic approach in securing and provision of necessary shared infrastructure. The Council will not accept ad hoc or piecemeal development which is detrimental to the delivery of necessary infrastructure and the wider planned growth. The Council will only accept variations to the identified infrastructure if it can be satisfied that appropriate alternative arrangements will be delivered in full and at the appropriate time and in general accordance with the approach and provisions outlined within this SPD.

## Negotiations/ Viability

- 5.27. Proposals should be designed in a way that accords with Local Plan policies, including the requirement to contribute towards strategic infrastructure costs and any other items that may be secured through S106 agreements.
- 5.28. Where, in the opinion of a developer, their proposed development cannot meet Local Plan policy requirements and the requirements of this SPD, the developer is required to robustly demonstrate that the development is clearly unviable by submitting a financial viability assessment (FVA) to the Council. An FVA should normally be submitted no later than the submission of the planning application for the proposed development scheme and must in any event be submitted well in advance of determination of that planning application. The broad level of viability will often be known before the development has crystallised and this should be made known to the case officer at an early stage in order to avoid post submissions delays. The developer will be required to fund the examination of a viability assessor on behalf of the Council and any specialist professionals required in that examination. This funding should be made available up front to avoid future delays.
- 5.29. All FVAs submitted by developers should contain the following information with supporting evidence:
- b. a summary of the main assessment assumptions (evidenced from an independent expert or source);
  - c. site or building acquisition cost and existing use value;
  - d. construction costs and programme;
  - e. detailed cashflow on an annual basis;
  - f. fees and other on costs;
  - g. projected sale prices of dwellings/non-residential floorspace;
  - h. details of discussions with registered providers of affordable housing (if relevant) to inform the value of affordable housing assumed within the FVA;
  - i. gross and net margin;
  - j. other costs and receipts;

- k. other relevant information dependent on the nature of the obligation(s) under discussion;
  - l. a summary clearly setting out the reasons that make a development proposal unviable; and
  - m. if applicable, any request to vary S106 agreements and/or affordable housing requirements from those set out in the Local Plan and this SPD and stating the proposed level of obligations, demonstrating why they are the maximum that can be provided, provided that this shall only be acceptable if all of the following have already been completed and a justificatory statement in respect of the same has been provided to the local planning authority:
    - i a review of all assumptions within the viability model with a view to improving viability, including land value, build and development costs, sales prices, dwelling types, phasing, funding (including borrowing costs) and legal, professional and marketing costs has been carried out;
    - ii consideration of a reduction in the minimum anticipated developer profit for the scheme to offset any degree of non-compliance with Local Plan or SPD requirements has been undertaken;
    - iii consideration of how growth assumptions (value increases over time) have been factored into the viability model;
    - iv available options for public sector funding which would enable the proposed development to be compliant with Local Plan or SPD requirements have been actively explored; and
    - v a consideration of how adjustments to the tenure mix and/or phasing of affordable housing affect the viability model, as well as adjustments in percentage terms, has been undertaken.
- 5.30. FVA will be scrutinised by the Council with advice from a suitably qualified external consultant and the reasonable cost of this external consultant is to be met by the developer who has submitted the FVA. If material changes are made to an application after submission that could affect scheme viability, a revised FVA will be required.
- 5.31. Where the Council is satisfied that S106 contributions or works required by the Local Plan policies and this SPD cannot be met in full on a particular development proposal due to financial viability, the Council will make the decision on how to apportion the funding that is available and may choose to:
- a. reduce the S106 contributions payable pursuant to this SPD; and/or
  - b. adjust the timetable for delivery of strategic infrastructure to be funded by those S106 contributions or provided in kind; and/or



- c. reduce or amend other planning obligations for that development proposal, provided that the Council will continue to pay due regard to the objective of ensuring an equitable and proportionate apportionment of the costs of delivering strategic infrastructure and those that are required to make development acceptable; and/or
  - d. liaise with relevant service providers, authorities and local communities as necessary, to determine which infrastructure should be prioritised to benefit from the additional funding and how contributions should be spent; the Council will be the one to make the final decision.
- 5.32. The financial viability of development proposals may change over time due to the prevailing economic climate, including changing property values and construction costs. In all cases, therefore, where the Council have agreed to any of the reduction or adjustment items set out above such that the resultant planning obligations are below the level needed to fully fund or provide the strategic and local infrastructure requirements to comply with Local Plan policy requirements, the Council will require a viability review of the relevant development with an updated FVA to be provided at appropriate intervals to determine whether greater or full compliance with this SPD and the Local Plan policy requirements can be achieved throughout the carrying out of the relevant development proposal.

### Escrow agreement and bonds

- 5.33. For relevant contributions involving the use of bonds and escrow account, S106 agreement should detail the terms and condition regarding the use of bonds or payments into a joint escrow account and appropriate arrangement to manage spending of such funds.

### Payment for specialist study

- 5.34. Where a Planning Performance Agreement has not been entered into, which sets out a list of particular specialist investigation/ study and makes allowances for its payment, the Council may require the applicant to pay a lump sum for the purpose of commissioning specialist study as required. Any amount unspent will be refunded to the applicant.

## 6. Implementing this Planning Obligations SPD

### A. Monitoring and Enforcement of Obligations

- 6.1. The Council will monitor all contributions agreed through S106 agreements, both financial and non-monetary to ensure that they are complied with.
- 6.2. In cases where developers have difficulty making payments at the appropriate times as required by the legal agreement, the Council will work with the developer to find a solution. This may involve the payment of an obligation at a later stage in the development, or payment by installments. However, where it is imperative that the relevant measure is in place prior to a development being occupied, the obligation to fund it will always become payable on commencement.
- 6.3. In the event of an obligation not being fulfilled as agreed, the Council will write to the developer requesting timescales for completion within 21 days.
- 6.4. In the absence of a response or if the Council remains dissatisfied with the proposed timescales for completion, the Council will consider instigating enforcement action. The Council has the option of using an injunction, which can stop the development proceeding and/or ensure compliance with the terms of the Agreement. The Council has the power to enter the land and carry out any works that were required and recover the costs (a 21 day notice of intention must be given to do this).

### B. Monitoring Fees

- 6.5. To support the monitoring and administration of s106 obligations, an appropriate monitoring fee will be applied to the relevant S106 agreements. The basis for the monitoring fee will be determined on a case-by-case basis. Monies received via this monitoring fee will be used by the Council to fund resources for monitoring the provisions secured via S106 agreements and other aspects of the planning application. Applicants will be required to pay the Council reasonable legal fees incurred in settling the unilateral undertaking, S106 agreement, or in a deed of variation to a S106 agreement.
- 6.6. Unilateral undertakings include obligation to pay the Council's costs in monitoring and managing the implementation of the planning obligation.

- 6.7. Essex County Council charge separate monitoring fees for S106 obligations types that they are responsible for, for example education and highways. Further information is available on [www.essex.gov.uk](http://www.essex.gov.uk)
- 6.8. In addition, for contributions falling under the monitor and manage mechanism, applicants will be required to pay the Council the cost of monitoring traffic against the TMMP.
- 6.9. All monitoring fees will be subject to indexation and payable on commencement of the development.

## C. Reporting on the Use of Section 106 Obligations and CIL

- 6.10. For financial contributions, an audit trail between the contribution and expenditure will be provided within the Infrastructure Funding Statements, published annually from 31 December 2020. This will also set out the infrastructure projects or types of infrastructure that the authority intends to fund, either wholly or partly, by CIL or planning obligations.
- 6.11. The Infrastructure Delivery Plan (IDP), which will be updated periodically will detail where s106 financial contributions have been secured towards individual infrastructure projects.

## D. Exempt development

- 6.12. Development consisting of:
  - a. less than 10 dwellings and less than 1,000 square metres of GIA non-residential development (except where it is a result of a larger development being sub-divided into smaller developments consisting of less than 10 dwellings and less than 1,000 square metres of non-residential development); or
  - b. a replacement development resulting in less than 10 additional dwellings or 1,000 additional square metres of GIA non-residential floorspace;

shall not be expected to enter into a S106 agreement in accordance with the framework S106 agreement unless national policy or guidance alters to no longer discourage obligations on smaller developments.

## E. Payment management

6.13 All agreements will include requirements for interest to be paid on outstanding contributions if payments are made late.

## 7. Appendix A: Glossary

Allotment	Land providing opportunities to grow produce as part of the long-term promotion of wildlife conservation and biodiversity.
Amenity green space	Publicly accessible areas green space providing recreation spaces in around development sites, providing opportunities for informal activities close to home, enhancing the appearance of residential areas and forming a link between green corridors/features, natural and semi natural space and other local community facilities. This can include small local areas providing places for recreation, picnic areas, sitting out areas. It can also include informal (unequipped) play areas that provide opportunities for creative play using the natural environment.
Children's playing space	This provision covers all aspects of equipped play areas for children and youths. It includes play areas that provide free play equipment (such as swings, climbing frames, slides and or fixed items of play), teen shelters, skateboard ramps, BMX tracks, etc.
Commencement of the development	Means undertaking some works on site to commence a planning permission. In order to lawfully 'commence' development it is necessary to satisfy the legal requirements in section 56(4) of the Town and Country Planning Act 1990.
Formal open space	Parks and managed open spaces which are publicly accessible, multi-functional greenspaces providing opportunities for informal recreation and community events, typically in urban areas. They can incorporate formal and informal features, such as flower beds, trees, landscaped areas and ancillary provision such as toilets and seating areas.
Informal and Natural Open Spaces	Informal less intensively maintained land. In these areas, wildlife, conservation, biodiversity and environmental education take precedence over recreational uses in determining management regimes. This includes areas with protective statutory designations and also comprises publicly accessible countryside parks areas. The size and utility of such spaces varies widely, with some having provision such as paths, benches, rubbish bins and planting schemes, whilst others comprise only grassed areas. Some provide linkages within the green infrastructure network to other open spaces.
Open space	All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.
Outdoor sport	Includes both pitch sport (such as rugby, football, cricket) and non-pitch sport such as bowls, tennis and athletics.

Planning obligation	Legal agreements between a Local Planning Authority and a developer, or undertakings offered unilaterally by a developer, that ensure that certain extra Planning Obligation works related to a development are undertaken. Sometimes called 'Section 106' agreements.
Street furniture	Collective term for objects and pieces of equipment installed along the streets and roads for various purposes. Examples include benches, traffic barriers, bollards, post boxes, phone boxes, streetlamps, traffic lights, traffic signs, bus stops, tram stops, taxi stands, public lavatories, fountains, watering troughs, memorials, public sculptures, waste receptacles, outdoor sculptures, waste bins, etc.

## Appendix B: The Open Space Calculator

### Brentwood Open Space Standards

#### RESIDENTIAL DEVELOPMENT

Space requirements		ha per 1,000 population	sqm per person	Local Plan / evidence
SPORT	Outdoor Sport	3.15	31.5	Local Plan, Figure 8.2
OPEN SPACE comprising of some or all of the following types	Children's Playing Space (per child)	0.13	1.3	Local Plan, Figure 8.2
	Allotments and Community Gardens	0.18	1.8	Local Plan, Figure 8.2
	Formal Open Space	0.21	2.1	A combination of Sport, Leisure and Open Space
	Informal and Natural Open Spaces	0.21	2.1	Assessment (2016) and CIL and Local Plan Viability
	Amenity Greenspace	0.22	2.2	Appraisal (2022)
<b>Total</b>		<b>4.1</b>	<b>41</b>	

#### EMPLOYMENT DEVELOPMENT

Space requirements		ha per 1,000 additional employee	sqm per additional employee	Local Plan / evidence
OPEN SPACE	Amenity Greenspace	0.6	6	A combination of Sport, Leisure and Open Space Assessment (2016) and CIL and Local Plan Viability Appraisal (2022)
<b>Total</b>		<b>0.6</b>	<b>6</b>	

## Costs of provision and maintenance

Space requirements	Brentwood's standards sqm per person	CAPITAL COSTS		MAINTENANCE COSTS		IMPROVEMENT COSTS	
		Capital cost per sqm		Maintenance cost per sqm (25 years)		Improvement cost per sqm	
Outdoor Sport	31.5	£	72	£	14.40	£	57.60
Children's Playing Space (per children)	1.3	£	220	£	44.00	£	176.00
Allotments and Community Gardens	1.8	£	25	£	5.00		
Formal Open Space	2.1	£	40	£	8.00	£	32.00
Informal and Natural Open Spaces	2.1	£	13	£	2.60		
Amenity Greenspace	2.2	£	20	£	4.00	£	16.00
<b>Total</b>	<b>41</b>	<b>£</b>	<b>390</b>	<b>£</b>	<b>78.00</b>	<b>£</b>	<b>281.60</b>



## Residential Calculator Example

This form provides an approximate calculation of the space (or commuted sums in lieu of open space and outdoor sport) that is required by the Council.  
 This should be used as a guidance only.

### Only enter your development details in the red box

Site area (ha)	<input type="text" value="1.39"/>	ha
<b>Property Mix</b>		
1 bedroom	<input type="text" value="12"/>	21%
2 bedroom	<input type="text" value="19"/>	33%
3 bedroom	<input type="text" value="19"/>	33%
4 or more bedrooms	<input type="text" value="7"/>	12%
<b>Total properties</b> (excluding sheltered, retirement and extra care)	<input type="text" value="57"/>	units
<b>Total population</b> (estimated)	<input type="text" value="135"/>	people
<b>Total children</b> (estimated)	<input type="text" value="43"/>	children
<b>% of on-site open space requirements against total site area</b>	<input type="text" value="39%"/>	
<b>Density</b>	<input type="text" value="41"/>	dph

### Scenario 1: on-site requirements are met in full

Development provides this amount of space for outdoor sport and open space on-site, in line with policy requirements. The detailed break-down is as follows:

	<input type="text" value="5,414.75"/>	sqm in total
<i>Outdoor sport</i>	4,252.50	
<i>Children's playing space (equipped)</i>	55.25	
<i>Allotments and Community Gardens</i>	243.00	
<i>Formal Open Space</i>	283.50	
<i>Informal and Natural Open Spaces</i>	283.50	
<i>Amenity Greenspace</i>	297.00	
The above outdoor sport and open spaces are then transferred to and adopted by the Council and the developer pays the Council a commuted maintenance sum of:	<input type="text" value="£ 69,075.10"/>	

Alternatively, developer chooses to retain this open space, and it will be maintained by a recognised not-for-profit

**This is policy compliant**

## Scenario 2: on-site requirements are met in full, with variation to the mix of open space types

Development provides this total amount of space for outdoor sport and open space on-site. However, the breakdown of each type of open space is different than the indicative standards. (Fill in the red boxes below with your estimated provision for each type to check if it meets the total quantum required)

9,385.00 sqm in total

comprising of:

Outdoor sport	5,500.00
Children's playing space (equipped)	85.00
Allotments and Community Gardens	-
Formal Open Space	1,800.00
Informal and Natural Open Spaces	1,000.00
Amenity Greenspace	1,000.00

*Outdoor sport*

*Children's playing space (equipped)*

*Allotments and Community Gardens*

*Formal Open Space*

*Informal and Natural Open Spaces*

*Amenity Greenspace*

The above outdoor sport and open spaces are then transferred to and adopted by the Council and the developer pays the Council a commuted maintenance sum of:

£ 103,940.00

Alternatively, developer chooses to retain this open space, and it will be maintained by a recognised not-for-profit

This appears to meet the quantum required, however, the types of space and quantum of each type needs to be agreed by the Council

## Scenario 3: no on-site provision is made, commuted sum is required

No on-site provision is made, as such developers are required to make this financial contribution for the Council to provide an equivalent amount of outdoor sport and open spaces to meet the additional demands off-site, and maintain this space

£ 414,450.60

This can make development policy compliant. To be discussed with the Council.

## Scenario 4: no on-site provision is made, but demands can be met by improvements to the existing facilities

No on-site provision is made; however, there is sufficient capacity and provision in the locality to meet the total open space needs of development. In this instance, the Council will require a contribution towards the improvements of such space an

£ 268,492.00

This can make development policy compliant. To be discussed with the Council.

**Scenario 5: insufficient on-site provision, remaining demands to be met off-site via a commuted sum**

Development provides some space on-site; but it does not meet the requirement in-full, and there is no capacity in the local green space to meet additional demands. (Fill in your estimated provision below).

Types of space

Types of space	On-site provision (sqm)	Shortfall (sqm)
Outdoor sport	5,000.00	-747.50
Children's playing space (equipped)	150.00	-94.75
Allotments and Community Gardens	500.00	-257.00
Formal Open Space	500.00	-216.50
Informal and Natural Open Spaces	1,000.00	-716.50
Amenity Greenspace	500.00	-203.00
<b>Total</b>	<b>7,650.00</b>	<b>-2,235.25</b>

In this instance, the developers are required to contribute towards the provision and maintenance of off-site space an amount of: This takes into account any on-site surplus provision against the standards. This amount has been offset:

#VALUE!  
Not applicable as on-site provision appears to have been met, try ---

On-site provision appears to be policy compliant.

**Scenario 6: insufficient on-site provision, remaining demands to be met via improvements to the existing facilities**

Development provides some space on-site; although it does not meet the requirement in full, there is capacity in the local area to meet the remaining demands. (Fill in your estimated provision below).

Types of space

Types of space	On-site provision (sqm)	Shortfall, to be met by existing local provision (sqm)
Outdoor sport	5,000.00	-747.50
Children's playing space (equipped)	150.00	-94.75
Allotments and Community Gardens	500.00	-257.00
Formal Open Space	500.00	-216.50
Informal and Natural Open Spaces	1,000.00	-716.50
Amenity Greenspace	500.00	-203.00
<b>Total</b>	<b>7,650.00</b>	<b>-2,235.25</b>

In this instance, the developers are required to contribute towards the improvements of existing facilities in the local area an amount of: This takes into account any on-site surplus provision against the standards. This amount has been offset:

#VALUE!  
not applicable as on-site provision appears to have been met, try ---

On-site provision appears to be policy compliant

**Scenario 7: insufficient on-site provision, demands to be met via both off-site provision and improvements to the existing facilities**

Development provides some space on-site; however, unmet demands will have to be met via both off-site provision and improvements to the existing facilities.

In this instance, please contact the Planning Development Management Team. The pre-application service allows for an opportunity to discuss the proposed development with the future Planning Officer who will assess your application.

N/A

### Employment Calculator Example

This form provides an approximate calculation of the space (or commuted sums in lieu of open space and outdoor sport) that is required by the Council. This should be used **as a guidance only**.

**Only enter your development details in the red box**

Site area (ha)	<input style="border: 2px solid red;" type="text" value="49.00"/>	ha
Total additional employees	<input style="border: 2px solid red;" type="text" value="2,100"/>	employee
% of on-site open space requirements against total site area	<input type="text" value="3%"/>	

**Scenario 1: on-site provision requirements are met in full**

Development provides this amount of space (in sqm) for amenity greenspace on-site, in line with policy requirements.  sqm in total

**This is policy compliant**

**Scenario 2: no on-site provision, commuted sum is required**

No on-site provision is made, as such developers are required to make this financial contribution to the Council to provide and maintain the open space off-site.

£

**This can make development policy compliant. To be discussed with the Council.**

**Scenario 3: no on-site provision, demands to be met via improvements of existing facilities**

No on-site provision is made; however, there is sufficient capacity and provision in the locality to meet development's open space needs. In this instance, the Council will require a contribution towards the improvements of such space.

£

**This can make development policy compliant. To be discussed with the Council.**

**Scenario 4: insufficient on-site provision, remaining demands to be met off-site via a commuted sum**

Development provides some space on-site; but it does not meet the requirement in-full, and there is no capacity in the local green space to meet additional demands. (Fill in your estimated provision below).

*Amenity Greenspace*

On-site provision (sqm)	Shortfall (sqm)
<input style="border: 2px solid red;" type="text" value="-"/>	<input type="text" value="12600.00"/>

**This can make development policy compliant. To be discussed with the Council.**

In this instance, the developers are required to contribute towards the provision and maintenance of off-site space an amount of.

£

## Scenario 5: insufficient on-site provision, remaining demands to be met via improvements to the existing facilities

Development provides some space on-site; although it does not meet the requirement in full, there is capacity in the local area to meet the remaining demands. (Fill in your estimated provision below).

*Amenity Greenspace*

In this instance, the developers are required to contribute towards the improvements of existing facilities in the local area an amount of:

On-site provision (sqm)	Shortfall - to be met by existing local provision (sqm)
<input type="text" value="-"/>	12600.00
£ 201,600.00	

**This can make development policy compliant.  
To be discussed with the Council.**