

# Local Plan

## APPENDIX H - PLANNING OBLIGATIONS

### Supplementary Planning Document:

### Planning Obligations



**April 2013**



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## Executive Summary

The Planning Obligations Supplementary Planning Document (SPD) was first published in 2006. It provided the framework for two SPDs on Education and Libraries published in 2008, and a Health Facilities SPD published in 2009. The 2006 SPD was supplemented by an Interim Guidance Note published in September 2009 on responding to the recession. The main purpose of the Planning Obligations SPD was to provide guidance on when, where, and how the Council will seek to use Planning Obligations and the procedural process for doing so.

Since 2006 we have produced the Local Plan Core Strategy and Development Management policies documents as the planning policy framework to manage change, and to shape the future of Barnet. The Planning Act 2008 introduced new regulations which have fundamentally changed the role of Planning Obligations. The London Plan has also undergone a full review and the National Planning Policy Framework has also been published.

It is therefore now timely to publish this revision. The SPD has been revised to focus on when Planning Obligations will be required, and its relationship with the Community Infrastructure Levy (CIL). The SPD sets the requirements for different scales of development as well as the procedures and processes for delivering the appropriate legal agreements. This revised SPD has been timetabled to be adopted alongside the CIL Charging Schedule in May 2013. It replaces the existing 'tariff' SPD's for Education, Libraries and Health and sets out the approach towards Planning Obligations for open spaces, transport, community facilities and environmental requirements.

# 1 Introduction and economic context

## 1.1 Introduction

- 1.1.1 Section 106 of the Town and Country Planning Act 1990 (as amended) forms the basis for Planning Obligations. A Planning Obligation (also known as ‘Section 106’) is a legally binding agreement made between the developer and the Council which is drafted where necessary to make an application acceptable in planning terms.
- 1.1.2 The Planning Act 2008 and subsequent Community Infrastructure Levy Regulations 2010 (as amended) introduced the Community Infrastructure Levy (CIL) as a new method of raising money for infrastructure from development. CIL is considered to be fairer, more certain and transparent.
- 1.1.3 The Barnet CIL is a flat rate charge for all development as specified in the CIL Charging Schedule. CIL is backed by viability evidence and set in consultation with local communities and developers. The charge applies from April 2013 and is expected to become the primary source of infrastructure funding in Barnet. CIL captures financial contributions that can support a wider range of local infrastructure than applied under the previous Planning Obligation Tariffs.

## 1.2 Purpose of the document

- 1.2.1 This SPD will focus on when Planning Obligations will be required and the relationship with CIL. It will set the requirements for different scales of development as well as the procedural process for delivering a legal agreement.
- 1.2.2 This SPD replaces the Planning Obligations SPD which was first published in 2006 and the Interim Guidance Note Responding to the Recession: Bringing Flexibility to S106 Planning Obligations published in September 2009. It also replaces the following SPDs – Contributions to Education, Contributions to Health Facilities and Contributions to Libraries.

## 1.3 Economic Context

- 1.3.1 At the time of writing this document, the continuing economic downturn is having a significant impact on the viability of development in general, posing a risk to the delivery of commercial floor space and new housing. The Council will continue to enable development to be brought forward during the economic downturn by providing flexibility in the operation of its s106 planning obligations process, whilst continuing to ensure the sustainability of schemes through delivery of supporting infrastructure.

## 2 Planning obligations

The Core Strategy, Development Management Policies (DMP), the saved suite of Unitary Development Plan policies for Brent Cross Cricklewood and the London Plan provide the development plan for Barnet. The SPD supports these documents providing more detailed information about how policies should be applied alongside Barnet's CIL Charging Schedule.

### 2.1 Legislation

- 2.1.1 The CIL provisions of the Planning Act 2008 came into force in April 2010 through the introduction of CIL Regulations. These allow local authorities to raise funds from developers undertaking new building projects in their area. One of the main visions of CIL is to introduce transparency and certainty for developers. The money can be used to fund various infrastructure projects such as new or safer road schemes, schools, health and social care facilities, park improvements and leisure centres.
- 2.1.2 The Charging Schedule provides certainty for developers as it clearly sets out the amount the Council will require developers to pay on eligible new development ie a rate of £135 per m<sup>2</sup>.
- 2.1.3 Barnet's Infrastructure Delivery Plan (IDP) published in November 2011 provides a snapshot of the scale and nature of the infrastructure required to support development. The IDP is a living document as it provides an ongoing assessment of local infrastructure needs. Appendix 1 of the IDP details all critical and necessary infrastructure projects that are key to supporting population and economic growth in Barnet.
- 2.1.4 The government has introduced new statutory restrictions upon the use of Planning Obligations to clarify their purpose and ensure that Obligations and CIL can work effectively together. The Planning Act and the CIL Regulations (as amended) 2010 change the use of Planning Obligations by:

**(a) Placing into law the policy tests on the use of Planning Obligations set out in the NPPF (para 204).**

CIL Regulation 122 makes it unlawful for a Planning Obligation to be taken into account when determining a planning application for a development, or any part of a development, if the obligation is not:

- (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

**(b) Ensuring the local use of CIL and Planning Obligations does not overlap**

- 2.1.5 Under Regulation 123 (2), on the adoption of CIL the Regulations restrict local use of Planning Obligations to ensure that individual developments are not charged for the same items through both Planning Obligations and CIL. Where a charging authority sets out that it intends to fund an item of infrastructure via CIL then a planning authority may not constitute funding or provision of relevant infrastructure via a planning obligation as a reason for

granting planning permission. Furthermore, a charging authority should publish on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL, and consequently the authority would be prohibited from seeking a Planning Obligation contribution towards the same item of infrastructure.

**(c) Limiting pooled contributions from Planning Obligations towards infrastructure which may be funded by CIL**

- 2.1.6 CIL Regulation 123 (3) has the effect that from 6 April 2014, or the date that a charging authority's first charging schedule takes effect (whichever is earlier) local planning authorities will only be able to pool up to five individual Planning Obligation contributions towards infrastructure that is capable of being funded by CIL.
- 2.1.7 Pooled contributions may be sought from up to five separate Planning Obligations for an item of infrastructure that is not locally intended to be funded by CIL. The limit of five applies as well to types of general infrastructure contributions, such as education and transport. In assessing whether five separate Planning Obligations have already been entered into for a specific infrastructure project or a type of infrastructure, local planning authorities must look over agreements that have been entered into since 6 April 2010.

## 2.2 Policy Context

### National Planning Policy Framework

- 2.2.1 National Planning Policy sets out the use of planning conditions and Planning Obligations in paragraphs 203 to 206 of the National Planning Policy Framework (NPPF). Paragraph 203 sets out that "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition." It goes onto to repeat the three tests set out in the CIL regulations. The NPPF replaced Circular 05/2005.
- 2.2.2 The NPPF also highlights that the local planning authority should take account of changes in market conditions over time and be sufficiently flexible to prevent planned development from being stalled (see paragraphs 173 to 177). In delivering sustainable development viability and costs are important factors in plan-making and decision taking. We do not consider that the impact of these Planning Obligations as set out in this SPD puts Local Plan implementation at risk; rather they facilitate sustainable development throughout the economic cycle.

### The London Plan

- 2.2.3 On 1 April 2012, the Mayor of London started charging CIL ("Mayoral CIL") on most development in London to help provide £300m towards the cost of delivering the Crossrail project. In Barnet the Mayoral CIL will be charged at the rate of £35 per m<sup>2</sup> of net additional gross internal floor area where new dwellings are proposed; and also for other types of development where the net additional floorspace is at least 100 m<sup>2</sup> (net). Barnet collects the Mayoral CIL on behalf of the Mayor.
- 2.2.4 The London Plan Policy 8.2: Planning Obligations sets out the Mayor's strategic priorities for Planning Obligations. These are
- 'affordable housing;
  - supporting the funding of Crossrail where appropriate (see Policy 6.5); and
  - other public transport improvements should be given the highest importance'

- Importance should also be given to tackling climate change, learning and skills, health facilities and services, childcare provisions and the provision of small shops.’

### Local Plan – Core Strategy

2.2.5 The Core Strategy sets out the strategic vision, objectives and policies to guide development in the borough over the next 15 years. It sets out the Three Strands Approach which provides the spatial vision that underpins the Core Strategy and Barnet’s Local Plan. The three strands are:

- **Strand 1.** Absolute protection of the Green Belt, Metropolitan Open Land and other valued open space from inappropriate development
- **Strand 2.** Enhancement and protection of Barnet’s suburbs, town centres and historic areas
- **Strand 3.** Consolidated growth in areas in need of renewal and investment

2.2.6 Consolidated growth concentrates new development in the most accessible locations around public transport nodes and town centres where community and physical infrastructure is to be improved. This broad approach can meet the sustainable design principles for a compact city. It can also help adapt to and mitigate the effects of climate change. Most importantly, the Green Belt and the one-third of the borough that comprises green open spaces, is protected from future urbanisation and development to ensure a high quality suburb.

2.2.7 In relation to this SPD the implementation of the following policies is important.

Core Strategy (CS) Policies:

- **CS 9 – Providing safe, effective and efficient travel**
- **CS 10 – Enabling inclusive and integrated community facilities and uses**
- **CS11 - Improving Health and Wellbeing**
- **CS 15 – Delivering the Core Strategy**

2.2.8 Subject to restrictions in Regs 122 and 123 of the CIL Regulations and to government guidance paragraph 20.8.3 in the Core Strategy sets out the following considerations that may require S106 including :

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• improvements to public transport infrastructure, systems and services</li> <li>• education provision</li> <li>• affordable or special needs housing</li> <li>• health facilities</li> <li>• small business accommodation and training programmes to promote local employment and economic prosperity</li> <li>• town centre regeneration, promotion, management and physical environmental improvements including heritage and conservation</li> </ul> | <ul style="list-style-type: none"> <li>• provision of public open space and improving access to public open space</li> <li>• other community facilities including policing</li> <li>• other benefits sought as appropriate improvements to highways and sustainable forms of transport</li> <li>• environmental improvements</li> </ul> |
|---|---|



### Local Plan – Development Management Policies

2.2.9 The Core Strategy is supported by policy in the Development Management Policies (DMP) DPD. There are a number of policies with specific relevance to this guidance:

- **DM04 – Environmental Considerations**
- **DM10 – Affordable Housing Contributions**
- **DM13 – Community and Education Uses**
- **DM14 – New and existing employment space**
- **DM15 – Green belt and open spaces**
- **DM16 - Biodiversity**
- **DM17 – Travel Impact and Parking Standards**

2.2.10 The DMP sets out the borough-wide planning policies beneath the Core Strategy to be used for day to day decision making by the Planning Service and planning committees.

### Barnet's CIL

2.2.11 The purpose of Barnet's CIL is to secure capital funding to help address the gap in funding for local infrastructure. The money raised by Barnet's CIL will be used to pay for infrastructure required to mitigate the impact of development across the Borough. The definition of infrastructure is set out in section 216(2) of the Act and in Barnet's Infrastructure Delivery Plan. Barnet will publish its formal list of infrastructure to be funded from CIL through the Council's Annual Budget-setting process.

2.2.12 The Council's strategic aims to ensure the introduction of CIL are to:

- (a) simplify contributions for smaller development schemes, and
- (b) aid the process of economic growth and delivery of development.

2.2.13 Barnet's Draft CIL charging rate has been set at: £135/ m<sup>2</sup>. It applies to the 'net additional floorspace' of new development which is delivering 100 m<sup>2</sup> or more of gross internal floorspace or the creation of one additional dwelling. This low rate will apply to residential (Use Classes C1-C4 including sui generis Houses in Multiple Occupation) and retail (Use Classes A1-A5) floorspace only.

2.2.14 Car parking space within new development, including ancillary car parking, will not be subject to the charge.

### Other guidance related to Planning Obligations

2.2.13 Two further SPD on Affordable Housing and Enterprise, Employment and Training will explain how developers are expected to comply with policy in these areas.

### Affordable Housing SPD

2.2.14 In February 2007 we adopted a SPD on Affordable Housing. The purpose of the SPD is to clearly set out the Council's approach to affordable housing provision. The Affordable Housing SPD is now subject to revision to reflect the Local Plan and changes at a national and London Plan level, however the calculation method used in the SPD will be valid until replaced.

2.2.15 The Local Plan sets a 40% borough-wide target of 40% of all new homes to be affordable. The threshold for requiring affordable housing is set at 10 or more housing units or a site larger than 0.4 hectares. Development viability will continue to be considered on a site by

site basis and the maximum reasonable amount of affordable housing will be required. Affordable housing is normally required on-site. In exceptional circumstances it may be provided off-site or through a commuted payment.

- 2.2.16 The existing SPD sets out further detail on viability considerations in particular what will constitute exceptional circumstances. It also sets out further detail on where payments in lieu will be accepted and the methodology for these.

### **Enterprise, Employment and Training SPD**

- 2.2.17 The purpose of the SPD is to provide advice and information to developers about the level of Planning Obligations required for the provision of affordable workspace, training and enterprise.
- 2.2.18 At present the February 2007 SPD on Affordable Housing encourages developers to engage with the Notting Hill Housing Trust - Construction Training Initiative. Until the new SPD is introduced, developers of sites which trigger Barnet's affordable housing requirements will be encouraged to assist unemployed people into the construction industry. The purpose of the provisions is to ensure new development supports provision of local apprenticeships. The requirement is for a charge of 1% of build costs to be applied to support the operation of the scheme, equipment and wages for the apprentices.
- 2.2.19 The Enterprise, Employment and Training SPD is expected to introduce mechanisms for assessing and quantifying enterprise and training requirements upon different types of development. For now, any development that either leads to the loss of existing employment floorspace, even if such floorspace is vacant, or includes the development of over 10 residential units will be reviewed to assess if there are appropriate measures to support local enterprise and/or training that is required to make the development acceptable.

## **2.3 When Planning Obligations will apply**

- 2.3.1 In accordance with the guidance in paragraph 203 of the NPPF Planning Obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. This SPD reflects Barnet's priorities for delivering development in a successful London suburb. The SPD helps clarify the site specific or local circumstances when Planning Obligations are to be used in Barnet. The following planning issues are covered:

1. Physical Infrastructure: Transport impact mitigation and travel plans
2. Social Infrastructure: Public open space, outdoor amenity space and children's play space requirements
3. Social Infrastructure: Community, health and educational facilities
4. Green Infrastructure: Environmental requirements in relation to air quality, noise pollution and biodiversity

- 2.3.2 The SPD sets out details for development in Barnet where the regulation of development and on site mitigation will be required to be met through a Planning Obligation; where appropriate the scale or type of development where a Planning Obligation will be required has been detailed. However there will be some situations involving Planning Obligations which this SPD has not considered. Such exceptional situations will be addressed on a case by case basis.

- 2.3.3 There are three forms of Planning Obligation that can apply to development: prescribe, mitigate and compensate:
- i) 'Prescribe' obligations apply to restrictions or expectations on the form of development that would be acceptable. This includes some measures designed to address sustainable design and construction, as well as matters such as affordable housing, and employment / enterprise / training that will both be set out in separate SPDs.
  - ii) 'Mitigation' obligations include site specific situations where a development creates an impact upon or would be impacted by an on site or external matter that specifically needs to be rectified or minimised. But they also extend to wider contributions towards infrastructure that is necessary to make a development acceptable. Mitigation can therefore be delivered both on site and off site in relation to a development.
  - iii) 'Compensation' obligations relate to situations where the form of development or its location involves the loss of a particular land or building use that is deemed to have an impact on the local area or wider community. Alternative provision is the preferred means of addressing such issues, but in some cases a financial sum can be accepted by the Local Authority provided that suitable options for compensation measures exist.
- 2.3.4 The introduction of CIL in Barnet effectively will replace the role for wider mitigation contributions towards infrastructure; except in specific cases where applications involve a change of use. Section 2.4 considers how potential negative impacts from CIL can be managed.
- 2.3.5 The Council has identified four key stages in the planning application process which are relevant to the creation of a planning agreement. These are Pre-application, Planning Assessment, Resolution to Grant Permission and Implementation. The process is managed and administered by the S106/CIL team who should be the first point of contact for any legal agreement. Further detail is set out in Section 3: Process and Procedures to Implement Legal Obligations.

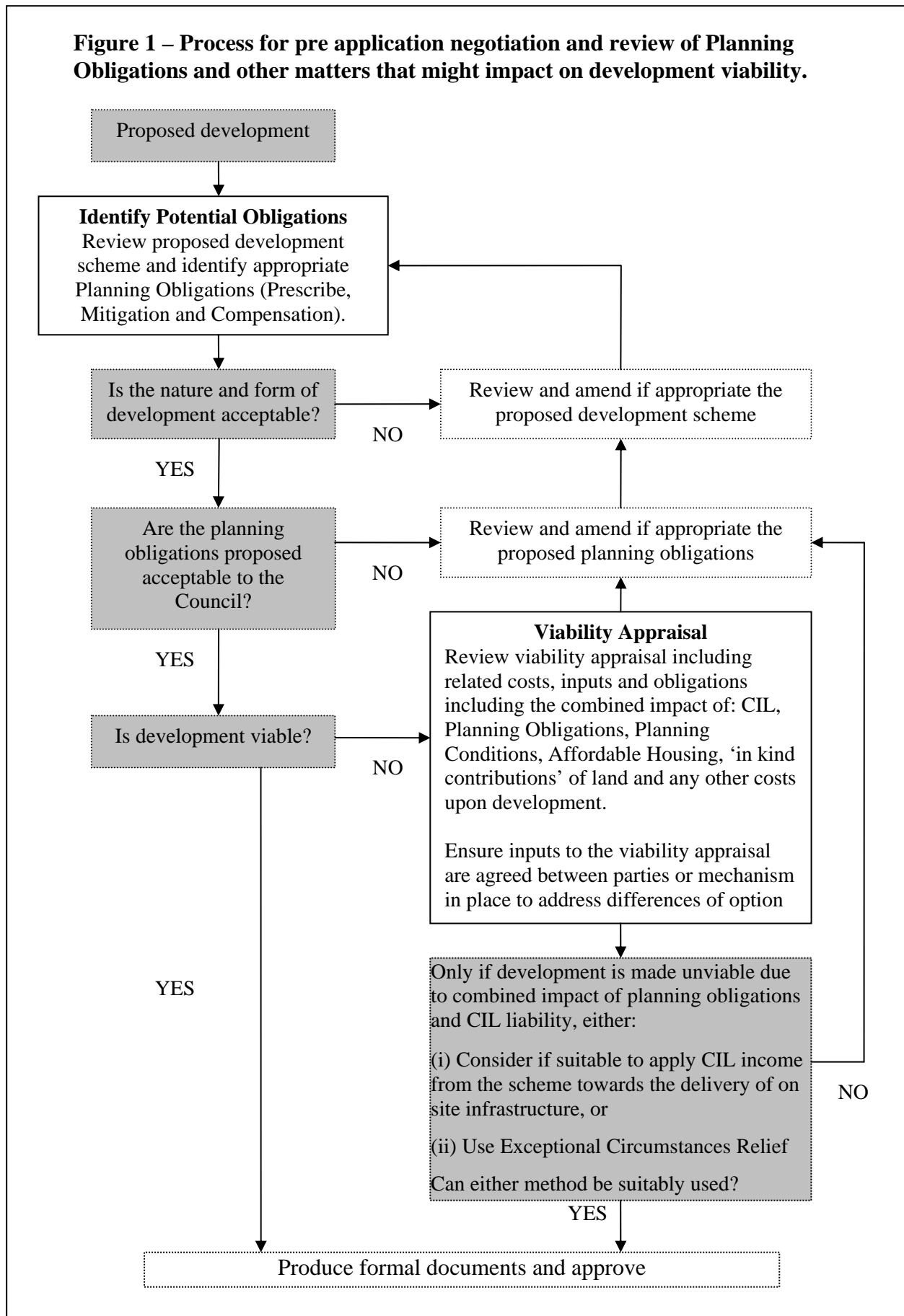
## **2.4 Striking the balance between Planning Obligations and CIL**

- 2.4.1 This document will provide the framework to ensure the financial context of a development is recognised during the application process to ensure the appropriate unbundling of planning obligations where these negatively impact upon the deliverability of a development scheme. Historically, in response to the economic downturn where viability concerns over individual developments have been shared with the Local Planning Authority, significant flexibility in the operation of negotiated planning obligations has been provided. This flexibility has been provided on a case by case basis and the Council will continue to do this where appropriate.
- 2.4.2 As identified in paragraph 2.3.4, CIL broadly contributes towards cumulative off site impacts caused by development, whilst Planning Obligations are used to address the prescriptive, compensatory and site specific mitigation impacts of a development. However specific developments may require more comprehensive off site mitigation measures to be addressed through Planning Obligations. In these cases the relationship to CIL will be considered carefully to avoid double charging.
- 2.4.3 Complexity will mainly arise where a development is required to deliver on site mitigation measures that will deliver wider benefits, such as when a new school, park or strategic road improvement is required. There is a risk that schemes required to provide such

infrastructure on site could be unfairly disadvantaged compared to those whose impacts are mitigated off site through CIL.

- 2.4.4 Transitional arrangements have been introduced to amend the Regulations in order to clarify how CIL relates to further planning permissions granted through section 73 permissions or applications for extensions to existing permissions. The transitional arrangements apply to planning permissions permitted before the Council's Charging Schedule is adopted. They ensure that existing schemes considered from a viability perspective under a different planning regime, are not double charged both Planning Obligations and CIL. The transitional arrangements also clarify that schemes which have started contributing towards a Planning Obligation can off set these existing payments against their CIL liability.
- 2.4.5 The Council will also produce a Regulation 123 list (list of projects to be CIL funded) and publish this to its website. Any item of infrastructure included on the Regulation 123 list cannot also be used as a reason to grant a planning permission via a Planning Obligation. General contributions to infrastructure will therefore be funded through CIL to ensure that the local use of CIL and Planning Obligations do not overlap. The Council's Regulation 123 list will mostly consist of items where CIL funds are available to Barnet Council; the list will be updated regularly.
- 2.4.6 We will use any opportunities through the processes for agreeing and modifying Planning Obligations as well as any mechanisms compliant with CIL Regulations to agree the boundaries between CIL, Planning Obligations and Planning Conditions to secure appropriate solutions. The Council will take into account government guidance to ensure there is no "double charging" or "double dipping" in respect of a development through the use of Planning Obligations, other statutory agreements, planning conditions and CIL payments.
- 2.4.7 Planning Obligations are agreed by negotiation with the Council at the time of the planning application, or when revisions are required, and therefore the procedure detailed in figure 1 (overleaf) is proposed to ensure developments are not double-charged through Planning Obligations and other mechanisms, whilst ensuring any agreed expenditure of CIL or other contributions would be compliant with the appropriate Statutes and Regulations.
- 2.4.8 Where on site infrastructure delivery is required to make a development scheme acceptable, but is agreed between parties to be appropriately funded or part funded through CIL collected by the Council, such infrastructure will still be required to be formally committed to through a suitably worded Planning Condition or if that is not possible a Planning Obligation in order to ensure that appropriate mitigation is delivered at the right time in relation to the development scheme. Separately, however, it can also be identified through an appropriate agreement or wording of the planning obligation that the Council will commit to using accrued CIL funds towards delivery of the infrastructure. In such circumstances the Council will also identify mechanisms to ensure that any obligations or conditions relating to such infrastructure are deliverable.
- 2.4.9 Concerns relating to double charging are mostly expected to arise in relation to larger development schemes where substantial on site infrastructure is expected to be delivered. In particular this includes the Regeneration and Development Areas, Priority Estates and Priority Town Centres as identified in Paragraphs 7.2.3, 7.2.12. and 7.2.14 of the Local Plan Core Strategy. These areas are identified priority areas for growth, for which the Council is committed to support development to ensure Barnet remains a Successful London Suburb.

**Figure 1 – Process for pre application negotiation and review of Planning Obligations and other matters that might impact on development viability.**



## 3 Barnet's Planning Obligations Framework

### 3.1 Physical Infrastructure: Transport Impact Mitigation and Travel Plans

- 3.1.1 Core Strategy Policy CS9: Providing Safe, Effective and Efficient Travel aims to relieve pressure on Barnet's transport network and reduce the impact of travel whilst maintaining freedom and ability to move at will and facilitating planned growth. Policy CS15: Delivering the Core Strategy sets out the range of physical infrastructure that may be expected as part of a development.
- 3.1.2 Policy DM17: Travel Impact and Parking Standards sets out when Transport Assessments and Travel Plans are required.
- 3.1.3 The generation of additional traffic, especially at peak times, by new development should be minimised. In many cases, some additional traffic cannot be avoided, but good location, design and management can reduce its amount and effect. In planning new development, its full impact on the whole transport system will need to be considered and where necessary, mitigation measures can ensure that the additional travel generated by the proposed development can be accommodated.

#### Travel Impact Mitigation

- 3.1.5 Most developments generate new travel movements and they should provide any necessary additional transport infrastructure to cope with these movements or mitigate impacts. Any necessary alterations to the transport network within or in the vicinity of new development will be expected to be provided.
- 3.1.6 The wider cumulative transport impacts arising from development which increase the demands on a transport network will be dealt with through CIL. Wider transport impacts for example including borough wide congestion, traffic intrusion (e.g. additional traffic on quiet lanes), road safety, air quality and the impact of additional traffic on other, especially vulnerable, highway users. Development also increases the need to improve transport alternatives such as walking cycling and public transport; which requires further investment and incentivisation for new occupants of developments to make these modes more appealing and attractive.
- 3.1.7 In order to address localised impacts specific transport related infrastructure may be required through Planning Obligations. This will be particularly relevant to developments that are larger in scale or are associated with intensive patterns of traffic and parking demand. Examples may include relevant junction improvements, new or amended bus services or traffic signals improvements. Necessary infrastructure such as junction improvements and their timescales for delivery will need to be defined and agreed with Barnet's highways officers for inclusion either within a Section 106 or a Section 278 agreement.
- 3.1.8 Where development involves alterations to the local highway network, this may be required through Section 278 of the Highways Act 1980 which allows developers to either pay for or carry out off site works to the public highway. For example there may be specific occasions when a development results in a traffic impact further along the network. Minor works such as provision of pedestrian crossing facilities, changes to waiting and loading restrictions, school keep clear markings and other amendments to road markings may be required as part of a development. Any such works may be subject statutory and public consultation under the Road Traffic Regulations Act.

- 3.1.9 As described in paragraph 2.4.3 there may be circumstances where provision secured through a planning obligation may serve an area wider than the development. In these circumstances the Council may consider the application of CIL to help deliver such works, in line with the process set out in Figure 1.
- 3.1.10 Policy DM17: Travel Impact and Parking Standards sets in part g: Parking Management that where the proposed parking for development is going to be limited in a Controlled Parking Zone to levels below the required provision for residential development it will be necessary to restrict the potential future occupiers from obtaining car parking permits through a legal agreement. Where this occurs a one off payment will be required to make the necessary amendments to the relevant Traffic Order.

### Thresholds for Travel Plans

- 3.1.11 A Travel Plan is a long term management strategy for an occupier or site that seeks to deliver sustainable transport objectives. The Travel Plan encourages a more efficient and more sustainable use of the transport system for both people and goods.
- 3.1.12 In line with DM17: Travel Impact and Parking Standards Travel Plans will be required for significant trip generating developments. A significant trip generating development is defined by Transport for London (TfL) thresholds. These thresholds are set out in Table 3.1 below. The requirement for a Travel Plan applies to both new developments and extensions or redevelopments of existing sites.
- 3.1.13 There may be a requirement for a Local-level Travel Plan where the predicted or perceived impact of the development on travel and transport in the area is significant. This may be for development which falls below the thresholds set out in Table 3.1 and will be assessed on a case by case basis. For example this may be for a mixed use development where each individual land use of a development may not exceed a threshold in Table 3.1 but cumulatively they may generate a significant number of trips. Further examples are set out in paragraph 3.5 of TfL's guidance<sup>1</sup>.
- 3.1.14 Equally there may be situations where a development is close to the Strategic Travel Plan threshold and it may be considered to have such a significant impact as to require a strategic level travel plan instead of a local one.
- 3.1.15 There are parts of the borough which are relatively remote and rural with low public transport accessibility. This leads to greater dependence on the car and certain land uses in these locations may need more careful consideration of the transport impacts.
- 3.1.16 Developers may choose to submit a Local-level Travel Plan despite the development falling below the thresholds given in Table 3.1 in order to demonstrate a commitment to minimising the impact of the development on the local environment and the community.
- 3.1.17 Section 4 of the TfL guidance provides further detail on the content of a Travel Plan. The Travel Plan requirements should be agreed in advance with Council officers at the scoping/pre-application stage of a planning application.

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<sup>1</sup> Travel planning for new development in London including deliveries and servicing. Transport for London 2011

**Table 3.1: Barnet Travel Plan thresholds**

	Local- level TP	Strategic-level TP
<b>Shopping centre</b>	More than 20 staff but less than 2500m <sup>2</sup>	Equal or more than 2,500 m <sup>2</sup>
<b>A1 food/non-food retail</b>	More than 20 staff but less than 1000m <sup>2</sup>	Equal or more than 1000 m <sup>2</sup>
<b>Garden Centres</b>	More than 20 staff but less than 2500m <sup>2</sup>	Equal or more than 2,500 m <sup>2</sup>
<b>A3/A4/A5 food and drink</b>	More than 20 staff but less than 750m <sup>2</sup>	Equal or more than 750 m <sup>2</sup>
<b>B1 including offices</b>	More than 20 staff but less than 2500m <sup>2</sup>	Equal or more than 2,500 m <sup>2</sup>
<b>B2 industrial</b>	More than 20 staff but less than 2500m <sup>2</sup>	Equal or more than 2,500 m <sup>2</sup>
<b>B8 warehouse and distribution</b>	More than 20 staff but less than 2500m <sup>2</sup>	Equal or more than 2,500 m <sup>2</sup>
<b>C1 hotels</b>	More than 20 staff but less than 50 beds	Equal or more than 50 beds
<b>C3 residential (including sui generis HMO/student accommodation)</b>	Between 50 and 80 units	Equal and more than 80 units
<b>D1 hospitals/ medical centres</b>	Between 20 and 50 staff	Equal or more than 50 staff
<b>D1 schools / nurseries</b>	All developments to have a School Travel Plan	All developments to have a School Travel Plan
<b>D1 higher and further education</b>	More than 20 staff but less than 2500m <sup>2</sup>	Equal or more than 2,500 m <sup>2</sup>
<b>D1 museum</b>	More than 20 staff but less than 100,000 visitors annually	Equal or more than 100,000 visitors annually
<b>D1 place of public worship or community centre</b>	More than 20 staff but less than 200 members/ regular attendees	Equal or more than 200 members/regular attendees
<b>D2 assembly and leisure (other than stadia)</b>	More than 20 staff but less than 1000m <sup>2</sup>	Equal or more than 1000m <sup>2</sup>
<b>D2 stadia</b>	More than 20 staff but less than 1500 seats	Equal or more than 1500 seats

Source: Travel planning for new development in London including deliveries and servicing. Transport for London. Table 3.1

3.1.18 Developments with a residential element that require a Residential Travel plan at local or strategic level will be required through a planning obligation to include the provision of funding for a Travel Plan Incentive fund within their TP. The fund will be used to offer to the first households of each unit the choice of travel incentives, as shown in Table 3.2.

**Table 3.2: Incentive measures for Residential Travel Plan**

Measure	Requirements for local level travel plan	Requirement for strategic level travel plan
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<p>Travel Plan Incentives fund</p>	<p>Each 1st household to be offered to select 1 of the following 3 incentives to the value of £150:</p> <ul style="list-style-type: none"> <li>• Oyster card with £150 credit</li> <li>• Cycle shop voucher to the values of £150</li> <li>• Car club credit/membership to the value of £150</li> </ul> <p>(At least 1 car club space must be provided on the development with a commitment to monitor use and to add additional spaces should demand be demonstrated)</p>	<p>Each 1st household to be offered to select 2 of the 3 following incentives to the value of £300:</p> <ul style="list-style-type: none"> <li>• Oyster card with £150 credit</li> <li>• Cycle shop voucher to the values of £150</li> <li>• Car club credit/membership to the value of £150</li> </ul> <p>(At least 2 car club spaces must be provided on the development with a commitment to monitor use and to add additional spaces should demand be demonstrated)</p>
<p><i>*Figures to be index-linked to the date of the agreement with the value rounded to the nearest £10.</i></p>		

3.1.19 In order for the Council to monitor the progress of Travel Plans in meeting their objectives and targets throughout the life of the plan, funding will be secured through a Planning Obligation. The level of this funding will depend on the type and number of travel plans required, the lifespan of the travel plan/s and the predicted or perceived transport impact of the development. The required amount will be decided on a case by case basis using the following as a basis (per Travel Plan required):

- Local-level Travel Plan - minimum £5,000 - indicative maximum £15,000
- Strategic-level Travel Plan - minimum £15,000 - indicative maximum £50,000
- School/ Nursery Travel Plan - minimum £5,000 - indicative maximum £15,000 (new / re-build/change of use)

3.1.20 Therefore, for a mixed use development that requires a number of individual Travel Plans, the contribution level will be calculated based on the combination of the amounts for the different Travel Plans, and will vary by size of scheme, nature of the development and number of years over which the development is expected to take to fully roll-out. Whereas it could be less than £50,000 for a small mixed use development, with local level plans for retail and food & drink and a strategic level plan for the residential, for major regeneration schemes the contributions would be much higher.

## 3.2 Social Infrastructure: Public Open space, Outdoor Amenity Space and Children’s Play Space Requirements

### Additional Public Open Space in Areas of Deficiency

- 3.2.1 Core Strategy Policy CS7: Enhancing and Protecting Barnet’s Open Spaces aims to protect and improve the provision of open space and protect and enhance biodiversity. In particular it aims to improve access to open space particularly in areas of public open space deficiency. This is supported by Policy DM15: Green Belt and Open Spaces which states that “where the development site is appropriate or the opportunity arises the Council will expect on site provision...”
- 3.2.2 The Development Management Policies document (para 16.3.6) sets out standards for open space which will be applied where a development is in an area of deficiency for publicly accessible open space. The standards were created by the ‘Open Space, Sport and Recreational Facilities Needs Assessment’ which applied three factors; quantity, quality and accessibility of open space to the existing open space in the borough to create a standard for Barnet. New open space should be provided in line with these standards:
- Parks (1.63 hectares per 1,000 residents)
  - Children’s play (0.09 hectares per 1,000 residents)
  - Sports pitches (0.75 hectares per 1,000 residents)
  - Natural green spaces (2.05 hectares per 1,000 residents).
- 3.2.3 These standards are set out and supported by evidence in the Barnet ‘Open Space, Sport and Recreational Facilities Needs Assessment’. The areas of deficiency for public open space are set out in Map 1. Development of a sufficient scale or on an appropriate site may be able to provide new open space. An appropriate site may be one where development is permitted on existing private open space providing it meets other aspects of DM15: Green Belt and Open Spaces. Policy DM15 states that in exceptional circumstances loss of open space will be permitted where either replacement of the open space being lost or equivalent or better quality of provision is provided. Where a proposal addresses public open space deficiency then the value of the land transferred will be offset against the CIL contribution required.

### Compensation for Lack of Outdoor Amenity Space

- 3.2.4 Policy DM02: Development Standards set out that the provision of outdoor amenity space is an important consideration for residential development. The standards for outdoor amenity space are set out in the Sustainable Design and Construction SPD and design guidance is set out in the Residential Design Guide SPD. The Core Strategy sets out a robust approach to proposals which involve the loss of gardens and are detrimental to suburban character.
- 3.2.5 In town centres and for some higher density schemes including tall buildings it may not be feasible for development to provide adequate private or communal outdoor amenity space. In these circumstances the development should make a financial contribution to the nearest appropriate public open space to compensate for the lack of outdoor amenity space. Contributions will be used for both improving access to and the quality of existing open spaces as appropriate. Contributions towards public realm improvements will also be considered where these may improve public amenity and can contribute towards improving the vitality and viability of town centres. In these situations the contribution will

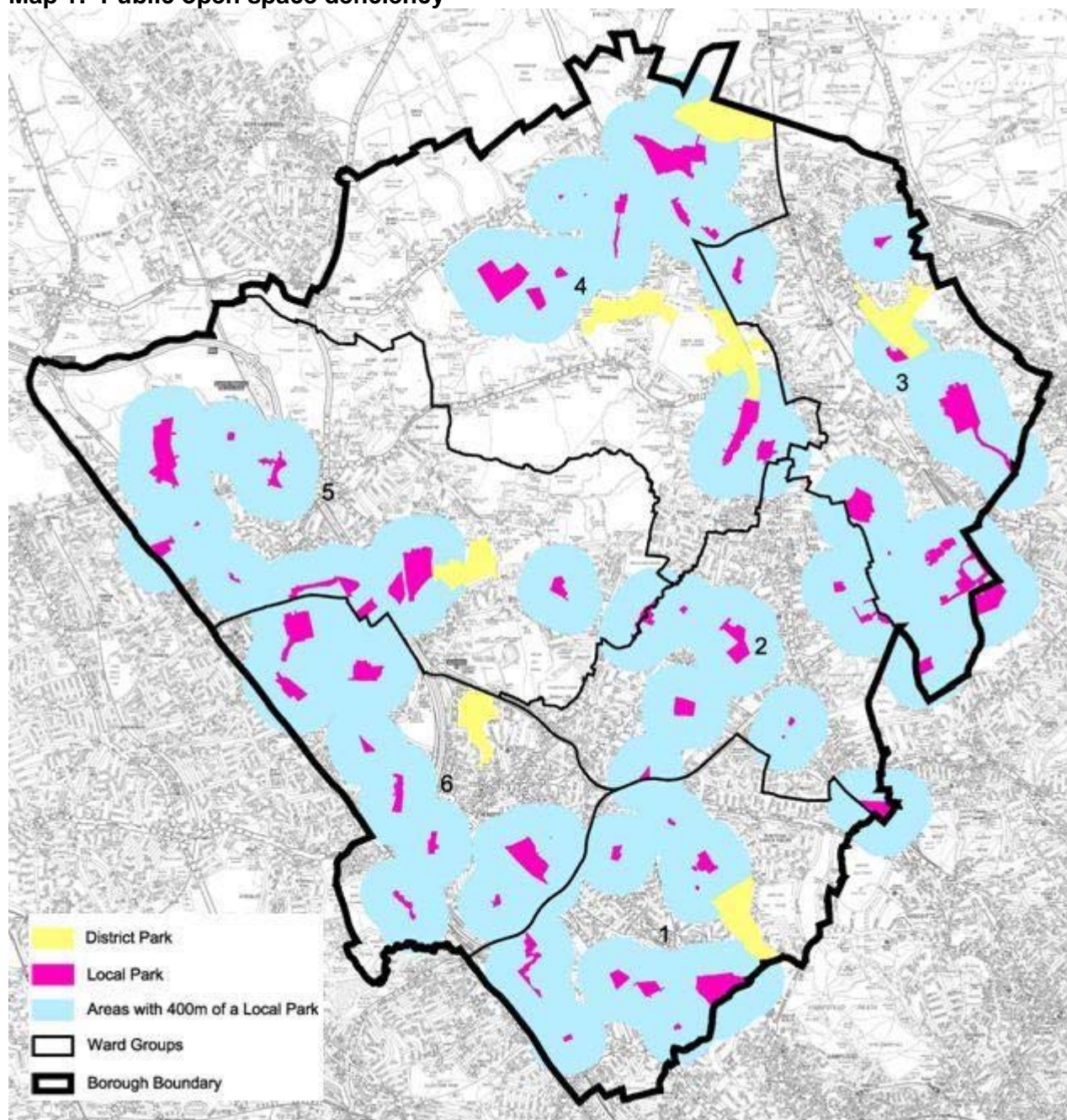
be in addition to CIL as the development will be causing a localised requirement for additional use of public open space/public realm.

3.2.6 The amount of compensation required for a lack of outdoor amenity space in town centres and for some higher density schemes including tall buildings will be determined on a site by site basis taking into account the following factors:

- how much outdoor amenity space is required and how much is provided [if any],
- the size of the development,
- the amount of communal amenity space provided and its quality [if any],
- distance to and accessibility of the existing local public open space
- the existing quality of the public realm in the town centre
- other factors including the mix of uses on site

3.2.7 If there is a specific public open space measure close to the development already identified on the Regulation 123 list (for further detail see paragraph 2.4.6) then compensation via a Planning Obligation may not be required.

**Map 1: Public open space deficiency**



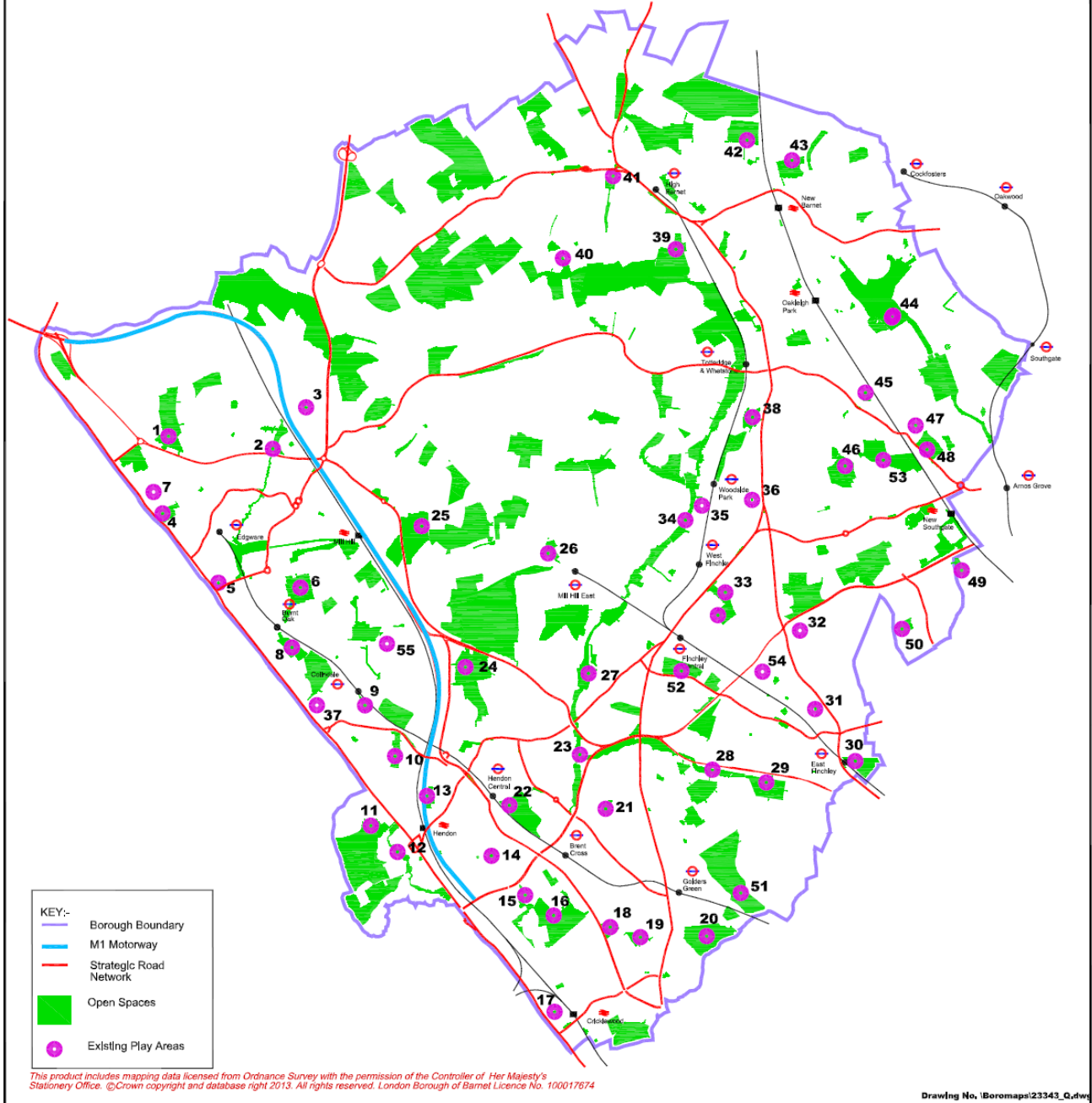
## Children’s Play Space

- 3.2.8 Policy DM02: Development Standards sets out that Play Space should be delivered in line with the London Plan. London Plan Policy 3.6: Children and Young People’s Play and Informal Recreation Facilities states that “Development proposals that include housing should make provision for play and informal recreation, based on the expected child population generated by the scheme and an assessment of future needs.” This is supported by the Mayor of London’s Supplementary Planning Guidance (SPG): Providing for Children and Young People’s Play and Informal Recreation (2012).
- 3.2.9 The Mayor’s SPG expects new housing development which creates a child yield (see Appendix 1) of 10 children or more to provide on-site 10 m<sup>2</sup> of safe and well designed play and recreation space for every child.
- 3.2.10 Development proposals should make communal play provision for under fives on-site where suitable provision does not already exist within walking distance of 100 metres. Development proposals which include units with private outdoor amenity space (gardens) may have the yield for under fives discounted. Where communal outdoor amenity space is provided it may be appropriate to count it towards a play space requirement where it is genuinely playable<sup>2</sup>. The Council will expect on-site provision to be delivered via a planning condition. In exceptional circumstances it may not be possible to provide play space for the under fives on site. In these situations a planning obligation will be required and where on site provision is not possible the maximum walking distance for under fives should be within 100 metres.
- 3.2.11 Map 2 shows the play areas in the borough with formal play provision. Nearly 50% of Barnet’s residents live within 600m of a formal equipped play area and less than half of Barnet’s parks have play areas. Table 3.3 details the type of play provision and the type of park it is located in.
- 3.2.12 It may be more appropriate to meet the need for older children off site to ensure that a suitably sized facility is provided either as new provision or through a pooled contribution towards expanding existing provision depending on the proximity and scale/quality of existing play space provision. Off site provision will usually be provided via a Planning Obligation. Accessible facilities for older children should be within 400 metres for 5-11 year olds or within 800 metres for the 12 plus age group. Ease of access is a consideration as barriers such as major roads and railways can reduce potential use of a playground. The Mayors (SPG): Providing for Children and Young People’s Play and Informal Recreation sets a range of sizes of play space in Section 4 with further detail on design.
- 3.2.13 Where an off-site contribution is provided via a planning obligation it should be sufficient to cover the costs associated with developing the same facility on-site. Where appropriate the planning obligation could identify the delivery of a specific piece of equipment or feature in a specific location. The document Design for Play: A Guide to Creating Successful Play Spaces (Department for Culture Media and Sport 2008) sets out a range of case studies with associated capital costs which will provide a reference point for negotiation for off site contributions. On-going maintenance costs should be agreed with the Council and provided as part of the Planning Obligation for both on and

<sup>2</sup> Genuinely playable space is described in paragraph 3.23 of the Mayor’s SPG as space where children’s active play is a legitimate use of the space with design elements that have a ‘play value’ which act as a sign or signal to children or young people that the space is intended for their play. A key requirement for the creation of play value is through fixed equipment, informal recreation activities or engaging landscape features.

off-site provision. A commitment as part of the Planning Obligation to meeting maintenance costs in perpetuity to an agreed standard for both on and off site playspace provision is expected. This should also cover where the playspace is to be transferred to the Council.

**Map 2:  
Barnet's Green Spaces and Play Areas**



**Table 3.3: Key to playspaces identified in Map 2: Barnet's Green spaces and Play Areas**

Key number	Name of park	Type of park	Under fives provision	Over fives provision	Over twelves provision
1	Edwarebury Park	local	yes	yes	yes
2	Stoneyfields Park	local	yes	yes	yes
3	Fairway children's playground	playground	yes	yes	yes
4	Stonegrove Park	local	yes	yes	yes

5	Deansbrook play area	playground	yes	yes	yes
6	Watling Park	local	yes	yes	yes
7	Stamford Court Playground	playground	yes	yes	no
8	Silkstream Park	local	yes	yes	no
9	Colindale Park	local	yes	yes	yes
10	Rushgrove Park	local	yes	yes	yes
11	West Hendon Playing Fields	outdoor sport	yes	yes	yes
12	York Park	local	yes	yes	yes
13	Malcolm Park	local	yes	yes	yes
14	Sturgess Park	local	yes	yes	yes
15	Clarefield Park	local	yes	yes	yes
16	Clitterhouse Playing Field	outdoor sport	yes	yes	yes
17	Cricklewood Playground	playground	yes	yes	yes
18	Childs Hill Park	local	yes	yes	yes
19	Basing Hill Park	local	no	yes	yes
20	Golders Hill Park	local	yes	yes	yes
21	Princess Park	local	yes	yes	yes
22	Hendon Park	local	yes	yes	yes
23	Brookside Walk	local	yes	yes	yes
24	Sunny Hill Park	district	yes	yes	yes
25	Mill Hill Park	local	yes	yes	yes
26	Bittacy Hill Park	local	yes	yes	yes
27	Windsor Open Space	local	yes	yes	yes
28	Northway Gardens extension	local	yes	yes	no
29	Lyttleton Playing Fields	local	yes	yes	yes
30	Cherry Tree Wood	local	yes	yes	yes
31	Market Place Playground	local	yes	yes	yes
32	Strawberry Vale Playground	local	yes	yes	yes
33	Victoria Park	local	yes	yes	yes
34	Riverside Walk (woodside park)	local	yes	yes	yes
35	Springfield Close	playground	yes	yes	no
36	Percy Road Playground	local	yes	yes	yes
37	Mannock Close	playground	yes	yes	no
38	Swan Lane Open Space	local	yes	yes	yes
39	Barnet Playing Field	local	yes	yes	yes
40	Riverside Walk (ducks island)	local	yes	yes	yes
41	Old Courthouse Recreation Ground	local	yes	yes	yes
42	Tudor Sports Ground	local	yes	yes	yes
43	Victoria Recreation Ground	local	yes	yes	yes
44	Oak Hill Park	district	yes	yes	yes
45	Barfield Avenue Playground	local	yes	yes	yes
46	Friary Park	local	yes	yes	yes
47	Brunswick Crescent Playground	local	no	yes	yes
48	New Southgate Recreation	local	yes	yes	yes
49	Hollickwood Park	local	yes	yes	yes
50	Halliwick Recreation Ground	local	yes	yes	yes
51	Hampstead Heath Extension	District	yes	yes	yes
52	Avenue House Grounds	local	yes	yes	yes
53	Bethune Recreation Ground	local	no	yes	yes
54	Brownswell Road	playground	no	yes	yes
55	Merlin Playground	playground	no	yes	yes

### 3.3 Social Infrastructure: Community, Health and Educational Facilities

- 3.3.1 The Core Strategy sets out in CS10: Enabling Inclusive and Integrated Community Facilities and Uses that the Council will work with our partners to ensure that community facilities including schools, libraries, leisure centres and swimming pools, places of worship, arts and cultural facilities, community meeting places and facilities for younger and older people, are provided for Barnet's communities. This is a key part of managing Barnet's future growth. Policy CS11: Improving Health and Wellbeing sets out that the Council will support the plans of NHS Barnet and its successor bodies to deliver modern primary and community care services in the borough.
- 3.3.2 The approach in Policy DM13: Community and Education uses sets out that where there is still a need for, and there is going to be a loss of a community facility, health facility or educational use, then a replacement facility of equivalent quantity or quality needs to be provided on site or at a suitable alternative location. Generally the intensification of the site which incorporates the existing use would be the preferred approach. However in some circumstances it may be more appropriate to re-locate a community or educational use to a more accessible location, such as a town centre.

#### Community Facilities

- 3.3.3 The meaning of community facilities is set out in the Development Management Policies (DMP) and encompasses a range of infrastructure that provides for the health, welfare, social, educational, spiritual, recreational, leisure and cultural needs of the community. A non-exclusive list of this type of infrastructure is set out in paragraph 14.1.2 of the DMP and includes health centres, dentists, schools & further education, space for the arts, museums, libraries, community halls and other public meeting venues, theatres, cinemas, indoor and outdoor sports facilities, places of worship and some policing facilities.
- 3.3.4 Where the principle of replacement with an alternative use is accepted in policy terms and a suitable alternative site for the community facility is identified because there is still a need for the community facility then a Planning Obligation will be required. The Obligation will ensure that replacement space provided is suitable and it may specify the size, level of fit out, limit the uses and depending on what the replacement space will be used for it may specify a limit on the rental level.
- 3.3.5 Where the principle of replacement with an alternative use is accepted in policy terms and there is still a need for the community facility but a suitable alternative site for the community facility has not been identified then a Planning Obligation will be required to ensure re-provision. Our preferred approach is that the developer commits to re-build the community facility elsewhere however in exceptional circumstances a payment to the Council will be considered. Factors to be considered when re-providing community facilities are:
- Improvements in access to public transport, walking and cycling and other local facilities and services such as shops
  - How the design of the facility can strengthen the future demand for its use
  - Can the facility be designed to meet the needs of a variety of users to provide a multi-functional space



Like for like replacement may not be necessary where improvements in line with these factors can be delivered. Actual costs for suitable replacement floor space and fit out will be the means of quantifying off site contributions, based on deliverable alternative provision.

- 3.3.5 In the case of some larger developments (circa 200 dwelling and above), accessibility to community facilities will need to be demonstrated as part of the planning proposal. Provisions for new facilities on site will be secured where a proposal directly increases the need for local access to a community facility, and where no spare capacity exists in the nearby vicinity – nor is reasonably expected to be provided in the near future. Provision in this manner will be secured through a Planning Obligation. On-site provision cannot forgo the need for developments to contribute to CIL - although such provision of community facilities may be eligible for a CIL contribution to help support its delivery.
- 3.3.6 The need created for certain new community facilities may be better met if they are provided in more accessible locations such as town centres, in these cases an off site Planning Obligation will be secured.

### **Educational Facilities**

- 3.3.7 Barnet is experiencing unprecedented pressure on primary school places, which is projected to increase in the coming years as existing pupils progress through primary school and the number of births in the borough continues to rise. Significant capital investment is required in additional school places. The Core Strategy sets out in CS10: Enabling Inclusive and Integrated Community Facilities and Uses that our programmes for capital investment in schools and services for young people address the needs of a growing, more diverse and increasingly younger population.
- 3.3.8 On larger scale sites<sup>3</sup> it may be necessary to provide schools directly on site to meet the needs of the development. This will be particularly relevant where there is already an existing local need and a suitable site for development comes forward. A suitable site would be determined in line with the policy requirements set out in DM13: Community and Educational Uses; principally that it is located in an accessible location and doesn't affect the free flow of traffic.
- 3.3.9 On-site provision will be secured through Planning Obligations and will be agreed on a case by case basis. The approach towards determining the scale of educational provision will take into account the following considerations:
- The local demand and supply of school places. In Barnet there is currently a significant shortfall of permanent primary school places across the borough which is starting to impact on the secondary sector.
  - The latest available data. For example local, national and regional data on child yield and population projections.

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<sup>3</sup> Larger scale sites are those of a scale which generate need for a one form entry school or above and can accommodate provision on-site. The generation of such need may be considered in relation to a single site or across multiple development sites which are in close enough proximity to create a new primary school catchment. The Council would prefer the delivery of a three form entry school on-site where it is possible and the wider demand and supply of school places justifies it as this is a more cost effective option. than a two form entry school. It is unviable for the Council to deliver less than a two form entry school.

- The wider need for educational provision. Statutory educational provision is broader than primary and secondary schools. It is currently required for children from the ages of 3 to 16 and in line with legislation this is due to increase to the ages of 2 to 18 by 2015. Young people with learning difficulties and disabilities require access to educational provision up to the age of 25.

3.3.10 When a developer is required to construct a new school or transfer land for a school to the Council to mitigate the impacts of its development, it will be obliged to make such transfers at no charge to the Council and free from financial ties. The land should have planning permission for educational or unrestricted D1 use, must be fully serviced, and have access provided to the boundary (to a standard specified by the Council). The need for a new school will be considered on a site by site basis having regard to individual site circumstances. (See also paragraph 2.4.9)

3.3.11 Applications for change of use are not normally CIL liable in that they do not usually create new build floorspace. Where a development is not liable for CIL or a disproportionately small charge is liable due to it being mainly or wholly a change of use application it will be liable for contributions towards social infrastructure such as healthcare facilities and education where it meets the three policy tests for planning obligations set out in the CIL Regulations. The financial contributions required will be calculated by the planning team based on the child yield figures set out in appendix 1, however the most up-to-date information will be used where available. In case of a residential to residential conversion the net child yield will be used.

### School Capacity in Barnet

3.3.12 The Council has a statutory responsibility, under the 1996 Education Act, to ensure that there are sufficient school places in its area, taking into account the different ages, aptitudes and special educational needs of pupils of school age.

3.3.13 Educational institutions are not expected to operate at full capacity (i.e. with no unoccupied places) as:

- It is important to retain some margin of surplus capacity to enable parental preference and flexibility of provision to be exercised.
- There must be cover for unforeseen fluctuations in the numbers of local children requiring places due to house moving (albeit into pre-existing accommodation).
- In faith or single gender schools, places are not necessarily available to the wider community because pupils must meet their entry criteria.

3.3.14 Due to school capacity issues across the borough, linked to population growth, the council is required to deliver new school facilities. The cost per pupil place for new schools / expanded schools within the borough is an average of £21,400 per pupil place. This figure will be used as the basis for negotiations and is subject to change.

3.3.15 When calculating the financial contributions for education an adjustment is made to discount the contributions from the affordable housing element by 75 per cent because it is assumed that this proportion of children will already be attending Barnet Council schools. This is because with social rented housing the council usually has 'nomination rights' to any such housing built in the borough and therefore the tenants who will eventually occupy such affordable housing commonly already reside in Barnet and any children in such households are already on the council's school rolls. Therefore 25% of the child yield from affordable units - the social rented and/or affordable rented proportions will apply.



## 3.4 Environmental Requirements: Energy Efficiency, Air Quality, Noise Pollution and Biodiversity

### Energy Efficiency

3.4.1 New development should provide the opportunity to meet the highest standards of energy efficiency and minimise carbon emissions through applying the energy hierarchy<sup>4</sup> set out in the London Plan. The Sustainable Design and Construction SPD sets out further details on energy use and decentralised energy. Where the Council's aims cannot be achieved through a planning condition, a planning obligation may be required in relation to a decentralised heat network, for example a contribution towards a feasibility study.

### Air Pollution

3.4.2 Air pollution is the result of emissions, such as carbon monoxide, nitrogen oxides and sulphur dioxide, being released into the atmosphere. The main sources of emissions are transport, combustion and industrial processes. Air pollution has been linked to health problems such as asthma and other respiratory diseases, and damage to the surrounding environment. Policy DM04: Environmental Considerations makes clear that new development should not reduce air quality and where there are any potential issues the Council will require an Air Quality Assessment.

3.4.3 Further detail on our air quality requirements in relation to air pollution are set out in the Sustainable Design and Construction SPD in section 2.13. Where an Air Quality Assessment is necessary it may set out means of mitigation which can only be set out in a Planning Obligation rather than a planning condition. The following Obligations may be sought to improve air quality:

- Use of low emission fuel technology and other measures to minimise emissions
- Tree and other planting where directly relevant to mitigating the impact of emissions – certain species of tree are better at absorbing pollutants than others and can provide a barrier
- Use of cleaner fuels for energy and heating

3.4.4 In some cases, air quality monitoring may be required to ensure that air quality standards can be met and maintained and contributions towards this may be required if necessary.

### Noise

3.4.5 Levels of noise have a major bearing on the health and well being of all Barnet residents. Persistent and intermittent noises, such as those made by traffic, industry, building services plant, sound systems, construction activities or other people, can undermine quality of life. Management of noise is an issue which significantly increases in importance for higher densities of population and economic activity. Receptors which are particularly sensitive to noise include dwellings and social infrastructure.

3.4.6 The layout of buildings can be designed or modified to reduce the effects of noise disturbance through the use of measures such as screening with natural barriers or other buildings. Further mitigating measures are set out in the Sustainable Design and Construction SPD<sup>5</sup>. Planning conditions can be used to control the operating hours of a

<sup>4</sup> The Energy Hierarchy is set out in London Plan Policy 5.2 Minimising Carbon Dioxide Emissions. Further detail is set out in 2.8.3

<sup>5</sup> Sustainable Design and Construction SPD: Barnet. 2012

particular noise generating development, or to influence the layout and design of buildings, in order to reduce the effects on noise sensitive uses.

- 3.4.7 The Sustainable Design and Construction SPD requires that a Noise Impact Assessment for development which is likely to be exposed to significant noise or cause a noise impact. Where there is a Noise Impact Assessment then there may be a circumstance where it is necessary to require that on going monitoring is provided to ensure that the noise impact does not continue to have a negative effect on existing and new residents. Any continuing negative impact would require further mitigation.
- 3.4.8 Off site mitigation will need to be considered where it is appropriate such as measures to reduce a noise at source such as quieter vehicles or changing work practices, the construction of noise barriers and the sound insulation of residential properties. Acoustic screening may be appropriate for larger sites which are proximate to noise sources. A link to improvements in the quality of open spaces can also be made with many of Barnet's open spaces increasingly impacted by noise from transport, and major highways corridors.

### **Biodiversity**

- 3.4.9 Policy DM16: Biodiversity sets out the principle that when considering development proposals the council will seek the retention and enhancement, or creation of biodiversity. The policy also addresses impact of development on a Site of Importance for Nature Conservation. Proposals should avoid adverse impact or if this is not possible minimise such impact and seek mitigation. Where the benefits of a scheme are judged to outweigh the harm made to a Site of Importance for Nature Conservation appropriate compensation may be required through mitigation such as alternative habitat creation off site in another location.
- 3.4.10 Policy DM16: Biodiversity also sets out that where appropriate, development which is adjacent to or within areas identified as part of the Mayor's Green Grid Framework (comprising green infrastructure<sup>6</sup>) will be required to make a contribution to the enhancement of the Green Grid. The 'Green Grid' are the green links and chains between open spaces. The Green Infrastructure SPD will provide further detail on Barnet's strategic approach for the creation, protection and management of networks of green infrastructure and identify the Green Grid in Barnet.
- 3.4.11 Larger developments may provide opportunities for planning obligations or CIL funding to provide programmes to reduce flood risk from and improve the biodiversity to, rivers in the borough. The Water Framework Directive rivers (Silk Stream and Edgware Brook, Dollis Brook, Pymmes Brook) in Barnet are all heavily modified and in need of improvement in their ecological status.

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<sup>6</sup> Barnet's Green Infrastructure includes: Green Belt and MOL, parks and gardens, natural and semi-natural green spaces, trees, hedgerows and green corridors, playing pitches and outdoor sports facilities, amenity green space, landscape, children's play facilities, allotments, community gardens and urban farms, cemeteries and churchyards, rivers, streams (including the Blue Ribbon Network) and open water areas as well as green roofs and walls.

## 4 Process and Procedures to Implement Legal Obligations

### 4.1 Process

4.1.1 Four key stages are identified in the process.

#### I. Pre-application Stage

- 4.1.2 Developers, prior to acquisition of land for development, should clarify the potential Planning Obligations and CIL required in order to anticipate the financial implications upon their development proposal. This understanding may be critically important to acquire the site for an appropriate value and make their proposal economically viable. Use of the Council's pre-application service is encouraged to help this understanding.
- 4.1.3 The Local Plan, the London Plan and the NPPF should be referred to and set the context for a dialogue with the Council helping developers obtain a general idea of the Planning Obligations expected from their proposals.
- 4.1.4 The Council's Planning Service will seek to establish a dialogue with developers as early as possible, to draw attention to the principal issues in relation to development proposals including the Planning Obligations expected from proposals. There is a charge for the pre-application service (details can be downloaded from the Council's website [here](#)).
- 4.1.5 The Council acknowledges that the introduction of CIL may change the way the Council has previously secured the delivery of infrastructure. As noted in paragraph 2.4.3 above there may be circumstances where there is a planning obligation to provide infrastructure on site but the Council might provide funding through CIL to deliver this. This is likely to only relate to larger developments in the borough and in these cases Planning Obligations or other legal agreements may be used to set out obligations on both the applicant and the Council to secure the funding and delivery of such infrastructure.

#### II. Planning Assessment Stage

- 4.1.6 With the submission of a formal planning application, the full extent of Planning Obligations can normally be determined. At the planning consideration stage, development proposals will need to follow a full consultation exercise which may include various Council services, local residents and community groups, the ward Councillors, other relevant agencies and partners. The GLA and TfL provide a pre-application advice service for applications of strategic importance which are referable to the Mayor. Following the consultation, the full extent of Planning Obligations related to the development proposal will be ascertained. The required planning obligation will normally be negotiated with the applicant, the "heads of terms" and payment triggers agreed as part of the evaluation of the planning application.

#### III. Resolution to grant permission

- 4.1.7 The relevant planning committee, composed of members of the council, may agree or disagree with the officers' recommendation. On occasions, the committee may resolve to grant planning permission subject to a legal agreement, but give delegated authority to the Head of Planning to refuse the scheme if the required agreement is not signed within a given timetable. Following a resolution to grant planning permission subject to a planning legal agreement, the Council's legal service (in liaison with the applicant's solicitors) will complete the legal agreement in the form of a deed. The agreement will be registered as a charge against the title at HM Land Registry and on the Council's planning register.

#### IV. Implementation

- 4.1.8 Details of the planning legal agreement (s.106 agreement), its clauses and its triggers will be recorded on a monitoring database. This monitoring database will be used for the purposes of identifying when developments become liable for planning obligations and to support an effective enforcement process.
- 4.1.9 Obligations upon a development will be subject to indexation from the date of the agreement (or an agreed alternative indexation date). The usual measure of indexation for payments will be the Retail Price Index (RPI) except in the case where a specific building or facility is required to be delivered, whereby any value associated with such a building is to be indexed according to the Building Cost Information Survey (BCIS) Index.
- 4.1.10 The trigger for most s.106 agreements will be the commencement of development. No action will take place in respect of the legal agreement until a specified trigger in the legal agreement has passed. Usually this will relate to when works of construction have implemented the planning permission, The definition of implementation will be set out in the legal agreement, but in most cases is defined in accordance with a material operation as defined in Section 56(4) of the Town and Country Planning Act 1990.
- 4.1.11 Upon the implementation of the development or the passing of the relevant triggers, the developer will honour the terms of agreement and make payment. Failure to make any due payment and comply with the terms of the agreement will incur a penalty rate of interest at 4% above the Bank of England Base Rate from the date any payment was due until the day it is received. Such a penalty rate will be above and beyond any indexation that is applicable upon the principle sum.

## 4.2 Management, Administration and Enforcement

### Section 106 Project Management

- 4.2.1 Project management is coordinated by the Planning Service's Infrastructure Planning Team. A legal agreement normally requires any financial contributions to be paid to the Council on the commencement of development. However, in some cases the legal agreement may state that payments should be phased to coincide with site construction or occupation.
- 4.2.2 Some non-financial legal agreements, such as those involving a Travel Plan, can require the delivery of Obligations throughout the life of a project (depending on the nature or terms of the agreement). Such cases are closely monitored by the Planning Service and services/agencies involved, in order to ensure that the terms of the agreement have been complied with over the agreed period.
- 4.2.3 Travel Plans will be subject to monitoring and review for at least the first 5 years after occupation, with requirements beyond 5 years normally required for major developments or those deemed to have a significant travel and transport impact. For some major developments it may be deemed appropriate to agree a 15 year time frame, expect monitoring in perpetuity of the scheme or in an agreed time after the development is fully occupied or declared closed. This will be agreed on a site by site basis. For Residential Travel Plans the monitoring will be for the first 5 years following occupation of the final unit.
- 4.2.4 Legal agreements will be logged, monitored and accounted for, in order to ensure effective delivery of the obligations and to provide information for interested parties on the outcome of any agreement. This will help to ensure that the Section 106 process is open and transparent.

### Enforcement

- 4.2.5 If it is evident that a legal agreement is not being complied with, the Infrastructure Planning Team will make a recommendation to legal services to instigate appropriate legal or planning enforcement action. Planning Obligations can be enforced through the use of an injunction, which is capable of stopping the development proceeding. The Council also has the power to enter land and carry out any works that have been required, and to recover costs for this action – however, the Council must give 21 days notice of its intention to do this.
- 4.2.6 To ensure compliance with the terms of a legal agreement, appropriate clauses will be included in the terms of the legal agreement requiring interest be paid for the late payment of financial contributions, at 4 per cent above the interest rate that obtained at the time that the relevant trigger in the agreement was activated. This condition is written into any Planning Obligation, so that developers are aware of the implications of late payment and agree to the terms.



## 4.3 Cost Recovery

- 4.3.1 The delivery of Planning Obligations, from negotiation to implementation, takes considerable time and resources. It often requires public consultation, committee resolutions, the involvement of lawyers, the production of legal documents, monitoring, cross-divisional working and partnership arrangements with other services and organisations. The Council will therefore seek the payment of contributions to cover the costs of its work relating to securing Planning Obligations.
- 4.3.2 As the Council is party to a large number of Planning Obligations, it takes a significant amount of resources to project manage and implement schemes funded by Planning Obligation agreements. The Council's legal representatives, in consultation with the relevant planning officer(s), undertake the drafting of legal agreements, and developers will be required to pay the legal and professional costs expended in their preparation. If issues of viability arise and there is a need for the Council to obtain independent valuation advice, property developers will be expected to meet the costs of this. All such legal and professional costs will be charged at an agreed and published flat rate and, where relevant, at the Council's current hourly rate.
- 4.3.3 The levying of any charges will be carried out in two stages:
1. **Execution Stage** – Covers the negotiation of Planning Obligations, legal fees and the costs of independent advice where there is dispute. This fee is collected at the time of signing of the legal agreement.
  2. **Implementation Stage** – This sum will be collected at the implementation, or other agreed 'trigger', of the planning permission. The Council will charge a standard fee for administering and monitoring Section 106 agreements. This will vary dependent on the value of the planning contribution and the number of obligations – each 'topic area' will require a distinct obligation to be drafted.
- 4.3.4 The basis for implementation costs is set out below, which are based on the total value of the contributions – this applies as at December 2012 and will be updated as and when necessary:
- Less than £1,000 = 0%
  - £1,000 - £24,999 = up to 5%
  - £25,000 - £49,999 = up to 4.5%
  - £50,000 - £74,999 = up to 4%
  - £75,000 – £99,999 = up to 3.5%
  - £100,000 - £149,999 = up to 3%
  - £150,000 - £199,999 = up to 2.5%
  - £200,000 - £249,999 = up to 2%
- 4.3.5 Should an agreement be required that only involves non-financial obligations, meaning that there is no contribution due under the terms of paragraph 4.3.4; then should such matters require ongoing monitoring or enforcement by the Council, then a 'monitoring contribution' of £500 per non-financial obligation will be applicable to the agreement.

## Appendix 1: Child Yield

### Market and intermediate flats

Age	Number of Bedrooms			
	Studio	1	2	3
<b>0-4</b>	0.00	0.00	0.07	0.17
<b>5-10</b>	0.00	0.00	0.02	0.11
<b>11-15</b>	0.00	0.00	0.01	0.03
<b>16-18</b>	0.01	0.01	0.01	0.02
<b>Total</b>	<b>0.01</b>	<b>0.01</b>	<b>0.10</b>	<b>0.33</b>

### Market and intermediate houses

Age	Number of Bedrooms					
	Studio	1	2	3	4	5+
<b>0-4</b>	0.17	0.17	0.08	0.29	0.63	0.36
<b>5-10</b>	0.00	0.00	0.03	0.10	0.31	0.58
<b>11-15</b>	0.00	0.00	0.01	0.05	0.13	0.25
<b>16-18</b>	0.00	0.00	0.01	0.01	0.04	0.17
<b>Total</b>	<b>0.017</b>	<b>0.017</b>	<b>0.12</b>	<b>0.45</b>	<b>1.10</b>	<b>1.36</b>

### Social rented/affordable flats

Age	Number of Bedrooms					
	Studio	1	2	3	4	5+
<b>0-4</b>	0.00	0.20	0.64	0.62	0.41	0.57
<b>5-10</b>	0.00	0.00	0.23	0.74	1.22	1.66
<b>11-15</b>	0.00	0.00	0.08	0.47	1.29	1.76
<b>16-18</b>	0.00	0.00	0.05	0.17	0.37	0.51
<b>Total</b>	<b>0.00</b>	<b>0.20</b>	<b>1.00</b>	<b>2.00</b>	<b>3.29</b>	<b>4.50</b>

### Social rented/affordable houses

Age	Number of Bedrooms				
	1	2	3	4	5+
<b>0-4</b>	0.20	0.64	0.62	0.41	0.57
<b>5-10</b>	0.00	0.23	0.74	1.22	1.66
<b>11-15</b>	0.00	0.08	0.47	1.29	1.76
<b>16-18</b>	0.00	0.05	0.17	0.37	0.51
<b>Total</b>	<b>0.20</b>	<b>1.00</b>	<b>2.00</b>	<b>3.29</b>	<b>4.50</b>

Source: Greater London Authority Demography and Policy Analysis Group. The GLA have provided this data as guidance which is interim, awaiting the 2011 census figures and it will be applied on this basis in Barnet. The most up to date local data will be used in relation to child yield.

**For further information and any specific queries, please contact:**

**The Planning Service duty planner at:**

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Planning Reception  
Barnet House, 2nd Floor  
1255 High Road, Whetstone N20 0EJ

Please note that the Duty Planner is available on Mondays, Wednesdays and Fridays from 9am to 1pm, except bank holidays and during the period between Christmas and New Year.

Tel: 020 8359 4561  
Fax: 0870 889 6818  
Email: [planning.enquiry@barnet.gov.uk](mailto:planning.enquiry@barnet.gov.uk)

**Listed Building and Conservation Area enquiries:**

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Urban Design and Heritage Team  
Tel: 020 8359 3000  
Fax: 0870 889 6818  
Email: [planning.enquiry@barnet.gov.uk](mailto:planning.enquiry@barnet.gov.uk)

**Building Regulation enquiries:**

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Building Regulation Service  
Tel: 020 8359 4500  
Fax: 0870 889 7462  
Email: [building.control@barnet.gov.uk](mailto:building.control@barnet.gov.uk)

For a comprehensive source of information concerning planning and building control matters please visit the council's planning pages online [www.barnet.gov.uk](http://www.barnet.gov.uk) or Government's planning portal website at [www.planningportal.gov.uk](http://www.planningportal.gov.uk)

Copies of this document can be viewed at any Barnet library and at the planning reception which is located at

Barnet House 2<sup>nd</sup> floor  
1255 High Road,  
Whetstone  
London N20 0EJ

The reception is open Monday to Friday: 9.00am to 5.00pm

#### Contact details

Strategic Planning (Planning and Housing), Building 4, North London Business Park,  
Oakleigh Road South, London N11 1NP

Or email: [forward.planning@barnet.gov.uk](mailto:forward.planning@barnet.gov.uk)

Or contact us on: 020-8359-4990