

Public Document Pack

BEST ACHIEVING
COUNCIL OF THE YEAR



Barry Keel
Chief Executive

Plymouth City Council
Civic Centre
Plymouth PL1 2AA

www.plymouth.gov.uk/democracy

Date: 6-1-2012

Please ask for: Nicola Kirby, Senior Democratic Support Officer (Cabinet)
T: 01752 304867 E: nicola.kirby@plymouth.gov.uk

CABINET

Date: Tuesday 17 January 2012
Time: 2pm
Venue: COUNCIL HOUSE, PLYMOUTH

Members:

Councillor Mrs Pengelly, Chair
Councillor Fry, Vice Chair
Councillors Ball, Bowyer, Jordan, Michael Leaves, Sam Leaves, Monahan, Ricketts and Wigans.

Members are invited to attend the above meeting to consider the items of business overleaf.

Members and officers are requested to sign the attendance list at the meeting.

Please note that unless the chair of the meeting agrees, mobile phones should be switched off and speech, video and photographic equipment should not be used in meetings.

Barry Keel
Chief Executive

CABINET

AGENDA

PART I – PUBLIC MEETING

1. APOLOGIES

To receive apologies for non-attendance submitted by Cabinet Members.

2. DECLARATIONS OF INTEREST

Cabinet Members will be asked to make any declarations of interest in respect of items on this agenda.

3. MINUTES

(Pages 1 - 6)

To sign and confirm as a correct record the minutes of the meeting held on 13 December 2011.

4. QUESTIONS FROM THE PUBLIC

To receive questions from the public in accordance with the Constitution.

Questions, of no longer than 50 words, can be submitted to the Democratic Support Unit, Corporate Support Department, Plymouth City Council, Civic Centre, Plymouth, PL1 2AA, or email to democraticsupport@plymouth.gov.uk. Any questions must be received at least five clear working days before the date of the meeting.

5. CHAIR'S URGENT BUSINESS

To receive reports on business which, in the opinion of the Chair, should be brought forward for urgent consideration.

CABINET MEMBER: THE DEPUTY LEADER

6. LOCAL DEVELOPMENT FRAMEWORK: PLANNING OBLIGATIONS AND AFFORDABLE HOUSING SUPPLEMENTARY PLANNING DOCUMENT SECOND REVIEW **(Pages 7 - 56)**

The Director of Place will submit a written report on the second review of the Local Development Framework: Planning Obligations and Affordable Housing Supplementary Planning Document for public consultation.

7. COMMUNITY INFRASTRUCTURE LEVY: DRAFT CHARGING SCHEDULE. (Pages 57 - 68)

The Director of Place will submit a report on the draft charging schedule as part of the Community Infrastructure Levy for public consultation, prior to adoption following Public Examination.

CABINET MEMBER: COUNCILLOR MICHAEL LEAVES

8. SEX ESTABLISHMENT LICENSING POLICY (Pages 69 - 124)

The Director of Place will submit a written report on a proposal to adopt new legal provisions which will provide the Council with the ability to have a greater level of control on the position and operation of sex establishments together with an associated licensing policy, which has been open to public consultation.

The recommendations of the Customers and Communities Overview and Scrutiny Panel on the draft policy will also be submitted.

CABINET MEMBER: COUNCILLOR SAM LEAVES

9. ADDITION OF A SEN SUPPORT CENTRE TO GOOSEWELL PRIMARY SCHOOL (Pages 125 - 132)

The Director of People will submit a written report on a proposal to add a SEN Support Centre at Goosewell Primary School following consultation.

CABINET MEMBER: COUNCILLOR MONAHAN

10. CONTRACT AWARD: FRAMEWORK AGREEMENT FOR SUPPORT, ENABLEMENT AND CARE SERVICES TO HELP ADULTS WITH LEARNING DISABILITIES TO LIVE INDEPENDENTLY (PEOPLE WITH COMPLEX NEEDS) (Pages 133 - 136)

The Director of People will submit a written report on the contract award framework agreement for support, enablement and care services to help adults with learning disabilities to live independently (people with complex needs).

11. CONTRACT AWARD: FRAMEWORK AGREEMENT FOR SUPPORT, ENABLEMENT AND CARE SERVICES TO HELP ADULTS WITH LEARNING DISABILITIES TO LIVE INDEPENDENTLY (PEOPLE WHO ARE AT RISK OF OFFENDING OR PERPETRATING HARMFUL BEHAVIOUR) (Pages 137 - 140)

The Director of People will submit a written report on the contract award framework agreement for support, enablement and care services to help adults with learning disabilities to live independently (people who are at risk of offending or perpetrating harmful behaviour).

12. EXEMPT BUSINESS

To consider passing a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in paragraph 3 of Part I of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

PART II (PRIVATE MEETING)

AGENDA

MEMBERS OF THE PUBLIC TO NOTE

that under the law, members are entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

CABINET MEMBER: COUNCILLOR MONAHAN

- 13. CONTRACT AWARD: FRAMEWORK AGREEMENT FOR SUPPORT, ENABLEMENT AND CARE SERVICES TO HELP ADULTS WITH LEARNING DISABILITIES TO LIVE INDEPENDENTLY (PEOPLE WITH COMPLEX NEEDS) (E3) (Pages 141 - 152)**

Further to item 10 above, the Director of People will submit a confidential written report on the contract award framework agreement for support, enablement and care services to help adults with learning disabilities to live independently (people with complex needs).

- 14. CONTRACT AWARD: FRAMEWORK AGREEMENT FOR SUPPORT, ENABLEMENT AND CARE SERVICES TO HELP ADULTS WITH LEARNING DISABILITIES TO LIVE INDEPENDENTLY (PEOPLE WHO ARE AT RISK OF OFFENDING OR PERPETRATING HARMFUL BEHAVIOUR) (E3) (Pages 153 - 164)**

Further to item 11 above, the Director of People will submit a confidential written report on the contract award framework agreement for support, enablement and care services to help adults with learning disabilities to live independently (people who are at risk of offending or perpetrating harmful behaviour).

Cabinet

Tuesday 13 December 2011

PRESENT:

Councillor Mrs Pengelly, in the Chair.

Councillor Fry, Vice Chair.

Councillors Ball, Bowyer, Jordan, Michael Leaves, Monahan and Wigans.

Also in attendance: Barry Keel (Chief Executive), Adam Broome (Director for Corporate Support), Carole Burgoyne (Director for Community Services), David Northey (Head of Finance), Stuart Palmer (Assistant Director for Strategic Housing) and Anthony Payne (Director for Development and Regeneration).

Apologies for absence: Councillors Sam Leaves and Ricketts.

The meeting started at 2.00 pm and finished at 2.35 pm.

Note: At a future meeting, the Cabinet will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

89. **DECLARATIONS OF INTEREST**

There were no declarations of interest in accordance with the code of conduct from councillors in relation to items under consideration at this meeting.

90. **MINUTES**

Agreed that the minutes of the meetings held on 15 and 29 November 2011 are confirmed as a correct record.

91. **QUESTIONS FROM THE PUBLIC**

There were no questions from the public for this meeting.

92. **CHAIR'S URGENT BUSINESS**

There were no items of Chair's urgent business.

93. **SITES PROPOSAL TO SUPPORT DELIVERY OF NEW AND AFFORDABLE HOUSING**

The Director for Development and Regeneration submitted a written report on a proposal to dispose of the following sites following a fully compliant EU procurement process to support the delivery of new and affordable housing -

Package 1

Former Ernesettle Community Centre
Maidstone Place garage site

Package 2

Former West Park Primary School
Former Southway Primary School

Package 3

Former Woodlands and Hillside School
Former Whitleigh Youth Centre
Former Whitleigh Care Home

Package 4

Former Tamerton Vale School
Former Astor Centre

Package 5

PLUSS

The report stated that -

- (a) minute 130 of Cabinet (29 March 2011) gave approval to the use of all of the Local Housing Company allocated sites in support of Registered Providers' bids for the new affordable housing funding framework, to be delegated to the Assistant Director for Strategic Housing in consultation with the Portfolio Holders for Planning, Strategic Housing and Economic Development, and Finance, Property, People and Governance;
- (b) the Head of Legal Services had identified a legal risk to the proposed process following recent EU court decisions;
- (c) as a result the Council was required to undertake an EU compliant tender process for these sites;
- (d) the funding environment and delivery mechanisms set out in the Government's Affordable Housing Framework required a more responsive and flexible approach from the City Council to secure investment to deliver new homes.

Councillor Fry (Cabinet Member for Planning, Strategic Housing and Economic Development) introduced the proposals and the Assistant Director for Strategic Housing also reported.

Cabinet Members were advised that as part of the package in relation to the former Southway Primary School land, adult playing pitches would be delivered to meet a specific need in the area.

Agreed that authority is delegated to the Assistant Director for Strategic Housing in consultation with the Portfolio Holders for Planning, Strategic Housing and Economic Development, and Finance, Property, People and Governance to dispose of the sites following a fully compliant EU procurement process to support the delivery of new and affordable housing.

94. **HOUSING PLAN 2012 - 2017**

The Director for Development and Regeneration submitted a written report on the draft Housing Plan 2012 -17 which had been developed through multi-agency, cross sector task and finish groups, to ensure that it links with other plans and priorities in the city. The plan would be published for consultation and then brought back to Cabinet in the new year, for adoption.

The Assistant Director for Strategic Housing introduced the draft plan and indicated that four delivery plans would be put in place to implement the proposals.

Agreed that –

- (1) the draft Housing Plan 2012 – 17 is approved for consultation until 23 February 2012;
- (2) the officers, together with the Portfolio Holder for Planning, Strategic Housing and Economic Development, are instructed to make appropriate amendments and responses to consultation findings, prior to bringing the revised plan to Cabinet and Council for adoption in March 2012.

95. **COUNCIL TAX BASE SETTING**

The Director for Corporate Support submitted a written report on the Council tax base for tax setting purposes in accordance with the Local Authorities (Calculation of Council Tax Base) Regulations 1992 as amended by Statutory Instrument 2003/3181.

Councillor Bowyer (Cabinet Member for Finance, Property and People) presented the report.

Cabinet Members were advised that –

- (a) the Council expected to achieve a 98.5% collection rate for Council tax, over time, with an in year anticipated collection rate of 96.5%;
- (b) in the difficult economic climate, there were a variety of ways that payment could be made and people were advised to make contact with the Council as soon as possible if they had difficulty making payments.

Agreed the Council tax base for 2012/13 tax setting as 77,271 Band D equivalents, which is the tax base after allowing for an estimated collection rate of 98.5%.

96. **2012/13 INDICATIVE BUDGET (REVENUE AND CAPITAL) ALLOCATED TO CORPORATE PRIORITIES**

The Director for Corporate Support submitted a written report setting out the Council's 2012/13 Indicative Revenue and Capital Budget.

The report stated -

- (a) that the indicative budget -
 - built on the income assumptions in the latest Medium Term Financial Strategy and its impact on the Council tax;
 - brought together the elements of the Council's income and expenditure strategy, summarised by each existing department, together with its capital strategy;
 - reviewed the impact on future revenue and capital plans;
- (b) that Local Government funding was changing, with continued reductions expected, the publication of the White Paper on Growth and a review of public sector pension provision;
- (c) the method of setting the 2012/13 budget;
- (d) how the three year budget delivery plans had been addressed.

Councillor Bowyer (Cabinet Member for Finance, Property and People) presented the report and indicated that following the recent government announcement on the local settlement, the assumptions made by the officers to produce the indicative budget had been confirmed, although further information was expected on specific grants in due course.

Cabinet Members were advised that –

- (e) there had been over 1,000 responses to the survey conducted by the Council as part of its budget consultation and that the outcome would be taken into account when producing the final budget recommendations;
- (f) from the survey, the top three service priorities were –
 - creating and protecting jobs across the city;
 - support for vulnerable children, children in care or in need of protection;
 - tackling criminal damage and anti-social behaviour;
- (g) up to 30 November 2011, 687 staff had left the Council, with the loss of 356 full time equivalent posts and 66 compulsory redundancies.

Agreed that –

- (1) the Leader is authorised to agree the draft Corporate Plan, for the purposes of consultation and scrutiny, in accordance with the budget and policy framework procedure rules;

- (2) the proposed revenue target budget requirement of £201.1m for 2012/13 and four year Capital Programme of £160.6m is recommended for consultation;
- (3) Cabinet consider findings from consultation, feedback from budget scrutiny and any material changes announced in the final settlement for Plymouth City Council in early February 2012 and recommend the final revenue budget for 2012/13 to Full Council on 27 February 2012.

This page is intentionally left blank

PLYMOUTH CITY COUNCIL

Subject:	Local Development Framework: Planning Obligations & Affordable Housing Supplementary Planning Document, Second Review
Committee:	Cabinet
Date:	17 January 2012
Cabinet Member:	Councillor Fry
CMT Member:	Director of Place
Author:	Jonathan Bell, Head of Development Planning
Contact:	Tel: 01752 304353 e-mail: jonathan.bell@plymouth.gov.uk
Ref:	JAB
Key Decision:	Yes
Part:	I

Executive Summary:

The Planning Obligations & Affordable Housing Supplementary Planning Document (SPD) sets out the Council's approach to delivering planning obligations, including affordable housing, through the planning application process. In doing so, it amplifies Core Strategy policies relating to housing and mitigating the impacts of development (Policies CS15 & CS33).

The original SPD was adopted by the City Council on 1 December 2008, and a first revision was adopted on 2 August 2010 reflecting the changed legal context for planning obligations created by the Community Infrastructure Levy Regulations, April 2010.

The adopted SPD sets out a framework for the negotiation of planning obligations which includes a standard charge based approach (referred to as a 'tariff') for mitigating the cumulative impacts of development on infrastructure, as well as a more bespoke approach to address other types of development impact and deliver affordable housing.

However, at its meeting of 12 July 2011 the Cabinet resolved to implement a Community Infrastructure Levy (CIL) for Plymouth. Once the Council's CIL is adopted (currently anticipated in Summer 2012), it will become the primary means by which developer contributions will be able to be secured to mitigate the infrastructure impacts of development. Planning obligations will still be required to help deliver affordable housing and to mitigate a range of impacts of development, but their use will be significantly scaled back.

In addition, national policy changes have taken place in relation to how affordable housing is defined. The Draft National Planning Policy Framework will combine and simplify all National Planning guidance in one document. This document contains a new definition of affordable housing which includes a new 'affordable rent' product which is expected to be the main form of affordable housing delivered by Registered Providers. The basic objective and approach of the Core Strategy to use the planning process to help meet local housing need

remains unaltered. However, the context for the negotiation of planning obligations including affordable housing has changed significantly.

Therefore there is now a pressing need to undertake a second review of the SPD.

The main changes proposed in this second review are:

- Restructuring of the SPD around the four types of planning obligation referred to in Circular 05/2005 in order to clarify the basis upon which planning obligations can be negotiated, post CIL adoption.
- Removal of all reference to the development tariff, given that CIL will become the primary mechanism for securing pooled infrastructure contributions.
- Removal of provisions relating to the enactment of market recovery schemes. This change is consequential to the move to a CIL regime, given that the primary role of such schemes is to identify potential discounts on the tariff to incentivise development during times of economic downturn.
- Explanation of the more limited circumstances where infrastructure contributions may still be sought through planning obligations, having regard to the provisions of the CIL Regulations.
- Updating of the section on Affordable Housing to bring it into line with current government policy changes and to reflect more up-to-date evidence on housing need.
- Updating of the evidence base which justifies the negotiation of planning obligations and sets out formulae by which standard charges may be identified, where appropriate.

Although the draft SPD will be a material consideration in the determination of planning applications, it will be necessary to continue to apply the tariff provisions of the Adopted SPD until CIL is adopted and operational. As a consequence, there is also a need to extend the current market recovery scheme (MRS), which is due to expire on 31 March 2012, to the same date. It is intended that CIL and this Second Review of the SPD will be adopted concurrently, in Summer 2012. In addition, the report seeks to make a minor amendment to the current MRS to clarify that its provisions do not apply retrospectively to planning applications for development which have already commenced, without consent.

Corporate Plan 2011-2014:

The recommendations of the report directly support the Council's 'delivering growth' priority. It will achieve this through delivering a planning obligations process which:

- Helps create the conditions for growth and therefore the achievement of sustainable growth in jobs and GVA (Level 1 indicators).
- Supports the achievement of a good range of houses, including affordable homes (Level 1 & 2 indicators).
- Secures provision, alongside CIL, for strategic and local infrastructure (Level 2 indicator).
- Addresses the environmental impacts of development (Level 2 indicator).

In addition, the delivery of a robust and effective approach to planning obligations will support the Council's 'value for communities' priority by ensuring the development contributes to and does not harm local communities and their services.

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

The financial and resource implications of this report can only be properly understood when considered alongside the Council's proposal to move to a Community Infrastructure Levy, the implications of which are set out in the CIL Draft Charging schedule report, which is shown elsewhere on this agenda.

It can be noted that in the order of £13m has been received through planning obligations since January 2000, which includes about £230,000 of tariff contribution secured since 2009. This is a figure in the order of £1m per annum, although the annual sum has declined in the recent economic downturn. However, when we apply the CIL charges set out in Plymouth's Preliminary Draft Charging Schedule to our development trajectory for housing and shopping development, an annual revenue of £1.3m - £2.2m could be expected over the first 3-4 years of its operation, with performance increasing later as the economy improves and there is scope for setting higher CIL rates. This is in addition to some contributions that will still be received through negotiated planning obligations, particularly in relation to local impacts of a development. This represents a significant improvement upon our historical performance in relation to use of planning obligations as the sole method of securing developer contributions.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management, Equalities, Diversity and Community Cohesion:

The report will significantly reduce risks associated with Risk No. 80 identified on the Council's Strategic Risk Register (*Planning obligations – implications of new legal framework and current economic circumstances*). In conjunction with the introduction of CIL, it offers the best prospect of optimising income generated from developer contributions whilst at the same time safeguarding the overall viability of development in the city.

An Equalities Impact Assessment has been carried out and confirms that the SPD's implications are positive in that it will help to ensure that adverse impacts of development are mitigated and affordable housing is provided.

Recommendations & Reasons for recommended action:

It is recommended that the Cabinet:

- 1 Approve the amended Planning Obligations & Affordable Housing Supplementary Planning Document (Consultation Draft) for the purposes of public consultation and as a material consideration in the determination of planning applications.

Reason: To ensure that the planning obligations process is as efficient and effective as possible, having regard to the CIL Regulations and the Council's timetable for introducing CIL.

- 2 Delegate authority to the Assistant Director for Development & Regeneration (Planning Services) to approve the final publication version of the consultation draft Supplementary Planning Document.

Reason: To ensure that the SPD is produced in a user-friendly format with appropriate illustrations and formatting.

- 3 Instruct the officers to refer the final version of the amended SPD to Cabinet and then a meeting of Full Council for adoption, following the completion of the consultation process.

Reason: To formally adopt the SPD in accordance with legal requirements.

- 4 Amend the Market Recovery Scheme for 2011/12 to clarify that its provisions do not apply retrospectively to planning applications where development has started without consent.

Reason: Given that the primary purpose of the MRS is to incentivise development delivery during times of economic downturn and market failure, and a scheme which has already commenced does not require incentivisation (this issue is brought to Cabinet in response to a resolution of Planning Committee at its meeting of 20 October 2011).

- 5 Resolve that the Market Recovery Scheme for 2011/12, as amended, be extended up until the date that the Council's Community Infrastructure Levy becomes fully operational.

Reason: To ensure that development viability and the city's economic recovery is not put at risk in the period up to the introduction of CIL.

Alternative options considered and reasons for recommended action:

An alternative would be to leave the SPD unaltered. However, this option would create considerable confusion once CIL is adopted as both a tariff and CIL would in theory be running concurrently. In practice, such a system would be extremely difficult to operate and would carry very significant risks – particularly in relation to lost appeals and cost awards against the Council. In any case Regulation 123 of the CIL Regulations would make such an approach completely untenable from April 2014. Additionally, the introduction of new national guidance has changed the definition and delivery mechanism for affordable housing. It would be confusing therefore to interested parties if the SPD did not reflect the most recent position.

A further alternative would be to not extend the Market Recovery scheme. It is considered that this option would jeopardise the viability of development in the transitional period to point when CIL becomes fully operational.

Background papers:

LDF Core Strategy, adopted April 2007

LDF Planning Obligations & Affordable Housing SPD: First review, adopted August 2010

LDF Local Development Scheme, July 2011

Plymouth City Council's Market Recovery Scheme, 2011/12

Report to Cabinet, 12 July 2011: Community Infrastructure Levy and Plymouth Infrastructure Needs Assessment

Minutes of Planning Committee, 20 October 2011

LDF, Planning Obligations & Affordable Housing SPD & Community Infrastructure Levy evidence base documents

Draft National Planning Policy Framework – DCLG July 2011

Strategic Housing Market & Needs Assessment Annual Update 2009/10

New Affordable Rent Model, its impact on affordability and housing need – Ark Housing Consultants March 2011

Sign off:

Fin	SG/De vF1112 0041.1 21211	Leg	JAR/13 255A	HR	n/a	Corp Prop	n/a	IT	n/a	Strat Proc	n/a
Originating SMT Member: Paul Barnard Assistant, Director for Development & Regeneration											

1.0 INTRODUCTION

- 1.1 The Planning Obligations and Affordable Housing Supplementary Planning Document (SPD) First Review was adopted by the City Council on 2 August 2010. It sets the framework for the negotiation of planning obligations to mitigate the impacts of development and provide for the delivery of affordable housing.
- 1.2 Alongside a Market Recovery Scheme, which the Cabinet enacted in response to the current adverse economic circumstances, the SPD has been used effectively in the planning application process since its adoption.
- 1.3 However, there is a need now to undertake a Second Review of the SPD in response to two factors in particular:
 - 1.3.1 The Council's plans to introduce a Community Infrastructure Levy (CIL) by the summer of 2012, when CIL will become the primary means by which developer contributions to mitigate the infrastructure impacts of infrastructure will be secured.
 - 1.3.2 The government's changed policy in relation to affordable housing delivery, and in particular its revised definition of affordable housing on the basis of affordable rent.
- 1.4 The Second Review also presents a timely opportunity to update the core evidence base which supports the case for negotiating planning obligations and the formulae used to calculate the potential unit costs of a development on addressing infrastructure impacts.

2.0 IMPLICATIONS OF THE MOVE TO A CIL

- 2.1 The CIL Regulations, April 2010 (as amended) are of great significance to the Council's approach to the negotiation of planning obligations. Now that the Council has published its timetable for introducing CIL (ref. Cabinet 12 July 2011) there is a pressing need to review the Planning Obligations & Affordable Housing SPD on a parallel timetable. The intention is that a CIL Charging Schedule and revised SPD will be adopted at the same Full Council meeting, in Summer 2012.
- 2.2 Two Regulations in particular have significant implications for the SPD:
 - 2.2.1 Regulation 122 sets out three statutory tests which all planning obligations must meet if they have been determining factors in the grant of planning permission. In summary, the obligation must be: necessary to the granting of permission; directly related to the impacts of the development; both fair and reasonable. It can be a matter of fine judgment as to whether a planning obligation meets these tests, with the courts as ultimate arbiters. However, the Regulation does increase the risks associated with the Council's current tariff scheme, placing a much greater onus on clearly evidencing each planning obligation on a case-by-case basis.
 - 2.2.2 From April 2014 or the date that CIL becomes operational, whichever is the earlier, Regulation 123 will impose very substantial restrictions on a local planning authority's ability to secure developer

- 2.3 The SPD therefore needs to explain the Council's overall approach to negotiating planning obligations alongside a CIL regime which will be the primary mechanism for securing infrastructure contributions.

3.0 IMPLICATIONS OF CHANGES TO NATIONAL AFFORDABLE HOUSING POLICY

- 3.1 Affordable Rent, introduced in 2011, will be the main type of new affordable housing supply. The majority of grant money provided to Registered Providers (RPs) from the Homes and Communities agency will be channeled into Affordable Rent, with a small proportion being available to social rented products. The intention being that this will allow a more diverse offer for the range of people accessing social housing.
- 3.2 Affordable rented homes will be made available to tenants at up to a maximum of 80% of market rent and allocated in the same way as social housing is at present. Landlords will have the freedom to offer Affordable Rent properties on flexible tenancies tailored to the housing needs of individual households. The government has introduced a series of other measures such as changes to tenure (no longer a requirement to offer lifetime tenancies, flexibility to offer shorter terms with a minimum of two years); greater flexibility for local authorities in their strategic housing role and options to increase mobility for social tenants. In reality it is likely that Affordable rent at 80% of market rents will be not be affordable for most Plymouth residents unless they are in receipt of housing benefit. Evidence that affordable rents are really affordable having regard to local incomes and property prices will need to be submitted to the Council.

4.0 SUMMARY OF PROPOSED AMENDMENTS TO SPD

- 4.1 The issues identified above are addressed in part through the restructuring of the SPD so that it focuses on the four types of planning obligation referred to in Circular 05/2005. These are:
- 4.1.1 Obligations that prescribe the nature of development (e.g. by requiring a proportion of the development to be affordable housing).
 - 4.1.2 Obligations that compensate for loss or damage created by the development (e.g. an impact on wildlife).
 - 4.1.3 Obligations that secure a commuted maintenance sum for a facility that the developer would like a local authority to adopt (e.g. a play area or open space).
 - 4.1.4 Obligations that mitigate the impact of development on infrastructure, through direct provision of or a financial contribution to improvements (e.g. impact on a local school).

- 4.2 This structure enables the SPD to explain clearly the implications of Regulation 123 in relation to 4.1.4. There will still be scope for planning obligations to be negotiated for infrastructure contributions, but only where the same infrastructure is not also being funded through CIL receipts. Additionally, no more than five planning obligations can contribute to a particular infrastructure project once CIL is operational. Such planning obligations will not be referred to as a 'tariff', but the use of formulae and standard charges is clearly supported by Circular 05/2005 and will still be helpful as a starting point for negotiation where justified by evidence of impact. These formula and standard charges will be set out in the evidence base document that will support the SPD.
- 4.3 In relation to affordable housing, the main changes proposed are:
- 4.3.1 A revised definition of affordable housing to comply with the new national definition, and the inclusion of Affordable Rent product as part of the housing mix.
 - 4.3.2 Updating local affordability levels in light of recent evidence on property prices and local incomes.
 - 4.3.3 All affordable units whether in receipt of HCA grant or not should be built to HCA Design and Quality Standards.
- 4.4 A consequence of the transition from tariff to CIL is that the provisions of the current SPD for enacting market recovery schemes (MRSs) will no longer be necessary. This is not because the city's economy is now performing at a level where market recovery measures are no longer necessary. Rather, it is because the primary tool within such schemes is the ability to offer a discount on the tariff, and the SPD will no longer provide for a tariff.
- 4.5 It should be noted that the primary objective of the MRS, to incentivise development delivery during times of market failure, is addressed in the very design of the CIL regime. The CIL-rate must be at a level which does not put at risk the overall viability of development in an area, and so viability is the primary determinant of the level that the charge is set. This is not the case with the tariff, with the primary determinant instead being the unit cost of mitigating the infrastructure impact caused. Hence, with a tariff approach there is a need for a MRS mechanism where development viability is challenged in times of economic downturn.
- 4.6 An MRS is also able to identify flexibilities around the negotiation of affordable housing and other planning obligations where viability is an issue, and provide for phased payments of developer contributions to assist with cash-flow. However, such flexibilities can be (and are) accommodated within the main body of the SPD, without the need for a separate MRS. Additionally, the CIL regime provides for a flexible approach to payments to support cash-flow problems.

5.0 TRANSITIONAL ARRANGEMENTS FOR TARIFF & MARKET RECOVERY SCHEME

- 5.1 The consultation draft SPD Second Review will be capable of being a material consideration in planning decisions once it is approved by Cabinet. However, the SPD First Review will remain the adopted plan until such time as the Second Review

itself is adopted. This is an important matter because until CIL is in place the tariff approach to mitigating the cumulative impact of development on infrastructure will need to continue.

- 5.2 Additionally, it should be noted that the current Market Recovery Scheme (MRS), which was enacted by Cabinet on 29 March 2011, is due to expire on 31 March 2012. Once the tariff approach is superseded by CIL, the MRS will become unnecessary. This is because CIL by law must be set at a level which does not prejudice the overall viability of development. Therefore, unlike the tariff, the level of developer contributions in CIL will be set by design in the context of the prevailing economic and market realities. However, given that CIL is unlikely to become operational until summer 2012 it is important that the current MRS is extended to cover the transitional period.
- 5.3 In addition to the extension of the MRS, a minor amendment is proposed to the current MRS. Namely, there is a need to clarify that the provisions of the MRS do not apply to retrospective planning applications where development has commenced without consent. Planning Committee has formally asked Cabinet to consider this amendment, by resolution at its meeting of 20 October 2011. This proposal is supported on the basis that the MRS's primary purpose is to incentivise delivery of development, and such incentives are clearly not needed where the development has already started. This change will not prevent an application from seeking to negotiate a reduced level of contribution, but the MRS will not be able to be used for this purpose.

6.0 NEXT STEPS

- 6.1 Once approved, the draft SPD will be subject to a six-week consultation period alongside the CIL Draft Charging Schedule (see separate report to Cabinet).
- 6.2 After all of the consultation responses have been considered and amendments made as appropriate, the SPD will be referred back to Cabinet and then to a meeting of Full Council to be formally adopted. This is likely to be in Summer 2012.

**APPENDIX: PLANNING OBLIGATIONS
& AFFORDABLE HOUSING SPD:
SECOND REVIEW – CONSULTATION
DRAFT**

Planning Obligations and Affordable Housing SPD Second Review 2011/12 (Consultation Draft)

I. Introduction

Purpose of the Supplementary Planning Document

1.1 This consultation draft Supplementary Planning Document (SPD) sets out proposed revisions to the City Council's approach to planning obligations and affordable housing as set out in the Adopted First Review of the SPD, August 2010. It sets this within the context of the Council's anticipated adoption of a Community Infrastructure Levy (CIL) during summer 2012. CIL will become the primary method by which the Council seeks pooled developer contributions to help meet the city's infrastructure needs. This SPD does not set policy, but instead provides a framework for implementation of the policies of the Adopted Core Strategy relating to the impacts of development and provision of affordable housing.

1.2 Almost all development has some impact on the environment or amenities, or on the need for infrastructure and services. Sometimes the impacts may be of such significance that development should not be permitted. However, often they can be mitigated through the design of the scheme and/or through appropriate mitigation measures, including financial contributions to help address the cumulative impacts of development on infrastructure.

1.3 Mitigation can generally be achieved in three ways:

- Through conditions imposed on planning applications;
- Through planning obligations, where conditions are not effective or appropriate to deliver the mitigation (for example, in relation to financial contributions);
- Through the payment of a development levy in accordance with an adopted CIL Charging Schedule, where the impacts relate to infrastructure needs which the Council has said will be funded (at least in part) by CIL receipts (this method of impact mitigation will only be applicable once Plymouth's CIL is formally adopted and becomes operational).

1.4 In addition to addressing the impacts of development, planning obligations can also be used to secure the implementation of a planning policy, such as the provision of affordable housing.

1.5 The objective of this SPD is to provide clarity to developers, planners, stakeholders and local residents regarding the basis on which planning obligations and affordable housing will be sought. It will assist in implementing local objectives in respect of the provision of sustainable development across the city by contributing

towards the delivery of the Plymouth Adopted Core Strategy. To achieve this objective, the SPD explains how planning obligations will be applied in the context of the CIL regime.

1.6 The SPD should be considered alongside a separate document (Plymouth's Planning Obligations Evidence Base) which is available at <http://www.plymouth.gov.uk/homepage/environmentandplanning/planning/makingaplanningapp/planningobligations.htm>. This includes evidence and formulae to help provide a consistent and proportionate approach for determining the costs of mitigating the impacts of development, particularly in relation to infrastructure impacts.

1.7 The SPD forms part of the package of Local Development Documents (LDDs) which comprise the Plymouth Local Development Framework (LDF), required under the Planning and Compulsory Purchase Act 2004. It assists the Council in securing local, sub-regional, regional and national objectives in respect of sustainable development. It is an important material consideration in the determination of planning applications.

National policy context

1.8 The national planning policy framework is currently under review by the Government. The Draft National Planning Policy Framework (NPPF), July 2011, includes the following provisions of particular relevance to this SPD:

- The purpose of the planning system is to deliver sustainable development, which includes amongst other things coordinating development and infrastructure requirements as well as promoting strong, vibrant and healthy communities, enhancing our natural environment and using our natural resources prudently (para. 9 & 10) – each of these aims in part being achieved through appropriate use of planning obligations
- A general presumption in favour of sustainable development will apply, with an emphasis on supporting economic growth, except where the adverse impacts of development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole (para. 13 & 14)
- Development likely to have a significant effect on sites protected under the Birds and Habitats Directives would not be sustainable under the terms of the presumption in favour of sustainable development (para. 16)
- Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition (para. 67)
- They should only be sought where they meet three tests relating to the need for the obligation, its relationship to the development and whether it is fair or reasonable in relation to the development proposed (para. 68)
- The expectation of local plans for planning obligations should not be such that development viability is threatened (para. 39)

- Councils should aim to deliver affordable housing on site unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities (para. 111).

1.9 Notwithstanding the publication of the draft NPPF, national planning guidance on planning obligations remains as set out in Circular 05/2005.

1.10 Circular 05/2005 appreciates that the planning system operates in the public interest and should aim to foster sustainable development, providing homes, investment and jobs in a manner which positively intervenes in the quality and condition of the physical and built environment. The Council draws attention particularly to the following provisions which provide important context for this SPD:

- Where the combined impact of a number of developments creates the need for infrastructure, local planning authorities are able to pool developer contributions to allow for infrastructure to be secured in a fair and equitable way (para. B21).
- Contributions can be sought where there is an existing infrastructure capacity problem (para. B15), where infrastructure has already been provided to meet the cumulative impacts of development (para. B23), and where there is a likelihood of there being a capacity problem in the future (Para B22). In this respect, the Circular seeks to avoid the problem of any spare capacity in existing infrastructure being credited to earlier developments.
- Contributions can be used to address the cumulative impacts of growth, particularly where there is a Growth Agenda (paras. B21, B22, B29).
- Contributions can be used to address the environmental mitigation arising as a result of growth (paras. B16 & B21)
- Local planning authorities are encouraged to use formulae and standard charges as quantitative indications of the level of contributions likely to be sought where appropriate (para. B33).
- These charges should not be applied in blanket form regardless of the actual impacts (para. B35).

The CIL Regulations

1.11 From Summer 2012 it is anticipated that the City Council will operate a CIL scheme as its main mechanism for securing developer contributions to meet the cumulative impacts of growth on infrastructure. However, some limited use of standard charges may still be appropriate through planning obligations to address impacts not funded in whole or part through CIL revenues. Regulation 123 of the CIL Regulations April 2010 provides for a maximum of five planning permissions to contribute in this way for any particular project or infrastructure type.

1.12 Additionally, Regulation 122 of the CIL Regulations 2010 makes it unlawful for a planning obligation to constitute a reason for granting planning permission unless it meets all of three statutory tests:

1. *The obligation is necessary to make the development acceptable in planning terms.* This means that planning obligations should be used to make development acceptable which would be otherwise unacceptable in planning terms in accordance with published local, regional or national planning policies.
2. *The obligation is directly related to the development.* This means that there should be a functional or geographical link between the development and the item being provided as part of the agreement.
3. *The obligation is fairly and reasonably related in scale and kind to the development.* This means that developers may reasonably be expected to pay for or contribute towards the cost of additional infrastructure provision which would not have been necessary but for their development. A reasonable obligation should at least seek to restore facilities, resources and amenities to a quality equivalent to that existing before the development.

Local policy context

1.13 The Core Strategy (Policy CS33) sets out the policy framework for planning obligations:

Community Benefits/Planning Obligations - CS33

Where needs arise directly as a result of development, the Council will seek to secure planning obligations or agreements pursuant to Section 106 of the Town and Country Planning Act 1990 that makes a positive contribution to creating a city of sustainable linked communities. Through such obligations and agreements, the Council will seek to ensure that development proposals:

- Meet the reasonable cost of new infrastructure made necessary by the proposal, including transport, utilities, education, community facilities, health, leisure and waste management.
- Where appropriate, contribute to the delivery of strategic infrastructure to enable the cumulative impacts of developments to be managed in a sustainable and effective way and support the delivery of the City Vision.
- Offset the loss of any significant amenity or resource through compensatory provision elsewhere.
- Provide for the ongoing maintenance of facilities provided as a result of the development.

1.14. This SPD provides further detail on the implementation of Policy CS33. It explains how developer contributions which are not provided for through the Community Infrastructure Levy might be:

- Sought to address the cumulative impacts of development (Core Strategy para. 16.9)
- Pooled into a capital pot(s) (Core Strategy para. 16.9)
- Used to address the impacts of development on strategic infrastructure, such as the need for major new sports facilities and transport infrastructure, as well as local infrastructure, such as schools and playing pitches (Core Strategy para. 16.11).

1.15. Additionally, it considers in more detail the wide range of matters identified in Core Strategy para. 16.8 that potentially might be covered by planning obligations:

- Affordable housing
- Education provision
- Community facilities and community safety
- Local labour and training initiatives
- Commuted payments for maintenance of facilities provided
- Highway infrastructure
- Pedestrian, cycle way, and public transport initiatives
- Nature conservation and wildlife mitigation measures, including in relation to the coastal environment
- Public art
- Public realm provision
- Recreation provision, including public open space, play and sports provision
- Offsetting carbon emissions through contributions to renewable energy or energy efficiency schemes / measures.

1.16 This list of planning obligation types has been used as the starting point for this SPD but it should not be considered as a definitive list of things that can be sought through a Section 106 agreement.

1.17 The Core Strategy (Policy CS15) also provides the policy context for affordable housing across the City:

Overall Housing Provision - CS15

At least 10,000 new dwellings will be built in the plan area by 2016 and at least 17,250 by 2021, of which at least 3,300 will be affordable being delivered through the planning system. They will include a mix of dwellings types, size and tenure, to meet

the needs of Plymouth's current and future population. In relation to private sector developments on qualifying developments of 15 dwellings or more, at least 30% of the total number of dwellings should be affordable homes, to be provided on site without public grant (subject to viability assessment). In addition:

- Affordable housing development will: be indistinguishable from other development on the site, reflect the type and size of the development as a whole, incorporate a mix of tenures including social rented accommodation.
- Off site provision or commuted payments for affordable housing will be acceptable provided it is robustly justified and contributes to the creation of balanced, mixed and sustainable communities.
- Conversions of existing properties into flats or houses in multiple occupation will be permitted only where the gross floor area of the property is more than 115sq.m., where the accommodation provided is of a decent standard, and where it will not harm the character of the area having regard to the existing number of converted and non-family dwellings in the vicinity.
- 20% of all new dwellings will be built to "Lifetime Homes" standard.
- All new dwellings must be of sufficient size to provide satisfactory levels of amenity for future occupiers and respect the privacy and amenity of existing occupiers

1.18 Affordable Housing is one of the most important issues to be addressed through the LDF and one of the greatest determining factors on the development viability of a development site. For more information on Affordable Housing please turn to Chapter 3.

2. Planning Obligation Framework

2.1 On adoption of the CIL regime, the Council intends to scale back significantly the number of planning obligations that it will seek to negotiate. Four types of planning obligation are anticipated:

1. An obligation which prescribes the nature of development (e.g. by requiring a proportion of the development to be affordable housing)
2. An obligation which compensates for loss or damage created by the development (e.g. an impact on wildlife)
3. An obligation which secures a commuted maintenance sum for a facility that the developer would like the Council to adopt
4. An obligation which mitigates the impact of development on infrastructure, through direct provision of or a financial contribution to improvements.

2.2 All planning obligations will be negotiated on a case by case basis in order to ensure that the three tests of Regulation 122 are complied with (see para. 1.12 above). The guidance in this SPD and the information contained in the supporting Evidence Base Document will help to ensure that the Council takes a consistent approach in applying the three tests.

2.3 In relation to Test One, it provides guidance on the policy justification and the overall need for a planning obligation, which in the case of infrastructure impacts is related to evidence of infrastructure capacity. Although the Council has published the evidence at the time of writing in summary form in the companion Evidence Base Document, it will keep this evidence under continual review and publish updates on its website where appropriate.

2.4 In relation to Test Two, the SPD and Evidence Base is fully consistent with the principle that planning obligations will only be sought which are directly related to the development. In respect of mitigation of development of impacts, where these are local (e.g. an impact on a local transport junction) then the mitigation sought will be for the relevant local improvement; and where it is strategic (e.g. an impact on the need for strategic sports and leisure facilities) then the mitigation sought will be for the relevant strategic improvement. It will not always be possible to identify the precise project that a planning obligation will relate to. For example, there may be 2 or 3 projects under consideration, each of which would address an impact but where the service provider has yet to decide on which one to advance. However, the planning obligation will clearly commit the developer contributions to an appropriate project so that the obligation is directly related to the development.

2.5 In relation to Test Three, it provides guidance to reflect to ensure that obligations are proportionate and do not seek additional requirements or mitigation than can be reasonable apportioned to the development. The Council will have regard to its formula based approach to calculating the cost of impact mitigation for each unit of development. This is set out in the Planning Obligations Evidence Base

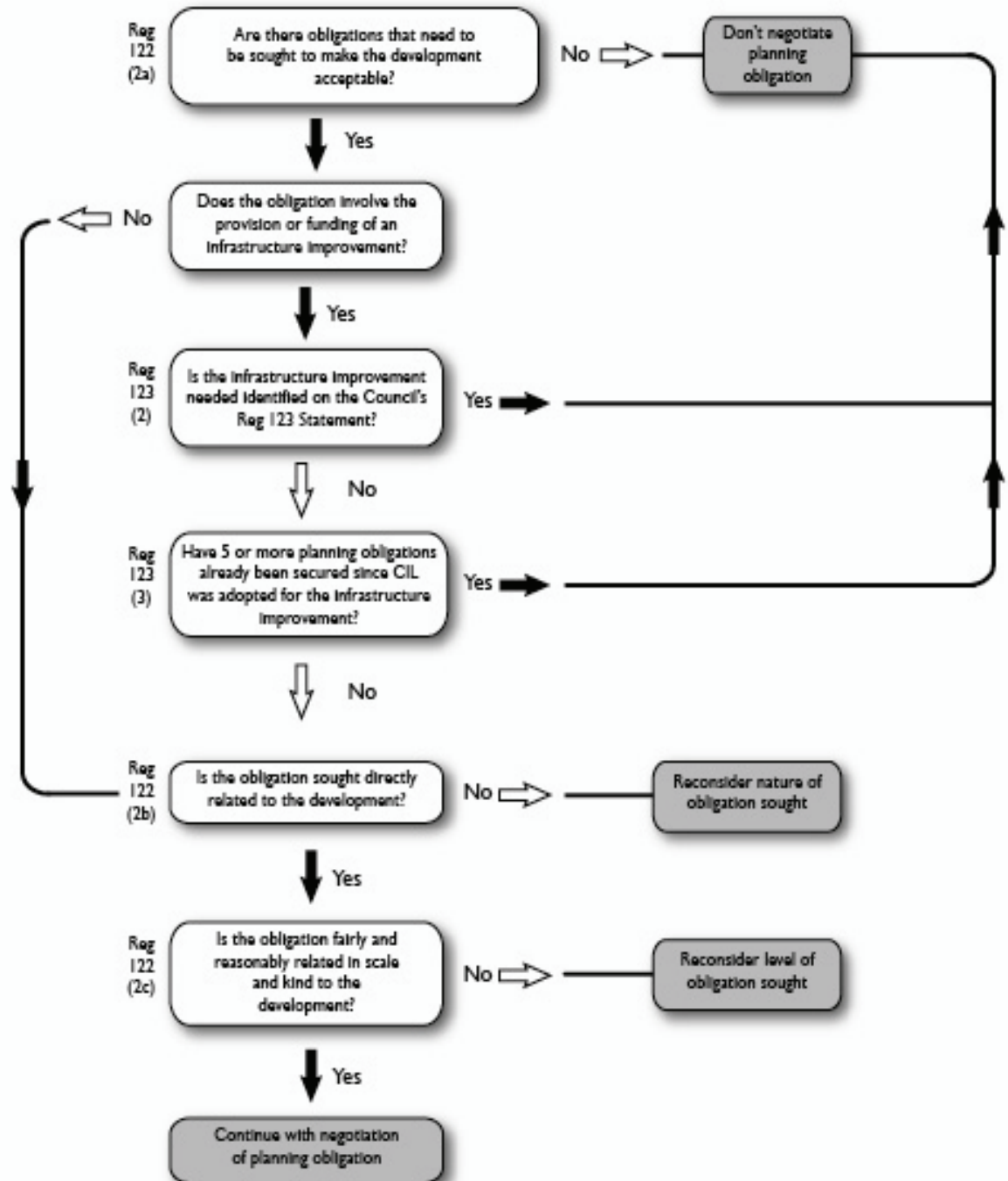
document. This approach will help ensure that planning obligations are fair and reasonably related in scale and kind to the development.

2.6 It should be noted that in relation to the last type of planning obligation listed in para. 2.1 (infrastructure contributions) the CIL Regulations prevent double counting of planning obligations with CIL contributions. The Council is required to publish what is known as a Regulation 123 Statement once it adopts a CIL Charging Schedule, setting out the infrastructure projects (or types) upon which it intends to spend CIL revenues. No planning obligation contribution will be able to be sought towards any infrastructure project (or type) that is listed on this Statement. Furthermore, even if an infrastructure project is not included on the Statement, Regulation 123 limits the number of planning obligations that can contribute to the same infrastructure project to a maximum of five. The Council is intending to publish its Regulation 123 Statement at the same time as it adopts both the CIL Charging Schedule and this SPD Second Review (currently programmed for Summer 2012).

2.7 Diagram 1 illustrates the process generally to be followed in determining whether or not a planning obligation is necessary in the context of the Regulations 122 and 123 of the CIL Regulations.

2.8 In order to ensure a consistent approach to planning obligations, the chapters that follow consider a number of the matters that a planning obligation might seek to address. However, an obligation will only be sought in relation to these matters where to do so would comply with both Regulations 122 and 123 of the CIL Regulations 2010.

Diagram 1. Planning Obligations: Navigating the CIL Regulations



3. Planning obligations which prescribe the nature of development – affordable housing

3.1 These types of planning obligation relate to situations where there is a policy or other requirement for a site to be developed in a particular manner or with particular elements. Such obligations are commonly used in relation to securing the delivery of affordable housing, pursuant to Core Strategy Policy CS15, and this is considered here in Section 3. The next Section considers other examples of these types of obligation.

3.2 The Council approach to implementing Policy CS15 through planning obligations, set out below, is divided into two distinct parts:

1. Affordable housing - the context: outlining the city's housing need, Plymouth's affordability problem and the policy landscape.

2. Delivery of affordable housing in development proposals: amplifying the Core Strategy Policy CS15, in terms of on-site provision, tenure mix including the role of new affordable rent, design and quality standards, the role of the Registered Providers in the context of Plymouth Housing Development Partnership, purchase prices for affordable units and the role of viability. The exceptional circumstances where an off site contribution may be considered are also outlined.

Affordable Housing – The Context

Affordable Housing Need

3.3 Providing better and more affordable housing is central to achieving Plymouth's growth ambitions, creating balanced and sustainable communities, supporting growth and regeneration and meeting our housing needs. In 2006, the Council and neighbouring authorities jointly commissioned DCA Consultants to undertake a Housing Market and Needs Assessment (HMNA). Reports were produced for the sub-region and for each local authority. This showed a variation in the levels of affordability across the sub region, but in all areas the demand for affordable housing far exceeded supply. In Plymouth's case, the annual affordable housing need from existing and concealed households, allowing for re-lets and assumed new supply as identified by the HMNA, was for 1,468 units. This was greater than the total annual housing provision. The assessment was updated for 2009/10 and identified an increase in the annual shortage of affordable housing to 1,663 dwellings.

3.4 Some of the key findings of the 2006 survey and the 2009/10 update of the HMNA in relationship to affordable housing are:

- Around 80% of newly forming households are unable to purchase in their own right;
- The affordable property types needed are: 47% houses, 16% bungalows and 37% flats/maisonettes;

- The scale of need could justify the whole affordable housing provision to be rented units;
- Even with falling house prices, house purchase in Plymouth is still beyond most people's reach as income levels of £29, 571 are required to purchase a lower quartile property;
- The need for 1, 2 and 3 bed properties is roughly even, with a small but important need for 4+ bedroom accommodation.

3.5 The provision of new affordable housing through the use of planning obligations, direct provision through Registered Providers (Housing Associations and other housing providers) and our regeneration activity provides an essential mechanism to help meet this affordable housing demand.

Policy basis for affordable housing

3.6 The national policy justification for seeking planning obligations in respect of affordable housing is currently set out in Circular 05/2005 and PPS3 Housing (Amended June 2011). The draft National Planning Policy Framework (NPPF) provides that local planning authorities should:

- Meet the full demand for market and affordable housing in their Local Plans;
- Work with neighbouring authorities where housing market areas cross administrative boundaries;
- Prepare a Strategic Housing Market Assessment to assess their full housing requirements and have a clear understanding of all housing needs in their area

3.7 Additionally, the Government has recently introduced a new affordable housing product – Affordable Rent. The intention is that Affordable Rent will, in some circumstances, significantly increase revenue by comparison with social rents based on the target rent setting formula; reducing reliance on public grant and providing opportunities to enhance scheme viability and on site delivery.

3.8 The local policy justification for seeking planning obligations in respect of affordable housing is set out in Policy CS15 (Overall Housing Provision) of the Adopted Plymouth Core Strategy. This seeks at least 30% affordable housing from all residential developments of 15 or more dwellings, subject to viability. The Plymouth Housing Strategy 2008-2011, the Plymouth Housing and Market Needs Assessment and updates, provide the evidence and context for consideration relating to affordable housing matters. Copies of these documents are available to view on the Council's web site at <http://www.plymouth.gov.uk>.

Affordable housing definition

3.9 The new national definition of affordable housing includes the new Affordable Rent product and is taken from the NPPF. It will supersede that which is contained within the Core Strategy (para. 10.20).

3.10 Affordable housing is defined as:-

Affordable housing: Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

- *Social rented housing* is owned by local authorities and private registered providers, for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency (HCA).
- *Affordable rented housing* is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).
- *Intermediate housing* is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as 'low cost market' housing, may not be considered, for planning purposes, as affordable housing.

Affordability in Plymouth

3.11 There is a serious affordability problem in Plymouth. Housing affordability problems, rigid lending and requirements for higher deposits are particularly affecting those individuals and families seeking to enter the housing market for the first time. Housing waiting lists are also increasing and at October 2011 there were 11,790 households on Plymouth's housing register.

3.12 PPS3 and the Draft NPPF require a link between local incomes and property prices to be demonstrated to indicate levels of affordability. The use of lower quartile indicators is a recognised measure of affordability (DCLG Advice Note 'Housing Market Information' May 2007). In 2010, in Plymouth, the lower quartile gross annual income was £17,225 and the lower quartile average house price was £115,000. The examples below demonstrate affordability in relation to lower quartile incomes.

Box 1: Lower quartile income housing affordability

Affordable purchase price¹ = lower quartile gross annual income x 3.5 times lending + 10% deposit

Affordable purchase price = £17,225 x 3.5 + £11,500 = £71,787

Affordable rental price = 25% of lower quartile gross annual income per month

Affordable rental price = £17,225 x 0.25/12 = £358

Source: Annual Survey of Hours and Earnings, 2010

3.13 The house prices to income ratio at the lower quartile is 6.67:1, which indicates that there is a substantial affordability gap at the lower quartile level and extending quite a way up the earnings ladder. This means that an individual would need to be earning more than £29,500 a year as well as having secured a deposit of £11,500 to afford a lower quartile priced house. Individuals on lower quartile earnings would clearly be unable to afford to buy property, and it is these individuals that would be likely to take up affordable rented accommodation.

3.14 In 2010, in Plymouth, the median gross annual income was £23,615 and the median house price was £145,000. The example below illustrates affordability in relation to medium incomes.

Box 2: Median affordability levels

Affordable purchase price = median gross annual income x 3.5 times lending + 10% deposit

Affordable purchase price = £23,615 x 3.5 + £14,500 = £97,152.50

Affordable rental price = 25% of median gross annual income per month
= £23,615 x 0.25 / 12 = £492

Source: Annual Survey of Hours and Earnings, June 2010

3.15 This gives a ratio of house prices to earnings at the median level of 6.15:1, which in relative terms of affordability, is little different from lower quartile levels. This means that an individual would need to be earning more than £37,285 and have a 10% deposit available to afford a median priced house. A person on median earnings could ill afford to purchase even a lower quartile priced home. Such a person would be likely to be able to benefit from intermediate affordable housing

¹ For the purposes of the example the multiple of 3.5 annual income is considered to be a responsible borrowing limit, although it is acknowledged that it might be possible to borrow a higher amount.

schemes, such as shared ownership. These figures will be subject to annual review for inflation and other market force influences.

Service charge and affordability

3.16 When considering affordable purchase and rental values, the Council will also consider service charges as part of the total housing cost. The Council will not accept unreasonable service charges that will undermine affordability. Restrictions on the levels of service charges will be written into Section 106 agreements. An indicative maximum at which service charges would be capped is £581 per annum, subject to RPI increases. Early discussions with the Housing Enabling Team should be undertaken regarding scheme design and implications for service charge.

Affordable Rent and affordability

3.17 Ark Housing Consultancy were commissioned by Plymouth Housing Partnership in 2011 to consider the relationship between Affordable Rent, affordability and housing need in the context of the Plymouth housing market. The report concluded that households would need to earn between £17,000 and £24,000 to be able to afford Affordable Rent at 80% of average market rent for 1, 2, 3 bed properties. The research concluded that the vast majority of households housed in 2010 could only afford this product if they were in receipt of housing benefits. Affordable rent may therefore only serve to house those who are willing and able to rely on housing benefit.

3.18 The role of Affordable Rent as an additional affordable product that will help meet an element of the city's housing need and aid scheme viability is recognised. A cautionary approach will however be adopted, particularly on grant free schemes e.g. S.106 and Plymouth City Council owned sites, acknowledging that the city has a diverse housing need.

Delivery of affordable housing in development proposals

Affordable housing threshold

3.19 Provision of affordable housing will be sought from residential developments of 15 dwellings or more. In these cases, qualifying developments will be required to provide at least 30% affordable housing on site, subject to viability.

3.20 The affordable housing threshold will apply to the total number of dwellings that are being proposed on site. This will be taken as the net figure, so that the number of units that exists on the site will not be taken into account.

3.21 Contributions for affordable housing will not be required from care / nursing homes or student accommodation, where occupation is restricted by planning conditions or legal agreements. Provision for affordable housing will be required

from sheltered and supported housing schemes, recognising the requirement to meet the housing needs of all sections of our communities².

3.22 The Council will seek to ensure that the spirit of its policy is not avoided by the artificial sub-division of sites resulting in applications below the threshold, or developments at densities below that which is reasonably appropriate to the site. Where such applications are made, it should be anticipated that they would be recommended for refusal. Applications close to the affordable housing threshold will be subject to thorough testing and policy assessment.

Affordable housing tenure mix

3.23 There is more than enough evidence of need to justify all affordable housing to be in the form of rented accommodation. However, this could not realistically be delivered through the planning process alone, nor would it contribute to building balanced communities. The Plymouth Housing Market and Needs Assessment (2006) para 19.6.4 stated a tenure mix of 60:40 should be sought for all affordable housing, split between social renting (60%) and intermediate accommodation (40%). Recognising the city's diverse housing need, the Council's preference for the mix of affordable housing tenure is a 60:40, split between social rented units and intermediate units.

3.24 With regard to the Affordable Rent tenure, it may be appropriate to include the provision of Affordable Rent properties to help ensure a balanced local housing market, the promotion of mixed and sustainable communities and aid scheme viability. This assessment will be made through discussions with the Housing Enabling Team and following a viability appraisal.

3.25 Evidence will need to be submitted and approved by the Council to demonstrate that the Affordable Rent product is affordable having regard to local incomes and house prices. The Council may also seek to moderate affordable rent levels, particularly on grant free schemes, to promote affordability and future proof against benefit reforms.

Design and quality standards

3.26 The Council will expect high standards of design, layout and landscaping for all developments, which respect the character of the area and reflect local distinctiveness.

3.27 To ensure the creation of mixed and integrated communities, the affordable housing should not be visually distinguishable from the market housing on the site in terms of build quality, materials, details, levels of amenity space, car parking and privacy. Tenure blind integration should be considered at an early stage of the detailed design and layout of the site.

² There is an increasing demand for older people accommodation. It is estimated that there will be an increase in the elderly population by 2026 and 27% of the population has some sort of disability. The provision of specialist housing e.g. extra care housing, sheltered and supported housing, lifetime homes is a priority to meet these needs.

3.28 The type and size of affordable housing should reflect the overall type and size of market housing proposed on the development site. However, the Council may wish to discuss the provision of other types of affordable property to meet identified local needs.

3.29 Affordable homes should be spread throughout the development, although on larger sites this can take the form of small clusters of not normally more than 12 dwellings. Consideration will be given for larger clusters in the case of supported and sheltered housing.

3.30 All affordable units requiring HCA grant must be built to meet the relevant HCA Design and Quality Standards.³ These standards relate to issues such as unit sizes, layout, services and sustainability. In addition, the expectation is that all affordable units that form part of a Registered Providers' Affordable Housing Programme 2011-2015, will meet the Design and Quality Standards. This applies to units that may previously have been referred to as nil grant e.g. S106. This means that even where a housing developer will not be in receipt of HCA grant, it is expected that the affordable units will be built to the Design and Quality standard to be transferred to a Registered Housing Provider. In some circumstances there may be nil grant properties with non-compliant design, which cannot meet all of the required standards. These should be discussed at the earliest possible stage with the Housing Enabling Team and will be considered on a case by case basis.

Involvement of Registered Providers

3.31 The Council strongly prefers all on-site affordable housing provision to be provided in conjunction with a Registered Provider (RP). They can secure effective and long-term management of the affordable housing, as well as ensuring the benefits of 'stair casing' (when occupiers purchase an additional % of a shared ownership house) are recaptured and recycled into alternative affordable housing provision.

3.32 The Council would want developers to work in collaboration with its Housing Enabling Team and the RP selected as being the preferred partner to deliver affordable housing on any particular site. The Council has a preferred list of RPs who are part of the Plymouth Housing Development Partnership and who are active in the city. Details of the preferred partner RPs are set out below.

³ Available at www.homesandcommunities.co.uk.

Box 3: Preferred RP Partners

- Affinity Sutton
- Aster Housing Association
- Devon and Cornwall Housing
- Guinness Trust
- Plymouth Community Homes
- Sanctuary Housing Association
- Spectrum Housing Association
- Sovereign Housing Association
- Tamar Housing Society
- West Country Housing Association

Financial considerations

3.33 The presumption in planning policy is that affordable housing should be provided without public subsidy. However, subject to viability assessment HCA grant and/or the introduction of a proportion of affordable rent tenure to improve scheme viability may be available. It should not be assumed that this will be forthcoming for every development.

3.34. It is important for developers to have a clear understanding of the likely financial impact of the affordable housing contribution in advance of acquiring land or making a planning application. To provide certainty and clarity, the Council has determined what a RP can afford to pay for social rent and shared ownership properties based on the rental income or sales values for units. This is to ensure that the unit is affordable to the tenant or purchaser, having regard to local incomes.

3.35 Table I shows indicative purchase prices for social rented units. Payments for shared ownership housing will be 50% of Open Market Value (OMV). This methodology has been determined on the basis that no more than 25% of the gross median income level for Plymouth should be spent on housing costs, ensuring affordability. The method for determining OMV is detailed in the HCA Capital Funding Guide.

Note: It may not be possible to provide Affordable Intermediate (including shared ownership) housing in developments of very high value dwellings. Early discussions regarding development details and values with the Council's Enabling and Planning Officers are essential to determine appropriate affordable housing packages in each case.

Table I Indicative Purchase Price for Social Rented Housing

Unit Type / Area	2006/07 Base Figures		2009/10 increased by Sept 2008 RPI + 0.5% (5.5%)		2010/11 increased by Sept 2009 RPI + 0.5% (0.9%)		2011/12 increased by Sept 2010 RPI + 0.5% (5.1%)		2012/13 increased by Sept 2011 RPI + 0.5% (6.1%)	
	(£) Per unit. Lower Threshold	(£) Per unit. Upper Threshold	(£) Per unit. Lower Threshold	(£) Per unit. Upper Threshold	(£) Per unit. Lower Threshold	(£) Per unit. Upper Threshold	(£) Per unit. Lower Threshold	(£) Per unit. Upper Threshold	(£) Per unit. Lower Threshold	(£) Per unit. Upper Threshold
1 bed flat (46m ²)	£28,750	£36,652	£32,965	£42,025	£32,668	£41,647	£34,334	£43,771	£36,428	£46,441
2 bed flat (56-61m ²)	£35,500	£42,613	£40,704	£48,859	£40,338	£48,419	£42,395	£50,888	£44,981	£53,992
2 bed house (72-76m ²)	£37,688	£46,362	£43,212	£53,157	£42,823	£52,679	£45,007	£55,366	£47,752	£58,743
3 bed house (82-86m ²)	£44,250	£54,106	£50,736	£62,037	£50,279	£61,479	£52,843	£64,614	£56,066	£68,555
4 bed house (106-115m ²)	£51,375	£61,311	£58,906	£70,298	£58,376	£69,665	£61,353	£73,218	£65,096	£77,684

NOTE: Lower threshold figures expected for smaller unit areas (floor space) or low value areas in city. : Upper threshold figures expected for larger unit areas (floor space) or highest value areas in the city.

3.36 Where the inclusion of affordable rented properties are considered to be acceptable, the RP payment for the affordable rented units will be based upon the Social Rent Matrix, with the potential for an uplift in revenue to be negotiated on a case by case basis subject to local market conditions.

Eligibility

3.37 Affordable housing units must be occupied by people in genuine need. People registered on the Plymouth Choice Based Letting scheme will be eligible for affordable housing provided through the planning system. Priority for affordable home ownership will be given to existing social housing tenants and serving military personnel, in accordance with Government policy. Key workers in the city are generally earning around or above the average wage for Plymouth and are therefore able to compete in the housing market on a favourable basis. They are not generally reliant on affordable housing. The Council will keep this situation under review and adjust affordable housing requirements accordingly if an affordable need arises.

Delivery and future control

3.38 All affordable housing provided through new residential development is required to be secured as affordable and be retained as such for future eligible households. The delivery of affordable housing on-site requires timely completion of affordable housing in line with market housing. This means that not more than 50% of open market dwellings should be occupied unless and until 50% of affordable housing has been completed and made available for occupation, and not more than 90% of open market dwellings should be occupied unless and until 100% of affordable housing has been completed and made available for occupation.

3.39 Where a RP is not involved in the provision of affordable housing, appropriate planning conditions or planning obligations will be applied to ensure that the benefits of affordability are passed on to subsequent as well as initial occupiers.

Off-site provision or commuted sums

3.40 Core Strategy Policy CS15 only allows for off-site provision or commuted payments *in lieu* of on site affordable housing where it is 'robustly justified and contributes to the creation of balanced, mixed and sustainable communities'. For example, where it is demonstrated that provision on an alternative site would more strongly meet the Council's housing and sustainable community objectives, this might be acceptable.

Calculating the contributions (off-site commuted sums)

3.41 Whilst the Council's preferred approach is the provision of affordable housing on-site, Box 4 sets out how off-site contributions for social rented and shared ownership units will be calculated:

Box 4: Calculating off site commuted sums from residential development.

Social rented unit contribution = Open Market Value minus the appropriate RSL purchase price (See Table 1)

Shared ownership unit contribution = 50% of Open Market Value (OMV)

3.42 The Plymouth Housing Market is considered to be compact and small enough, with good transport links, to be regarded as a single entity. Financial contributions may be pooled with contributions from other developments to further the delivery of affordable housing anywhere in the city, as appropriate and at the discretion of the Council.

Pre-application discussions

3.43 The Council strongly encourages pre-application discussions with regard to planning obligations including affordable housing, through its Development Enquiry Service. The Service provides an opportunity to discuss and agree how the Council's affordable housing policies may be applied to a particular development, and provides a service for the early resolution of outstanding issues.

Summary of key points

- The annual affordable housing need from existing and concealed households, allowing for re-lets and assumed new supply, is for 1,854 units, which is greater than the total annual housing provision.
- At least 30% affordable housing will be sought from all residential developments of 15 or more dwellings, subject to viability.
- Only where robustly justified might a commuted sum be accepted towards the provision of affordable housing on another site.
- A tenure mix of 60:40 will be sought for all affordable housing split between social renting (60%) and intermediate accommodation (40%). It may be appropriate to include the provision of Affordable Rent, this assessment will be made through discussions with the Housing Enabling Team and following a viability appraisal.
- The type and size of affordable housing should reflect that of the overall development.
- Affordable properties should be indistinguishable from private market housing.

- The Council will strongly prefer all on site affordable housing provision to be provided in conjunction with an RP, as agreed with its Housing Enabling Team.
- The Council has determined what a RP can afford to pay for social rent and shared ownership properties based on the rental income or sales values for units. Where affordable rented properties are acceptable, the RP payment for the units will be based upon the Social Rent Matrix, with the potential for an uplift in revenue to be negotiated on a case by case basis subject to local market conditions.
- The delivery of affordable housing on site requires timely completion of affordable housing in line with market housing.
- The presumption in the policy is that affordable housing should be provided without public subsidy.
- Where non viability is claimed, this should be backed up by an 'open book approach'. The developer may be required to pay for a valuation by an independent valuer nominated by the Council. This will be submitted to the Council for scrutiny and testing to ensure that it is robust and sound.
- Priority for affordable home ownership will be given to existing social housing tenants and serving military personnel. Key workers are currently able to compete in the open housing market, but their needs will be kept under review.

4. Planning obligations which prescribe the nature of development – other examples

4.1 These types of planning obligation relate to situations where there is a policy or other requirement for a site to be developed in a particular manner or with particular elements. We have considered affordable housing, which is one such type above. They may also be used in a range of other circumstances – for example, to deliver the Council’s policy to seek a net gain in biodiversity or provide local employment and training benefits with development. These are considered below. Other examples could be where community facilities, transport measures or low carbon energy infrastructure measures need to be incorporated into the development. The key policy principle underlying such obligations will usually be Core Strategy Policy CS01, relating to the creation of sustainable linked communities, which is then articulated in more detail through the Strategic Objectives and other policies of the Core Strategy and other local development documents.

Net gain in biodiversity

4.2 Core Strategy Policy CS19 provides not only for the mitigation of unavoidable impacts on wildlife but also explicitly for development to deliver a net gain in biodiversity. Chapter 7 of the Adopted Design Supplementary Planning Document, 2009, provides specific guidance on this matter. The section below on Nature Conservation (paras. 5.2 – 5.4) summarises the overall justification for planning obligations addressing biodiversity issues. The level of biodiversity enhancements to be sought from any development will be negotiated on a case by case basis, but it will be important that the obligation delivers a level of enhancement proportionate to the scale and nature of the development.

Economic development, local labour and training

4.3 The Core Strategy sets out strategic objectives for the economy of the city. Policy CS04 (Future Employment Provision) states that ‘the Council will support a step-change in the performance of Plymouth’s economy through supporting the provision of childcare facilities close to places of employment and promoting local labour agreements with developers to enable local people in deprived communities to secure employment and skills development’.

4.4 The aims of the Plymouth Local Economic Strategy 2006-2021 include:

- Promoting unconstrained participation in the labour market by enabling local residents to receive appropriate training and gain the skills necessary to obtain employment within the development. This could include schemes such as provision for childcare.
- Positive promotion and encouragement of use of local labour during construction phase.
- Provide business support for target industries such as Market Focused Research & Development (R&D).
- Provision of affordable and flexible business space within new developments.

4.5 Development activity brings capital investment, creates new jobs during construction and new opportunities for employment. Traditionally, the jobs and benefits created by new commercial development have not always been accessible to those local people who need them. It is a clear expectation of the Core Strategy that development will make a positive contribution to a city of sustainable linked communities and this includes playing its part in helping to address issues of social and economic exclusion.

4.6 The planning obligation sought will reflect the scale and nature of the development and will be determined on a case by case basis. Planning obligations to support economic development will normally be sought in relation to major development proposals, especially those in or near deprived communities, those with significant community impacts and those directly delivering regeneration programmes. The following list identifies some examples of initiatives that may be sought where appropriate:

- Local labour initiatives to provide valuable local employment opportunities
- Apprenticeships, to assist young people into work and contributing to the future skills-pool in the city.
- Training funds, to address the multiple barriers people may face in accessing work opportunities. These can be secured by a simple commitment to advertise vacancies in the local area and guarantee interview.
- Childcare provision, which helps address exclusion through improving the accessibility of employment.
- Flexible and affordable business premises, particularly small and start-up units on accessible lease terms. This provision ensures continuing opportunities for business start-up.

- Community endowment funds, which can be established and accessed by local projects according to local priorities for social and economic facilities and services.
- Affordable retail space for independents, by designing in smaller units and kiosks. This will benefit local people through easy access to services and the development will achieve a more diverse and interesting character.
- Retail and business area improvements, by improving security, reducing dereliction and blight and improving business trading environments. This will help attract new investment, support responsible behaviour and increase trade.
- Support of the local and social economy, through local procurement of goods and services as an alternative to purchasing those same goods and services from private companies from further afield.

5. Planning obligations which compensate for detrimental impacts

5.1 These types of planning obligation will be most commonly used where there is some loss, damage or other detrimental impact arising from a development which needs to be compensated for. Such obligations are commonly used to compensate for the loss of wildlife habitat or where compensatory measures are needed to address carbon emissions arising from a development. It could also apply in situations, for example, where an important facility has been lost (perhaps a community meeting place) and there is a need to replace it elsewhere.

Nature conservation

5.2 The Core Strategy seeks not only to ensure that the natural environment and wildlife is safeguarded, but also that development produces a net gain in biodiversity (see para. 4.2). Planning obligations are one of the tools available to the Council to ensure that these policy objectives are achieved and that where loss to wildlife and the natural environment are unavoidable, it is appropriately compensated.

5.3 This approach is supported by Planning Policy Statement 9 (PPS9) and ODPM Circular 06/2005. PPS9 establishes six 'key principles' to ensure that the potential impacts of planning decisions on biodiversity / geodiversity are fully considered. Circular 06/2005 complements PPS9 by providing detailed guidance on the protection of designated nature conservation sites and protection of species by the planning system. A key theme running through the key principles of PPS9 is that planning authorities should not only seek to conserve biodiversity, but also to 'enhance, restore or add to biodiversity interest'. Para. B16 of Circular 05/2005 states that 'planning obligations can be used to offset through substitution, replacement or regeneration the loss of, or damage to, a feature or resource present or nearby'.

5.4 Direct mitigation measures towards nature conservation may be sought where there is a need to resolve site specific biodiversity or geodiversity issues. Where biodiversity net gain cannot be achieved on site, financial contributions will be calculated with reference to a Biodiversity and/or Geodiversity Management Plan which shall be submitted to and approved by the Council. The management plan must be produced in line with the guidance found within Plymouth's Design SPD.

Offsetting carbon emissions

5.5 Core Strategy Policy CS20 provides that all proposals for non-residential developments exceeding 1,000 square metres of gross floorspace, and new residential developments comprising 10 or more units (whether new build or conversion), should incorporate on-site renewable energy production equipment to off-set at least 15% of predicted carbon emissions. Para 11.27 of the Core Strategy says that where this policy objective cannot be achieved in the development, a planning obligation will be sought to secure the savings through the implementation of other local renewable energy or energy efficiency schemes.

5.6 All development has the potential to cause harmful emissions that exacerbate climate change, which is widely acknowledged as one of the principal concerns for sustainable development. The Core Strategy aspires to move the city towards carbon neutrality (Strategic Objective 1) and makes policy provision for promoting improving the sustainability of resource use, including through renewable energy in development proposals (Policy CS20).

5.7 In the exceptional cases where the on-site renewable energy objective is found to be undeliverable due to site constraints, a contribution towards the delivery of off-site CO₂ reduction measures will be sought. The level of contribution will be based on the estimated capital cost of the renewable energy equipment needed to meet the 15% reduction in total predicted carbon emissions for the planned development.

5.8 These contributions will be used to deliver carbon savings by investing in energy efficiency of the existing housing stock, or through supporting the delivery or expansion of low carbon energy infrastructure such as district heating and cooling networks.

5.9 In those areas where Policy CS20 is relaxed in favour of area wide district energy solutions, the Council will negotiate contributions on a case by case basis. The level of contribution sought will be based upon the following variables:

- Level of capital investment required onsite to support expansion of the proposed district energy network
- Cost savings generated through relaxing of the CS20 onsite renewable requirement, and /or achieving Building Regulation CO₂ emissions standards through the connections to a District Energy network.

5.10 In December 2007, Department of Communities and Local Government published a supplement to PPS1 entitled "Planning and Climate Change". This expects planning to be a positive force for change that will help secure progress against the UK's emissions targets, and deliver the Government's ambition for zero carbon development, both by direct influence on energy use and emissions, and in bringing together and encouraging action by others.

5.11 The Government's aspirations are to ensure that all new homes in England and Wales are zero carbon by 2016, with interim reductions in CO₂ emissions of 44% below current Building Regulations by 2013. There are similar ambitions to cut carbon emissions from new non-domestic buildings by 2019.

6. Planning obligations which secure a commuted maintenance sum

6.1 These types of planning obligation will be most commonly used where a developer provides a landscaped area, an open space or a play facility as part of a development, and which it wishes the Council to maintain and adopt.

Commutated payments for maintenance of facilities provided

6.1 The Council is normally prepared to adopt and maintain properly laid out green space, play space or playing pitches that are intended for wider public use, where these amenities are provided by the developer on site as part of a development. This will be subject to a 20 year commuted sum as a negotiated element of the Section 106 agreement, calculated on the basis of costs set out in Table 2 below. If the developer does not intend to offer areas for adoption, then the Council needs to be assured that satisfactory alternative arrangements are in place for maintenance in the future.

Table 2: Maintenance costs for Formal/Informal Green Space, Local Nature Reserves and Equipped Children's Play Space¹

Type of Space	Cost (£/ m2 per year)
Children's Play	£19.40
Parks and Gardens	£5.14
Informal Green Space	£0.62
Local Nature Reserves/Natural Green Space	£0.95
Allotments	£ 0.31
Playing Pitches	£0.51

¹These costs come from data supplied by CABE Space for maintenance of green space in the South West between 2005 and 2007 and from Sport England.

7. Planning obligations which mitigate the impact of development on infrastructure

7.1 Circular 05/2005 (Para B15) identifies that ‘if a proposed development would give rise to the need for additional or expanded infrastructure which is necessary in planning terms and not provided for in the application it might be acceptable for contributions to be sought towards this additional provision through a planning obligation’. Subject to the Council’s Regulation 123 Statement of infrastructure to be supported through CIL receipts (see para. 2.6), the seeking of developer contributions towards infrastructure where needed can be an appropriate use of planning obligations.

7.2 As mentioned already, it is the Council’s desire to significantly scale back the use of planning obligations once CIL is in place. This will be achieved substantially because Regulation 123 provides that, once CIL is adopted (or from April 2014, whichever is the earlier), contributions will only be able to be sought from a maximum of five planning obligations for any particular piece of infrastructure. Additionally, the Council favours the use of thresholds to ensure that these five contributions are sought from larger schemes only. The proposed thresholds are identified in Table 3.

Table 3: Thresholds below which infrastructure contributions through planning obligations will not normally be sought

Development type	Threshold
Residential	15 homes
Student housing	15 bed spaces
HMOs	15 bed spaces
Commercial developments	500 sq.m. gross internal floor area

7.3 Contributions to mitigate the infrastructure impact of development will be negotiated on a case-by-case basis, and only where there is evidence of an impact and an identifiable means for mitigating that impact. To assist the negotiation process, the Planning Obligations Evidence Base document identifies need and sets out formulae which enable an average infrastructure mitigation cost per unit of development to be calculated. This Evidence Base document will be updated when necessary to reflect changing evidence and costs. Evidence base updates will be published at <http://www.plymouth.gov.uk/plymouthsplanningobligationsevidencebase>

7.4 In addition to the draft National Planning Policy Framework and the overarching Core Strategy Policy CS33, which seeks to ensure that developments meet the reasonable cost of new infrastructure made necessary by the proposal, the following sections detail further local policy context for each infrastructure topic and give examples of how development can result in an impact.

Education

7.5 Education infrastructure is an integral component of balanced sustainable communities. It is the Council's vision to ensure the highest quality opportunities exist in education, learning and training, improving school performance and raising aspirations and standards of achievement for all age groups. Core Strategy Strategic Objective SO9 (Delivering Educational Improvements) and Policy CS14 (new Education Facilities) set a spatial planning framework for education which will support positive improvements to school provision in Plymouth.

7.6 Development of new family homes creates a need for additional school places at early learning centres, primary schools and secondary schools. Recent demographic changes in Plymouth and the cumulative impact of the growth of the city mean that there is and will continue to be a compelling need for additional capacity in the city's education infrastructure throughout the Core Strategy plan period (2006-2021) and beyond. The evidence in relation to school capacity is kept under constant review by the Council's Children's Services Department.

Primary healthcare

7.7 The Core Strategy's Strategic Objective 15 (Delivering Community Well-being) focuses on improving the city's healthcare facilities and ensuring that the potential health impacts of development are identified and addressed at an early stage in the planning process.

7.8 The Plymouth Primary Care Trust provides a network of primary care facilities and services throughout the city. The Council recognises the social benefits of the provision of excellent primary healthcare facilities to the community. New residential developments put pressure on existing health facilities and cumulatively create the need for additional facilities and services. In order to cope with pressures arising from the growth of the city, new investment will be needed in a number of primary care facilities. In some cases, developer contributions may be sought to make the development acceptable.

Libraries

7.9 The Core Strategy's Strategic Objective 2 (Delivering the City Vision), amongst other matters, seeks to create 'sustainable linked communities - where people enjoy living and where the full range of local services and facilities are provided'. It also seeks to provide 'exceptional shopping, cultural, education and health facilities'. The Council seeks to provide a network of well stocked local libraries throughout the city with the Central Library at the hub.

7.10 New residential developments put pressure on existing library services. It therefore may be reasonable to expect developers to contribute towards the costs of library infrastructure where the need arises directly from the development. Indeed, to cope with pressures arising from the growth of the city, further investment will be needed in a number of existing libraries and potential additional library provision.

Community facilities

7.11 The Core Strategy Strategic Objective 8 seeks 'To facilitate the creation of Plymouth as a vibrant waterfront city with a thriving cultural and leisure sector and a diverse, safe, balanced and socially inclusive evening / night economy. This will be achieved by: Establishing and promoting one or more sustainable cultural quarters as centres for arts, culture and entertainment for the city'.

7.12 Community facilities are vital to the vibrancy and success of local communities. They can come in many forms, including meeting places, youth centres, places of worship, local theatres and cultural facilities and local heritage facilities.

7.13 New developments can impose extra costs on service providers at a time when resources are stretched. Therefore it may be reasonable to seek provision of or contributions towards the costs of community infrastructure where the need for those facilities arises directly from the development and there is evidence of existing inadequate provision in the area.

7.14 Applications will be assessed individually to determine if they will place strain on existing, or create a demand for new, facilities. This is only likely to be the case with larger developments. In making its assessment the Council will have regard to its evidence, including its Sustainable Neighbourhood Assessments and other neighbourhood and locality data.

7.15 It has not been possible to identify a formula for calculating the unit cost of development on community infrastructure given the varied nature of community facilities. Therefore, each negotiation will be entirely self-sufficient.

Transport and highways

7.16 Core Strategy Policy CS28 (Local Transport Considerations) sets out the Council's approach to transport infrastructure. It states that development should where appropriate:

- Contribute to improved public transport provision and the development of new interchanges on the High Quality Public Transport network
- Support safe and convenient pedestrian, cycling and road traffic movement
- Provide proactive facilities and measures to support sustainable transport modes
- Contribute to the progressive introduction of network management technology, to maximise existing and future capacity and investment across all transport modes - and to reduce congestion and delay for the benefit of business and domestic travellers alike
- Actively promote green travel plans.

7.17 Many types of development will have an impact on transport infrastructure, for example through additional trip generation or additional vehicular accesses. These impacts can occur both at a local and a city-wide scale. It is therefore reasonable to seek provision of, or contributions towards, transport improvements where the need arises directly from the development.

7.18 Investment in transport infrastructure represents one of the greatest challenges to the Plymouth growth agenda. Overall traffic levels in Plymouth have increased over the last decade, leading to increased congestion and a range of associated problems such as increased air pollution, noise impacts and visual intrusion. It is critical to the successful and sustainable growth of the city that major transport improvements are delivered. Without this, the level of growth necessary to achieve the City Vision will not be possible.

7.19 In addition to the strategic implications of transport, there are local matters too which may justify the use of planning obligations. The Council envisages that the majority of sites will not require specific local improvements due to transport and access issues being addressed as part of the scheme design. This matter will however be determined on a case by case basis.

7.20 Although this list is not exhaustive, obligations could be sought in relation to:

- New access roads
- Improved junction layouts
- Improved public transport accessibility
- Improved measures for cyclists / pedestrians.
- Traffic management/highway safety measures

7.21 When developers apply for planning permission, the Council may ask them to produce a Transport Assessment (TA) or Transport Statement (TS) to provide a technical assessment of all the accessibility issues and transport implications that may arise due to the development. The TA or TS may be used in negotiating specific local off-site access improvements to allow the Council to assess the impact of the development plus any mitigation measures proposed as necessary. The Council may seek a financial contribution or works from the applicant to provide any necessary mitigation measures in the form of a Section 278 or 106 Agreement.

7.22 The wider transport implications of a development may also be addressed, in whole or part, through a Travel Plan. Guidance on Travel Plans is provided in Section 8.4 of the Development Guidelines Supplementary Planning Document.

Green infrastructure

7.23 The green infrastructure of an area is its network of green spaces. It has multiple benefits and functions, such as exercise, relaxation and play, wildlife areas, flood alleviation, food and fuel production and sustainable transport links. The provision of adequate levels of green infrastructure, both at a local / neighbourhood level and at a city / regional level is crucial to delivering sustainable growth. Although wildlife and the marine environment are both part of an area's green infrastructure they are considered separately in sub-sections below.

7.24 Planning obligations have an important role to play in ensuring that the green infrastructure impacts and needs of new development are met. The Core Strategy, supported by the Plymouth Green Infrastructure Delivery Plan and the Plymouth Green Space Strategy, provide a strong local policy and delivery justification for the use of planning obligations in relation to both local and strategic green infrastructure impacts.

7.25 Each new home potentially has an impact on the city's existing green infrastructure, or creates a need for new green spaces. Developer provision of, or contributions to, green infrastructure delivery and/or management may therefore be necessary to make the development acceptable in planning terms.

7.26 The Green Infrastructure Delivery Plan is in part a response to the Habitat Regulation Assessments undertaken for the Core Strategy and other Development Plan Documents, which demonstrates a legal imperative to mitigate the impacts of city growth on environmental assets of European importance such as the European Marine Site (EMS) and Dartmoor National Park. It identifies a series of strategic mitigation projects which will ensure that the city grows in a sustainable way without undermining the environmental quality of the designated European sites. In this respect it is significant that para. 16 of the draft NPPF states that development likely to have a significant effect on sites protected under the Birds and Habitats Directives would not be sustainable under the terms of the presumption in favour of sustainable development.

7.27 Plymouth's Green Space Strategy is more concerned with the local green infrastructure needs. It sets out standards and targets to protect and improve the quantity, quality and accessibility of green space in the city. Objective GSS01 sets a target of 5.09 hectares of accessible green space per 1000 population. While it is not feasible for every neighbourhood in the city to achieve this standard, many neighbourhoods in the city currently fall well below this target. Objective GSS06 sets a target that everyone should have an accessible green space within 400m of where they live and work, while Objective GSS07 sets a target that everyone should have a play space within 600m of where they live. The majority of neighbourhoods in the city contain areas that fall outside these targets. Objective GSS08 sets a target that all local green spaces should be at least of a 'good' quality as measured by Plymouth's quality audit indicators. Currently, several local green spaces fall below this standard. With population growth, investment will be needed to maintain as well as enhance quality.

Plymouth Sound and Estuaries European Marine Site

7.28 As a waterfront city, the coastal and estuaries environment is a critical aspect of Plymouth's 'green' resource. The Tamar Estuaries Complex is recognised as being of European importance for the biodiversity that it supports. It is designated as a Special Area of Conservation (SAC) and parts are also designated as a Special Protection Area (SPA). The Habitat Regulations Assessment of the Core Strategy identifies a number of possible impacts on Plymouth Sound and Estuaries SAC arising from Core Strategy policies, including impacts on water quality, physical damage, habitat loss and biological disturbance. The need for negotiation of planning obligations is supported by Core Strategy Strategic Objective 11 (Delivering a Sustainable Environment), and Policy CS19 (Wildlife).

7.29 Developments which have an impact on the environmental quality of the EMS should provide for mitigation of their impacts through contributing towards the protection and management of the site.

Public realm (including public art)

7.30 Core Strategy Policy CS34 (Planning Application Considerations) states that 'Planning permission will be granted if all relevant considerations are properly addressed. These will include whether the development: incorporates public spaces, landscaping, public art and 'designing out crime' initiatives'. New residential development and commercial development in shopping centres potentially puts additional pressure on the public realm generating a need for further investment in management and improvements. Developer contributions may therefore be sought to mitigate such impacts.

7.31 The City Centre's public realm is one of the key elements of infrastructure necessary to deliver the Plymouth's growth vision. Given that the City Centre is a facility for use by all people in the city, residential development wherever it is in the city will cumulatively create an impact on and demand for use of its facilities and spaces. Furthermore, improvements to the City Centre's public realm will be to the wider benefit of the city.

Play areas

7.32 Core Strategy Policy CS30 (Sport, Recreation and Children's Play Facilities) states that 'New residential development will be required to make appropriate provision for sport, recreation, open space and children's play to meet the needs of the development'. This is amplified by standards and targets set out in Plymouth's Green Space Strategy.

7.33 Each new family home potentially has an impact on the city's existing play areas or creates a need for new play areas. Developer provision of or contributions to play areas may therefore be needed in order to make the development acceptable in planning terms.

Sports, recreation and playing pitches

7.34 The need for appropriate use of planning obligations is supported by Core Strategy Policy CS30 (Sport, Recreation and Children's Play Facilities), which states that 'New residential development will be required to make appropriate provision for sport, recreation, open space and children's play to meet the needs of the development'. CS30 also seeks to enhance the city's sport and recreation facilities by delivering major new facilities at the following locations: Central Park Life Centre, Manadon and Devonport Brickfields.

7.35 Sport and physical activity improve health, fitness and well-being. Providing sport and recreation facilities to meet the needs of new residents is therefore a priority. Sport and recreation facilities contain both local and strategic elements of infrastructure. Playing pitches serve mainly local needs. Specialist sports facilities (such as swimming pools, indoor sports halls and indoor bowling) tend to serve a city-wide population.

7.36 The Playing Pitch Strategy sets out a local standard for playing pitch provision for three different sub-areas of the city based on a detailed analysis of demand and supply. It identifies a need for investment in new and improved playing pitches in each of three sub areas of the city. Most new residential developments potentially create a demand for use of playing pitches.

7.37 In respect of the strategic sports and recreation infrastructure, the Sports Facilities Strategy sets out standards for provision of sport and recreation facilities and identifies a hierarchy of provision based on the quality of facilities. It identifies a considerable need for new investment even for the existing population. Development contributing to the growth of the city will increase the need for such investment.

8. Implementation of Obligations

8.1 The following paragraphs detail the Council's approach to the procedural elements of implementing planning obligation policy.

Validation process

8.2 Planning applicants will be required to comply with the requirements of Plymouth's Local Validation Agreement so that applications can be validated. Meeting these requirements will enable the Council to process planning applications more efficiently and within the tight timescales set by Government.

Outline applications and pre application discussions

8.3 The Council encourages pre-application discussions with regard to planning obligations. The early discussion of planning obligation matters, specific proposals and potential abnormal development costs will provide greater clarity and certainty for developers as to the type and scale of contributions potentially sought.

Drafting of agreements

8.4 Planning Agreements will normally be drafted by the Council. Circular 05/2005 (para. B36) promotes the use of 'Standard Agreements' to speed up the preparation of the S106 agreement. The Council will provide standard legal agreements and standard unilateral undertakings.

Financial contributions

8.5 All financial contributions contained in S106 agreements will be index linked to the date of the Committee, or delegated authority approval. Financial contributions will normally be expected to be paid upon commencement of development (as defined in Section 56 of the 1990 Town and Country Planning Act). However, to support development viability the Council recognises that this will not always be practical. In these circumstances, the Council will accept payments at specific stages during the development process, for example, upon first occupation of half the dwellings etc. Trigger dates for the payment of financial contributions will be included in the S106 Agreement, as will any time periods by which the contribution is to be spent.

8.6 Following receipt by the Council, financial contributions will be held in separate accounts. Contributions remaining unspent at the end of a time period specified in the S106 agreement will, on request, be returned to the payee along with any interest accrued.

8.7 The Council will in most cases seek to negotiate a five year time period to implement planning obligations where these involve the payment of a developer contribution. This is considered to be a reasonable timescale for the delivery of many mitigation measures. However, where a more strategic or complex

intervention is needed, or resources need to be pooled from a variety of developments, then a longer time period will be sought, up to a maximum of 15 years.

Development viability and spatial priorities

8.8 The Council acknowledges that, in certain circumstances, a development may not be able to address all of the planning obligations sought without the scheme becoming economically unviable.

8.9 If a developer considers that the Council is placing unreasonable expectations for planning obligations upon a proposal site, then an assessment of development viability can be conducted. The Council will seek an 'open book' approach, whereby relevant development finances are subject to appraisal in order to provide the appropriate and necessary information to support a claim. Details of the information requirements for this process are set out in a Plymouth Viability Protocol in Appendix I.

8.10 The cost of assessing development viability will be met by the developer who is claiming non-viability for the planning application. Abnormal costs should be reflected in the price paid for the site. Demolition of existing structures, site clearance and decontamination should be reflected in the land value. It will not be acceptable to make allowance for known site constraints in any financial viability appraisal.

8.11 The Council or appropriate external body will employ confidentiality and discretion with any evidence provided, and this will only be utilised to address and evaluate a specific claim. However, it may be necessary to report the key issues and broad conclusions in reports to elected members at the time of consideration of a planning application. If the Council agrees that a proposal cannot reasonably afford to meet all of its specified requirements, it will not necessarily result in the proposal receiving approval from the Council. It is quite possible that the issues will be so significant that the application will be refused, but in reaching its judgement the Council will consider whether there are overriding benefits in favour of granting permission, and if so will seek to prioritise planning obligation needs. This judgement will be made on a case by case basis.

8.12 The emphasis of the new planning system is to improve the spatial elements of plan making. To deliver the Core Strategy, the locational requirements of particular areas of Plymouth will be taken into consideration through a prioritisation process that is not based on viability. Priorities will be determined by having regard to Development Plan Document proposals, strategic infrastructure requirements and neighbourhood needs, as identified in the Plymouth Sustainable Neighbourhood Assessments (www.plymouth.gov.uk).

Pooling of contributions

8.13 The primary method available for the pooling of developer contributions to address the cumulative impacts of development will be the Community Infrastructure Levy. However, the CIL Regulations do not preclude the pooling of contributions through planning obligations from up to five schemes (Reg 123) where the infrastructure improvements to be delivered are not being funded through CIL revenues.

8.14 The Council aims to take a strategic approach to infrastructure delivery, which includes taking a view on the most appropriate funding routes and identifying investment and delivery plans for its growth areas. It will use this process to consider which infrastructure needs are best supported through CIL revenues and to anticipate development proposals which may make contributions through planning obligations. This approach is consistent with Circular 05/2005, which states that 'where the combined impact of a number of developments creates the need for infrastructure, it may be reasonable for the associated developers' contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way'. It is also supported by the Core Strategy. See in particular para. 16.9 which states that: 'It is important that development contributes positively to the city and impacts are appropriately managed. This may include contributing to an infrastructure capital pot to ensure that cumulatively developments deliver solutions to enable the city to grow in a sustainable manner whilst at the same time contributing positively to the City Vision'.

Monitoring and management of obligations

8.15 The monitoring and management of planning obligations will be undertaken by the Council to ensure that all obligations entered into are complied with on the part of both the developer and the Council, and that all financial contributions are spent in accordance with the Agreement. Enforcement action will be taken by the Council where conditions or planning obligations are not being complied with.

8.16 Monitoring information detailing the agreements and the progress of agreements will be kept on a database maintained by the Council. The process will provide assurance that obligations have been spent in full and appropriately.

Fees

8.17 Applicants will be required to meet their own and the Council's costs of producing planning obligation agreements, whether the agreement is completed or not, including associated legal costs.

8.18 In addition, a Planning Obligation management fee will be payable on the signing of Section 106 agreements to meet the Council's costs in administering and implementing the agreement. The level of fee will be reviewed on an annual basis and published in Planning Services Fees Policy (see <http://www.plymouth.gov.uk> or contact the Planning Service for further information).

APPENDIX: PLYMOUTH VIABILITY PROTOCOL

1. The primary aim of this Protocol is to ensure that planning obligations are implemented fairly. While the Council recognises that there are instances when the level of planning obligation sought could cause projects to become unviable, particularly given CIL liabilities, it also requires developers to provide evidence that ensures agreements are the result of an engagement process that has integrity.

Early engagement

2 The applicant will let the planning officer know that it plans to raise the issue of viability as soon as it is apparent so that a process to evaluate the claim can be established. This should ideally be during the pre-application stage. Early engagement gives the developer the opportunity to present their case and provides adequate time to scope the relevant viability issues, plan the work programme and agree on an analytic approach/model.

3 On some applications, or as part of a S106 agreement, a 3rd party appraisal may be required. In this case, the developer, the Council, and the 3rd party consultant will meet together to scope the details of the appraisal.

An agreed platform for viability analysis

4 If the developer and the Council agree that a development appraisal will be a basis for evaluating viability, a model and its inputs will be made accessible to both parties. Whatever the model used for the appraisal, it should be presented in a form that enables the planning officer to interrogate its underlying structure and assumptions.

5 The computer programme used to create the viability model will be agreed with the developer. This could be a simple, well-specified model in Excel; the affordable housing model by Three Dragons or the HCA/GVA Economic Appraisal Tool; or commercial property standards such as Argus Developer, ProVal, ProDev and the like. In the event that the developer uses a proprietary model, the developer should be prepared to provide the Council with the opportunity to interrogate it. In the case that a proprietary model lacks sufficient transparency or specification, the applicant will be asked that another format be used.

6 In the event that a developer opts for a simple model, at the very least they will need to include assumptions and evidence for the following items:

- Site and/or building acquisition costs
- Construction costs
- Fees, finance and all other associated costs

- Gross development value
- Developer profit

7 In the event that the Council has questions about the model's assumptions or asks for more detail, the developer will provide evidence which supports the basis of the assumptions. Evidence could be from sources such as the Building Cost Information Service (BCIS), SPON's Architects' and Builders' Price Book or Valuation Office Agency (VOA) data. For rental and sales data (including yields), it is expected that the developer will provide evidence of market transactions.

8 In the event that the project has abnormal costs, these should be disaggregated, backed up by evidence and reflected in the fixed land value (if appropriate). Abnormal costs include such items as the demolition of existing structures, site clearance and decontamination.

Discussing viability and reaching agreement

9 The starting point for any discussion about viability should be based on a model that illustrates the project's financial position in light of the Council's existing policies with regard to affordable housing, planning obligations and/or CIL liabilities.

10 If it is found that there are discrepancies between the assumptions in a developer's viability model and other available evidence, the developer must provide satisfactory evidence that justifies the discrepancy.

11 In the event that the initial appraisal exercise establishes that planning obligations have a material impact on viability, the next step is for the developer and Council for discussing possible solutions for delivering a viable scheme.

This page is intentionally left blank

PLYMOUTH CITY COUNCIL

Subject:	Community Infrastructure Levy (CIL) – Draft Charging Schedule
Committee:	Cabinet
Date:	17 January 2012
Cabinet Member:	Councillor Fry
CMT Member:	Director of Place
Author:	Peter Hearn, Spatial Planning Coordinator
Contact:	Tel: 01752 307944 e-mail: peter.hearn@plymouth.gov.uk
Ref:	PH/CIL/2
Key Decision:	Yes
Part:	I

Executive Summary:

Cabinet considered a report on the Community Infrastructure Levy (CIL) and Plymouth Infrastructure Needs Assessment on 12 July 2011, where it agreed to approve the introduction of a Community Infrastructure Levy for Plymouth, along with a timetable for adopting a CIL Charging Schedule.

CIL is a new levy that local authorities in England and Wales can choose to charge on developments in their area to help fund infrastructure improvements. It was first introduced in April 2010 and is now a major plank of the localism agenda, with provisions identified in the Localism Act, and with detailed Regulations having been put in place to provide for its implementation.

The money raised through CIL can be used to support new development by funding infrastructure that the city, local communities and neighbourhoods need – for example, new road schemes, park improvements or improvements to local school capacity.

The CIL Regulations prescribe the process by which a CIL is introduced. A Preliminary Draft Charging Schedule (PDCS) must be published for consultation, followed by a Draft Charging Schedule, which sets out for consideration at an independent public examination the CIL charge/s that a charging authority is intending to apply to development in its area (expressed in £s per square metre). The Draft Charging Schedule can also be used to set out charging authorities' Instalments and Discretionary Relief in Exceptional Circumstances policies.

Plymouth's PDCS was published for consultation under delegated authority on 1 November 2011, with the consultation period ending on 13 December 2011. The main issues identified through the consultation process are detailed in paragraph 2.3 of the accompanying report.

In accordance with the 12 July 2011 Cabinet resolutions, authority is now sought for the publication of the Draft Charging Schedule for consultation, prior to its Public Examination. This will provide for consultees to make representations which can be heard by the Examiner if they so choose. These procedures are laid out in the CIL Regulations. Following Public Examination, receipt of and response to the Examiner's report, the Final CIL Charging Schedule can be adopted. This stage is likely to be reached in Summer 2012, with the CIL Charging Schedule subsequently coming into effect in Autumn 2012.

A copy of the proposed Draft CIL Charging Schedule is attached as the Appendix to this report.

The CIL Regulations make it clear that Charging Schedules must not put at serious risk the overall development of their area, and so evidence on development viability must underpin the level/s at which the levy is set. CIL charging authorities are required to use viability and infrastructure needs evidence to strike an appropriate balance between the desirability of funding infrastructure from the CIL and the potential effects of CIL upon the economic viability of development across their area. Plymouth's Draft Charging Schedule is underpinned by appropriate evidence and this will be made available to consultees alongside the Draft Charging Schedule.

Plymouth was selected to be one of a number of CIL implementation 'Frontrunners' by the Government Department for Communities and Local Government (CLG) in July 2011. CLG is anticipating Plymouth submitting its Draft CIL Charging Schedule for Examination by April 2012. We are on track to achieve this target.

It is the Government's intention that CIL regimes replace 'tariff-approaches' to Section 106 agreements, such as that currently operated by the Council. Indeed, once Plymouth's CIL becomes operational, the Council's tariff approach will be defunct. It is therefore necessary to undertake a second review of the Planning Obligations and Affordable Housing Supplementary Planning Document (SPD) to reflect these changes, and this is subject to a separate report to this meeting of Cabinet. The revised SPD is intended to provide clarity to developers on the operation of the planning obligations process once the CIL regime is operational.

Corporate Plan 2011-2014:

The report directly supports the Council's vision for the city as well as its priority for delivering growth. The Community Infrastructure Levy will deliver resources towards the infrastructure required to unlock the City's growth potential. CIL receipts can be used to:

- Help create the conditions for growth and therefore the achievement of sustainable growth in jobs and GVA (Level 1 indicators).
- Support the achievement of a good range of houses (Level 1 & 2 indicators).
- Secure provision for strategic and local infrastructure (Level 2 indicator).
- Address the environmental impacts of development (Level 2 indicator).

In addition, CIL receipts will support the Council's other three priorities in the following ways:

- 'Value for communities' - by ensuring that development contributes to and does not harm local communities, and by securing resources to help deliver improvements in communities.
- 'Raising aspirations' – particularly through securing additional resources that can support the wider learning infrastructure of the city.
- 'Reducing inequalities' – particularly through securing additional resources for infrastructure investments that improve community well-being.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

The introduction of CIL will ensure that the Council is able to continue to secure developer contributions to address the community infrastructure implications of development and the growth of the city. This could amount to a significant increase on what has historically been delivered through the Section 106 process.

The Council is able to charge an administration fee of up to 5% in levying CIL, and it is anticipated that the costs of preparing for and introducing CIL can be recouped from this fee.

Prior to the introduction of CIL cost pressures arising will in the first instance need to be met from Planning reserves. These cost pressures include the cost of the examination of the Draft Charging Schedule. If the set up costs include an option to acquire a new CIL database, a proposal for this will be subject to the capital approvals process, which will address any on-going revenue maintenance costs. Existing systems are being reviewed to develop the most cost-effective administration and monitoring system. The Department for Communities and Local Government may in future relax the 5% administration fee limit in certain circumstances.

CIL is subject to new enforcement procedures, and there will therefore be a requirement for new legal procedures to be put in place and acted upon.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management, Equalities, Diversity and Community Cohesion:

The Community Infrastructure Levy may support the promotion of community safety or health and safety by, for example, assisting with the implementation of infrastructure that improves road safety, improves defences against flooding, improves healthcare provision, improves open space through better lighting, etc.

An Equalities Impact Assessment has been carried out and this confirms that, by having the effect of helping to mitigate the adverse impacts of development, the impacts of CIL are entirely positive in equalities terms.

The introduction of CIL offers the best prospect of optimising income generated from developer contributions whilst at the same time safeguarding the overall viability of development in the city. The current tariff-based approach to securing developer contributions through Section 106 Agreements is very constrained by the CIL Regulations, which in any case provide for the demise of such approaches by April 2014. CIL will therefore significantly reduce risks associated with Risk No. 80 identified on the Council's Strategic Risk Register (*Planning obligations – implications of new legal framework and current economic circumstances*).

Recommendations & Reasons for recommended action:

It is recommended that the Cabinet:

1. Approve the publication of the Draft CIL Charging Schedule for public consultation.

Reason: To ensure that the Draft Charging Schedule is published with appropriate authority, to ensure that Plymouth is well placed to continue to secure developer contributions towards meeting the infrastructure needs of the city, and to ensure that the Council meets Department of Communities and Local Government 'Frontrunner' expectations by providing for the submission of the Council's Charging Schedule for Examination by April 2012.

2. Delegate authority to the Assistant Director for Development & Regeneration (Planning Services), in consultation with the Portfolio Holder for Planning, Strategic Housing and Economic Development, to agree minor amendments to the Draft Charging Schedule in response to the consultation process, and to submit the Draft Charging Schedule and any requisite Statement of Modifications for Independent Public Examination.

Reason: To provide for Public Examination procedures to be expedited following public consultation.

3. Instruct officers to report the Final CIL Charging Schedule to Cabinet and Full Council for adoption following Public Examination.

Reason: To ensure that the final CIL Charging Schedule is adopted with appropriate authority, in accordance with the requirements of the CIL Regulations.

4. Instruct officers to present proposals for future review of the final CIL Charging Schedule to Cabinet when seeking approval for its adoption following Public Examination.

Reason: To ensure that procedures are in place to respond to changing economic circumstances.

Alternative options considered and reasons for recommended action:

The alternative would be to not introduce a Community Infrastructure Levy. This would leave the existing tariff approach in place until it was effectively made redundant after April 2014 by Regulation 123 of the Community Infrastructure Levy Regulations. This Regulation will remove the Council's ability to secure any significant level of pooled developer contributions to meeting the infrastructure costs arising from the growth of the city. It is therefore not recommended.

Background papers:

- 12 July 2011 Cabinet Report on CIL and the Plymouth Infrastructure Needs Assessment - <http://www.plymouth.gov.uk/modgov?modgovlink=http%3A%2F%2Fwww.plymouth.gov.uk%2FmgInternet%2FieListDocuments.aspx%3FCId%3D254%26amp%3BmId%3D4493%26amp%3BVer%3D4>
 - November 2011 Plymouth Preliminary Draft CIL Charging Schedule and supporting evidence base documentation – see <http://www.plymouth.gov.uk/homepage/environmentandplanning/planning/makingaplanningapp/communityinfrastructurelevy.htm>
 - Schedule of Consultation Responses to the November 2011 Plymouth Preliminary Draft CIL Charging Schedule – see <http://www.plymouth.gov.uk/homepage/environmentandplanning/planning/makingaplanningapp/communityinfrastructurelevy.htm>
 - CLG Community Infrastructure Levy: An Overview – May 2011 <http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevymay11>
 - Community Infrastructure Regulations, April 2010 - <http://www.legislation.gov.uk/uksi/2010/948/contents/made>
 - Community Infrastructure Levy Amendment Regulations, February 2011 - <http://www.legislation.gov.uk/ukdsi/2011/9780111506301/contents>
 - CLG Community Infrastructure Levy Guidance: Charge Setting and Charging Schedule Procedures, March 2010 - <http://www.communities.gov.uk/publications/planningandbuilding/cilguidance>
 - Community Infrastructure Levy: Detailed Proposals and Draft Regulations for Reform – Consultation - <http://www.communities.gov.uk/publications/planningandbuilding/cilreformconsultation>
-

Sign off:

Fin	SG/DevF11120 041.121211	Leg	JAR/13256A	HR	N/A	Corp Prop	N/A	IT	N/A	Strat Proc	N/A
Originating SMT Member: Paul Barnard Assistant Director for Development & Regeneration											

1.0 THE COMMUNITY INFRASTRUCTURE LEVY

- 1.1 The Community Infrastructure Levy (CIL) is a new charge that local authorities in England and Wales can choose to levy on development to help pay for the infrastructure that is required to mitigate the adverse impacts of, and thereby support the delivery of growth. The vision for Plymouth is to grow the city by around 50,000 people, and to deliver around 40,000 new jobs and 30,000 new homes. Significant investment in infrastructure will be required to accommodate this growth. CIL will provide one important source of funding to help provide this infrastructure.
- 1.2 Provision was made for the introduction of CIL by the Planning Act 2008, and it is now a major plank of the localism agenda, with further provisions identified in the Localism Act 2011.
- 1.3 Detailed Regulations have been put in place to provide for the implementation of CIL. These Regulations provide for an end to tariff-based approaches to Section 106 Agreements, such as that currently operated by the City Council. Once Plymouth's CIL becomes operational, the Council's tariff approach will be defunct. It is therefore necessary to undertake a parallel review of the Planning Obligations & Affordable Housing Supplementary Document, and that is subject to a separate report to this Cabinet meeting.
- 1.4 This report is concerned purely with the consideration of the Draft CIL Charging Schedule, which is the stage of the CIL process that we have now reached. The report does not consider other aspects of CIL at this time. However, in the lead up to the implementation of CIL, Cabinet will receive further reports in relation to its formal adoption and how CIL receipts will be used to meet city and local needs.

2.0 PRELIMINARY DRAFT CHARGING SCHEDULE

- 2.1 The CIL Regulations (as amended) prescribe the processes that must be followed by local authorities seeking to introduce a Community Infrastructure Levy. The first stage is to publish a Preliminary Draft Charging Schedule (PDCS) for consultation. This needs to be followed by the publication of a Draft Charging Schedule, which must be subject to Public Examination by independent examiner before the Final Charging Schedule can be adopted by resolution of Full Council.
- 2.2 Plymouth's PDCS was published for consultation on 1 November 2011, with the consultation period ending on 13 December 2011. The PDCS included proposed rates to be levied on different types of development in Plymouth.
- 2.3 The main issues and concerns raised through the consultation process were:
 - (i) The effect of the proposed £60m² CIL charge on small residential developments which have not previously been subject to the Plymouth Development Tariff (i.e. developments of under five units).
 - (ii) The relationship between CIL and regeneration in areas with low land values.
 - (iii) The proposed application of uniform rates across the city.

- (iv) The relationship between CIL and Section 106.
- (v) The potentially negative impact of the proposed £30m² rate on smaller retail developments and thereby the City Centre and town, district and local centres.
- (vi) The proposed application of the £100m² rate to food superstores / supermarkets.
- (vii) The implications of the proposed CIL rates for the provision of purpose-built student accommodation.
- (viii) The phasing of CIL payments in accordance with any Instalments Policy.
- (ix) The circumstances in which discretionary relief from CIL will be applied in Plymouth, and in which the CIL rates will be reviewed.

2.4 A detailed account of representations and detailed responses to these representations is provided in a Schedule of Consultation Responses to the November 2011 Plymouth Preliminary Draft CIL Charging Schedule, which is available as a background paper.

3.0 DRAFT CHARGING SCHEDULE

3.1 These issues and concerns have been taken into account in the preparation of the Draft Charging Schedule attached as Appendix I to this report, as has further refinement of the viability analysis undertaken to inform the Preliminary Draft Charging Schedule.

3.2 The Draft CIL Charging Schedule must be published for consultation, prior to its Public Examination. This is to enable consultees to make representations which can be heard by the Examiner if they so choose. Following Public Examination, receipt of and response to the Examiner's report, the Final CIL Charging Schedule can be adopted.

3.3 The Draft Charging Schedule includes a table of charges that are intended to apply to particular developments across the city. When it comes to residential development, it is proposed that charges should vary, depending on the number of residential units, on whether the units are part of a high-rise development, and on whether the units constitute purpose-built student accommodation. A higher rate is proposed for the development of food superstores / supermarkets. These different rates have been arrived at following extensive evidence gathering and development viability testing.

3.4 The key consideration in setting CIL charges is their impact on development viability. As with all other local authorities, we have used a Residual Land Value appraisal approach to assess the financial capacity of development to pay a CIL charge. In other words, we have tested the extent to which value is generated by a given development so as to pay a CIL charge. The development appraisals we have deployed reflect a wide range of development contingencies that a developer could encounter in Plymouth. We have worked closely with a property valuations specialist to establish these contingencies. They have included items such as the current and expected health of the local economy; the potential achievable rental or sales values; the cost of purchasing development land, and construction costs. By varying these elements across a number of development appraisals, we gained

insight into the sensitivities that different developments have in their capacity to pay a CIL charge.

- 3.5 In developing the Draft Charging Schedule we have taken a cautious approach, meaning that we have proposed CIL charges at levels at which we have confidence that there is an adequate financial “cushion” so as not to introduce a financial burden to the extent that it puts future development at risk. As is apparent, the local economy has slowed significantly over the past three years and there are few signs that the situation will improve in the near-term. This has translated directly into a decline in the viability of property development.
- 3.6 There are a number of development typologies for which the evidence base shows there is no capacity to pay a CIL charge. These include offices (and other employment-related use classes), some retail uses and hotels. In Plymouth, the weak economy is hitting these sectors particularly hard. We also concluded that for high rise residential developments, the high construction costs leave this category without the capacity to pay a CIL charge. With regard to the residential sector more generally, the evidence base provides the rationale for the charges proposed. We have established differential rates for residential developments based upon the requirement for them to provide affordable housing. The evidence shows that for smaller schemes which are not required to deliver affordable housing, there is a greater capacity to pay a CIL charge. Other development categories for which the evidence base shows there is capacity to pay a CIL charge include (non high-rise) purpose-built student accommodation and larger food retail developments.
- 3.7 Paragraph 2.3 above lists the main issues and concerns raised through the consultation on the Preliminary Draft Charging Schedule. These have been considered carefully in the preparation of the Draft Charging Schedule. The main amendments proposed are set out below:
- The proposed rate for non-high-rise C3 (residential) developments of fewer than 15 units has been reduced from £60m² in the PDCS to £50m² in the Draft Charging Schedule. This responds to concerns raised through representations about the effects of the £60m² rate on the viability of small developments, which have higher build costs in comparison to larger developments.
 - The proposed rate of £60m² for purpose-built student accommodation of less than 6 storeys remains as it was in the PDCS, with the exception that developments of 6 storeys or more will have a nil charge. This responds to evidence of significantly higher build costs for high rise development, and makes the approach to student accommodation consistent with that applied to low and high rise non-student residential development.
 - The proposed PDCS charge of £30m² for ‘A’ uses of less than 10,000ft² has been removed. This responds to refined viability analysis and representations that the imposition of such a charge is likely, in the current economic climate, to push such development unacceptably close to the margins of viability.

- Clarification has been introduced that the proposed £100m² charge for food superstores / supermarkets also applies to extensions to those stores. Additionally, the threshold is now expressed in square metres rather than square feet, and a definition has been included to make it clear that the provisions relate to superstores and supermarkets that may also sell non-food goods as part of their overall mix.

3.8 In response to other key issues raised through the PDCS consultation process:

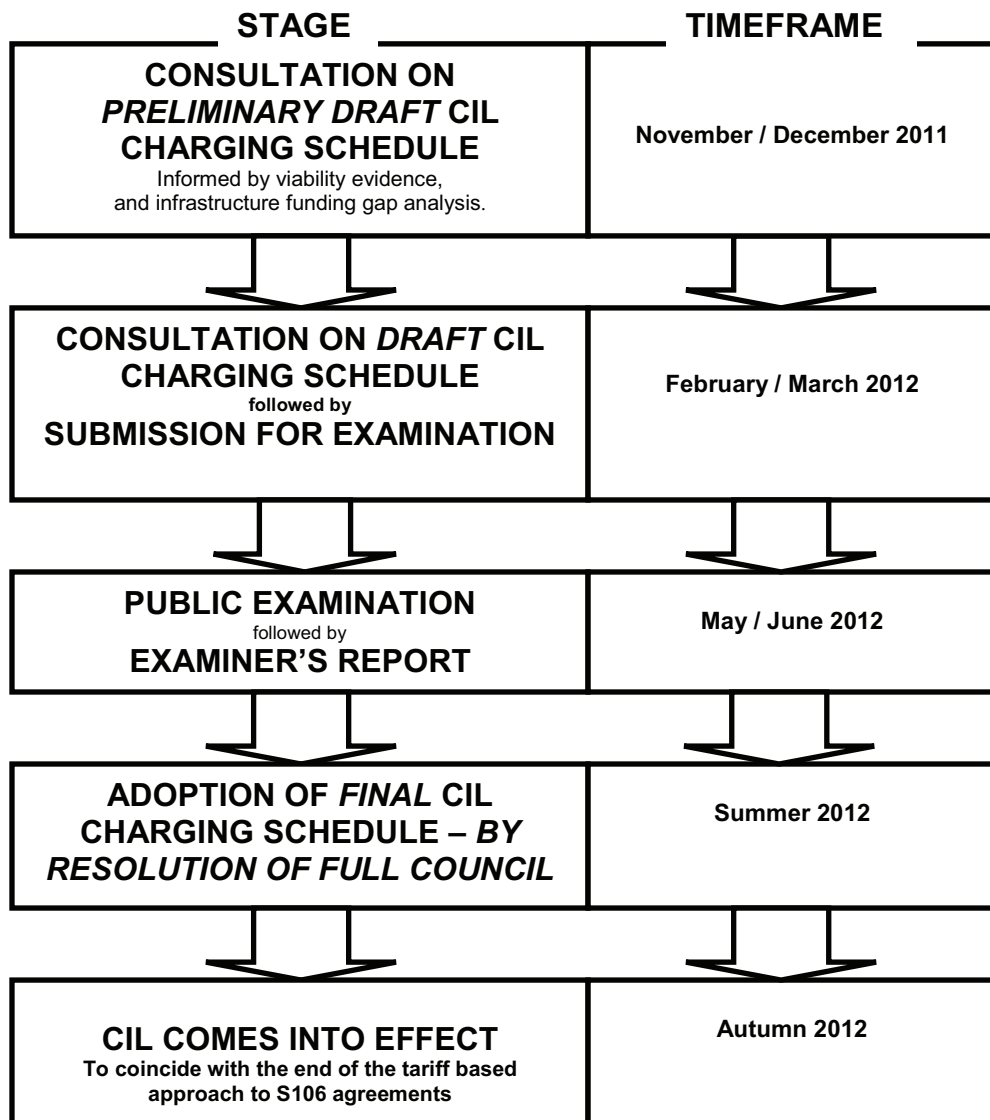
- Proposals for future review of the CIL Charging Schedule and the circumstances in which the provision of Discretionary Relief in Exceptional Circumstances will be considered will be presented to Cabinet when approval is sought for the adoption of the final Charging Schedule.
- It is not proposed to apply different rates in different geographical areas of the city. The rates proposed take full account of land values in the lowest value areas of the city and are not considered to compromise the viability of development in those areas. There is demonstrable evidence of developments being able to 'create value' in even the lowest value areas of the city.
- A separate report to Cabinet proposes consultation on amendments to the Planning Obligations and Affordable Housing SPD, and thereby addresses the relationship between CIL and Section 106 agreements.
- The Draft Charging Schedule incorporates a draft Instalments Policy. This is particularly important from the perspective of developers, in that the phasing of payments is critical to project cashflow, and thereby to securing development finance. By relating payments more closely with development revenue, the viability of schemes can be improved. The Instalments Policy has been drafted in consultation with Plymouth Regeneration Forum representatives and in the context of other authorities' proposed Instalments Policies.

4.0 NEXT STEPS – THE PROCESS AND PROGRAMME FOR ADOPTING A COMMUNITY INFRASTRUCTURE LEVY

- 4.1 Whilst the process for adopting a Final Charging Schedule has not changed since the 12 July 2011 Cabinet report, the programme has been amended to draw on the experience of the first examinations of other charging authorities' Draft Charging Schedules, which have provided clarity around timeframes and procedures. However, the overall timeframes for adoption and implementation of Plymouth's CIL are largely unchanged, with adoption of the Final Charging Schedule anticipated in Summer 2012, and with the Charging Schedule subsequently coming into effect in Autumn 2012.
- 4.2 The flowchart on the following page identifies the very broad process that needs to be followed in adopting Plymouth's CIL, along with indicative timeframes. Consultation with stakeholders on the Draft Charging Schedule will be the immediate focus, followed by Examination of the Draft Charging Schedule, and then adoption by resolution of the full Council. Further engagement will also take place with Council services to prepare for CIL implementation.

4.3 The flowchart does not identify all of the internal arrangements that will need to be made to accommodate CIL. For example, new administrative procedures need to be put in place to assess developments' CIL liability, a CIL-capable database will be implemented, new financial and accounting systems need to be put in place, and new legal compliance procedures need to be accommodated. Arrangements to administer and manage CIL will be put in place over the coming six to nine months.

IMPLEMENTING THE COMMUNITY INFRASTRUCTURE LEVY



APPENDIX I: DRAFT CIL CHARGING SCHEDULE

This Draft Charging Schedule sets out Plymouth City Council's Community Infrastructure Levy charging rates. These rates will apply uniformly across the City. It also incorporates a draft Instalments Policy relating to the payment of the levy.

Proposed CIL Rates

Plymouth's proposed CIL rates are as follows.

CIL RATES IN PLYMOUTH – in £s per square metre				
Development type	Rate	Development type	Rate	Notes
Residential Development:		Hotels	£0	*This rate includes the entire high rise development, including lower floors; however any low rise elements linked to but not structurally necessary to the high rise development will be liable to the relevant low rise rates. **For the purposes of this Charging Schedule, superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floor space as part of the overall mix of the unit.
• 15 units or more, non high-rise	£30	Cinemas and Commercial Leisure	£0	
• Less than 15 units, non high-rise	£50	Offices, Industrial Units, Storage and Distribution (B1/B2/B8)	£0	
• Purpose-built student accommodation, non high-rise	£60	Superstores / supermarkets** of 1000m ² gross internal floor area or more, including all extensions to such stores	£100	
• High rise residential & purpose built student accommodation – 6 storeys or more*	£0	All other retail uses, and financial & professional services, restaurants & cafes, drinking institutions, takeaways	£0	
Residential Institutions	£0	All Other Uses	£0	

Calculating the Chargeable Amount

The amount of CIL payable (the 'Chargeable Amount') will be calculated in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010, as amended.

The chargeable rate is set having regard to viability information, to ensure that the levy does not put at risk the overall development of the area. The rates will be updated annually for inflation, and will therefore be index linked to the national All-in Tender Price Index published from time to time by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors. If the BCIS ceases to publish the All-in Tender Price Index, the Retail Prices Index will be used instead.

Draft CIL Instalment Policy

Overview

Regulation 70 (7) of the Community Infrastructure Levy Regulations 2010 (as amended by the Community Infrastructure Levy (Amendment) Regulations 2011) sets a default of full payment of the Levy within 60 days of the commencement of development. The Regulations also enable a

Charging Authority to set an Instalment Policy that allows payments to be spread over longer periods.

The context for this proposed Instalments Policy is the Council’s strong desire to support and enable development and economic growth in the city. The Council recognises the significant economic constraints upon development and investors at this time of economic downturn. It therefore proposes a policy that allows CIL payments to be phased, including payments over longer timescales for large scale projects. This provides for payments to be spread across the development process so that they are, where possible, synchronised with development progress and development cash flows.

The commencement date is the date given on the commencement notice as advised by the developer under CIL Regulation 67. A failure of the developer to notify the Council of a commencement date results in an automatic surcharge and removal of the privilege to utilise the Council’s Instalment Policy.

Policy

The Community Infrastructure Levy is proposed to be payable by instalments as follows:-

Where the chargeable amount is less than £15,000	Full payment will be required within 90 days of the commencement date.
Where the chargeable amount is between £15,000 and £50,000	First instalment representing 25% of the chargeable amount will be required within 90 days of the commencement date. The second instalment representing 50% of the chargeable amount will be required within 270 days of the commencement date. The third instalment representing 25% of the chargeable amount will be required within 360 days of the commencement date.
Where the chargeable amount is over £50,000 but below £100,000	First instalment representing 25% of the chargeable amount will be required within 90 days of the commencement date. Second instalment representing 50% of the chargeable amount will be required within 360 days of the commencement date. Third instalment representing 25% of the chargeable amount will be required within 540 days of the commencement date.
Where the chargeable amount is £100,000 or above	First instalment representing 25% of the chargeable amount will be required within 90 days of the commencement date. Second instalment representing 25% of the chargeable amount will be required within 270 days of the commencement date. Third instalment representing 25% of the chargeable amount will be required within 540 days of the commencement date. The fourth instalment representing 25% of the chargeable amount will be required within 720 days of the commencement date.

CITY OF PLYMOUTH

Subject: Sex Establishment Licensing Policy
Committee: Cabinet
Date: 17 January 2012
Cabinet Member: Councillor Mike Leaves
CMT Member: Director of Place
Author: Andy Netherton, Manager Safety, Health and Licensing
Contact: Tel: 01752 304742
e-mail: andy.netherton@plymouth.gov.uk

Ref:

Key Decision: Yes

Part: I

Executive Summary:

Recent legislative changes provide the Council with the ability to have a greater level of control on the position and operation of sex establishments. Businesses that operate lap dancing and similar operations will now come under the same licensing system as sex shops and sex cinemas. This will require the adoption of the new legal provisions and an associated licensing policy. A draft policy has been open to public consultation, the results of which are contained in this report.

The Customers and Communities Overview and Scrutiny Panel have reviewed the consultation findings and the subsequent draft policy. Recommendations from the panel are contained in this report.

Corporate Plan 2011-2014:

This report links to the delivery of the corporate improvement priorities, in particular:

- Reducing inequalities between communities – through the appropriate licensing and control of sex establishments to reduce their impact on safety, wellbeing and local amenity.
 - Delivering sustainable growth – through the balance of regulation against the need to protect residents and creating a consistent regulatory environment in which legitimate businesses can operate
 - Keeping children safe – through the restriction of access, operation, location and appearance of premises
 - Providing more and better culture and leisure activities – Promoting a wide range of cultural and leisure opportunities in Plymouth and through the maintenance of operating standards by businesses
-

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

Fees are to be set locally and will be based on full cost recovery. Recommended fee levels are contained in this report and are a reasonable reflection of costs.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

Section 17 of the Crime and Disorder Act 1998 puts a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

The Policy has a key role in protecting workers in sex establishments and reducing the risk of sexual offences linked to the operation of sex establishments.

An Equalities Impact Assessment has been completed with no significant findings

Recommendations & Reasons for recommended action:

It is recommended that Cabinet members consider the report and

- A. Consider recommendation (1) from the Customer and Communities Overview and Scrutiny Panel regarding the condition on opening hours which was recommended to be included within the policy. To decide whether the wording of Option 1 or Option 2 as set out in Paragraph 5.1 of this report should be included within the Sex Establishments Licensing Policy that is to be recommended to City Council.
- B. Do not support the recommendation (2) from the Customer and Communities Overview and Scrutiny Panel regarding notification of applications as outlined in Paragraph 5.2. To decide whether the policy should be amended to include this recommendation within the Sex Establishments Licensing Policy that is to be recommended to City Council.
- C) Recommend to City Council to resolve the following:
 1. To adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by s.27 Policing and Crime Act 2009, which shall come into force on the 5 March 2012.
 2. To adopt the Sex Establishments Licensing Policy contained in Appendix A of this report subject to recommendations A and B
 3. To approve the Scheme of delegation contained in Appendix B of this report
 4. To approve the following fees and charges
 - Application Fee £3900
 - Variation Fee £ 800
 - Annual Renewal Fees £3200
 - Transfer £750

Alternative options considered and reasons for recommended action:

1) Not to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 – This would leave sex establishment licensing split between two different pieces of legislation. Sex shops and sex cinemas would remain regulated by the 1982 Act, with lap dancing and similar venues remaining under the Licensing Act 2003. The Licensing Act provides less freedom for matters which the Council can consider when deciding on a licence application. No controls on the number, location and appearance of lap dancing clubs would be possible. A further public consultation would be required if a decision not to adopt Schedule 3 is taken.

2) Recommend changes to the policy, individual elements of the policy could be altered. The main debating areas are discussed in this report. The recommended policy has been drafted to reflect the consultation feedback and officers considered opinions on good practice and government guidance.

Background papers:

[Local Government \(Miscellaneous Provisions\) Act 1982](#)

[Home Office Guidance – Sexual Entertainment Venues](#)

[Customers and Communities Overview and Scrutiny Panel \(18th July 2011\) Item 17](#)

Sign off:

Fin	CoS F ECI 112 001 TO CS	Leg	AG/12969/ 05.01.2012	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member: Jayne Donovan											

1.0 Background

The Council has previously adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (LGMPA), which allows local authorities to regulate premises to be used as “Sex Establishments” e.g. shops or cinemas. The Policing and Crime Act 2009, amends Schedule 3 of LGMPA to include “Sexual Entertainment Venues” in the meaning of sex establishments.

A sexual entertainment venue is defined as *“any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer”*

“Relevant Entertainment”, is defined as: *“any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”*

- 1.1 Premises which provide relevant entertainment on an infrequent basis are not sexual entertainment venues under Schedule 3 LGMPA and will continue to be regulated under the Licensing Act 2003. These are premises that provide relevant entertainment on no more than 11 occasions within a 12 month period, with one month between events and each event must not be longer than 24 hours. Any premises that provide relevant entertainment on more occasions, more frequently, or for a longer period of time than is permitted under this exemption will be operating as a sexual entertainment venue and will have committed an offence under Schedule 3 LGMPA unless they hold a sexual entertainment licence or the authority has waived the requirement for such a licence.
- 1.2 The new legislative controls available to the Licensing Authority will strengthen the role that local communities can play in deciding whether a sex establishment venue is appropriate for a particular locality. The provisions bring the licensing of lap dancing premises and similar venues in line with other “sex establishments” and allow the Licensing Authority to prescribe standard conditions on grounds not covered by the Licensing Act 2003 e.g. location, hours, display of adverts and the visibility of the interior of the premises.
- 1.3 Should the Authority adopt the provisions, there will be a further transitional period where existing operators can apply for licences under the new laws. New applicants can also within this period apply to the Licensing Authority for a licence; however, applications may not be determined before a period of six months after the date the provisions are adopted.
- 1.4 While local authorities are not required to publish a licensing policy relating to sex establishments, they can do so if they wish as long as it does not prevent any individual application from being considered on its merits at the time the application is made.
- 1.5 In determining suggested fee levels, Officers have had regard to the European Services Directive: Guidance for Local Authorities and LACORS Guidance on the impact of the Services Directive on councils setting and administering local licence fees. The fees have been based on a full cost recovery basis

1.6 The Council currently licences:

Two sex shops (no sex cinemas)

3 premises with the facility for lap dancing controlled by the Licensing Act 2003 (2 active).

Other premises may undertake activities which may require licensing

2.0 Consultation Process

In order to provide clear guidelines for the administration and decision making process for any applications a draft sex establishment policy was produced. This draft policy was subject to a public consultation which was made as wide as possible. The consultation process included direct mailing to:

- 675 individuals and groups, including community groups, faith groups, licensees holding a licence under the Licensing Act 2003, licensees currently holding a sex shop licence.
- All ward Councillors
- Members of Team Plymouth
- Public press release and articles in the Evening Herald
- Local community groups.

2.1 A total of 46 responses were received and the responses have been collated and attached at Appendix C. The full responses are available for members to view during the meeting.

2.2 The Customer and Communities Overview and Scrutiny Panel met on the 18th July 2011 to review the draft policy. Having considered the matter the panel agreed to recommend to the Overview and Scrutiny Management Board that the following matters are recommended to Cabinet –

- (1) the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982;
- (2) the content of the draft Sex Establishment Licensing Policy with the inclusion of the following -
 - (hours of opening) to include 'Good Friday' on a similar basis to Sundays;
 - (notification) that residents, chairs of school governors, religious establishments
 - within a specific distance from the proposed sex establishment, as well as the relevant Ward Councillors, are notified of any application by individual letters.

3.0 Regulators Compliance Code

The Legislative and Regulatory Reform Act 2006 and Statutory Code of Practice requires regulators to have regard to the principles contained in the Statutory Code of Practice when undertaking regulatory activities, including the establishment of policies. The specific obligations of the code relevant to this policy are;

3.1 Economic Progress

Regulators should consider the impact that their regulatory interventions may have on economic progress, including a consideration of the costs, effectiveness and perceptions of fairness of regulation. Regulators should consider the impact that their regulatory interventions may have on small businesses, ensuring that the regulatory interventions fall fairly and proportionately considering the size of the business and the nature of their activities.

3.2 Risk Assessment

Regulators should ensure that the allocation of their regulatory efforts is targeted where they would be most effective by maximising their target outcomes. In general policies and activities must target those businesses where greater controls will lead to the increased public protection.

3.3 No evidence has been submitted that identifies a disproportionate detrimental economic effect of the policy. It is important that each application must be taken on its own merits. The policy will provide clear guidance on the expectations and wishes of the Council when determining applications of this kind. Although the draft policy is clear that certain parts of the City are considered unsuitable, there may be scope for some applications to be approved if they meet the highly detailed requirements for the location and operation of premises. Careful consideration will be necessary should an existing premise not have a licence application renewed.

4.0 Provision of Services Regulations

This impacted on the policy in respect of fees, which must be set at reasonable levels and not be used as a deterrent and quantity limits, artificial limits must only be set where it is in the over-riding public interest to do so.

4.1 Fees

Fee levels are based on officer time and Council resources involved in the following activities:

- Processing of documents for applications, renewals and transfers
- Determination of applications by the Licensing Committee
- Enforcement of conditions on licence holders
- Dealing with complaints
- Introduction and regular review of a policy
- Maintenance of staff training and back office support such as IT support

Fee levels are based on full cost recovery which includes officer time, staff on costs and central support recharges. Suggested fee levels are:

Application Fee £3900

Variation Fee £ 800

Annual Renewal Fees £3200

Transfer £750

The European Services Directive requires that any fees are reasonable. The fee levels are relatively high due to the low numbers of licensed premises involved over which to spread the costs of the administration of the licensing system. The current fee for a sex shop is £2875 pa.

4.2 Quantity Limits

The draft policy has proposed that quantity limits be specified for Union Street and certain parts of the City Centre, in order to prevent an excessive number of premises within these areas. The proposed numbers are based both on the number of existing licences and how many premises could be present without compromising the nature, amenity and character of a neighbourhood. It is felt that it is in the overriding public interest to limit the over provision of this type of establishment in any one area.

5.0 The Policy

Following the consultation, the draft policy has included minor amendments and is in Appendix I.

5.1 Customer and Communities Overview and Scrutiny Panel (CCOS Panel)

Recommendation I

The content of the draft Sex Establishment Licensing Policy be amended with the inclusion of the following –

(hours of opening) to include ‘Good Friday’ on a similar basis to Sundays;

The current draft policy (Appendix I) states;

“The Council will apply hours of operation that are commensurate to the existing use area and its effect on residential property. There shall normally be no operation of licensable activities on Sundays (06.00 am to midnight), Christmas Day or Easter Sunday. Alternative opening restrictions may be put in place dependant on the character of each locality”.

Officers recommend consideration of the adoption of this inclusion and also consider additional wording on the last sentence to allow the Licensing Committee to consider alternative opening restrictions upon receipt of representations. This wording would give the Licensing Committee a definite starting point on opening hours but also the ability to set alternative times to allow trading to take place on Sundays or Bank Holidays when making decisions on applications or reviews of licences. This would allow the Licensing Committee to take into consideration factors such as previous history of the premises and their hours of operation; trading restrictions placed on a Sunday or any other religious and/or belief days and allow departure from the policy where appropriate.

The protection of Sundays still has residual legal protection, predominantly in the form of the Sunday Trading Act 1994. This limits the hours of Sunday opening dependant on the size and nature of the retail premises. The current Council policy prevents Sunday opening for the licensed sex shops. 71% of all respondents to the consultation were against Sunday opening.

If a less prescriptive and more flexible option is desired this could be achieved through the following wording.

"...The Council will apply conditions on hours of operation that are appropriate to the locality and have regard to any representations received..."

The adoption of this wording will allow the Licensing Committee to set opening hours but there will be no default position regarding the closure of premises on a Sunday, Good Friday, Easter Sunday or Christmas Day. The applicant would be able to request any hours and Licensing Committee would be able to make decisions on suitable trading hours. These restrictions will be dependant on considerations such as; location, activity, business operation and local community views including religious and/or belief matters. This flexible approach will allow restrictions to be tailored more appropriately to each application to take account of the variety of views likely to be received by the Licensing Committee.

In summary Cabinet members are requested to make recommendation to City Council on the wording of the policy regarding opening hours from the following two options;

Option 1

'The Council will apply hours of operation that are commensurate to the existing use of the area and its effect on the locality. There shall normally be no operation of licensable activities on Sundays and Good Friday (06.00 am to Midnight), Christmas day or Easter Sunday. Alternative opening restrictions may be put into place dependant on the character of each locality and representations received'

Option 2

'The Council will apply conditions on hours of operation that are appropriate to the locality and have regard to any representations received'

5.2 Customer and Communities Overview and Scrutiny Panel (CCOS Panel)

Recommendation 2

The content of the draft Sex Establishment Licensing Policy be amended with the inclusion of the following -

(notification) that residents, chairs of school governors, religious establishments within a specific distance from the proposed sex establishment, as well as the relevant Ward Councillors, are notified of any application by individual letters.

Officers' comments are that there is no statutory requirement on the Council to notify residents and businesses of applications. To do so would place additional requirements on the Council. It is proposed that ward Councillors are notified of applications within their ward or adjacent wards where appropriate. Applicants have statutory duties to publish a notice in a local paper and post a prescribed sign in the premises window. Consultation views on this subject were equally divided.

The Customers and Communities Overview and Scrutiny Panels recommended that residents, chairs of school governors, religious establishments within a specific distance from the proposed sex establishment, as well as the relevant Ward Councillors, are notified of any application by individual letters.

The addition of a voluntary commitment to notify local residents and businesses places an additional burden on the Council which is not supported by the legislation. Applicants are legally required to place a public notice in a local newspaper and also to display in a prominent location on the property a Council prescribed notice.

The proposed policy expands upon the legal requirement to specify that this notice must be separate to any other licence application, such as under the Licensing Act 2003. The proposed policy also expects the applicant to have undertaken reasonable steps to consult local residents, business and community groups in relation to applications for grant, or variation of the terms or conditions of a licence. The nature and extent of consultation will depend on the history of a particular premises and the perceived likelihood of problems occurring and objections being received. The proposed policy also states that local ward Councillors will be notified of each application.

It is considered that these proposed additional requirements sufficiently expand upon the legal requirements of the advertising provisions and to do more would open the Council to a risk of challenge and liability.

This recommendation is made in light of the recent appeal cases *Corporation of the Hall of Arts and Sciences v The Albert Court Residents' Association 2011* (Court of Appeal) which overturned the ruling in the Administrative Court case of *Albert Court Residents' Association versus Westminster City Council 2010* (Administrative Court).

Although the legal provisions for the licensing of sex entertainment establishment are contained in the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and not the Licensing Act 2003, it is officers' opinion that these cases could equally be applied to the proposals now being considered.

An additional consideration concerning the proposal to adopt the proposed procedure of notification relates to the application fees that can be set. Under the legislation the application fee must be reasonable and cover the administrative process. Including additional administrative procedures which are not specified under the Act, and including the costs of these in the fees calculation could lead to challenge and in turn could result in the costs of this work being unrecoverable.

Officers consider that the legal and proposed policy requirements placed on applicants taken together with the notification of ward Councillors should provide an acceptable level of notification to local businesses and residents.

The Police Reform and Social Responsibility Act 2011 will, however, result in Licensing Authorities having a statutory duty to publicise applications received under the Licensing Act 2003. The precise details of the notification and publicity system are not yet known.

This aspect of the policy will, therefore, be reviewed in light of any changes.

Other policy considerations

5.3 Locality criteria

There was general support for the locality statements and the areas considered to be sensitive.

5.4 Minimum distance

An arbitrary measurement of distance from sensitive areas does not allow flexibility to allow for local circumstances and geography. It is therefore proposed that no distances are prescribed in the policy. 72% of respondents felt that a distance should not be specified.

5.5 Existing Premises

Premises that are currently licensed or undertake activities covered by the policy will be invited to apply for a new licence. Additional detail has been added to the policy to clarify the Councils position regarding an existing business' right to continue trading even though it may not completely comply with the new policy requirements. A balance must be obtained between the achievement of the licensing objectives and human rights; these being Article 1, Protocol 1 of the European Convention on Human Rights (peaceful enjoyment of possessions) and Article 10 (Freedom of expression). *Belfast City Council v Miss Behavin' Ltd* is the leading case and it is clear that any decision to refuse an existing licence must be rational, necessary and proportionate for the promotion of the licensing objectives.

6.0 Scheme of Delegation

The current constitution identifies the Licensing Committee as having responsibility for sex establishment licensing. Appendix B identifies a scheme of delegation appropriate for the Committee and officers

7.0 Conclusion

The policy was generally considered favourably by those responding to the consultation and should provide a basis for rational and reasonable determination of licence applications.

Draft

Sex Establishment

Licensing Policy

Effective date:

CONTENTS

INTRODUCTION

SCOPE AND PURPOSE

LICENSING OBJECTIVES

RELEVANT LOCALITY STATEMENT

QUANTITY LIMIT STATEMENT

DETERMINATION OF APPLICATIONS

MANAGEMENT OF THE PREMISES

ENFORCEMENT

POLICY REVIEW

APPENDIX 1 - DEFINITIONS

APPENDIX 2 - APPLICATION, CONSULTATION AND HEARING PROCEDURES

APPENDIX 3 - TRANSITIONAL PROVISIONS

CONTACT POINTS

PAGE NUMBERS TO BE ADDED ON PUBLISHED VERSION

INTRODUCTION

The City Of Plymouth is the second largest City on the south coast of England and, after, Bristol, the largest in the South West with a residential population in the region of 256,700. Looked upon as the regional capital of Devon and Cornwall, Plymouth has a rich combination of heritage and natural beauty in what is a thriving maritime city that attracts millions of visitors.

The City is located in an area of outstanding beauty, with the Dartmoor National Park to the north, the natural harbour of Plymouth Sound to the south and the rivers Plym and Tamar on either side. Plymouth's rich history and maritime heritage, combines the advantages of city living with the benefits of having the diverse countryside and coastline of Devon and Cornwall on its doorstep.

Plymouth City Council employed the world-renowned architect David Mackay and the 'Mackay Vision' are embedded in the on-going re-development of Plymouth. It is likely that over the next twenty years it is reasonable to expect that the population of Plymouth could rise to between 300,000 - 350,000 due to urban expansion.

This Licensing Authority recognises that the provision of entertainment is a major contributor to the economy of the City, attracting tourists and visitors, making for a vibrant City, which in turn continues to be a major employer. Commercial occupiers of premises have a legitimate expectation of an environment that is attractive and sustainable for their businesses balanced by the needs of residents and views of the Council.



SCOPE AND PURPOSE

The Council recognises and values the communities' views and opinions. The government has amended controls on the legitimate operation of sex establishments and that such businesses are a legitimate part of the retail and leisure industry. The Council is not able to take a moral view on sex establishments.

This policy statement has amongst other things, four main purposes;

- To inform applicants of the parameters within which the Council will make licensing decisions.
- To provide guidance to local residents and businesses of the boundaries within which the Licensing Authority will make licensing decisions.
- To provide Members of the Licensing Committee with a decision making framework.
- To support the Licensing Authority if it has to demonstrate in a court of law how it arrived at its licensing decisions

Plymouth City Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous) Provisions Act 1982 (as amended) to come into effect on the 5th March 2012, providing that anyone wishing to operate a "sex establishment" within the City must first obtain a licence from the Council. This policy sets out the principles that the Council will apply when making decisions relating to the operation of sex establishments. It outlines the control measures that the Council will consider prior to licensing a sex establishment including guidance on the quantity limits to be applied in defined areas. It is the Council's intention to facilitate well run and managed businesses with licence holders displaying sensitivity to the impact of their premises on local residents.

All applications for new, variation or transfer of sex establishment licences outlined in this policy will be considered by the Licensing Committee or Licensing Sub-Committee as the committee responsible for determining applications at a public hearing, or officers where appropriate delegated powers have been granted.

A 'sex establishment' means a 'sex shop', a 'sex cinema' or a 'sexual entertainment venue'. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control.

The definitions of each type of sex establishment can be found in Appendix I

Appendix 3 contains transitional provisions and is contained only for guidance and to make this document as comprehensive as possible

LICENSING OBJECTIVES

The Council will expect applicants to submit applications and where a licence is granted operate their businesses, to prevent or minimise its impact on;

- The prevention of crime and disorder
- The protection of safety, health or public decency
- The prevention of nuisance
- The protection from children from harm
- Protecting the nature, amenity and character of a neighbourhood

These licensing objectives will be taken into account when determining an application and any conditions attached will be necessary and designed to achieve the licensing objectives. Applicants must satisfy the Council of how they will promote the licensing objectives. A copy of the conditions may be required to be prominently displayed on the premises for the use of employees, workers and patrons.

Guidance on the issues to be considered is below.

Prevention of Crime and Disorder:

In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications. In giving due regard to these possible implications members will consider and weigh up all the information available and representations made, including those from the public and other relevant authorities.

Applicants should consider the following control measures as examples of good practice that may be considered as part of their application.

- Use of appropriate numbers of security personal and stewards ensuring effective controls at all times
- Training staff in crime prevention measures
- Membership requirements where appropriate
- Use of CCTV inside of all areas to which the public have access and the outside areas of the premises, ensuring digital systems comply with Home Office and Information Commissioners Office (ICO) minimum requirements.
- Quality of supervision and surveillance in premises
- Regular checks by management and door supervisors of all public areas including toilets
- Assessment of customer profile ensuring effective management of customers both inside premises and in outside smoking / external seating areas
- Anti-discriminatory policies and practice covering e.g. homophobia, racism and hate crime
- Awareness of drink spiking
- Zero tolerance drug policies including the appropriate use of searching and drug safes to combat drug crime
- Active participation in club/pub watch schemes
- Maintenance of comprehensive staff records and training records
- Clear published policies regarding the standards of behaviour expected from staff and customers

Protection of Safety, Health and Public Decency

The operation of any sex establishment should not prejudice the safety or health of anyone, including any performers. In addition the presence and operation of a sex establishment must not adversely affect the public decency and behaviour of residents or patrons. Applicants should consider control measures that will address the following factors;

- The health, safety and wellbeing of any performers, e.g. secure access and egress, adequate changing facilities, internal CCTV.
- Provision of information to performers regarding support groups for those working in the sex industry.
- Clear policies relating to the prevention of exploitation of vulnerable adults, drug, alcohol and substance misuse
- Employees to receive training approved by Plymouth Safeguarding Children Board on the identification of potential exploitation or trafficking of vulnerable adults and to notify the Police of concerns
- The health, safety and wellbeing of any patrons
- Maintenance of acceptable behaviour of patrons
- Positive messages regarding sexual health
- Active participation in schemes to reduce and prevent sexual violence and maintenance of policies in respect of same
- The external appearance and advertising of the business will not overtly alert passersby to the presence and nature of the business

Prevention of Nuisance

Any commercial activity has the potential to create nuisance whether by noise, litter or anti-social behaviour from the operation of the business or the activities of patrons. Applicants should have regard to the following factors;

- The nature and hours of operation
- The location of premises and character of the surrounding area in relation to the proximity to residential and other noise sensitive premises
- Latest admission times
- Measures for the limitation of noise emissions from the premises. These may include noise limitation devices, sound insulation, the installation of acoustic lobbies and double glazing and the installation of air quality management systems.
- Measures to deal with queuing outside the premises
- Effective management and control of outside areas i.e. smoking areas
- Measures to deal with dispersal of customers from the premises including the employment of door supervisors, use of dedicated taxi firms, notices in the premises requesting customers to respect neighbours

Protection of Children from Harm:

The operation of any sex establishment should not prejudice the safety of children and applicants should have regard to following factors that may be used to protect children from harm;

- Premises to have a policy relating to the protection of children from harm
- No unsuitable external promotion or advertising of the premises whilst the premises is closed e.g. flashing neon signs or similar
- Premises to operate a Challenge 21/25 proof of age scheme before patrons access the premises. Employees must receive training on the operation of the proof of age policy and keep records of such training.
- Records to be kept of refusals and incidents
- Employees to receive training on the identification of potential exploitation or trafficking of children and to notify the Police of concerns
- Prominently displayed signs barring under 18 year olds
- Screening or obscuring of windows, doors and other openings so that the interior of the licensed premises and the displays of articles sold at the premises shall not be visible at any time to persons outside the building
- Goods to be discreetly wrapped before leaving the premises and when being delivered
- Use of CCTV inside of all areas to which the public have access and the outside areas of the premises, ensuring digital systems comply with Home Office and Information Commissioners Office (ICO) minimum requirements.
- The external appearance and advertising of the business will not overtly alert children to the presence and nature of the business

Protecting the Nature, Amenity and Character of a Neighbourhood

The Council does not wish for an establishment to be inappropriately located or for any neighbourhood or locality to become dominated by the presence of sex establishments. Equally the Council recognises the need to encourage the promotion and development of a broad range of entertainment and leisure opportunities. When considering applications decisions will balance the needs of the community with the needs of the applicant.

The Council will consider the following factors and expect applicants to develop management strategies that have regard to the locality including nearby sensitive buildings or activities.

- The external appearance of premises
- Sightlines and surveillance
- Lighting and ability to monitor in relation to crime and disorder
- External advertising on buildings
- Hours of operation
- Nature of activities
- The concentration of premises licensed as Sex Establishments in a particular neighbourhood or locality

RELEVANT LOCALITY STATEMENT

Schedule 3 of the Act allows the Council to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the Council considers appropriate for that locality; or that a sex establishment would be inappropriate having regard to the character of the relevant locality, the use of any premises in the vicinity or the layout, character or condition of the premises. Nil may be the appropriate number.

The Council does not consider it appropriate to define the entire city as having the benefit of a quantity limit. A ‘locality’ is not defined on a map with a finite arbitrary boundary but it is intended to be a virtual boundary that has regard to neighbourhoods, natural boundaries, postal districts and local precedents. Material decisions that might be relevant to a local community could include a licensed premises that is ‘on the way to the’ local shops, school or places of worship.

In relation to a vehicle, vessel or stall the locality under consideration will be where it is desired to use it as a sex establishment.

The Council will consider it unsuitable to have a sex establishment located within an inappropriate distance from;

- A residential area
- Premises, areas or access routes to such premises or areas which are designed for or attract children or families, such as; schools, play areas, parks, children’s centres, youth clubs, nurseries or leisure facilities and other similar sensitive premises
- Places of public religious worship
- A shopping area aimed at attracting residents and visitors to the City
- Community facilities or public buildings
- Historic buildings, cultural attractions, educational establishments or areas and tourist attractions
- A locality with a history of specific social difficulties
- A gateway to an identifiable locality
- Where there is already a sex establishment

An inappropriate distance will be dependant on the type, size, appearance, position and operation of the premises when considered against the specific nature of the locality in question.

Given the above criteria it is considered that currently the only areas considered as suitable for the provision of certain defined licensed sex establishment premises are the areas known as;

- Union Street
- City Centre

Any applications in these areas are still subject to the requirements identified in this policy.

All other parts of the City are generally considered unacceptable, although each case would be considered on its own merits having regard to the specific detail of the application. For example; it may be appropriate based on the individual merits of the application to grant a licence in a commercial area where there are no residential properties, such as on a business park.

QUANTITY LIMIT STATEMENT

The Act allows the Council to determine a number of sex establishments in a specific locality. This can include determining that the appropriate number is **nil**. The Council considers that there is an overriding public interest to justify quantity limits for the areas known as Union St and the City Centre to avoid an excessive build up of sex establishments, thereby undermining the character and nature of the designated areas.

Whilst applications will be determined based on their individual merits there will be a presumption against granting additional licenses in areas where the number considered appropriate for that locality have already been granted.

The Council will not take account of commercial need. This is a matter for market forces and may be a relevant consideration for planning applications. The existence or absence of suitable planning approval is not a relevant consideration for the Council, but is a matter for the applicant.

For each of the following areas the number of sex establishments considered as appropriate is;

Location	No of Sex Shops / Cinema	No of Sexual Entertainment venues
Union Street	1	2
City Centre	1	Nil

For all other localities the appropriate number will be **nil**.

DETERMINATION OF APPLICATIONS

Existing Businesses

Those businesses either licensed or undertaking licensable activities prior to the adoption of this policy (see transitional arrangements) may apply under the new licensing regime. Existing businesses have limited rights to continue trading even though it may not completely accord with the new policy aspirations and expectations. A balance must be obtained between the achievement of the licensing objectives and human rights; these being Article 1, Protocol 1 of the European Convention on Human Rights (peaceful enjoyment of possessions) and Article 10 (Freedom of expression). Any decision to refuse an existing licence must be rational, necessary and proportionate for the promotion of the licensing objectives. Anyone wishing to object to the grant of a licence for existing businesses must provide supporting evidence to demonstrate the impact on the locality with reference to the licensing objectives.

Applications for the grant, variation, renewal or transfer

The application process is set out in Appendix 2.

The transitional arrangements for the introduction and implementation of this policy for the inclusion of sexual entertainment venues within Schedule 3 of the Act and for guidance are set out in Appendix 3 Please refer to the Act for final interpretation.

The Council will expect applicants to submit applications and where granted, operate their businesses to prevent or minimise an impact on the licensing objectives;

- Crime and disorder
- The protection of safety, health or public decency
- The prevention of nuisance
- The protection from children from harm
- Protecting the nature, amenity and character of a neighbourhood

When considering an application for grant, renewal or variation, the Council will in particular consider the;

- (a) Type of activity
- (b) Duration of proposed licence
- (c) Proposed hours of operation
- (d) Layout, appearance and condition of the premises
- (e) The use to which premises in the vicinity are put
- (f) The character of the locality in which the premises are situated or relevant development or strategic plans adopted by the Council
- (g) Levels of recorded crime and disorder in the area

The Council will expect the applicant to have undertaken reasonable steps to consult local residents, business and community groups in relation to applications for grant, or variation of the terms or conditions of a licence. The nature and extent of consultation will depend on the history of a particular premises and the perceived likelihood of problems occurring and objections being received.

Where an application is to renew an existing sex shop, sex cinema or sexual entertainment venue the Council will have regard to the previous history of the premises, and material changes to the operation of the premises, any non-compliance, any planning policies and regeneration factors and any other matters considered material to the application.

When considering all applications the Council will take into account:

- (a) Past demonstrable adverse impact from the activity
- (b) Whether appropriate measures have been agreed and put into effect by the applicant to mitigate any adverse impacts.

- (c) Premises that were previously granted a licence cannot automatically expect re-issue where, for example, the medium and long term aspirations for the locality have changed and the continuation of that licensed premises would undermine the revised aspirations of that locality and as a consequence re-issue would not be justified.

Fitness of Applicant

An applicant must be a fit and proper person to hold a licence. In determining suitability for a new licence or a transfer the Council will have regard to;

- (a) Previous knowledge and experience of the applicant and
- (b) Any evidence of the operation of any existing or previous licence held by the applicant, including any licence held in any other Licensing Authority and
- (c) Any report about the applicant and management of the premises received from statutory objectors/responsible authorities
- (d) Any criminal convictions, cautions, warnings or information supplied by the Police or other agencies.

Length of Licence

Licences will generally be granted for a duration of 1 year.

Waivers

The Council does not consider it appropriate for waivers to be issued except in extreme circumstances.

Notices

Applicants for sex establishments must offer proof of giving public notice of the application in a local newspaper. The advertisement must be no later than 7 days after the date the application is made.

Where it relates to a premise a notice must be displayed on or near the premises in a place where it can conveniently be read by members of the public. The notice must be in place for 21 days beginning with the date the application was made.

All notices must be in the form prescribed by the Council at that time. Where a separate application is being made under the Licensing Act 2003 a separate notice will be required.

Applications for any sex establishment must be the subject of separate public notices and advertisements and not linked to any premises licence application. This is to ensure that the local community has every opportunity to be aware of the specific submission of an application within the terms of Schedule 3 of the Act.

Fees

The Act states that applicants shall pay a reasonable fee for the grant, renewal, variation or transfer of a sex establishment licence. The City Council will set fees on the basis of full cost recovery.

Hours of Opening

* See Cabinet Report The Council will apply hours of operation that are commensurate to the existing use area and its effect on residential property. There shall normally be no operation of licensable activities on Sundays (06.00 am to midnight), Christmas Day or Easter Sunday. Alternative opening restrictions may be put in place dependant on the character of each locality.* See Cabinet Report

Disability Discrimination

The Disability Discrimination Act 1995 introduced measures to tackle discrimination encountered by disabled people in the areas of employment, access to goods, facilities and services and the management, buying or renting of land or property. Applicants will be expected to:

- Make reasonable adjustments for disabled people, such as providing extra help to make changes to the way they provide their services
- Make reasonable adjustments to the physical features of the premises to overcome physical barriers to access

The Council will have regard to the likely impact of licensing of sex establishments on disability discrimination and the requirements of the Equality Act 2010, particularly when considering the operation and management of the premises.

Sex Shop

Licenses for sex shops are required where R18 films being sold or where a significant degree of sex articles are offered for sale.

The term significant degree is not defined. When considering whether or not a licence is required the following factors will be considered;

1. The ratio of sex articles to other aspects of the business
2. The absolute quantity of sales
3. The character of the remaining business
4. Nature of the displays in the business
5. Turnover

The Council will consider any other relevant material, information or data relevant to the particular premises.

MANAGEMENT OF THE PREMISES

The Council requires all licence holders to ensure that they and their employees comply with all relevant licence conditions.

In terms of management of licensed sex establishment, the Council strongly encourages where possible and appropriate, that licence holders;

- (a) Work with statutory agencies such as the Police, and Council departments in order to create and maintain a safe environment, both within licensed premises and in the environs around them

- (b) Develop crime prevention strategies in consultation with the Police and the Council, in particular where premises are located in areas with high levels of recorded crime.

In terms of the employment of staff in licensed premises, the Council requires that all staff be appropriately trained in areas such as the legislation relating to sex establishments, any licence conditions, and any proof of age policies.

ENFORCEMENT

Once licensed, it is essential that the premises are maintained and operated so as to ensure the compliance with the specific terms of the licence and any condition attached. The Council will make arrangements to monitor premises.

The Council will work closely with all other relevant statutory bodies to ensure an efficient deployment of all personnel engaged in enforcing licensing law and inspecting licensed sex establishments, in order to ensure that resources are targeted at problem and high risk premises, whilst ensuring that all such premises meet the required standards.

Failure to maintain compliance may result in action being taken in accordance with the Council's relevant Enforcement Policies.

EXCHANGE OF INFORMATION

From time to time the Council may exercise its powers under section 115 of the Crime and Disorder Act 1998 to exchange data and information with the Police and other partners to fulfil the statutory duty of reducing crime

The name and addresses of objectors will not be disclosed to applicants or published in public reports.

POLICY REVIEW

The Council will review this policy as required by the governing legislation or when deemed necessary.

APPENDIX I

DEFINITIONS

The meanings assigned in this document have been paraphrased from Schedule 3 of the Act. The definitions are considered correct as at the date of this policy. Please refer to the Act for final interpretation.

A ‘sex establishment’ means:

A ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. It includes any premises, vehicle, vessel or stall used as a sex establishment but does not apply to the sale, supply or demonstration of articles which are manufactured for use primarily for the purposes of birth control or primarily relate to birth control”.

A “sexual entertainment venue” means:

“Any premises at which relevant entertainment is provided before a live audience for financial gain of an organiser”

“Relevant entertainment” means:

“Any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). An audience includes an audience of one”

For the purpose of the definitions for “sexual entertainment venue” and “relevant entertainment definitions”, it does not matter whether the financial gain arises directly or indirectly from the performance or display of nudity.

“Audience” includes an audience of one

“A display of nudity” means:

- (a) In the case of a woman, exposure of her nipples, pubic area, genitals or anus; and
- (b) In the case of a man, exposure of his pubic area, genitals or anus;

“The organiser” means any person who is responsible for the organisation or management of;

- (a) The relevant entertainment; or
- (b) The premises;

“Premises” includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.

A “sex cinema” means;

Any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which

- (a) Are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage
 - (i) Sexual activity; or
 - (ii) Acts of force or restraint which are associated with sexual activity; or
- (b) Are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.

No premises shall be treated as a sex cinema by reason only

- (a) If they may be used for an exhibition of a film (with the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act) of their use in accordance with that authorisation; or
- (b) Of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985

A **“sex shop”** means:

Any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating

- (a) Sex articles; or
- (b) Other things intended for use in connection with, or for the purpose of stimulating or encouraging -
 - (i) Sexual activity; or
 - (ii) Acts of force or restraint which are associated with sexual activity.

No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

A **“sex article”** means;

- (a) Anything made for use in connection with, or for the purpose of stimulating or encouraging
 - (i) Sexual activity; or
 - (ii) Acts of force or restraint which are associated with sexual activity; and
- (b) Anything to which the below applies.

To any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and

To any recording of vision or sound, which

- (i) Is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or
- (ii) Is concerned primarily with the portrayal of, or primarily deals with or relates to, genital organs, or urinary or excretory functions.

APPENDIX 2

APPLICATION, CONSULTATION AND HEARING PROCEDURES

Application Process

The Licensing Section, Public Protection Service will have responsibility for processing any application having regard to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (“the Act”) , relevant statutory guidance, national and local licensing policies.

The application form and relevant documentation for the new licence, renewal, variation or transfer must be completed and returned with the appropriate fee as determined by the Council’s fees and charges. Application forms can be accessed from the Council’s Licensing website or are available upon request from the Licensing Section.

In keeping with the requirements of the EU Services Directive applications may be made electronically. For further information, please visit the Council’s licensing website or contact the Licensing Section.

It should be noted that as a result of the Provision of Services Regulations 2009 tacit authorisation of an application does not apply as different arrangements are in place with regard to the notifications of determination of an application.

A notice of the application must be advertised both on or near the premises and in a local newspaper circulating within the area of the premises i.e. Evening Herald. The notice must clearly identify the premises to which the application relates. Sample prescribed notices are available on the website. The notice on or near the premises shall be displayed for 21 days beginning with the date of the application and in a place where it can be conveniently read by the public.

The notice in the newspaper shall be published no later than 7 days after the date of the application.

The Council recognises that there will be some ‘cross over’ in the management and control of the premises having regard to the requirements of the Licensing Act 2003. The Council will expect the applicant to have considered the factors and to have drawn comparisons where appropriate in promoting the licensing objectives. This is particularly relevant where the premises already has or is applying for a premises licence.

Applicants are advised to consider the Council’s pool of conditions

The applicant shall use the prescribed form published by the Council for any application and supply the details requested. These details may include:

Site plan (1:1250)

Premises plan (1:50) showing all entrance and exit points, all parts used and the licensed areas suitable marked

Drawings of the elevations including signage and advertising

Personal / company details

Details of previous convictions

Consultation

A copy of the application form and supporting documentation must be sent to the Chief Officer of Police within 7 days of the date the application was given to the Licensing Authority.

The Council may consult with the following authorities to ensure that all relevant information is available when considering an application;

- Devon & Cornwall Police
- Devon and Somerset Fire & Rescue Service
- Public Protection Service, Plymouth City Council
- Planning Department, Plymouth City Council
- Crime Reduction Safety Partnership
- Child Protection Board

The Council will consult any other organisation it deems relevant to a particular application. Relevant Ward Councillors will be notified of all applications for grant, renewal and transfer of licences and the variation of conditions within their Ward, and also those on or near the Ward boundary.

Representations

Representations may be made to an application by any person, business, community group or representative of any of the above who live in the vicinity and /or have a reasonable expectation to be in a position to comment. The final arbiter of whether any representation is relevant having regard to the specific application will be the Licensing Officer duly authorised by the Council to process the application.

A relevant representation will state the grounds on which the objection/positive representation is made and will need to be made in the following terms:

- Be made in writing
- Indicate the name and address of the person or organisation making the representation
- Indicate the premises to which the objection relates
- Indicate the proximity of the premises to the person making the representation.
- Link the representation as to how the licensing objectives would be compromised

Representations may only be made within the period of 28 days following the date on which the application was given to the Council.

The Council will not normally consider any representation that does not contain the name and address of the person making it. Any personal details received will not be disclosed in the Committee report

Representations received that are frivolous or vexatious or which relate solely to moral grounds is likely to be given lesser weight.

Where representations are made the Licensing Authority will provide copies to the applicant.

Where objections are made and not withdrawn, a hearing before a Licensing Sub Committee will normally be held within 20 working days of the end of the period during which representations may be made, unless all parties agree that a hearing isn't necessary. At this point all interested parties will have the opportunity to attend.

Decision Making

The Council recognises that the licensing of sex establishments is controversial and stimulates very emotive arguments. However, the Council does not have the right to, and will not, have regard solely to the morality of sex establishments. Its approval or disapproval of sex establishments is not a matter that can be considered. Consequently, objections on the grounds that sex establishments should not be allowed only on moral grounds will not be considered.

Hearings

All applications for new, variations or transfer of sex establishment licences will be considered at a public hearing by Licensing Committee or Licensing Sub-Committee as the committee responsible for determining applications or officers where appropriate delegated powers have been granted.

With regard to renewals where the appropriate application procedures have been followed and where no relevant representations have been submitted officers will normally have delegated authority to process the application and where appropriate, issue the licence

Representations will be considered by Committee. There are no explicit provisions for objectors to be heard, but the Council has discretion on this matter.

Individuals or responsible authorities will only normally be afforded a hearing if the Chair is satisfied that;

- (a) A relevant written objection was received during the statutory 28 day consultation period
- (b) The objector will be confined to putting forward only those points that are relevant to consideration of the grounds of refusal and which have been notified in writing to the applicant
- (c) Objectors and applicant will be heard on the same occasion as the hearing
- (d) The applicant will be afforded the opportunity to address the committee and respond to any enquiries members may have.

Members may adjourn to private session to discuss the case before making a decision. A verbal decision will normally be given that day with a written decision sent within 5 working days stating the Committee's reasons for that decision.

The Committee after due consideration may decide to grant or refuse the licence under the provisions in Schedule 3 of the Act, or may grant a licence on such terms and conditions and subject to such restrictions as it may specify.

Conditions may be imposed for example to control:

- (a) The external appearance of the premises;
- (b) The operating hours of the business;
- (c) The visibility of the interior of the establishment to passers by;
- (d) Any change of use of any kind of sex establishment to another;
- (e) Displays or advertisements on or in such establishments;
- (f) CCTV provision;
- (g) The employment of suitable management & staff.
- (h) Restrictions on age of customers
- (i) Suitable proof of age schemes or policies

A pool of conditions will be used to provide conditions that are proportionate and necessary for the operation, management and control of the particular premises. Officers will recommend suitable conditions for each application.

Grounds for Refusal

Mandatory Refusal - under the provisions in Schedule 3 of the Act, the Council must refuse a licence for the following reasons

- (a) To a person under the age of 18; or
- (b) To a person who is disqualified by virtue of the revocation of a previous licence in the area within the preceding 12 months; or
- (c) To a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made, or
- (d) To a body corporate which is not incorporated in an EEA State; or
- (e) To a person who has been refused an application for a licence for the premises within the preceding 12 months, unless the refusal has been reversed on appeal.

Discretionary refusal – the Council may refuse to grant a licence on one or more of the following grounds:

- (a) That the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) That if the licence were to be granted the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant of a licence if he made the application himself;
- (c) That the number of sex establishments in the relevant locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for that locality (the number may be nil);
- (d) That the grant of the licence would be inappropriate, having regard to:
 - (i) The character of the locality where the premises are situated; or
 - (ii) The use to which any premises in the vicinity are put; or
 - (iii) The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

Appeals

An applicant for the grant of a licence whose application is refused has the right of appeal to the Magistrates' Court within 21 days. However, if refusal was on the grounds specified in paragraphs above then no right of appeal is available under this legislation. A person whose application is refused due to these reasons may attempt to invoke a judicial review of the Council's use of its discretion in coming to a decision. Those making representation, objecting to or supporting an application, have no right of appeal under this piece of legislation.

APPENDIX 3

TRANSITIONAL PROVISIONS

The legal aspects of the transitional provisions are set out in the Policing and Crime Act 2009 (Commencement No1 and Transitional and Saving Provisions)(England) Order 2010 (The transitional Order) and the legal aspects of the transitional provisions are set out in the Policing and Crime Act 2009 (Consequential Provisions(England) Order 2010 (The Consequential Order)

The 1st Appointed day will be 5th March 2012

The 2nd Appointed day will be 5th September 2012

The 3rd Appointed day will be 5th March 2013

Existing Operators

Existing operators who immediately before the 1st Appointed Day have a 2003 Act licence and lawfully use that premises as a sexual entertainment venue under that licence will be allowed to continue to provide relevant entertainment until the 3rd Appointed Day or the determination of any application submitted before that time (including any appeal against the refusal to grant a licence), whichever is the later.

New Applicants

New applicants who do not meet the criteria for an existing operator will not be able to operate any activities which require a licence under this policy until the appropriate licence has been granted.

Determination of Applications received on or before the 2nd Appointed Day

Applicants can submit applications from the 1st Appointed Day onwards. Any applications received after the 1st Appointed Day but before the 2nd Appointed Day shall be considered together, so that in the case of a locality with a quantity limit applications are considered on their merit and not on a first come first served basis.

No applications will therefore be determined before the 2nd Appointed Day.

If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence it will take effect on the 3rd Appointed Day.

Determination of Applications received after the 2nd Appointed Day

Applications will be considered when they are made but only once all applications made on or before that date have been determined. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence it will take effect on the 3rd Appointed Day or if later the date the application is determined.

CONTACT POINTS

For advice on any aspect of this policy please contact:

Licensing Section, Public Protection Service, Plymouth Council, Floor 6 Civic Centre, Plymouth, PL1 2AA

Tel: 01752 – 304141

Fax: 01752 – 226314

Email: licensing@plymouth.gov.uk

Police Licensing Team, Licensing Department (West), Launceston Police Station, Moorland Road, Launceston, Cornwall PL15 7HY

Tel: 01566 771309

Fax: 01566 771388

Email: licensingwest@devonandcornwall.pnn.police.uk

Child Protection, Child Protection Team, Social Services, Ginkgo House, 156 Mannamead Road, Plymouth, PL3 5QL

Tel: 01752 306340

Fax: 01752 306344

Email: childprotect@plymouth.gov.uk

Devon & Somerset Fire & Rescue Service, West Devon Headquarters, Glen Road, Plympton, Plymouth, PL7 3XT

Tel: 01752 333600

Fax: 01752 333640

Email: westfiresafety@devfire.gov.uk

Environmental Health Service, Public Protection Service, Plymouth Council, Floor 6, Civic Centre, Plymouth, PL1 2AA.

Tel: 01752 304141

Fax: 01752 226314

E-mail: public.protection@plymouth.gov.uk

Planning & Regeneration Service, Plymouth Council, Floor 9 Civic Centre, PL12AA

Tel: 01752 – 304366

Email: planningconsents@plymouth.gov.uk

Plymouth Community Safety Partnership, Floor 8, Civic Centre, Plymouth, PL1 2AA

Tel: 01752 315788

E-mail: plymcomsafety@plymouth.gov.uk

Appendix B

Matter to be dealt with	City Council	Licensing Committee	Assistant Director Environmental Services
Application for a sex establishment licence		In all cases	
Application to vary a sex establishment licence		In all cases	
Application for transfer of a sex establishment licence		Where objections have been received and not withdrawn	If no relevant objections received, or where objections have been withdrawn
Application for the renewal of a sex establishment licence		Where objections have been received and not withdrawn	If no relevant objections received, or where objections have been withdrawn
Application for the waiver from the requirement of a sex establishment licence Consideration of the revocation of a sex establishment licence Setting of fees Review of Licensing Statement of licensing Policy Amendments to the statement of licensing policy Anything else	City Council City Council City Council	In all cases In all cases	Assistant Director Environmental Services

APPENDIX C

Sex Establishments Licensing Policy Consultation

No	Respondent	Synopsis of Response	Public Protection Service response
Key – SE – Sex Establishments			
1	Sarsen Housing Assoc	<p>Generally in favour.</p> <p>Requests further clarification on the proposal not to set a minimum distance that a SE should be located from ‘sensitive buildings’.</p> <p>Local residents should be assured of the right to raise objections or offer opinion to any application and raises concern that leaving this up to the applicant is enough.</p>	<p>Noted.</p> <p>Noted</p>
2	St Boniface Catholic College	<p>Generally in favour.</p>	
3	Tourist Information Centre	<p>Generally in favour.</p> <p>Seeks clarification of how responsibility of the applicant to advertise be enforced by the council.</p>	<p>The applicant will be required to advertise in the local newspaper i.e. Herald and by public notice outside the premises. This is similar to that required under the Licensing Act 2003. In addition the application must show how they have consulted with local community including residents, local business and other interested parties. Officers will also take steps to inform local ward councillors as part of the application process.</p>

4	Fr Gregory Carpenter	<p>Generally in favour.</p> <p>In favour of quantity limits, however respondent considers that Union Street needs to be reclaimed with fewer such establishments.</p> <p>The respondent states that a sex establishment should not be permitted to open on a Sunday.</p>	<p>Whether to have a quantity limit for any specific area is a principle part of this consultation and if so the concentration of licences will have to be set. If a quantity limit for any area is considered not appropriate then the principle of 'each case on its own merits' would need to be applied.</p> <p>Noted.</p>
5	Plymouth Heartbeat	<p>The respondent has raised a number of points objecting to the present of any sex establishments being allowed to operate in this City and consequently was against the principle of having a quantity limit for any area.</p> <p>The respondent was of the view that by having a policy this will encourage the proliferation of establishments</p>	<p>Noted.</p> <p>By having a SE policy will provide a robust framework within which all future decisions can be made on the control of such establishments.</p>
6	Sir John Hunt Community Sports College,	<p>Generally in favour.</p> <p>.</p>	

7	Upper Barbican Res Ass	<p>Generally in favour.</p> <p>Residents have a right to know applicants do not advertise in known publications.</p> <p>All establishments should be monitored by CCTV and have doormen any breach should be rigorously punished by immediate closure.</p>	<p>Noted</p> <p>The presence of CCTV and other security measures is a key part of the operating conditions of any proposed establishment and the suitability and adequacy of such systems would be scrutinised by the Police during the application process.</p>
8	UCP St Marks & St John	<p>In favour of having a policy for sex establishments.</p> <p>The respondent does not believe that limits should be set on the number of sex establishments and that all applications should be considered on their merits.</p> <p>The respondent believes residential accommodation and premises where children are present are 'sensitive buildings'. Other buildings such as places of worship, historic buildings and shopping areas should not be considered.</p> <p>The respondent does not consider the aspirations of an area to be relevant.</p>	<p>Noted</p> <p>Noted. Although those other buildings are also likely to have children present.</p> <p>Officers consider the aspirations of a neighbourhood and residents to be highly relevant.</p>
9	Abbey Hall Prysten House.	<p>Generally in favour.</p> <p>The respondent does not agree with the limits for Union Street/City Centre.</p> <p>The respondent states that the Council should notify all relevant local residents.</p>	<p>Noted.</p> <p>Noted</p>

10	Hooe Baptist Church.	<p>Generally in favour.</p> <p>The respondent considers that other premises such as supermarkets and filling stations should also be included as ‘sensitive buildings’.</p> <p>The respondent stated that due to the sensitive nature of such establishments everyone in the vicinity of a proposed application should be deliberately/ specifically notified.</p> <p>The respondent was of the opinion the draft Sex Establishment Licensing Policy appears to be extremely thorough and fair.</p> <p>Comment - I am aware that there is no mention of the word ‘brothel’ - is this deliberate? Could a case be made by a potential proprietor for permission under these policy conditions for a brothel to be established? If so please would the Council ensure that regulations are put in place to prevent such an establishment being established?</p>	<p>Noted.</p> <p>Noted</p> <p>Noted.</p> <p>There is no mention of ‘brothels’ as these establishments fall outside of the law and as such are not covered be this policy.</p>
11	Keyham Methodist Community Centre,	<p>Generally in favour.</p> <p>The respondent raised concerns that sex establishments aren’t going to be limited outside of the proposed Union St and City Centre localities</p> <p>The respondent believes residential accommodation and premises where children are present are ‘sensitive buildings’. Other buildings such as places of worship, historic buildings and shopping areas should not be considered.</p> <p>There is a consensus from residents of Keyham who attend the community centre that they would like to be informed of any such establishments.</p>	<p>The draft policy states that there will be a presumption that the quantity limit for all other areas will be Nil.</p> <p>Noted. Although those other buildings are also likely to have children present.</p> <p>Officers will review whether it is appropriate to notify other ‘interested parties’ or ‘community buildings located within the vicinity.</p>

12	Ashoka Kadampa Buddhist Centre	<p>Generally in favour.</p> <p>The respondent put forward an additional licensing criterion against which an application should be considered. The Prevention of Moral Turpitude.</p> <p>The respondent was not in favour of a quantity limit as specified, stating that the lower limit the better.</p> <p>The respondent considered that people have the right to be notified</p> <p>Comment - We believe these kinds of establishment are harmful to the long term moral health and happiness of both those using them and their families and the well being of our under society.</p>	<p>Officers consider that licensing criteria should be objective and not include any references to behaviour other than that included in the Protection of Safety, Health and Public Decency.</p> <p>Noted</p> <p>Noted.</p>
13	Pelican Children's Centre	<p>Generally in favour.</p> <p>The respondent does not agree with quantity limits being set for Union Street/City Centre.</p> <p>The respondent does not agree with the draft proposal not to set a minimum distance a SE would need to be located away from sensitive buildings. Citing the government guidelines for the Protection of Children and Vulnerable People.</p> <p>The respondents stated that the policy should be bias towards the wishes of residents.</p> <p>The respondent stated that residents should be told.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted</p>

14	The Clittaford Club,	<p>The respondent was not in favour of a quantity limit, expressing the view that each case should be considered on its own merits.</p> <p>The respondent was happy for premises to open on Sundays</p> <p>The respondent was of the view that no policy is needed.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted. Although Officers are of the view that a policy will provide a robust framework within which all future decisions can be made.</p>
15	Plymouth High School for Girls, (Yr 12 members)	<p>Generally in favour.</p> <p>The respondent did not agree that applications should not be granted in other areas of the city, providing that they were discrete and as long as they follow rules.</p> <p>The respondent believes that hotels and 'transport hub' should also be considered as 'sensitive buildings'.</p> <p>The respondent was happy for SE premises to open on Sundays</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
16	Leigham Primary School	<p>Generally in favour.</p> <p>The respondent does not agree with the draft proposal not to set a minimum distance an establishment would need to be located away from sensitive buildings. Citing that 'it is never right to be neat a school or where young people congregate'</p>	<p>Noted.</p>

17	Economic Development PCC	<p>No reference to protection/prevention/identifying individuals who are victims of Sex Trafficking which is becoming a significant problem.</p> <p>Prevention of Nuisance – no measures to deal with people congregating outside establishments to smoke which could be seen as intimidatory.</p> <p>Quantity Limits – on what quantitative methodology has this been based on?</p> <p>Hours of Opening – if sex establishments are restricted to Union Street and the City Centre, then what is the justification for prohibiting them opening on Sunday's and Bank Holidays being as most other shops and entertainment venues in those areas can / do? – this policy seems arbitrary and illogical</p>	<p>Officers will explore this point.</p> <p>This is a key part of the licensing objective the Prevention of Public Nuisance</p> <p>The draft policy sets out quantity limits for areas based on existing establishments likely to be covered by this policy. There are other premises outside of these areas that will also need to be considered. These factors will be considered prior to the approving the policy.</p>
18	The Art of Dance	<p>Generally against the proposal as it will not have any benefits for the wider community and may lead to a restriction in liberty.</p> <p>The respondent questions the link surrounding crime linked to sexual encounter establishments and crimes linked to such establishments are recorded and that this information is publicly available.</p>	<p>Noted.</p> <p>Noted. In considering any future application all interested parties will have the opportunity to submit evidence linked to criminal behaviour that may be associated to the establishment concerned. It will be the responsibility of the Licensing Committee to consider all relevant information prior to making a decision to grant vary or revoke a licence.</p>

		<p>There are several elements of the new guidelines (draft policy) that I must bring into question as they may have a knock on effect to my business:</p> <p><i>The external appearance and advertising of the business, e.g. no sexually explicit material</i></p> <p><i>Any live performance or any live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). An audience includes an audience of one”</i></p> <p><i>I am concerned about this vague definition of what it is to sexually stimulate? As I carry out more than 12 pole dancing performances at my establishment and other venues during the year to a mixed audience of both men and women could my business fall under this restricted category?</i></p> <p><i>Will the legislation extend to clubs/bars who have poles installed for customer use?</i></p> <p><i>How will the rules apply to burlesque performances that include elements of striptease?</i></p> <p><i>I do appreciate that the document does detail what it classes as nudity:</i></p> <p><i>“A display of nudity” means:</i></p> <p><i>(a) In the case of a woman, exposure of her nipples, pubic area, genitals or anus;</i> <i>and</i> <i>(b) In the case of a man, exposure of his pubic area, genitals or anus;</i></p> <p><i>However this wording would still allow an exotic dancer to perform wearing a string bikini and thong without the need for any restrictions?</i></p> <p><i>The wording, I assume, may also restrict theatre performances where nudity may be involved such as the recent Theatre Royal performance 'Puppetry of the penis'?</i></p>	<p>Noted – Officers have replied in detail the respondent. The Home Office has issued guidance to local authorities on how to interpret and implement this legislation and officers have been mindful in drafting this draft policy.</p> <p>This public consultation is designed to seek local views on this draft policy prior to the final version being considered by Council for adoption.</p>
--	--	---	--

19	Corporate Support, PCC	Reference to statement concerning CCTV and not about the purpose of the policy.	Noted – Officers will review the text to ensure compliance with the Information Commissioners Code of Practice
20	Thornbury Primary School	Generally in favour. The respondent considers not to set a minimum distance that an establishment would need to be located away from sensitive buildings as ‘too ambiguous’.	Noted. Noted.
21	Vue Cinema	The respondent does not agree with the quantity limits for Union Street/City Centre. The respondent does not consider places of worship should be viewed to ‘sensitive buildings’. The respondent stated that all residents in the area should be notified at the expense of the applicant.	Noted. Noted. Noted.
22	Manor Street Children’s Centre	Generally in favour	Noted.
23	Hyde Park Junior School	Generally in favour The respondent stated that where an application is located in a residential area then the publicity should be wider. Comment - This is a real move in the right direction.	Noted. Noted Noted.
24	Resident	Generally in favour. The respondent stated that the safety of ‘workers’ should be included in the licensing objectives.	The safety of employers and performers is part of the licensing criteria.

		<p>The respondent was not in favour of a quantity limit, expressing the view that each case should be considered on its own merits.</p> <p>The respondent believes premises where children are present and tourist attractions are 'sensitive buildings'. Other buildings such as residential areas, places of worship and shopping areas should not be considered.</p> <p>The respondent did not agree that an existing SE should expect its licence to be automatically renewed.</p> <p>Comment - You must have as a primary aim the safety of the workers and an aim to support the workers in illegal establishments helping them to leave unlicensed premises.</p> <p>Women in the sex industry need support and help to leave the industry and licences to support the workers is a good idea.</p>	<p>Noted.</p> <p>Noted.</p> <p>The respondent has draw comparisons with illegal activities and protecting workers from the sex trade as these activities are not licensable.</p> <p>Existing online services provide support to individuals involved in the sex industry.</p>
25	Engage SW, St Levan Road	<p>Generally in favour.</p> <p>The respondent agrees with the principle of quantity limits for Union St and the City Centre but not with the numbers proposed for Union St.</p> <p>The respondent stated that SE should be located near industrial areas or in remote locations away from residential areas.</p> <p>The respondent stated that residents should be informed by leaflet or letter</p> <p>Comment - I applaud the Council for trying to protect the public from such unsavoury establishments. The risks to the public and to our cities reputation is of the utmost importance when the authority makes its decision. This is a great City and should not have its good name sullied by such places existing here.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted</p> <p>Noted.</p>

26	Avondale Arms	<p>The Respondent did not support the draft licensing policy. Citing that her premises was not a SE just a bar.</p> <p>The respondent was not in favour of setting quantity limits or that applications should not normally be granted in other areas of the city</p> <p>The respondent supported the principle that an existing SE should not expect its licence to automatically renew if the aspirations of the surrounding neighbourhood change.</p> <p>Comment - My pub is not a sex establishment and is having problems enough paying all. The staff is just bar maids with the bust on show. There is not physical contact with customers and must always put their top on when leaving the bar to collect glasses or go to toilet.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted</p> <p>Any establishments that fall within the parameters of the amended legislation will be invited to apply. Whether not or a licence is necessary will be a matter consideration by officers by reference to legislative requirements</p>
27	St Andrews Church,	<p>Generally in favour.</p> <p>The respondent was in favour of a quantity limit for Union St, but did not agree with a limit being set for City Centre in which case it should be each application on its own merits.</p> <p>The respondents stated that for applications notification should be given to properties within 200 metres of proposed premises.</p>	<p>Noted.</p> <p>Noted</p>
28	Elburton Methodist Church	<p>Generally in favour.</p> <p>The respondent does not agree with any quantity limit for Union Street or the City Centre. Preferring a zero limit for both areas.</p> <p>Comment - We do not agree that such establishments add anything of value to our city and urge the council to move towards NIL values in all parts of the city as soon as possible.</p>	<p>Noted.</p>

		<p>The section at the bottom of Page 13 and at the top of Page 14 is unclear and needs to be rewritten.</p> <p>The return is made at the request of the church Council of Elburton Methodist Church. The Church has predominantly White British members.</p>	The text will be reviewed.
29	The Hoe Conservation Residents Association	Generally in favour.	
30	Oasis Project	<p>Generally in favour.</p> <p>The respondent stated that the sex industry should not be present in the City Centre.</p> <p>The respondent stated that libraries, doctor's surgeries and dentists should also be classified as 'sensitive buildings'.</p> <p>The respondent considered that by not setting minimum distance criteria then there will be an erosion of unmet limits. Specified limits can be agreed and set.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p>
31	North Road West Area Residents Association.	<p>The respondent did not consider that the proposed licensing objectives would prevent crime & disorder, only lesson and control to an extent.</p> <p>The respondents did not agree with the proposal to set quantity limits or the proposal to not normally grant application in other areas of the city as this would result in all SE being located in Union St., 'people that live there including children already have enough to cope it'</p>	<p>Noted.</p> <p>Noted.</p>

32	Resident	<p>The respondent stated that Union St is run down and this is not a reason to concentrate SE as this can increase the sense of seediness.</p> <p>Concentrating sex establishments near to the Palace could limit the appetite of investors and certainly for visitors. It compounds the stigma of our neighbourhood, we are working hard to try to change perspectives and this will confirm the current stigma in lots of ways.</p> <p>Given Union St is a main route out of town I think it is important for the rest of Plymouth not to drive through an area that could be defined by the sex shops, cinema's and lap dancing clubs.</p> <p>Union St is also a main route for visitors to Plymouth from the ferry port into Cornwall, what sought of impression would this type of concentration of establishments have on them.</p>	<p>The draft policy sets out quantity limits for areas based on existing establishments likely to be covered by this policy and will seek to prevent the proliferation of sex establishments in that specific area</p> <p>The draft policy outlines the options that are available however a locality policy would also apply to areas that could be the subject of a quantity limit.</p> <p>The draft policy does set out the principle that an existing establishment should not expect its licence to be automatically renewed where it can be established that the aspirations of the surrounding area have changed. This is explored in Qu. 10 on the feedback response form.</p> <p>Noted.</p>
33	Church of the Holy Spirit	Generally in favour.	
34	Church of the Holy Spirit	Generally in favour.	
35	Resident	Generally in favour.	
36	Resident	Generally in favour.	

37	Resident	<p>Generally in favour.</p> <p>The respondents felt that the policy was not fair on the residents of Unions St.</p>	Noted.
38	Resident	<p>The respondent does not agree with any quantity limit for Union Street or the City Centre. Citing that there are already concerns that the existing establishment (in Union St) are near to a children’s centre, play area, residential properties and a primary school.</p> <p>The respondent stated that where an application is made for establishments in a non-residential area these should be considered on their own merit i.e. Faraday Mill.</p> <p>The respondent stated that children’s centres should also be classified as ‘sensitive buildings’.</p> <p>The respondent did not agree with the draft policy not to set a minimum distance that establishments would need to be located away from sensitive buildings, but did not state the reasons why.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made but did not state the reasons why.</p> <p>Comments – Whilst I welcome the contents of the policy in places it contradicts the practices on the ground. The decision to focus the location of establishments within Union St puts these establishments within 100 yards of children’s centre play parks and primary schools. Given concerns raised about the sexualisation of children, increasing concerns about the impact of drugs and alcohol on the lives of children and the on-going work to improve Stonehouse and Millay the decision to site establishments within Union St does not support the communities aspirations for the area.</p>	Refer to the comment set out in No.32.

39	<p>Cllr Sue McDonald</p> <p>Ward Councillor</p>	<p>The respondent stated that the draft policy did not contain enough detail and information to understand how the policy and decision making process will work.</p> <p>The respondent stated that Union St (and to some extent the City Centre) has all the features listed within the 'relevant locality statement'. Therefore given these criteria considered that Union St is not suitable for the location of certain defined licensed sex establishments as outlined in the draft policy statement.</p> <p>All other parts of the City are generally considered unacceptable, although each case would be considered on its own merits having regard to the specific detail of the application. For example; it may be appropriate based on the individual merits of the application to grant a licence in a commercial area where there are no residential properties, such as on a business park.</p> <p>The respondent does not agree with any quantity limit for Union Street. Citing that there are already concerns that the regeneration of the Palace Theatre as reason for not permitting any SE in Union St. In addition concern is raised that Union St and the City Centre would be the only available areas as establishments would not be permitted elsewhere.</p> <p>The respondent stated that community facilities, home zones, hostels should also be classified as 'sensitive buildings'.</p> <p>The respondents stated that the policy is not fair to the residents Union St as it contains a high density of flats.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made and that the council should notify local residents, churches and nurseries.</p>	<p>Officers acknowledge that the locality criteria set out in the draft document are equally applicable to Union St. The option of a quantity limit is designed to provide a cap and prevent the proliferation of establishments concentrated in one area. The limits put forward in this draft policy represent the status quo for those particular areas.</p> <p>For all other localities the draft policy has put forward that the appropriate number of establishments will be nil. Although each case would be considered on its own merits having regard to the specific detail of the application it may be appropriate based on the individual merits of the application to grant a licence in a commercial area where there are no residential properties, such as on a business park.</p> <p>As previously stated a quantity would prevent the proliferation of establishments in a particular locality.</p>
----	---	--	---

		<p>Comment – Union St neighbourhood contains all of the listed factors on page 8 (relevant locality statement) that the Council considers as unsuitable. A debate needs to take place with the public in the neighbourhoods as aspirations have changed. I have raised the topic of the policing proposals at the City Centre Neighbourhood meetings ‘Stonehouse Action’. Latter community organisation working with Oliver Colvile MP who attended and chaired the last two meetings re. Regeneration of the Palace Theatre.</p>	
40	Waterfront City Church	<p>Generally in favour.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made and that the council should notify local residents, and businesses.</p>	Noted.
41	Revd Dave Rix	<p>Generally in favour.</p> <p>The respondent did not agree with the proposal not to notify local residents when an application is made as people directly affected would benefit from the opportunity to respond.</p>	Noted.
42	Thompson & Jackson on behalf of Temptations T2 Ltd.	<p>No over-riding objections to the policy as drafted, although they would want to ensure that the policy did not hinder their continued business or restrict it in such a way that it would affect profitability and the employment of a significant number of persons.</p> <p>The respondents raised concerns over some of the attached conditions (which do not form part of the policy) considering them to be confusing, restrictive and not appropriate.</p> <p>The respondents raised concerns that the implementation of a quantity limit may not be entirely lawful under European legislation and that any application has to be consideration its own merits.</p>	<p>Noted.</p> <p>Officers will review the proposed conditions having regard to the respondent’s comments and in tandem with other enforcement agencies to ensure that any published licensing conditions are clear, suitable and relevant.</p> <p>Officers will consider these concerns.</p>

		<p>The respondent agrees that it is not appropriate to have establishments in a suburban area such as the Barbican, Mutley Plain or North Hill.</p> <p>Restrictions on advertising should be considered carefully as it could amount to a restraint of trade.</p> <p>The respondents raised concerns that the proposal that an existing establishment should not expect its licence to be automatically renewed where it is established that the aspirations of the surrounding area have changed, would potentially mean the destruction of a viable and successful business which has not caused problems.</p> <p>The respondent was in favour of quantity limits for Union St and the City Centre subject to their existing premises being within the defined area of Union St.</p> <p>The respondent has strong reservations that for localities other than Union St and the City Centre, the appropriate number the establishments would be Nil as this would effectively be a blanket ban and lawful.</p>	<p>Any licensing decision would be made having regard to the licensing objectives and the evidence presented at the time</p> <p>The draft policy outlines that a 'locality' is not defined on a map with a finite arbitrary boundary but it is intended to be a virtual boundary that has regard to neighbourhoods, natural boundaries, postal districts and local precedents. Material decisions that might be relevant to a local community could include a establishments premises that is 'on the way to the' local shops, school or places of worship.</p> <p>The draft policy states that for all other localities the appropriate number will be nil. It will be for the Council to decide, having regard to all the available information, government guidance, legal advice and the opinions received from the public consultation as to the appropriateness of such a policy.</p>
43	<p>Martin Worthington Licensing Sergeant</p> <p>Devon and Cornwall Constabulary</p>	<p>The DCC supports the purpose of the policy</p> <p>DCC believes the SE licensing policy contains sufficient detail to make a clear transparent and robust framework for a meaningful policy.</p> <p>DCC support the five proposed licensing objectives and the publication of a list of control measures and have submitted some amendments to the published pool of conditions.</p>	<p>Officer will review the submitted amendments.</p>

		<p>DCC whole heartedly support the creation of a Relevant Locality Statement for Plymouth.</p> <p>DCC note the council's Quantity Limit Statement. The police do not have a view on the number of SE it is acutely aware of concerns raised by some residents in areas where 'lap dancing' clubs have operated. Therefore it may well be of benefit to maintain the current level of SE for the introduction of the policy and review the quantity limit once the policy has had the opportunity to 'bed in'</p> <p>DCC believe the licensing objectives to be proportionate, necessary and appropriate.</p> <p>DCC wish to point out that the demography of Union St varies with commercial and ENTE licensed premises interspersed with large areas of residential housing.</p> <p>DCC agree not to support any arbitrary minimum distance and that in this context each application should be considered on its own merits.</p> <p>DCC consider the draft policy to be proportionate and a mechanism by which the council and other responsible authorities can ensure that the highest standards can be maintained.</p> <p>DCC do not have any concerns with establishments operating on Sundays providing that the appropriate safeguards are in place.</p> <p>DCC have concerns that establishments may be utilised for the purposes of prostitution, organised crime, sexual exploitation, money laundering etc. The police recommend the council ensures appropriate safeguards are in place for an application.</p>	<p>Officers will review the locality known as Union St to ensure that it remains applicable and relevant in the context of this policy.</p> <p>The draft policy outlines that a 'locality' is not defined on a map with a finite arbitrary boundary but it is intended to be a virtual boundary that has regard to neighbourhoods, natural boundaries, postal districts and local precedents.</p> <p>Noted. Officers will have regard to the proposals put forward to ensure that the appropriate checks and balances are in place.</p>
44	Social Inclusion Unit PCC	The respondent recommends that the policy reference the Equalities Act 2010.	Officers will review the draft policy with regard to the suggestions made.

45	Stonehouse Neighbourhood Management. PCC	<p>In favour of the policy and its licensing objectives.</p> <p>The respondent set out agreement in principle with limiting establishments in the Union St locality. Set out concerns that the existing sex shop is in very close proximity to a children's centre residential accommodation.</p> <p>The respondent was concerned that the existing establishments are located near services targeted at vulnerable client such as street drinkers, homeless and treatment centres.</p> <p>Union St is also a main route for visitors to Plymouth from the Millbay Port and focussing establishments in this area does not support the stated aspiration for the city.</p> <p>As a ENTE area vulnerable persons are more liable to attack/ victim of crime.</p> <p>The respondent stated that Union St is a mixed use area with a high density of residential accommodation and not just a ENTE area. Residents are desperate that Union St should be viewed as not merely a convenient place to site any establishments that other residents would object to having in their streets.</p> <p>The respondent stated establishments should be granted in other areas of the city.</p> <p>The respondent was in favour of not setting a minimum distance to sensitive buildings but with a caveat of protecting sensitive buildings.</p> <p>The respondent felt that due to the sensitive nature of establishments local residents in the immediate area should be notified. Although the neighbourhood team could assist.</p>	<p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted. It is proposed that as part of the application process the applicant will have to show evidence of local consultation. Officers will notify elected councillors of the submission of an application. Officers will review the draft policy to consider way to ensure that the applicant has notified all 'sensitive buildings', community representatives, etc.</p>
----	---	--	---

46	Plymouth Safeguarding Children Board	<p style="text-align: center;">PLYMOUTH SAFEGUARDING CHILDREN BOARD (PSCB)</p> <p style="text-align: center;">CONSULTATION RESPONSE TO THE PROPOSED PLYMOUTH CITY COUNCIL SEX ESTABLISHMENTS LICENSING POLICY</p> <p>INTRODUCTION:</p> <p>The aim of this report is to provide comments from the Plymouth Safeguarding Children Board on the Plymouth City Council draft proposals for a Sex Establishments Licensing Policy.</p> <p>COMMENT:</p> <p>The PSCB is the responsible authority for assessing all Licensing and Gambling applications within the city in respect of Licensing Objective (e) – ‘Protection of Children from Harm’. The process of assessment is delegated to the Local Authority Children’s Social Care who complete the assessment on behalf of the PSCB with the outcomes reported to the PSCB Full Board on a quarterly basis.</p> <p>The PSCB welcomes the fact that safeguarding children is identified as a key component within the ‘Draft Sex Establishment Policy’ which in general provides a clear and robust process to be followed in determining the awarding of a licence to run a ‘sex establishment’. However, the PSCB believes that the draft policy could be strengthened to ensure that safeguarding is more firmly embedded at the heart of the licensing process.</p> <p>The safeguarding of children must be at the forefront of any sex establishment’s operation and the said establishments must be aware of the South West Child Protection Procedures (www.swcpp.org.uk), in particular responsibility/methods of reporting/recording concerns in relation to child protection, sexual exploitation or trafficking. A statement that the sex establishment should have due regard to the South West Child Protection Procedures would be welcome at the forefront of the document.</p> <p>It should be noted that there are a number of grammatical errors within the whole document and it is suggested the document is reviewed and amended.</p> <p>Page 6/7 of the document under the section ‘Protection of Safety, Health and Public Decency’ identifies a number of control measures to be addressed in bullet point format. An additional bullet point should be added as follows:</p> <ul style="list-style-type: none"> - Staff receive training on the identification of potential exploitation and/or trafficking of vulnerable adults and be required to notify the Police of concerns. <p>The bullet points on Page 6/7 should be a mandatory condition on the licence.</p>	Noted and amendments made
----	--------------------------------------	--	---------------------------

Whilst the proposal outlines a number of control measures that should be in place as examples of good practice in meeting the various licensing objectives, the PSCB would recommend the following bullet point control measures are added to the section 'Protection of Children from Harm' on page 7 of the document:

- Use of CCTV inside and outside the premises, ensuring digital systems comply with Home Office guidance minimum requirements.
- Staff receive training in the operation of a Challenge 21 proof of age scheme and records are kept of the said training.
- Records are kept of refusal of entry and incidents.
- Staff receive training on the identification of potential sexual exploitation and/or trafficking of children and be required to notify the Police of concerns.

The bullet points on Page 7 should be a mandatory condition on the licence.

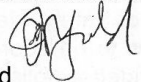
Page 8 of the document provides a 'Relevant Locality Statement' and identifies the criteria the Council will use to determine an area unsuitable for a sex establishment. It makes a statement that the areas known as 'Union Street' and the 'City Centre' are considered the only areas suitable for the provision of certain defined licensed sex establishment premises. It should be made clear in the proposals that the consideration of such establishments in these two identified areas is also subject to the suitability criteria.

Page 10 of the document provides criteria to be considered in determining an applicant's fitness to hold a licence. It is suggested that bullet point (d) should be amended to read 'Any criminal convictions, cautions, warnings or reprimands of the applicant.'

Page 15 of the document identifies the organisations engaged in the consultation process. The final bullet point 'Child Protection Board' should be amended to read 'Plymouth Safeguarding Children Board'.

RECOMMENDATION:

It is recommended that the draft policy is amended to include all the comments identified in the above paragraphs.


Jim Gould
Independent Chair of the Plymouth Safeguarding Children Board.
08/12/11

Consultation Results		
Qu.1	Does the draft Sex Establishment Licensing Policy contain enough detail and information for you to understand how the policy and decision-making process will work?	Yes 34 No 3
Qu.2	Do you agree that the following criteria for considering sex establishment licence applications adequately address all the issues? <ul style="list-style-type: none"> • Prevention of crime and disorder • Protection of safety, health and public decency • Prevention of nuisance • Protection of children from harm • Protecting the nature, amenity and character of a neighbourhood 	Yes 37 No 3
Qu.3	The draft policy proposes that limits are set on the number of sex establishments within two areas of the city – Union Street and the city centre. Do you agree with this proposal? If yes, do you agree with the following limits, which take into account premises already operating in these areas? Union Street: One sex shop/cinema and two sex entertainment venues City centre: One sex shop/cinemas and no sex entertainment venues If no, (and you are not in favour of limits for specified areas) then are you in agreement that each application should be considered on its own merits?	Yes 25 No 10 23 10 22 8 7 3
Qu.4	Do you agree that applications should not normally be granted in other areas of the city?	Yes 28 No 10

Qu.5	<p>The draft policy considers that it is important to highlight ‘sensitive’ buildings, locations and areas. Do you agree that it is not appropriate to issue a licence for a sex establishment near the following?</p> <ul style="list-style-type: none"> • Primarily residential accommodation • Schools, play areas, youth clubs • Places of worship • Historic buildings or tourist attractions • Shopping areas aimed at attracting visitors to the city 	<table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left; width: 50%;">Yes</th> <th style="text-align: left; width: 50%;">No</th> </tr> </thead> <tbody> <tr> <td>37</td> <td>2</td> </tr> <tr> <td>39</td> <td>1</td> </tr> <tr> <td>35</td> <td>5</td> </tr> <tr> <td>36</td> <td>3</td> </tr> <tr> <td>35</td> <td>4</td> </tr> </tbody> </table>	Yes	No	37	2	39	1	35	5	36	3	35	4
Yes	No													
37	2													
39	1													
35	5													
36	3													
35	4													
Qu.6	<p>The draft policy does not propose a minimum distance that a sex establishment would need to be located away from sensitive buildings, locations or areas. Instead, it is proposed that an application should be considered against the specific geographical circumstances of the area in question. Do you agree with this proposal?</p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;">Yes 28</td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td>No 11</td> </tr> </tbody> </table>	Yes 28			No 11								
Yes 28														
	No 11													
Qu.7	<p>Do you think the draft Sex Establishment Policy is fair to both local residents and licensed establishments?</p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;">Yes 27</td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td>No 8</td> </tr> </tbody> </table>	Yes 27			No 8								
Yes 27														
	No 8													
Qu.8	<p>The Council proposes that it will not notify local residents and businesses when a licence application is made, as there is a statutory responsibility on the applicant to advertise the application. However, elected members in the wards concerned and wards nearby will be notified. Do you agree that this will be acceptable?</p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;">Yes 19</td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td>No 20</td> </tr> </tbody> </table>	Yes 19			No 20								
Yes 19														
	No 20													
Qu.9	<p>Should any sex establishment be permitted to open on a Sunday?</p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;">Yes 11</td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td>No 27</td> </tr> </tbody> </table>	Yes 11			No 27								
Yes 11														
	No 27													
Qu.10	<p>Do you agree that an existing sex establishment should not expect its licence to be automatically renewed where it can be established that the aspirations of the surrounding area have changed?</p>	<table style="width: 100%; border: none;"> <tbody> <tr> <td style="width: 50%;">Yes 32</td> <td style="width: 50%;"></td> </tr> <tr> <td></td> <td>No 8</td> </tr> </tbody> </table>	Yes 32			No 8								
Yes 32														
	No 8													

This page is intentionally left blank

PLYMOUTH CITY COUNCIL

Subject:	Addition of a SEN Support Centre to Goosewell Primary School
Committee:	Cabinet
Date:	17 January 2012
Cabinet Member:	Councillor Samantha Leaves
CMT Member:	Director of People
Author:	Jayne Gorton (School Organisation, Access and Services to Schools Manager)
Contact:	Tel: 01752 307472, Email: jayne.gorton@plymouth.gov.uk
Ref:	CM(CAB) (99) (16/11/11)
Key Decision:	No
Part:	One

Executive Summary:

Following Cabinet decisions in August 2009 and December 2010 to implement proposals relating to Downham Special School, the school will relocate to purpose built facilities on the Tor Bridge site in Estover in September 2012. As part of this move the Downham satellite classes, currently located at Goosewell Primary School will also relocate to the new site, leaving the purpose built facilities vacant.

This report seeks:

1. authorisation to undertake formal consultations with all interested parties on proposals to add a SEN support centre for children with communication and interaction needs, specifically autistic spectrum disorder to Goosewell Primary School with effect from September 2012, using the facilities vacated by Downham Special School.
2. authorisation for the Cabinet Member for Children and Young People, in light of the outcomes of and responses to the formal consultations, to determine whether to publish formal proposals (Public Notice) to undertake the above change affecting Goosewell Primary School; and to determine whether to implement the proposal outlined in any such Public Notice.

Corporate Plan 2011 – 2014:

This proposal aligns with and supports the following Corporate Priorities:

Raise aspirations – In order to ensure that children with ASD achieve better qualifications and find high quality jobs it is essential to provide sufficient specialist support places that inspire children to attend and enjoy school.

Reduce inequalities – Providing specialist provision for primary age children with ASD within a mainstream school would provide them with inclusive educational opportunities and narrow the gap in equality of access to support.

Provide value for communities – Making use of the surplus facilities at Goosewell Primary School once the Downham satellite classes are relocated will help to address the growing need for specialist support for primary age children with ASD.

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

- Provision has been made within the 2011/12 Services for Children and Young People revenue budget to meet the minimal costs of the consultation.
- There could be an increase in the number of teaching and other staff – Funding would be based on the number of agreed places allocated through the formula funding for Support Centres charged to the direct schools element of the Dedicated Schools Grant (DSG). It would be for the school to decide how to allocate the funding but the local authority would expect this to include the appointment of a teacher in charge.
- The facilities are purpose built and will not need refurbishment; however the proposal includes the provision of a sensory room.
- Additional equipment would need to be purchased for the proposed sensory room, together with some workstations. This would be paid for through the Children’s Integrated Disability Service equipment budget.
- Six children currently at the school would transfer to the support centre and additional transport costs could be incurred for the additional four children depending on where they live.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

Schools are a key facility within their local communities and support wider cohesion in the area. An equality impact assessment has not been completed as the facilities that will house the Support Centre have been constructed within the last two years and were designed to current building regulations which are fully DDA compliant. In addition these are community facilities which are open to all; therefore issues surrounding discrimination on the basis of age, faith, gender, race or sexual orientation are not applicable.

The Council’s Strategy for Change 2008 states that “The Council expects all schools in Plymouth to be inclusive. All pupils with Special Education Needs will, if appropriate, have the opportunity to begin early years and primary education as part of, or co-located with a mainstream school.” This proposal supports that aspiration.

There are no health and safety issues as the facilities have been purpose built and an alternative entrance and drop off point is already in existence for minibuses transporting those children who currently attend the Downham satellite class. There are no community safety issues related to this proposal. The risk management for this facility is incorporated within the school’s own risk management procedures.

Recommendations & Reasons for recommended action:

- a) The proposed change would make effective use of the vacated facilities at the school and provide additional specialist provision for the growing number of children with autistic spectrum disorder within a mainstream environment.
- b) The proposed change is considered to be in the best interests of children, families and staff.
- c) The Council is required to carry out a period of formal consultation and consider all the outcomes of and responses to that consultation before deciding whether to publish a formal notice of the proposed change. Therefore it is recommended that the Cabinet Member for Children and Young People, be authorised to determine whether to publish formal proposals to undertake the above change affecting Goosewell Primary School in light of the outcomes of and responses to the formal consultation.

- d) If a formal proposal is published, the third stage of the statutory procedures requires the Council to consider all the outcomes of and responses to the public notice and make a final determination whether or not to proceed with the proposal. Therefore, it is recommended that if a public notice is published, the Cabinet Member for Children and Young People be authorised to make a final determination about this proposal.

Alternative options considered and reasons for recommended action:

Doing nothing was considered and rejected on the basis that the facilities at Goosewell Primary School were purpose built, there is a need for additional facilities for the growing number of children with ASD, the school does not need the additional space for mainstream education and not to make use of the facilities would be a financial burden on the school and a waste of specialist provision.

Background papers:

[Plymouth City Council Children's Services Strategy for Change Investment for Children](#)

[Cabinet Paper August 2009](#)

[Cabinet Paper December 2010](#)

[Inclusion Strategy 2005-2008](#)

Sign off:

Fin	ChS0361 AMartin	Leg	13282/LT	HR	MG 1111/001	Corp Prop	N/A	IT	N/A	Strat Proc	N/A
Originating SMT Member: Colin Moore, Assistant Director for Lifelong Learning											

1.0 Introduction

- 1.1 Since developing the Inclusion Strategy in 2004, we have worked to the principle that all pupils with Special Educational Needs should have the opportunity to begin early years and primary education as part of, or co-located with a mainstream primary school.
- 1.2 Within Plymouth it is recognised that over the past 10 years, knowledge and understanding of the needs of children and young people with autism and earlier identification of children with ASD/complex communication needs have led to a dramatic increase in the need for provision in mainstream schools.
- 1.3 In 2010 two key reviews were completed within Plymouth's Children and Young People's Plan. In July 2010 a review of provision for children and young people with autistic spectrum disorders resulted in recommendations for the improvement of provision and to meet identified gaps. In December 2010 a multi-agency Task and Finish Group review of support available to children and young people with ASD and their families resulted in an improvement plan to develop a more coherent, multi-agency response to need. Both reports highlighted the importance of recognising how early support, provision of information and co-ordination of services would improve outcomes for children, young people and their families both in relation to education and learning and out of school. It was subsequently agreed that the recommendations of both reviews should be drawn together into a single improvement plan for support and provision to children and young people with ASD and their families and this plan is currently being finalised.
- 1.4 In August 2009 and December 2010 Cabinet agreed to implement proposals to relocate Downham Special School to purpose built facilities on the Tor Bridge site in Estover in September 2012. As part of this move the Downham satellite classes, currently located at Goosewell Primary School will also relocate to the new site, leaving the purpose built facilities vacant.
- 1.5 When the plans for the building project at Goosewell Primary School were first discussed it was proposed that when the Downham satellite classes relocated the facilities would be occupied by pupils from Longcause Special School. However for some years the school has provided separate facilities for a group of children with ASD and developed significant expertise in this area and, as part of an ongoing review of special education provision within the city, it would be more appropriate to incorporate the facilities into the school rather than providing satellite facilities for a special school.
- 1.6 The number of children in the city being diagnosed with autistic spectrum disorder is rising and the facilities being vacated at Goosewell Primary School would be ideally suited to providing a Support Centre for these children.

2.0 Goosewell Primary School

- 2.1 Goosewell has a planned admission number in reception of 90 and a forecast number on roll in 2012 of 591. It is an above average-sized primary school serving the local area, with some pupils coming from outside the immediate catchment area. The school's latest Ofsted report in June 2011 grades the school as 'good' with good capacity for sustained improvement.
- 2.2 34% of pupils come from services families and the proportion of pupils joining, leaving and sometimes rejoining the school other than at the usual times of admission or transfer is much higher than found in most other schools nationally.
- 2.3 Although the overall proportion of pupils with special educational needs and/or disabilities is broadly average it is increasing, with a high proportion of pupils with statements of special educational need. In some year groups the proportion of pupils with special educational needs and/or disabilities is above average.

- 2.4 The school includes an Autistic Spectrum Disorder (ASD) base, which currently caters for six pupils with communication and interaction needs who come from the wider area of Plymouth.
- 2.5 The school has a welcoming, strongly inclusive family atmosphere. Pupils enjoy their time at the school and their attendance is above average. Children get off to a good start in the Early Years Foundation Stage and by the end of Year 6, pupils achieve well and attain broadly average levels.
- 2.6 The school does a good job of ensuring that the significant number of pupils who join the school during the year, such as those from service families posted to the area, settle in quickly and progress well.
- 2.7 Staff have very good relationships with all pupils and use these well to encourage all groups of pupils, including those with special educational needs and/or disabilities, to become confident and enthusiastic learners. The school have placed staff on the new ASD accredited programme (PgCert) with the University of Plymouth, reflecting their commitment to successfully meeting pupils' needs.

3.0 Specialist facilities at Goosewell Primary School

- 3.1 Downham Special School's satellite classrooms currently provide pupils with a combination of specialist teaching and resources and opportunities to be included with their peers in some mainstream classes at Goosewell Primary School.
- 3.2 The facilities comprise two self contained classrooms on the lower ground and ground floors, each accommodating eight children, with cloakroom/lobby, office, storerooms, withdrawal room, disabled toilets and shower, kitchen areas, wet room/play area and group rooms.
- 3.3 In order for the children to integrate with their own age groups the KSI satellite base is placed on the lower ground floor with the main school's years 1 and 2 (KS1). The KS2 satellite base is on the ground floor close to the existing years 3 and 4 (KS2).
- 3.4 Both bases are located on the main spinal corridors in the school to ensure that they are well connected to central resources and halls for dining and drama and not isolated.
- 3.5 The group rooms are located next to the classrooms allowing for noisy and quiet activities to be separated and small groups to withdraw for individual sessions.
- 3.6 The classrooms are large enough to achieve the general recommendations for a wide range of curriculum activities. They are below the size recommended for complex ASD needs but the children currently using the satellite classes do not fall within this category and therefore do not require spaces for such a wide range of supportive equipment.
- 3.7 Staff kitchen areas are provided in each base for preparation of snacks, and for the preparation and washing of art and pupil cookery utensils.
- 3.8 The KSI group room has been fitted with a trough for wet play and opens directly onto the outdoor play space allowing wet play activities to be undertaken both outdoors and indoors.
- 3.9 The group rooms have been designed and equipped to reflect pupils' ages, and both bases contain disabled/accessible toilets, with the KSI toilet also operating as a walk-in wet room shower.
- 3.10 Each day a mixture of packed and cooked meals are provided for in the school hall and children in the satellite classes are on the early lunch sitting to allow them to enjoy a longer mealtime. It is a good social event and the age groups mix.

4.0 Proposed Support Centre

- 4.1 The proposed Support Centre would be a local authority provision commissioned to Goosewell and managed by the school on the local authority's behalf. The arrangement would initially accommodate 10 children, six of whom already attend the school. An evaluation of the service will be undertaken after three years to determine how it is meeting the identified need. The evaluation will inform the specification for the service level agreement for the following three years.
- 4.2 Children would be allocated to the Support Centre by the SEN Panel and would be registered as pupils of Goosewell Primary School.
- 4.3 The school has the right ethos and a record of making provision for ASD children under their existing cluster arrangements and this proposal would be an extension of that expertise.
- 4.4 Goosewell is well located to meet the needs of pupils in the East of the city. Current primary specialist ASD provision is in the West of the city at Mayflower Primary School.
- 4.5 Plymstock School, which has enhanced provision for secondary aged pupils with ASD is located close by and this would provide improved transition for pupils requiring continued specialist provision in Key Stage 3.

5.0 Benefits and disadvantages

- 5.1 Benefits of adding a Support Centre to Goosewell Primary School include:
- Makes use of the purpose built facilities when the Downham satellite classes relocate to Tor Bridge.
 - Not to make use of the facilities would be a financial burden on the school and a waste of specialist provision.
 - Provides additional facilities for the increasing number of primary age children with ASD.
 - Provides primary age children with ASD with inclusive educational opportunities within a mainstream school.
 - Narrows the gap in equality of access to support, increasing capacity in the east of the City and providing choice for parents.
 - Builds on the school's successful track record of dealing with children with ASD and makes effective use of the expertise and specialist knowledge already developed in the school.
 - Provides specialist support places to children with ASD that will inspire them to attend and enjoy school, and ensure that they achieve better qualifications and find high quality jobs.
 - Located close to Plymstock School which has enhanced provision for secondary aged pupils with ASD providing improved transition for pupils requiring continued specialist provision in Key Stage 3.
- 5.2 Disadvantages of adding a support centre to Goosewell Primary School include:
- The facilities could be used to expand the school, we have a policy of not expanding primary schools beyond three forms of entry and Goosewell is already this size.
 - Children with ASD are spread throughout the city and additional costs could be incurred in transporting them to a Support Centre in Plymstock.
 - Additional set up costs could be incurred in equipping and staffing the Support Centre, but these would be covered by the Support Centre formula funding and Children's Integrated Disability Service equipment budget.

- The classrooms are below the size recommended for complex ASD needs which could restrict the children that can be accommodated. However the proposal is to provide flexible arrangements suited to the individual needs of the children. This would include being educated within a mainstream class in the school for part of the school day and mean that only a proportion of the children would be located in the Support Centre at any one time.
- The school experiences turbulence in its population partly due to the high number of service families, which could adversely affect children with autism. However the school successfully manages this issue with the current autistic pupils and would use its expertise in this area to ensure that pupils were not adversely affected.

6.0 Statutory procedures

- 6.1 The first stage of statutory procedures – normally 6 weeks - is to hold detailed and formal consultations with all interested parties, including pupils, parents, staff and governors, as well as all other schools in the city and other public agencies. There are detailed provisions in DfE guidance as to the prescribed information that must be made available to all consultees, which includes the details of the proposal, and the impact of the proposal on students, staff, governors and the local community.
- 6.2 Following completion of stage 1, the second stage prescribes that the local authority must give careful consideration to all the outcomes of and responses to the consultation and then decide in the light of those outcomes and responses whether to publish formal proposals, in the form of a public notice, to add a Support Centre to Goosewell Primary School.
- 6.3 Following completion of stage 2, the third stage prescribes that the local authority must give careful consideration to all the outcomes of and responses to the public notice and then decide in the light of those outcomes and responses whether to implement the proposal to add a Support Centre to Goosewell Primary School.
- 6.4 The fourth and final stage is to implement the proposals.

This page is intentionally left blank

PLYMOUTH CITY COUNCIL

Subject:	Contract Award: Framework Agreement for Support, Enablement and Care Services to help Adults with Learning Disabilities to live independently (people with complex needs)
Committee:	Cabinet
Date:	17 January 2012
Cabinet Member:	Councillor Monahan
CMT Member:	Director of People
Author:	Debbie Butcher, Head of Strategic Commissioning
Contact:	Tel: 01752 307452 e-mail: Debbie.Butcher@plymouth.gov.uk
Ref:	
Key Decision:	Yes
Part:	Part I

Executive Summary:

Supported living services are commissioned to provide support, enablement and care for adults with learning disabilities to help them to live independent lives, safely within their own homes in the community.

Within this provision, specialist services exist to provide support to people who have a learning disability and complex needs.

In total, currently 44 service users are supported through this specialist provision funded via both Plymouth City Council Adult Social Care and NHS Plymouth. The projected 2011/12 spend for supported living services resourced via both funding streams is £3,006,129, of which Adult Social Care spends £1,809,390 per annum.

The national agenda for people with learning disabilities outlined in "Valuing People Now" promotes support in the community including people with more complex needs.

This is underpinned by the national agenda for adult health and social care which promotes personalisation, choice and control.

In order to meet this agenda, and improve the market alongside ensuring value for money, Plymouth City Council and NHS Plymouth have jointly agreed the need to establish a framework of providers via a competitive procurement exercise.

The tenders were evaluated by a team of staff from across both Plymouth City Council and NHS Plymouth and also included service users.

Corporate Plan 2011-2014:

The award and execution of these contracts specifically relates to the following Corporate Priorities:

Raise aspiration: raise the skills and expectations of Plymouth residents.

Reduce inequalities: reduce the large economic and health gaps between different areas of the city by tackling the causes.

Provide value for communities: become more efficient and join up with partners and local residents to deliver services in new and better ways.

Deliver Growth: Tackling worklessness by increasing access to training and employment for homeless vulnerable people and increase the number returning to paid employment.

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

The award of this 'framework' is estimated to realise a 2.11% financial efficiency saving per annum for Plymouth City Council (equating to £38,111), compared to the previous year's expenditure on this service, assuming the level of demand remains the same.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

- The framework agreement will reduce risk to Plymouth City Council and NHS Plymouth, in addition to promoting the provision of quality services to service users, through a robust contract and contract management process which is not currently applied to all provision.
- The services will enable people with a learning disability to access community services, increase their independence and enjoy being part of their community.

An Equality Impact Assessment has been completed which has highlighted that the procurement of a framework of services to deliver support would generally have a positive impact by ensuring the delivery of personalised services and increased choice. It was considered that there may be an initial adverse impact for any service users whose current support provider either decides not to participate in the tender or loses their contract as a result of the tender process. The resulting action identified the need for communication, support and advocacy for service users who may be affected alongside a variety of options for their ongoing support. Service users will not lose services as a result of this tender.

Recommendations & Reasons for recommended action:

The recommendation is that a three year contract, with an option for one year extension, be awarded to the successful suppliers for the following:

‘Framework of services to support people with a learning disability who have complex needs’

The evaluation process determined their offers to be the most economically advantageous tenders based on price and quality. The award of these contracts is forecasted to achieve efficiencies.

Alternative options considered and reasons for recommended action:

Extend Existing Contracts:

Existing spot contracts in place are reviewed in line with the individual service user’s support plan review. Block contracts funded via Supporting People revenue (part of ASC) expire 29th April 2012. If these were extended the opportunity to ensure price management, achieve value for money and deliver choice within the umbrella of personalisation would be lost.

In addition, the procurement of these services is subject to Plymouth Council’s Contract Standing Orders which state that any procurement over the threshold value of £75,000 is to be competitively tendered.

Background papers:

Equality Impact Assessment

Sign off:

Fin	CoSF A1112 003- SRA- 25/11/2011	Leg	13298	HR		Corp Prop		IT		Strat Proc	JK/SPU/CP/261/1111
Originating SMT Member: Pam Marsden											

This page is intentionally left blank

PLYMOUTH CITY COUNCIL

Subject:	Contract Award: Framework Agreement for Support, Enablement and Care Services to help Adults with Learning Disabilities to live independently (people who are at risk of offending or perpetrating harmful behaviour)
Committee:	Cabinet
Date:	17 January 2012
Cabinet Member:	Councillor Monahan
CMT Member:	Director of People
Author:	Debbie Butcher, Head of Strategic Commissioning
Contact:	Tel: 01752 307542 email: Debbie.Butcher@plymouth.gov.uk
Ref:	
Key Decision:	Yes
Part:	I

Executive Summary:

Supported living services are commissioned to provide support, enablement and care for adults with learning disabilities to help them to live independent lives, safely within their own homes in the community.

Within this provision, specialist services exist to provide support to people who have a learning disability and who are at risk of offending or perpetrating harmful behaviour.

In total, currently 21 service users are supported through this specialist provision funded via both Plymouth City Council Adult Social Care and NHS Plymouth. The projected 2011/12 spend for supported living services resourced via both funding streams is £1,700,561 of which Adult Social Care spends £1,307,951 per annum.

The national agenda for people with learning disabilities outlined in "Valuing People Now" promotes support in the community including people who are at risk of perpetrating harmful behaviour.

This is underpinned by the national agenda for adult health and social care which promotes personalisation, choice and control.

In order to meet this agenda, and improve the market alongside ensuring value for money, Plymouth City Council and NHS Plymouth have jointly agreed the need to establish a framework of providers via a competitive procurement exercise.

The tenders were evaluated by a team of staff from across both Plymouth City Council and NHS Plymouth and also included service users.

Corporate Plan 2011-2014:

The award and execution of these contracts specifically relates to the following Corporate Priorities:

Raise aspiration: raise the skills and expectations of Plymouth residents.

Reduce inequalities: reduce the large economic and health gaps between different areas of the city by tackling the causes.

Provide value for communities: become more efficient and join up with partners and local residents to deliver services in new and better ways.

Deliver Growth: Tackling worklessness by increasing access to training and employment for homeless vulnerable people and increase the number returning to paid employment.

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

The award of this 'framework' is estimated to realise a 0.64% financial efficiency saving per annum for Plymouth City Council (equating to £8,329.82), compared to the previous year's expenditure on this service, assuming the level of demand remains the same.

Other Implications: e.g. Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

- The framework agreement will reduce risk to Plymouth City Council and NHS Plymouth, in addition to promoting the provision of quality services to service users, through a robust contract and contract management process which is not currently applied to all provision.
- By increasing the range of specialist providers that Plymouth City Council and NHS Plymouth contract with, the client group will have access to a wider range of support which will be more able to respond to meet need and as such reduce associated risks.
- The services will enable people with a learning disability to access community services, increase their independence and enjoy being part of their community.

An Equality Impact Assessment has been completed which has highlighted that the procurement of a framework of services to deliver support would generally have a positive impact by ensuring the delivery of personalised services and increased choice. It was considered that there may be an initial adverse impact for any service users whose current support provider either decides not to participate in the tender or loses their contract as a result of the tender process. The resulting action identified the need for communication, support and advocacy for service users who may be affected alongside a variety of options for their ongoing support. Service users will not lose services as a result of this tender.

Recommendations & Reasons for recommended action:

The recommendation is that a three year contract, with an option for one year extension, be awarded to the successful suppliers for the following:

‘Framework of services to support people with a learning disability who have complex needs’

The evaluation process determined their offers to be the most economically advantageous tenders based on price and quality. The award of these contracts is forecasted to achieve efficiencies.

Alternative options considered and reasons for recommended action:

Extend Existing Contracts:

Existing spot contracts in place are reviewed in line with the individual service user’s support plan review. Block contracts funded via Supporting People revenue (part of ASC) expire 29th April 2012. If these were extended the opportunity to ensure price management, achieve value for money and deliver choice within the umbrella of personalisation would be lost.

In addition, the procurement of these services is subject to Plymouth Council’s Contract Standing Orders which state that any procurement over the threshold value of £75,000 is to be competitively tendered.

Background papers:

Equality Impact Assessment

Sign off:

Fin	CoSF A1112 002-SRA- 25/11/20 11	Leg	13299	HR		Corp Prop		IT		Strat Proc	JK/SPU/CP/2 60/1111
Originating SMT Member: Pam Marsden											

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank

Document is Restricted

This page is intentionally left blank