

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

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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

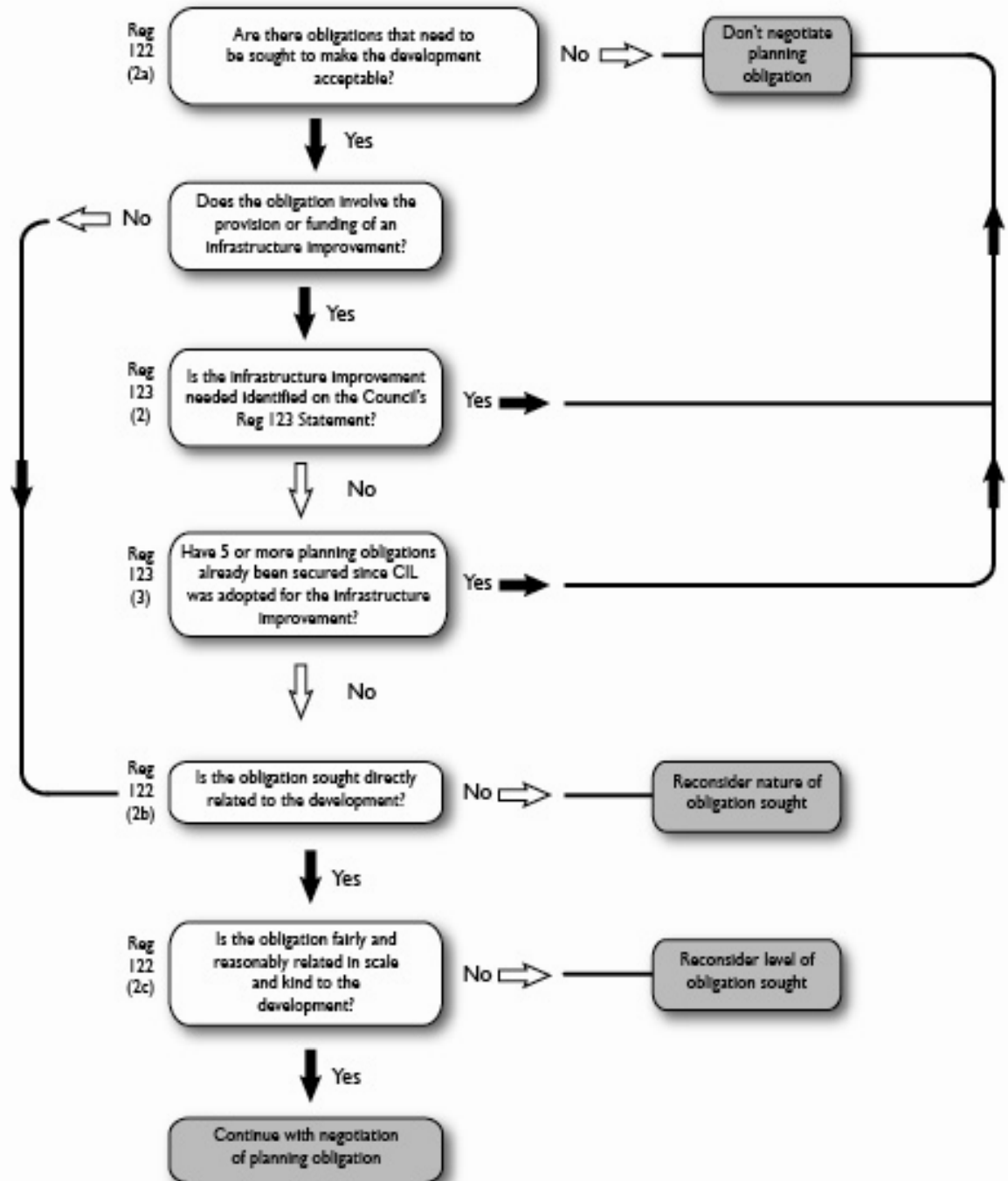
document. This approach will help ensure that planning obligations are fair and reasonably related in scale and kind to the development.

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.

Commuted 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.