This consultation seeks views on the London Borough of Newham’s draft Planning Obligations and Development Viability SPD.

This document provides guidance to the development industry, planning officers and the public on the types of financial and non-financial planning obligations which will be required to make development acceptable where Newham Council is the Local Planning Authority (LPA). This document provides clarification as to how the LPA interprets Development Plan policies. It does not create any additional financial burden on development.

This guidance has been drafted in line with paragraph 153 of the National Planning Policy Framework to enhance transparency with the public about when the LPA will expect planning obligations to be secured. It is intended to expedite the negotiation on planning obligations and facilitate development in Newham in line with the requirements of Regulations 11 to 16 of the Town and Country (Local Planning) (England) Regulations 2012 (as amended).

The Council is inviting comments on this document between 21 March 2016 until 17.00 on 04 May 2016. Comments should be submitted in writing to PlanningObligations@newham.gov.uk or to London Borough of Newham Investment Team (PODVSPD Con, Newham Dockside, 1000 Dockside Road, London E16 2QU.

Any comments received on this consultation will be made public and no confidentiality can be provided to respondents.

It is anticipated that, should no significant changes be required, this document will be considered for formal adoption by the Full Council at a meeting in Summer 2016.
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1. Introduction

1.1. Newham’s local plan provides the vision and framework for how development will come forward in the Borough. Currently the Local Plan is made up of several documents; including:

- The Core Strategy (2012)
- The Proposals Map (2012)
- Unitary Development Plan policies saved by the secretary of state and not deleted by adoption of the Core Strategy
- Detailed Sites and Policies DPD (*material consideration in current format whilst examination is ongoing*) and associated Policies Map

1.2. The Local Plan forms part of the Development Plan, which also includes the London Plan (2015).

1.3. When acting as the Local Planning Authority (‘LPA’) the Council must determine planning applications in line with the policies outlined within the Development Plan so far as material to the application, and to any other material considerations. Where the Development Plan is absent, silent, or policies are out-dated Paragraph 14 of the National Planning Policy Framework (NPPF) should apply and assessment will be in the context of enabling sustainable development.

1.4. In order to facilitate successful planning applications and to provide information to applicants this draft Supplementary Planning Document (SPD) has been produced. Once adopted, this will provide guidance to applicants when submitting planning applications as to what measures might be necessary to make a development acceptable in planning terms.

1.5. This draft SPD provides additional guidance on policies outlined in the Local Plan and how the LPA will locally apply matters arising from the London Plan (2015) (and associated supporting Supplementary Planning Guidance) and national policy. Once adopted, this draft SPD will be a material consideration when the LPA and other bodies determine planning applications for development in Newham.

1.6. In order to minimise the perception of ‘double-dipping’ for the funding of infrastructure (where a developer might consider they are paying twice for the same type of infrastructure) this draft SPD will demonstrate where infrastructure will be expected to be funded via individual developer contributions and where infrastructure may be funded via the Community Infrastructure Levy which is in place in Newham.

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1 Further details on the examination can be found here: https://www.newham.gov.uk/Pages/ServiceChild/Detailed-Sites-and-Policies-DPD-Examination-2016.aspx
1.7. This document provides additional information on policies which have been the subject of extensive public consultation and examination and will not add to development costs beyond what has been established in the policies that are already in effect.

1.8. The following section of this document sets the context of Planning Obligations, how they can be used and the interaction with the Community Infrastructure Levy (CIL). Subsequent sections of this document deal with key themes and how planning obligations will be secured in order to make a development acceptable and facilitate sustainable development in the Borough.
2. Planning Obligations

What are planning obligations and when are they used?

2.1. Planning applications for development in the Borough should not have an adverse impact on existing or future residents of an area. The Local Planning Authority (‘LPA’) should work proactively with applicants to make sure development is acceptable. Generally, conditions are not negotiable and are applied by LPAs to planning permissions to ensure the quality of the development and make what would otherwise be unacceptable development acceptable.

2.2. In some circumstances it is not appropriate to use a planning condition and another type of control should be applied to a development through the use of a ‘planning obligation’. A planning obligation must be agreed by the LPA and the land owner (or the developer) and is contained within a legally binding contract known as a Section 106 Agreement. The Section 106 (‘S106’) Agreement forms part of the planning decision and the planning permission is subject to compliance with the S106 Agreement.

2.3. Another way for applicants to demonstrate that they have mitigated the impact of their development is to propose restrictions or obligations they promise to deliver if planning permission is granted by way of a legal mechanism known as a Unilateral Undertaking. The Unilateral Undertaking is not signed by the LPA, but if it is to be considered as a reason to grant planning permission it must be sealed by the Council to make it enforceable.

2.4. Generally the LPA deal with Section 106 Agreements rather than Unilateral Undertakings. When reading this guidance planning obligations refers to either type of legal provision whether by agreement or undertaking.

2.5. There can be multiple planning obligations (contractual promises to do something) contained within one Section 106 Agreement. They are a type of contract that binds the land and passes from one landowner to the next (referred to as successors in title).

2.6. Unless these obligations are complied with, they bind the land as long as there is an active planning permission (if the planning permission is not implemented within the defined timescales the associated obligations fall away). Section 106 Agreements are charges on the land and as such are publicly available on the planning register and are disclosed on a Local Land Charges search\(^2\).

2.7. Planning obligations can be used in the following circumstances to:
   - Restrict the development or use of land in a specified way;

\(^2\) In accordance with Section 106 (11) of the Town and Country Planning Act 1990 (as amended)
• Require specific operations or activities to be carried out in, on, under or over the land;
• Require land to be used in a specified way; or
• Require sums to be paid on a specified day or dates periodically.

What is the relationship between planning obligations and the Community Infrastructure Levy (CIL)?
2.8. The Planning Act 2008 introduced the ability for Local Planning Authorities to collect monies from developers using a mechanism known as the Community Infrastructure Levy (CIL). It is not compulsory to create a CIL, but the Council has elected to use this mechanism as one way to help fund infrastructure in the Borough.

2.9. The rationale for CIL is that it is a more equitable way for developments of all sizes (meeting certain minimum thresholds) to make a contribution to the wider impacts of growth across an area. The CIL is collected from development across the Borough and makes a contribution to funding strategic infrastructure (like schools, sports facilities, open space) which the Borough needs more of, or of better quality, to cope with an increasing number of people living and working here.

2.10. It is the intention that for the most part the CIL will replace other types of developer contributions. The main exception is that Affordable Housing cannot be funded by the CIL and must still be secured and delivered through planning obligation.

2.11. In order to provide stakeholders with clarity on the types of contributions and other non-financial obligations they might be expected to make this draft SPD sets out the LPA’s expectations and will guide Newham’s Development Management officers when assessing a planning application.

2.12. The Community Infrastructure Levy Regulations 2010 (as amended) (‘CIL Regulations’) set out the rules that the Borough will follow when collecting CIL and dealing with planning obligations.

2.13. The National Planning Policy Framework provides guidance and Regulation 122 of the CIL Regulations establishes statutory test as to when planning obligations can be secured as a reason to grant planning permission, namely the obligation must be:
• Necessary to make the development acceptable in planning terms;
• Directly related to the development; and
• Fairly and reasonably related in scale and kind to the development

2.14. The CIL Regulations also place further limitation on how many individual contributions can be secured from developers to fund infrastructure. Since Newham’s CIL became effective on 1 January 2014 it has not been possible to secure more than five planning obligations to fund the same type of infrastructure or infrastructure project. This is
sometimes referred to as the ‘pooling restriction’. The intention is that this type of more strategic infrastructure should be funded through CIL. LPA’s can continue to pool contributions for measures that cannot be funded through the CIL.

2.15. There are three charging schedules in effect in the Borough:
- Mayoral CIL
- Newham CIL
- London Legacy Development Corporation CIL

2.16. The Council acts as a collecting authority on behalf of the Mayoral CIL and Newham’s CIL. Further details on the CIL collection process and how monies are spent can be viewed at www.newham.gov.uk/cil.

2.17. In order to ensure that all stakeholders have an understanding of the types of infrastructure which may be funded in part by Newham’s CIL a Regulation 123 infrastructure list has been published on the Newham.gov.uk website. This also ensures that anybody negotiating planning obligations will, when read in conjunction with this draft SPD, have a full understanding of how a development will contribute to infrastructure in the Borough.

Who determines when a planning obligation is needed?

2.18. Planning obligations can only be used in certain circumstances as a reason to grant planning permission, they must pass three statutory tests outlined in paragraph 2.13 of this guidance.

2.19. The LPA and applicant should work positively together having due regard to the Development Plan, any material considerations and ultimately to ensure that any consented development is holistically sustainable.

2.20. Paragraphs 203-205 of the NPPF establish when planning condition and obligations should be utilised in the planning process. The National Planning Practice Guidance builds upon the appropriateness of planning obligations and when they should be sought.

2.21. London Plan Policy 8.2 Planning Obligations establishes the priorities for securing both strategic and local infrastructure; including but not limited to the provision of Affordable Housing, funding Crossrail and other transport infrastructure and tackling climate change and air quality, social infrastructure and the provision of small shops.

3 The London Legacy Development Corporation is a separate local planning authority, further details on their Local Plan, CIL charging schedule and planning obligations can be found at: http://queenelizabetholympicpark.co.uk/planning-authority/planning-policy
2.22. This document builds upon a number of Local Plan Policies as outlined in the following sections.

2.23. The LPA offer a comprehensive pre-application advice service and would encourage applicants to consult with this service prior to making an application to ensure an expedient determination of any planning application. For applications for major or large-scale development it might be more appropriate to engage in a planning performance agreement whereby the LPA provides a framework for the determination of the planning application. Neither of these services guarantees a scheme will obtain planning permission; however they are ways to positively and actively identify and address in principle impacts of proposals and seek ways to mitigate these impacts.

2.24. Early engagement with the LPA is encouraged. An applicant will be expected to have taken account of the Development Plan and have comprehensively considered the full development costs of delivering a policy compliant scheme in Newham. The issue of financial viability applies expressly to only one Development Plan policy (discussed in Section 8).

2.25. The NPPF does make provision for ensuring that Development Plans are deliverable, although this is not at the expense of sustainable development. Paragraph 173 of the NPPF states that ‘To ensure viability…when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable’. This guidance provides further information on some of the established Development Plan costs which may be secured through the planning process and Section 8 deals with how this should be considered in financial viability appraisals.

2.26. The LPA will endeavour to determine an application within statutory deadlines, unless otherwise agreed with an applicant. The LPA will work positively with applicants and stakeholders to deal expeditiously with matters to enable appropriate development to be delivered in the Borough.

2.27. In general, either the Strategic or Local Development Committee will determine applications subject to a Section 106 Agreement. The report to

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4 Further details of the pre-application advice can be found here: https://www.newham.gov.uk/Pages/Services/Planning-Pre-application-service.aspx?l1=100006&l2=200074
5 Further details on Planning Performance Agreements can be found here: https://www.newham.gov.uk/Pages/Services/Planning-Pre-application-service.aspx?l1=100006&l2=200074
6 Details of the jurisdiction of the London Borough of Newham planning committees is available as Article 8 of the constitution:
the Committee will outline Heads of Terms to be included within the Section 106 Agreement or the details of a Unilateral Undertaking.

2.28. A Section 106 Agreement cannot be executed until a resolution (decision) has been made on a planning application, and a planning permission (which is subject to a Section 106 Agreement) cannot be issued until the Section 106 Agreement is completed. As such, as far as is practicable, detailed drafting of the Section 106 Agreement should occur alongside the assessment of the planning application.

2.29. This SPD gives an indication of the type of planning obligations that may be sought. This is not exhaustive and each planning application will be considered on its own merits. It should be noted that planning applications are subject to public consultation, as such representations provided by stakeholders seeking planning obligations will be acknowledged, considered and reported within Officer’s reports.

2.30. This guidance provides indicative thresholds for when planning obligations may be sought. It is not possible to indicate all of the scenarios which might trigger mitigation. Where the guidance indicates that matters will be dealt with on a site-by-site basis an applicant should be fully aware of the requirements of the Development Plan when purchasing a site and developing a scheme. Where the threshold is identified as major applications this is defined with reference to major development as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 or any successor legislation.

What is the relationship between planning obligations and Section 278 Agreements?

2.31. Section 278 of the Highways Act 1980 allows the local highway authority (which might be Newham, Transport for London or the Department for Transport) to enter into private agreements with third parties to undertake works on or to the public highway, funded by the third party (typically a Developer).

2.32. The National Planning Policy Guidance and the CIL Regulations emphasise that planning conditions and planning obligations should not be used to compel developers to enter into Section 278 Agreements if the Charging Authority intends to or may fund the same infrastructure through the Levy. The Charging Authority’s Regulation 123 infrastructure list outlines the potential infrastructure or types of infrastructure which may be funded by the Levy. Applicants should review the Regulation 123 infrastructure list with the LPA during the pre-application process.

2.33. Following representations from stakeholders on a planning application or through reasoned judgment the LPA may, through negatively worded conditions, seek to ensure that developments may not be beneficially commenced, occupied or utilised until impacts on the public highway have been addressed.

2.34. The CIL Regulations brought about a change restricting the number of planning obligations which can be secured to deliver one type or infrastructure or project, this pooling restriction does not apply to Section 278 Agreements.

2.35. Through the pre-application and PPPA process the LPA will advise early and in tandem discussions with the local highway authority to expeditiously deal with highways matters arising from a planning application.

2.36. An application accompanied by an in principle draft or completed Section 278 Agreement will be a material consideration for the LPA.

2.37. The restrictions upon securing Section 278 Agreements via planning obligations does not apply where the party entering into the Agreement is the relevant Minister, Transport for London or a strategic highway company (as provided for by Regulation 123(2B) of the CIL Regulations).
3. Overview of Newham’s position

3.1. The Core Strategy outlines the priority infrastructure provision to support existing and new communities as the Borough grows.

3.2. Developments which provide affordable homes for local residents and offer employment opportunities to the Borough’s population will in principle be supported if properly mitigated.

3.3. This guidance builds upon policies in the Development Plan. The themes addressed are considered in isolation and provide a methodology for how the LPA will deal with each matter.

3.4. The impacts of an individual scheme will be assessed and where there are competing requirements for mitigation which cannot all be provided due to financial viability the LPA will seek to ensure the optimum outcome for the Borough. In some instances this may be to refuse planning permission.

3.5. This SPD will support the Council’s resilience agenda particularly the themes a high quality physical environment, a strong local economy and genuine housing options.

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7 [https://www.newham.gov.uk/Pages/Services/Resilience.aspx](https://www.newham.gov.uk/Pages/Services/Resilience.aspx)
4. Housing

Family and Affordable Housing

4.1. The Council’s intention is through the lifetime of the Local Plan period that we will build sustainable communities in quality neighbourhoods with the right mix and balance of housing types, sizes and tenures where residents feel safe and choose to live, work and stay.

4.2. With a policy of delivering 50% of new homes as affordable homes the Borough will work with applicant and landowners to ensure the right supporting infrastructure is available to enable the delivery of family sized and affordable homes through the coming years.

4.3. The Core Strategy outlines the target of 39% family housing across the Borough; with indicative housing typologies associated with strategic sites forming either high family, low density (40%); medium family, medium density (30%); or low family, high density (20%).

4.4. The provision of family housing and affordable housing will be considered in accordance with the box ‘Considerations for the Assessment of Housing Mix and Tenure’ within policy H1 of the Core Strategy (page 129). For ease of reference this is replicated below:

Considerations for the Assessment of Housing Mix and Tenure

In considering planning applications for housing the Council will have regard to the following matters when determining an appropriate mix and tenure:

The primary concern will be the need to secure quality mixed and balanced communities. Other criteria will be:

1. Scheme viability;
2. The availability of subsidy;
3. The existing mix of housing in the area;
4. The individual circumstances of the site in terms of site conditions, local context and site features;
5. The availability of required infrastructure and community facilities for residents.

A1 Family Housing

Where development with the capacity for 10 units are proposed the application should demonstrate the on site provision of family housing in accordance with the considerations outlined in the Box on page 129 within policy H1 of the Core Strategy.

In the first instance the provision of family housing should be made on site. Where circumstances do not allow for this the Council will consider the off
site provision of family housing or cash in lieu contributions; these will be secured through a planning obligation.

**Threshold / trigger**

Developments or redevelopments on individual sites with the capacity to deliver 10 units or more should aim to deliver 39% family housing on site.

Strategic sites should refer to the indicative housing typologies outlined in the Core Strategy.

**Policy position**

Core Strategy:
H1 Building Sustainable Mixed Communities
H2 Affordable Housing
INF9 Infrastructure Delivery

### A2 Affordable Housing

Where development with the capacity for 10 units are proposed the application should demonstrate the on site provision of affordable housing in accordance with the considerations outlined in Box on page 129 within policy H1 of the Core Strategy.

In the first instance the provision of affordable housing should be made on site. Where circumstances do not allow for this the LPA will consider the off site provision of affordable housing or cash in lieu contributions; these will be secured through a planning obligation.

**Threshold / trigger**

Developments or redevelopments on individual sites with capacity for 10 units or more:

- *in* the Canning Town and Custom House Area to provide between 35-50% of the number of proposed units as affordable housing, comprising a tenure split of 65% market housing and 35% affordable, split between social rent and intermediate tenure;

- *in* the rest of the Borough, where the Council is the LPA, to provide between 35-50% of the number of proposed units as affordable housing, comprising 60% social housing (split between social rent and affordable rent) and 40% intermediate housing.

**Policy position**

Core Strategy:
H1 Building Sustainable Mixed Communities
Affordable Rent Homes provided by the private sector
4.5. The LPA support the inclusion of a range of tenures within schemes and across developments in the Borough in the right locations to enable genuine choice for Newham’s residents.

4.6. Where an applicant wishes to deliver an affordable rent product within their development and therefore benefit from Social Housing Relief allowed for in the CIL Regulations the developer will be required to enter into a planning obligation to secure the units as affordable housing.

4.7. Discussions between the applicant and the LPA on the tenure of units should happen early in the development process.

A3 Affordable Rent Homes

In addition to A2, where a scheme provides affordable rent homes which will be provided by the private sector (not a registered provider of social housing or the local housing authority) in order to benefit from Social Housing Relief provided for by the CIL Regulations this must be secured by planning obligation.

Applicants seeking to deliver this type of housing through this mechanism must disclose this to the LPA during the assessment of the application.

Threshold / trigger

Any scheme that provides affordable rent homes to be delivered by anyone other than a registered provider of social housing or the local housing authority; if they wish to benefit from Social Housing Relief within the CIL Regulations.

Policy position

Core Strategy:
H1 Building Sustainable Mixed Communities
H2 Affordable Housing

Regulation 49 of the Community Infrastructure Regulations 2010 (as amended)

Starter Homes

4.8. Following an announcement from the National government and emerging provision in the Housing and Planning Bill a new type of housing will be available for the market to deliver. A developer may make an application
for a brownfield site (one which has previously been developed/used) under the starter home exemption site policy, subject to certain conditions. The conditions relate to sites being deemed as under-used or unviable.

4.9. In the Draft Interim Housing SPG (March 2015) the GLA considers at paragraph 1.2.60 that this policy has limited application in London as these types of sites will already have planning permission, be allocated for housing through the Development Plan or be identified within the Strategic Housing Land Availability Assessment.

4.10. Notwithstanding the GLA’s position applications for this type of development in line with the national policy will be considered favourably unless appropriate mitigation in line with the NPPF cannot be secured, this includes ensuring the developments deliver a high quality design.

A4 Starter Homes

Applications for starter homes (as defined by National government) will be assessed on the merits of the application and necessary mitigation to ensure sustainable development will be secured via planning conditions and obligations.

The requisite Community Infrastructure Levy will be payable in line with the CIL Regulations in force at the time planning permission is granted (i.e. until such time that amendments are introduced this type of development will be considered as Use Class C3 housing and the appropriate rates will apply with no relief or exemption).

A planning obligation will be required to secure the units within a consented scheme to remain as starter homes for a set period of time, indicatively 15 years but this may be reviewed on a case by case basis.

Threshold / Trigger

The provision of Starter Homes within an application for development in line with DCLG guidance or subsequent legislation.

Policy position

National planning policy guidance- Starter Home exemption site policy

Core Strategy:
J2 Providing for Efficient Use of Employment Land

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8 DCLG Starter Homes exception sites Guidance March 2015
4.11. Central government supports the delivery of affordable housing and seeks to reduce the perceived barriers to delivery. As such, in November 2014 guidance was provided to LPAs to reduce the burden of affordable housing provision by Developers on smaller sites (the small sites exception policy). The LPA maintain the thresholds in the adopted Development Plan are appropriate for development in Newham.

The Private Rented Sector and the provision of affordable housing

4.12. The provision of units built specifically for Since 2012 there has been a London wide and borough focus on delivering purpose built Private Rented Unit to meet the needs of those priced out of the Build for Sale market and, particularly in Newham, to address the generally poor quality existing Private Rented Sector (PRS).

4.13. The Council wishes to encourage the development of a high quality Private Rented Sector to meet the housing needs of Newham residents. The Borough requires this development to take place to compliment the existing Build for Sale and affordable housing delivery programmes, but not to displace or replace their roles, in a thriving house building market. The Council will show flexibility in its approach were applicants engage constructively with the Council to ensure that PRS schemes do not hinder or ignore the Council’s housing priorities set out in Policies H1 and H2 of the Core Strategy.

4.14. The Council will produce a protocol for how applications which incorporate PRS units within their schemes will be dealt with and this will be published on the Newham website.
5. Economic Regeneration

Workplace

5.1. Enabling residents to enjoy the same opportunities as those in other parts of London is a key priority for Newham. Investment in education for Newham’s young people creates a foundation, but skills training and job brokerage extends beyond compulsory education and can be accessed by Newham’s residents who have employment aspirations beyond their current circumstances. Workplace is the primary tool for ensuring that local residents are able to live economically independent lives.

5.2. Workplace is one way of facilitating the delivery of the spatial vision for the Borough, as outlined in the Core Strategy, whereby the housing and regeneration growth in the Borough should be supported by the delivery of quality jobs that are accessible to Newham’s residents.

5.3. Workplace is Newham’s jobs brokerage, bringing together a comprehensive range of personalised, integrated services to both job seekers and employers. This includes support for local unemployed and under-employed people, access to training provision and business support services as well as supporting local employers’ recruitment needs. All employers are offered a free recruitment service. Since opening in 2007, Workplace has supported Newham residents into over 29,000 jobs.

5.4. A fair and proportionate contribution is sought from applicants towards enabling Newham residents access to jobs at their development sites, this will enable residents to develop skills and experience to meet the recruitment and training needs of employers.

5.5. The funding from applicants and developers will be used to support job brokerage and vocational skills training for local residents to support them into the jobs which will become available during the course of construction or end-use of a development.

5.6. In order to demonstrate the level of resource and investment required to support residents into jobs the case study below outlines the process and scale of operation undertaken to support residents into jobs at Westfield Stratford City:
   - 13,700 local candidates were screened to assess training needs and suitability
   - 5,233 residents trained (2 week training) - selected from above
   - 5,400 prepared and put forward for interviews - most of these would have undergone training (as above)
   - 2,000 job starts on opening day - November 2011

5.7. The above shows that Workplace worked with 13,700 local residents in order to secure 2,000 job starts, a ratio of almost 1:7. This is a typical ratio for recruitment programmes and ratios are often higher than this at a
national level. It is anticipated, following nine successful years of Workplace’s operation, to have to work with the same numbers and ratios in order to place the right candidates into the jobs emerging from new developments across the rest of the Borough.

5.8. The calculation of contributions sought from applicants and developers to support residents in to these job opportunities is based on a benchmark figure used within the job brokerage/welfare to work industry. Table 1 outlines how the value of £3163 unit cost per job created has been established. The current unit cost is based on current funding guidelines (as detailed below) but will be subject to change in line with future national unit cost guidelines.

<table>
<thead>
<tr>
<th>Source / Funder</th>
<th>Unit Cost</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>DWP Work Programme Bidding Guidance 2011</td>
<td>£3,600 – 13,700</td>
<td>For 12m+ benefit claimants who are returning to work</td>
</tr>
<tr>
<td></td>
<td>Average: £8,650</td>
<td></td>
</tr>
<tr>
<td>Skills Funding Agency (Skills Funding Agency) European Social Fund Programme 2014-16</td>
<td>£2,835 - £3,492</td>
<td>European Funded tendering opportunity targeting a wide range of people to support them into work.</td>
</tr>
<tr>
<td></td>
<td>Average: £3,163</td>
<td></td>
</tr>
</tbody>
</table>

Table 1

5.9. In order to place residents into jobs Workplace will need to work with far more people than the number of jobs created as there are many stages to go through in advance of placing the right candidate into the right job. The stages include: meeting with the employer to agree upon the recruitment process; working with the employer to develop appropriate pre-recruitment training; advertising the opportunities available; outreach to local communities; inviting candidates in for initial selection and screening events; placing them into training; preparing for, and placing into interviews; securing feedback from employers.

**B1 Skills and training**

The operation of Workplace will be supported by financial contributions proportionate to the scale of development, including the numbers of jobs created during construction and/or end use of the development.

The value of the contribution sought from any applicant will be calculated based on the number of full-time equivalent posts created or the numbers of employees generated by a development (as advised by the applicant on their application form and supporting chapters within Environmental Statements).

The LPA will secure the optimum financial contribution from a Developer, based on the numbers of jobs that are created or enabled by a scheme. The LPA seeks to ensure that 100% of the jobs enabled by new development can be accessed and secured by Newham residents, and funding will typically be sought as follows:
\[
\begin{array}{ccc}
\text{number of jobs enabled by development} & \times \text{financial contribution to skills and training} = \text{financial contribution to skills and training}
\end{array}
\]

£3163 x number of jobs enabled by development = financial contribution to skills and training

Note: This unit cost will be subject to change in line with future national unit cost guidelines.

**Threshold / Trigger**

All major applications, including end-use employment generating and those with an element of construction.

**Policy position**

London Plan:
Policy 4.12 Improving Opportunities for All

Core Strategy:
S1 Spatial Strategy
SP2 Healthy Neighbourhoods
J3 Skills and Access to Employment
INF9 Infrastructure Delivery

National planning policy framework:
Building a strong, competitive economy

Detailed Sites and Policies DPD (submission draft):
J4 - Managing a Mixed Use Borough

**Local labour – construction and end use**

5.10. The development of the Borough offers a great opportunity for Newham’s residents to enjoy sustained local employment or training opportunities to launch new careers. The Government is committed to an additional 3 million apprenticeship starts in England by 2020\(^9\). The provision of good quality apprenticeships within developments will be encouraged. Good quality apprenticeships should offer a salary of at least the national minimum wage.

5.11. The use of local labour through construction of a development to the end use of development (where it is employment generating) will be expected. Aspirational targets of securing 100% of jobs for local residents will be carried forward into planning obligations following negotiation with

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\(^9\) Further details on the Apprenticeships (in England): vision for 2020 can be found here:
Developers, with a duty to provide monitoring data to the Council and Workplace about Newham residents employed on site and within the development. All monitoring evidence is to be collected from Newham residents who are asked to supply information on a voluntary basis and must be processed in accordance with the Data Protection Act 1998 and other relevant legislation.

**B2 Local labour - construction**

Applicants/Developers will be expected to require their contractors to provide advance notice of jobs to be created by the development and details of the requisite skills needed to undertake these jobs.

The commitment to local labour in a planning obligation lies immediately with the developer who will be required to further strengthen these obligations through appropriate wording in contracts and leases which passes those obligations onto site-wide contractors/employers to work in partnership with Workplace.

The LPA requires that 100% of jobs are advertised with Workplace. The service will endeavour to provide suitable candidates for all opportunities and will immediately advise of the likelihood of forwarding suitably skilled/experienced candidates for those jobs so employers can pursue other recruitment options, if necessary. A minimum target of 25% of construction jobs being secured by Newham residents will be established in order to ensure that the development positively impacts on local economic benefit.

During the course of development the Developer or Contractor will be expected to use reasonable endeavours to support Newham residents to secure their first job in the construction industry. Additionally they will be expected to use reasonable endeavours to support Newham residents who are holders of Construction Skills Certification Scheme Cards (or equivalent affiliated scheme) to progress from green to red cardholders and from red to blue cardholders. In partnership with the main contractor the Council will seek to identify opportunities to develop structured pathways to experienced worker status (e.g. on site training and assessment). These pathways will be adapted according to the specific needs of the site.

Where the development of a site or scheme is over a sustained period of time (2 years plus) or in multiple phases there will be a requirement for Workplace staff to have a regular presence on site in order to enable positive working relationships between Workplace staff and hiring managers.

The LPA will seek to secure apprenticeship opportunities on major developments. Targets will be agreed on an individual basis according to the skill area, training need and availability of relevant apprenticeship frameworks (qualifications available). A guideline of 1 apprentice per £3 million investment will be used in situations where the construction phase is expected to last for 2 years or more.
The main contractor will be required to provide Workplace staff with site-wide quarterly monitoring data to demonstrate progress towards meeting the target of 25% Newham residents employed on site.

Threshold / Trigger

All major applications with an element of construction

Policy position

London Plan:
Policy 4.12 Improving Opportunities for All

Core Strategy:
S1 Spatial Strategy
SP2 Healthy Neighbourhoods
J3 Skills and Access to Employment
INF9 Infrastructure Delivery

National planning policy framework:
Building a strong, competitive economy

Detailed Sites and Policies DPD (submission draft):
J4 - Managing a Mixed Use Borough

B3 Local labour – end use

Developers will be expected to provide advance notice of jobs to be created by the development and details of the requisite skills to undertake these jobs.

The commitment to local labour in a planning obligations lies immediately with the developer who will be required to further strengthen these obligations through appropriate wording in contracts and leases which passes those obligations onto development-wide employers to work in partnership with Workplace.

The LPA requires that 100% of jobs are advertised with Workplace. The service will endeavour to provide suitable candidates for all opportunities and will immediately advise of the likelihood of forwarding suitably skilled/experienced candidates for those jobs so employers can pursue other recruitment options, if necessary. In order to ensure that the development positively impacts on local economic benefit targets will be set as outlined below:

- In order to ensure the development positively impacts on local economic benefit a minimum target will be set aiming for 80% of vacancies emerging at the development will be filled by Newham residents; and
• The main contractor will be required to provide Workplace staff with an annual snapshot report which records the percentage of vacancies filled by Newham residents and the percentage of Newham residents employed within the development. This information will help the LPA assess the extent to which Newham residents are benefiting from the regeneration of the Borough.

**Threshold / Trigger**

All major applications which generate end-use employment

**Policy position**

London Plan:
Policy 4.12 Improving Opportunities for All

Core Strategy:
S1 Spatial Strategy
SP2 Healthy Neighbourhoods
J3 Skills and Access to Employment
INF9 Infrastructure Delivery

National planning policy framework:
Building a strong, competitive economy

Detailed Sites and Policies DPD (submission draft):
J4 - Managing a Mixed Use Borough

5.12. The Council’s Business Development Team exists to maximise economic benefit arising from major contracts and new developments in the Borough. They work in close partnership with local businesses to support their development and alert them to the potential supply chain opportunities arising as a result of the regeneration of the Borough.

**B4 Local supply chain, goods and services**

In order to maximise the scope and quantum of supply chain opportunities being delivered by local businesses, developers will be expected to provide advance notice of contracts for the supply of goods and services to be created by the development and of the requisite value of contracts.

This advanced notice will alert local businesses to supply chain opportunities and give them the opportunity to secure these opportunities and/or develop the necessary policies and systems to make them fit to supply goods and services for future supply chain opportunities.

**Threshold / Trigger**

All major applications
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<tr>
<td>London Plan:</td>
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<td>Policy 4.12 Improving Opportunities for All</td>
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<td>Core Strategy:</td>
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<td>S1 Spatial Strategy</td>
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<td>J1 Investment in the New Economy</td>
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<td>J3 Skills and Access to Employment</td>
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<td>INF9 Infrastructure Delivery</td>
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<td>National planning policy framework:</td>
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<td>Building a strong, competitive economy</td>
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6. Sustainable transportation

Travel plans

6.1 The use of Travel Plans can help reduce emission by promoting alternatives to the private motor vehicle. Travel plans will typically be secured by planning condition, in response to any matters raised during the assessment of a planning application. School, Workplace and/or residential Travel Plans should be produced where a development exceeds particular thresholds in, and produced in accordance with, the relevant Transport for London (TfL) guidance. The Developer is required to submit and then maintain and deliver upon the agreed targets.

6.2 As the cumulative impact of development across the Borough impacts upon the way people move around the Borough, whether by foot, cycle, public transport or private vehicle the infrastructure providers must be able to adapt to competing demands. Adherence to travel plans and active monitoring should minimise any negative impact on existing and new people in the Borough and the associated environmental impacts.

6.3 In order to maintain an understanding of the impacts applicants will be required to make a contribution towards travel plan monitoring undertaken by the Council, in addition to the inherent costs to the developer of adhering to the travel plan.

C1 Travel Plan Scrutiny Fees

Travel plans should be utilised and actively monitored by the responsible parties to ensure targets are met or exceeded.

In order to deal with the submission of travel plan monitoring data the LPA will seek an initial fee of £500 upon the grant of planning permission and £500 for each submission of monitoring data.

The LPA will seek a bond of c.£20,000 to be placed into an account which can be accessed should the Developer fail to undertake their monitoring triggered at years 1, 3, 5 and 10 post occupation of the development.

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<td>As identified in TfL guidance¹⁰</td>
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<th>Policy position</th>
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<tr>
<td>National planning policy framework: Promoting sustainable transport paragraph 36</td>
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¹⁰ Strategic level thresholds for requiring a Travel Plan or Travel Plan Statement: [https://tfl.gov.uk/info-for/urban-planning-and-construction/travel-plans/planning-requirements](https://tfl.gov.uk/info-for/urban-planning-and-construction/travel-plans/planning-requirements)
Reduced Car Parking Development Agreements

6.4 In order to ensure that on street parking stress is not made worse by new developments, the LPA will seek to ensure that the occupants of certain developments will not be able to benefit from a parking permit to park on the public highway where a resident’s parking zone is in force.

6.5 Pursuant to the Cabinet decision of 18 February 2016, the Council’s aspiration is ‘Keeping Newham Moving – A New Deal for Our Roads’. This focuses on ensuring that existing residents are given the first opportunity to access on street parking. Where new development is enabled in areas with good public transport connectivity or supported by the operation of car clubs and other mechanisms the reliance on private motor vehicle will diminish.

6.6 Evidence suggests that car ownership in the Borough and across Greater London is modest compared to other cities in the country\textsuperscript{11}.

C2 Reduced car parking development agreements

A planning obligation will ensure that future occupants of a development (this could be both residential and business uses) are not able to benefit from a parking permit. Whilst the obligation will be available on the planning register, there will be an obligation on the developer upon disposal of first interest to notify the prospective purchaser of this restriction.

Where appropriate enforceable covenants should be applied to leases of residential and commercial premises within a development restricting applications for parking permits. Note: This exemption does not apply to those occupants who are the holder of a disabled person’s (blue) badge.

An associated fee will be paid to the Council in order to ensure that no application will result in the issuing of a parking permit and to ensure robust enforcement of this provision. Indicatively, this cost will be £2000 per planning obligation, but this could be more dependent upon the scale of development.

Threshold / Trigger

\textsuperscript{11} For example, the GLA’s Health Impact of Cars (September 2015):
• Where the location of development is within an identified parking stress area, or
• Where a traffic management order is in place to manage parking or
• In location with high public transport accessibility.

Policy position

London Plan:
Policy 6.13 Parking

Core Strategy:
S1 Spatial Strategy
INF9 Infrastructure Delivery

National planning policy framework:
Promoting sustainable transport paragraph 39

Detailed Sites and Policies DPD (submission draft):
SP8 - Ensuring Neighbourly Development

C3 Car clubs

Applicants will be expected to consider the availability of car clubs in the vicinity of their development site, whether their development should make provision for spaces on the public highway (at a cost to the Developer) and how to incentivise occupants of the development to utilise a car club scheme.

A planning obligation may be secured in order to provide funding for the traffic management orders and associated costs to enable the delivery of car clubs spaces on the public highway.

A planning obligation may also be secured to ensure that, at a cost to the Developer, residents are provided with free membership to the respective car club to encourage the use of this service for a term of typically two years for each dwelling.

Threshold / Trigger

Major applications and where need or demand is established in a Transport Assessment supporting a planning application

Policy position

London Plan:
Policy 6.13 Parking

Core Strategy:
Public Realm and Highways

6.7 The LPA will support improvements to the public realm to encourage walking and cycling which enables access to green infrastructure, community facilities, public transport hubs and employment. There will be occasions where the design of schemes, including the access to and interaction with the public realm may necessitate the applicant making a contribution to enhancements to the local environment.

6.8 The LPA will strongly encourage tandem conversations with the Highways Authority during the design of a scheme, prior to submission of a planning application (this can be through the pre-application process or independently). Where it is necessary to undertake works to the public highway an applicant may be required to enter into a Section 278 Highways Agreement with the relevant Highways Authority.

6.9 If a draft of a Section 278 Agreement or heads of terms between the Developer and Highways Authority has progressed this could be submitted to the LPA and would be a material consideration in the assessment of the planning application.

6.10 The submission of details associated with the substantiated costs of highways works are particularly important if this is considered to be a development cost which is impacting on the delivery of other planning policy requirement, necessary mitigation and infrastructure required by the Development Plan.

6.11 Where the LPA deem it necessary to protect the public highway for the benefit of pedestrians, cyclists and vehicular traffic, the costs associated with the reinstatement of damage or alteration to the carriageway will be secured by Bond. This Bond will be called upon if necessary and any unexpended funds will be returned to the developer/contractor.

C4 Public Realm and Highways

The following types of works may be required to be undertaken and secured by way of condition or planning obligation in accordance with the impact of a particular development:

- Pedestrian environmental surveys and commitment to deliver associated identified works
- reinstatement of footpaths, dropped kerbs
- traffic management orders; including, but not limited to, loading and unloading, waiting restrictions
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<td>SP8 - Ensuring Neighbourly Development</td>
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**Public Transport**

6.12 The LPA will consider the impact of development on the public transport network, taking into consideration TfL’s business plan, planned investment and revenue generated from additional service provision.

6.13 Taking into consideration the London Mayor’s priority transport infrastructure project of Crossrail 1; funding will be sought from Developers in accordance with the *Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy SPG*. The LPA will consider London Plan policies 6.5 and 8.2 when securing funding from applicants for Crossrail.

6.14 London Plan policy 8.2 emphasises the importance of securing planning obligations for local and strategic priorities, including transport improvements. The LPA must ensure that any request for funding is dealt with in accordance with the statutory tests in the CIL Regulations.

6.15 TfL and their subsidiaries or service operators have been a beneficiary to planning obligations secured by Newham as the LPA. The Borough liaises with TfL’s borough planning and planning obligations teams to ensure that secured mitigation is delivered.

6.16 In accordance with the Council’s adopted Regulation 123 list it is anticipated that access to the Borough’s strategic sites, as identified in the Core Strategy, could be funded by the Newham’s CIL. As such, no transport infrastructure which meets this criteria should be funded by planning obligations.

6.17 It is acknowledged that enhancements to bus services, including increased frequency or extensions to existing services or new routes may be required by development in the Borough and that this service enhancement is not considered to be infrastructure.
**Prior approvals – transport mitigation**

6.18 To support applications for prior the LPA encourages the submission of a Unilateral Undertaking to address any transport impacts arising from a proposed development.

6.19 A Unilateral Undertaking made under Section 106 of the Town and Country Planning Act is a binding promise from an applicant, or someone with an interest in the land, that certain obligations will be adhered to or performed. To be material to the consideration of the application for prior approval the Unilateral Undertaking must be supported by in principle agreement that it addresses all of the requisite transport mitigation and be sealed by the Council’s legal representatives.

6.20 An applicant or developer should consider the Development Plan and this guidance to consider the transport impacts which may be arising from their development and what mitigation can be proffered. If the LPA deem that this mitigation is sufficient to address all transport concerns this may enable prior approval to be granted and avoid the submission of a planning application.
7. Sustainability, climate change and environmental protection

Energy

7.1 In the first instance, the reduction and minimisation of carbon dioxide emissions should be designed into each planning application in line with the energy hierarchy (London Plan Policy 5.2, part A).

7.2 Where it can be demonstrated through an energy statement that the requirement for major developments to meet the reduction targets set out in London Plan Policy 5.2 (part B) cannot be accommodated on site, the Developer must demonstrate how they will make off-site provision for an equivalent carbon dioxide emissions reduction; this will be secured by planning obligation.

7.3 If the Developer is not able to identify an alternative off-site provision for equivalent carbon dioxide emissions reduction within the Borough, the Council will secure a financial contribution to be expended on delivery of carbon dioxide savings. In line with the Mayor of London’s Sustainable Design & Construction SPG (2014), Carbon Offset Fund guidance will be developed to identify suitable projects to be funded by such contributions.

7.4 Details of the carbon offset fund will be published on Newham’s website. The projects delivered by the carbon offset fund will be reported in the Planning Obligations Annual Monitoring Report.

7.5 The value of cash in lieu contributions will be calculated at a rate of £1,800 per tonne of carbon dioxide to be off-set as per the Sustainable Design & Construction SPG (2.5.13).

7.6 For clarification the provision of carbon emission reduction projects are not captured by the pooling restriction as these projects are not deemed to be infrastructure. Equally, financial contributions can be secured as they cannot be funded by CIL (as they are not infrastructure).

D1 Energy

All opportunities to meet relevant Development Plan carbon emission reduction targets should be explored by the Developer.

Where, using all practicable means, the specified emissions reduction cannot be secured on site, the Developer may make this provision off site.

In exceptional circumstances the Council will accept cash in lieu contributions for the shortfall in targeted emissions reduction at a rate of £1,800 per tonne of CO\textsubscript{2}.

The rate is calculated based on a nationally recognised price for carbon dioxide of £60 per tonne, with overall contribution taking into account the ‘lifetime’ (30 years) of a development (£60 x 30 years = £1,800 per tonne of
carbon dioxide to be off-set)

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<th><strong>Threshold / Trigger</strong></th>
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<tr>
<td>Major applications where the Energy Statement demonstrates a need for off-setting</td>
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<tr>
<td>London Plan:</td>
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<tr>
<td>Policy 5.2 Minimising Carbon Dioxide Emissions</td>
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<td>Core Strategy:</td>
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<td>S1 Spatial Strategy (specifically point 10)</td>
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<td>SC2 Energy</td>
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<td>INF9 Infrastructure Delivery (specifically point 4)</td>
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**Biodiversity**

7.7 The LPA will seek to ensure that Biodiversity is protected, or enhanced across the Borough. Where a development is not able to protect biodiversity on site there may be a requirement for off site provision to mitigate impacts. This can be delivered by the applicant, or through a cash payment to the LPA to facilitate the delivery of actions outlined in the Newham Biodiversity Action Plan or other Council initiatives as updated from time to time.

7.8 The protection and enhancement of blue and green infrastructure will be reviewed on a case-by-case basis.

7.9 If a financial contribution is secured to mitigate the loss of, damage to or erosion of quality of biodiversity associated with a Development the LPA will provide clarification as to a range of measures which monies might be applied to.

7.10 It should be noted that the LPA do not consider biodiversity to be a type of infrastructure and as such any contributions secured will be exempt from the CIL pooling restrictions.

**D2 Biodiversity**

The LPA will support applications that protect or enhance biodiversity.

Where a development causes an on site or off site impact on biodiversity, including the loss of, damage to or erosion of quality of biodiversity mitigation should be provided.
In the first instance biodiversity should be protected or enhanced on site. Where this is not practicable mitigation should be provided on site and should form part of the planning application. Where protection cannot be secured on site the LPA will consider the provision of off site biodiversity enhancements, preferably in the vicinity of the development site or within the Borough.

Any enhancement to or significant changes to biodiversity must be considered with regards to the impact of the technical safeguarding of London City Airport’s operations.

**Threshold / Trigger**
To be identified on a site by site basis

**Policy position**

London Plan:
Policy 7.19 Biodiversity and access to nature

Core Strategy:
S1 Spatial Strategy
INF6 Green Infrastructure
INF7 Blue Ribbon Network
INF8 Infrastructure Delivery

Detailed Sites and Policies DPD (submission draft):
SP8 - Ensuring Neighbourly Development
SP9 - Recognising Cumulative Impact
SC5 – Maximising Sustainable Design

*Previously identified site specific mitigation*

7.11 The Core Strategy and existing infrastructure planning work has identified several strategic sites whose successful delivery is dependent upon certain types of infrastructure.

7.12 Proposals for development at the following sites should include funding or delivery mechanisms for the identified infrastructure (S10 Abbey Mills; S11 Parcelforce; S15 Canning Town East; S18 Limmo; S19 Royal Albert Basin and S22 Minoco Wharf).

7.13 The provision of this infrastructure has been assessed as to the impact on viability of these sites. Applications should demonstrate how they can facilitate the delivery of this infrastructure.

7.14 Please note this infrastructure is expressly excluded from the LPA’s Regulation 123 Infrastructure list and no CIL can be spent on the delivery of this infrastructure.

**D3 Site specific mitigation**

Previously identified site specific mitigation:
• Core Strategy Site S10 Abbey Mills - bridge connection over Manor Road to West Ham station
• Core Strategy Site S11 Parcelforce – bridge connection over Manor Road to West Ham station
• Core Strategy Site S15 Canning Town East - bridge connection over A13 to Barking Road
• Core Strategy Site S18 Limmo - bridge connection from Limmo site to Canning Town station and access to station
• Core Strategy Site S22 Minoco Wharf – provision of education facilities to serve developments within the site and hinterland
• Core Strategy Site S19 Royal Albert Basin - provision of education facilities to serve developments within the site and hinterland

It is noted that this infrastructure was identified as necessary supporting infrastructure to enable the delivery of the above strategic sites. As proposals emerge for developments on these strategic sites an assessment will be undertaken to ensure that this infrastructure is incorporated into the development and surroundings or a suitable alternative is provided where necessary.

**Threshold / Trigger**

Development at sites indicated above

**Policy position**

Core Strategy:
INF9 Infrastructure Delivery

R123. Community Infrastructure Levy Regulations 2010 (as amended)

**Monitoring and reducing environmental impacts**

7.15 Where the LPA considers that a development is likely to cause an impact on the surrounding environment through emissions (including, but not limited to, air quality, noise, vibration) a contribution may be sought to monitor this impact.

7.16 The types of development that may give rise to this type of contribution include, but are not limited to:

- Any development with out of (normal) hours construction
- Large scale development / construction close to sensitive receptors
- Some industrial uses where operational environmental impacts occur (e.g. concrete batching, recycling facilities)

7.17 The local authority’s statutory powers under the Control of Pollution Act 1974 and Environmental Protection Act 1990, should not be the principal safeguard as by their nature some type of nuisance or disturbance may need to have happened before action can be taken. By proactively
monitoring and working alongside contractors during construction or operators during the end-use of a development it is considered that impact and any potential harm on neighbours should be eradicated or at least managed and minimised.

7.18 This type of contribution is not infrastructure and therefore is exempt from the pooling restriction. The impacts of development consented by the planning regime, where identified and anticipated should be mitigated by the Developer, Contractor or Operator causing the impact, the burden should not fall to the Local Authority.

### D4 Environmental Protection Monitoring

Where the LPA consider or an Environmental Statement identifies that the construction of a scheme or the operation of a particular use has the potential to harm sensitive receptors appropriate conditions will be employed to control development and minimise harm.

Where it is considered that it is expedient to monitor emissions independently a planning obligation will be secured to fund the local authority undertaking monitoring and liaison with appropriate stakeholders. This will ensure productive working relationships between Developers, Contractors and Operators of sites with the Local Authority where their operation may be deemed to be likely to cause an impact on those in the vicinity of the site.

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<th>Threshold / Trigger</th>
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### Policy position

London Plan:
- Policy 5.3 Sustainable Design and Construction
- Policy 5.17 Waste Capacity
- Policy 7.14 Improving Air Quality
- Policy 7.15 Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes

Core Strategy:
- S1 Spatial Strategy
- SP2 Healthy Neighbourhoods

Detailed Sites and Policies DPD (submission draft):
- SP8 - Ensuring Neighbourly Development
- SP9 - Recognising Cumulative Impact
- SC5 – Maximising Sustainable Design
8. Financial viability

The principle of viability in the planning process

8.1 The LPA considers that planning applications should be submitted in accordance with the Development Plan. Where an applicant is not able to adhere to the Development Plan due consideration will be given as to whether an application can be supported, taking into account all material considerations.

8.2 Financial viability in the planning process has emerged as an increasingly important issue and one which the public are seeking further clarity on.

8.3 A draft London Borough Development Viability Protocol to provide a benchmark to the development industry about the overall principles of viability in the planning process will be considered across London is currently being consulted on. The Council are member of this forum and support further clarity being provided on this matter.

8.4 Whilst there is guidance provided on how financial viability could be dealt with this SPD confirms with how the LPA will deal with this matter locally.

Procedures for assessing viability

8.5 At the earliest opportunity the issue of financial viability should be considered. If an applicant is engaged with the LPA prior to the submission of a planning application this matter will be integral to advice the LPA provide to the applicant.

8.6 Planning applications should be submitted with financial viability assessments of the proposed scheme where the application does not provide the requisite supporting infrastructure prescribed in the Development Plan.

8.7 For the avoidance of doubt financial viability assessments will definitely be required in the following situations (although other occasions may trigger the need for submission of an assessment to support a planning application):

- Where an application does not provide the relevant on-site family housing in accordance with Core Strategy Policy H1; or
- Where an application does not provide the relevant on-site affordable housing provision in accordance with Core Strategy Policy H1.

8.8 The submitted financial viability assessment should accord with the Planning Practice Guidance, applying the local interpretation of inputs identified in the following section.

8.9 An open book financial viability assessment should be conducted by someone familiar with and operating in accordance with the professional and ethical standards within the RICS Red Book.
8.10 An editable electronic version of the viability model should be made available to the LPA, or anybody acting on their behalf, to enable a robust review of the submission. A pdf version of the document must also be submitted with the planning application and this will be made available on the Council’s Public Access system for public scrutiny.

8.11 The Council is updating its Planning Application Requirements with the intention of preventing the validation of planning applications which are required to submit a financial viability assessment. Until such time that this information is submitted, no assessment will be undertaken or public consultation on the scheme will occur.

8.12 The applicant will be required to fund the LPA’s reasonable costs associated with external assessment of a viability assessment, and reassessment as required, to enable this matter to be robustly assessed.

8.13 The assessment of planning applications must take into consideration the Development Plan, legislation, relevant guidance and market conditions present at the time a determination on an application is made. Should the LPA consider that there has been a material change in circumstances then the applicant may be requested to undertake a further or amended viability assessment.

8.14 Where an LPA acknowledges that an application is deficient in the provision of planning obligations required in the Development Plan, by virtue of current conditions, it may be appropriate to secure a review mechanism or refuse to grant planning permission.

**Assumptions in viability assessments**

8.15 Information included within a viability assessment must be benchmarked against publicly accessible information and robustly justified. The viability assessment must allow for independent scrutiny by the LPA (or other determining authorities) and anybody who undertakes a review of the veracity of the submission on behalf of the LPA.

8.16 The viability assessment must provide a true reflection of the proposed scheme, demonstrating that the scheme is deliverable and what planning obligations will be provided (both in kind and payments to relevant stakeholders).

8.17 There must be internal validity to the viability assessment ensuring consistency between the scheme being delivered, anticipated development values, associated build costs and that this is reflective of the local market trends.

8.18 *Development values* incorporated within viability assessments must be established with reference to comparable local and recent transactions. Within Newham, local should be considered with reference to new build developments in either the arc of opportunity or urban Newham, as
identified in the Core Strategy. This distinction is not definitive but a rule of thumb which should be considered by applicants or those undertaking assessments on their behalf. Recent transactions should, in principle, relate to new build developments which have been sold or leased in the two years prior to the submission of the planning application. Where this information is not available, or directly comparable, other information can be included. Where a tenant or future occupier (including a Registered Provider) is identified for the proposed scheme the relevant information of these arrangements should be included within the viability assessment; this information also helps to support the proposition that the scheme is deliverable.

8.19 **Build costs** should be based on the realistic specification of the development proposed and accompanied by evidence of associated professional costs. There should be no inflation of build costs, along with all other assumptions they are based on today’s values. The LPA will be consistent in applying the financial models associated with development financing, whilst it is acknowledged that some applicants have alternative funding mechanisms, a planning permission applies to land rather than an individual applicant. Abnormal costs should be identified, with supporting evidence for remediation or other costs, it is expected that these costs will be reflected in the land value for the site. Where the development is mixed use, build costs should be attributed to the different proposed uses on site and information expressed per square foot or metre of the gross internal area (GIA) of the development and these figures should be benchmarked against publicly accessible information.

8.20 Newham specific planning obligations and the applicable CIL are also development costs which should be incorporated into viability appraisals. The relevant CIL instalment policy should be incorporated into cashflow models. The LPA will advise when the financial and non-financial obligations outlined in this guidance, or are otherwise identified as necessary to the particular scheme, will be triggered.

8.21 The **developer’s profit** expressed in a viability assessment should be proportional to the risk associated with the proposed development and not an expression of the return desired by a developer. Typically it would be expected that developer’s profit should be expressed as a percentage of gross development costs or gross development value (GDV), depending on the type of scheme. It is likely that profit levels will be included at a rate of 15-18% of gross development value for a residential scheme or 15% to 20% on cost. The prevailing market conditions would support the lower end of this range. Where there is the provision for onsite affordable housing, this is considered to afford a greater level of assurance and profits in the range of 6% of gross development value would be more appropriate. For mixed-use schemes, or where residential schemes incorporate a mix of tenures (including private rent units) a suitable return should reflect the GDV or on-cost benchmarks referenced above.
8.22 Recognising the guidance offered by the Planning Practice Guidance, a key principle in the viability of a development is whether a planning permission will provide a landowner with a competitive return and therefore allow land to be released for development.

8.23 Within the viability assessment there will be the consideration of the residual land value and the benchmark land value. Where the residual land value is higher than the benchmark land value then financial value has been enabled by the planning / development process.

8.24 The residual land value is calculated by deducting development costs (of a policy compliant development) from development value; the resulting amount establishes the value which can be paid for the land. It is noted that this might be different from what an applicant has paid for the land, however this should not form part of the assessment.

8.25 Benchmark land value should be calculated with the existing use value plus a premium; this is supported by guidance provided by the GLA\(^\text{12}\).

8.26 When an existing use value of a development site is included within a development appraisal this should be evidenced, include reasonable comparative uses in similar condition and circumstances. Alternative use or the hope value associated with the prospective development of the site should be excluded from the viability assessment. Once the existing use is established the reasonable premium above this value can then be considered. The LPA will consider the robustness of this assumption in accordance with the particulars of the development site.

8.27 Where the amount paid for a development site exceeds the reasonably assessed residual land value this should not adversely impact on the delivery of sustainable development. Commercial land transactions should not diminish the delivery of a quality policy compliant planning application with relevant supporting infrastructure.

**Review Mechanisms**

8.28 The LPA will support applications for sustainable development which are substantially in accordance with the Development Plan and which allow for the Borough’s aspirations to be realised.

8.29 Where a planning application demonstrates that due to today’s financial viability a scheme cannot deliver all of the policy requirements that would be expected the LPA may consider the use of a review mechanism, to be secure by planning obligation. This provision could apply to a phased or non-phased planning permission.

\(^{12}\) Mayor of London’s Housing SPG and the GLA Affordable Housing Toolkit Guidance note
8.30 A review mechanism can be used for financial payments or, where feasible, non-financial provisions in kind (i.e. on-site affordable housing delivery).

8.31 The trigger for a refreshed review mechanism, post planning decision, can be linked to the commencement of planning permission should the review be focused on whether additional onsite affordable housing can be delivered.

8.32 Where the review mechanism considers whether additional monies can be paid to the LPA or other stakeholders it may be more appropriate to consider the gross development value, in a residential scheme it might be appropriate to wait until data is available relating to realised sales values of first sales to individual purchasers of units. Triggers will be agreed based on the development proposed and to ensure the delivery of the maximum levels of affordable housing under relevant planning policy.

8.33 A financial review mechanism will be capped at a cash equivalent amount to a policy compliant level and will be triggered once a benchmark (established with reference to the initial review mechanism) has been reached. Typically this might relate to realised private sales values on a value achieved per square foot of Net Internal Area. To incentivise the developer to surpass the benchmark the LPA will consider a proportional allocation of the surplus profit above the benchmark until such time that the cap is achieved. The developer’s proportion of super profits should relate to an acceptable profit level with some grounds to incentivise the maximising of sales revenues, at which point ongoing super profit reverts to being solely for the benefit of the development or developer.

8.34 The planning obligations secured will not be affected by the review mechanism. Should a developer consider that they are not able to adhere to the obligations in their Section 106 Agreements this must be dealt with separately.
9. Process and procedures

Pre-application advice
9.1 The LPA offers a comprehensive pre-application advice service, as noted in paragraph 2.20. Applicants are urged to review the Development Plan and other supporting guidance (including this document) at the very earliest stage of the development process.

9.2 If and when land is acquired the full costs of delivering a policy compliant scheme should be taken account of. In principle advice can be provided prior to the acquisition of land, however a fee will apply for any such pre-application guidance.

Validation requirements
9.3 To ensure the LPA and all stakeholders involved in commenting on and assessing a planning application have the opportunity to fully understand the impacts of a proposal it is encouraged that a scheme is designed in accordance with the Development Plan in force at the time, having regard to any advice provided by the LPA.

9.4 In order to reduce any delay in the assessment of a planning application applicants should ensure that all information required to assess an application is submitted.

9.5 Where the application submitted is not in accordance with the Development Plan by virtue of financial viability this will need to be demonstrated in accordance with Sections 4 and 8 of this document. Where this information is not provided the application will not be considered valid and no assessment will take place.

9.6 All information submitted in support of an application that an applicant considers the LPA should take into consideration as part of the assessment of the application will be published on the Council’s Public Access system. Publication of information will ensure that all stakeholders are privy to the same information.

Assessing and determining an application
9.7 The LPA will make new material information submitted regarding planning obligations available to the public by publishing information on Public Access, this will enable stakeholders an opportunity to comment on the substance of the application. Where the LPA considers that additional submitted information substantially changes the application it reserves the right to re-consult with the public which may give rise to a delay in the determination of the application.

13 Please review the Planning Application Requirements required to submit a valid application: http://www.newham.gov.uk/Pages/ServiceChild/Planning-application-forms.aspx
9.8 Monies secured in Section 106 Agreements will be indexed from the date payment is secured (the date of the Deed) to the date that monies are paid. This is to ensure the costs of performing a function or delivering infrastructure take inflation into account. The LPA will determine whether to apply the all in items retail price index (RPI), the Build Cost Information Service (BCIS) index or any other applicable index.

9.9 As the LPA or other stakeholders may have to forward fund infrastructure ahead of the trigger of payment from an individual Developer the sum agreed in the Deed will be the minimum sum paid, indexation calculations will not allow for a reduced contribution to the LPA.

**Monitoring adherence to Planning Obligations**

9.10 Completed Section 106 Agreements are held for perpetual public viewing on the LPA’s planning register at www.newham.gov.uk/pa.

9.11 The LPA consider that as obligations contained within Section 106 Agreements are necessary to make development acceptable in planning terms it is important that there is sufficient funding to maintain resource specifically dedicated to ensuring compliance.

9.12 Unlike planning applications and dealing with conditions or reserved matters there is no fee associated with administering the compliance with planning obligations. The LPA consider that ensuring there is sufficient dedicated resource to deal with planning obligations will help to ensure that developments subject to planning obligations will be acceptable.

9.13 Any costs associated with the additional work associated with monitoring and ensuring compliance with Section 106 Agreements will be borne by the Developer. The costs will be proportional to obligations secured through the Section 106 Agreement.

9.14 The costs will be calculated by determining the number of hours required to monitor an individual Section 106 agreement multiplied by the Council’s actual or budgeted costs per hour to monitor all Section 106 agreements. Early engagement with the LPA on the planning application will enable confirmation of the expected costs of monitoring compliance.

9.15 If there is provision within an Agreement for the re-evaluation of financial data, in the form of a review mechanism which might be used to safeguard the provision of family and affordable housing (although not exclusively) the costs of an independent assessment will be borne by the Developer.

9.16 The Planning Obligations Annual Monitoring Report will be prepared outlining the financial and non-financial obligations in a given year; those secured, monies received, obligations complied with and also any monies spent in accordance with Section 106 Agreements. This report will be presented to the Strategic Development Committee in order to provide
Members and the public a feedback loop on the performance of planning obligations in enabling sustainable development.

9.17 In order to facilitate the monitoring of compliance with planning obligations Section 106 Agreements will make provision for the Developer to notify the Council of certain activities including, but not limited to, the following:

- Prior-notification of payments to the Council
- Implementation of the planning permission (definition of implementation included in the Deed) by way of the ‘Implementation Notice Form’
- Completion of the development
- Occupation of the development
- Any other trigger identified in the Section 106 Agreement

9.18 Submission of information to demonstrate compliance with a planning obligation will be entered into the LPA’s database, assessment undertaken and where necessary a decision issued. This information will be available on the planning register.

9.19 The intention of publishing information on Section 106 compliance is to expedite the conveyancing process to minimise any delays caused in the sale or re-financing of properties in the Borough.

Non-compliance with planning obligations

9.20 Planning obligations are one mechanism to make development acceptable. Where a Developer, or anyone acting on their behalf, does not accord with the provisions in an Agreement the Council will work proactively with parties to remedy any matters of non-compliance.

9.21 The parties to a Section 106 Agreement are reminded that their obligations should be complied with, regardless of whether the Council expressly request payment or the submission of information.

9.22 The Council will adhere to any dispute resolution mechanism provided for in the respective Section 106 Agreement, however reserve the right to take all action necessary to recover any monies owed and the associated costs for these proceedings.

9.23 Where applicable late payment interest will accrue as identified in the Section 106 Agreement from the date that the Council deem that payment should have been received until the date that cleared funds are received. The interest will usually accrue at 4% above the Bank of England Base Rate. Late payment interest is not a penalty, but provides compensation for the loss of the ability to benefit from the monies which are due.

9.24 To ensure transparency is enabled where the Council consider it expedient an ‘enforcement’ case will be opened whilst any potential
matters of non-compliance are investigated. This will be available for public scrutiny\(^{14}\) and will be notified on a Land Charges search.

9.25 Notwithstanding the above, any matters of non-compliance with financial obligations will be notified to the Local Land Charges service and a note will be maintained on the Land Charges register until such time that the matter is resolved.

9.26 The LPA’s Enforcement Policy, which may be updated from time-to-time, is available on the Council’s website\(^{15}\).

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\(^{14}\) Public Access: [https://pa.newham.gov.uk/online-applications/search.do;jsessionid=64387469AD16B67A3CA3D5F13DDC706A?action=simple&searchType=Application](https://pa.newham.gov.uk/online-applications/search.do;jsessionid=64387469AD16B67A3CA3D5F13DDC706A?action=simple&searchType=Application)

\(^{15}\) [http://www.newham.gov.uk/Pages/Services/Planning-enforcement.aspx](http://www.newham.gov.uk/Pages/Services/Planning-enforcement.aspx) - refer to ‘related documents’