

Camden Planning Guidance

# Developer Contributions

March 2019



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# 1 Introduction

## KEY MESSAGES

- This document covers general issues regarding developer contributions.
- Developer contributions can be:
  - secured through a Section 106 legal agreement, (also referred to as a “planning obligation”), and
  - collected through the development tariff known as the Community Infrastructure Levy (CIL), A development Planning proposals may require developer contributions either by a planning obligation or a CIL payment or both.
- For detailed guidance on what planning obligations may be expected for a particular type of development please refer to the individual relevant topic-based Camden Planning Guidance documents and the relevant charging schedule for CIL.

## What is Camden Planning Guidance?

- 1.2 The Council has prepared this Camden Planning Guidance to support the policies in our Local Plan and other development plan documents. This guidance forms a Supplementary Planning Document (SPD) which is an additional material consideration in planning decisions.
- 1.3 This document should be read in conjunction with, and within the context of, the relevant policies in the Camden Local Plan 2017 and individual topic-based Camden Planning Guidance documents as appropriate.
- 1.4 This document was adopted in March 2019 and replaces CPG 8 Planning obligations (July 2015 – updated March 2018).

## What does this guidance cover?

- 1.5 The purpose of this guidance is to set out why ‘developer contributions’ are required. This term covers both Community Infrastructure Levy (CIL) requirements and S106 legal agreements, which are also known as planning obligations.
- 1.6 This document provides information on procedural matters related to developer contributions and how planning obligations operate alongside the Community Infrastructure Levy.

- 1.7 Specific guidance relating to individual planning obligation requirements, e.g. open space payments or construction management plans, are set out in the topic-based Camden Planning Guidance documents.

## 2 Background

### Infrastructure to support new growth

- 2.1 In order to deliver growth and ensure development is implemented in a sustainable way it is essential that the necessary supporting infrastructure is in place. This applies both to the direct infrastructure needs of development sites, such as highway works and landscaping, and the cumulative impacts of additional development on infrastructure such as schools, transport, open spaces and community facilities. Developer contributions contribute to the funding and delivery of this infrastructure, related to the scale and nature of the development.

### National planning context

- 2.2 The legislative framework for planning obligations is set out in Section 106 of the Town & Country Planning Act 1990 (as amended).
- 2.3 For CIL legislation is set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). Government policy on planning obligations is set out in Paragraphs 54 to 57 of the National Planning Policy Framework (NPPF) (July 2018). Regulation 122 ( and restated at Paragraph 56 of the NPPF) set out the following tests that must be satisfied if an obligation is to be sought in granting planning permission:
- the obligation must be necessary to make the development acceptable in planning terms;
  - the obligation must be directly related to the development;
  - the obligation must be fairly and reasonably related in scale and kind to the development

### London context

- 2.4 The London Plan is the Spatial Development Strategy for London and forms part of the 'development plan' for all London boroughs. It identifies affordable housing and transport as joint funding priorities for developer contributions. Particular emphasis is placed on the delivery of Crossrail, which is funded through the Mayoral CIL ( further details in para 3.6), as well as through planning obligations. Other priorities for funding through planning obligations are climate change mitigation and adaptation, learning and skills, healthcare, child care facilities and small shops.

The new London Plan maintains the priority for affordable housing and transport improvements and recognises the role large sites can play in delivering necessary health and education infrastructure and the

importance of affordable workspace and cultural and leisure facilities in delivering good growth.

### **Camden Local Plan context**

- 2.5 Developer contributions have an important role to play in meeting the strategic objectives of the Council's Local Plan and in particular ensuring that infrastructure relating to the needs created by the development is provided to support new growth, meet Camden's needs for new homes jobs and facilities, and to provide an attractive and sustainable environment, . Policy DM1 *Delivery and monitoring* sets out the role of planning contributions while individual polices throughout the Plan set out key requirements for contributions or expectations for planning obligations.
- 2.6 Policy DM1 states the Council will:
- work with relevant providers to ensure that necessary infrastructure is secured to support Camden's growth and provide the facilities needed for the borough's communities. Information on the key infrastructure programmes and projects in the borough up to 2031 are set in Appendix 1;
  - use planning obligations, and other suitable mechanisms, where appropriate, to:
    - support sustainable development,
    - secure the infrastructure, facilities and services to meet needs generated by development, and
    - mitigate the impact of development.'

## **3 The Community Infrastructure Levy**

- 3.1 The Community Infrastructure Levy (CIL) is a non negotiable charge which local authorities collect on certain new developments in their area. It is used to fund local infrastructure to support new development.
- 3.2 There are two types of CIL collected in Camden:
- Camden CIL, and
  - Mayoral CIL

The CIL will apply to all proposals which add 100m<sup>2</sup> or more of new floorspace or an extra new dwelling.

The CIL Regulations (as currently drafted) also stipulate that a contribution towards infrastructure via a planning obligation cannot be entered into if it is to provide funding for an item of infrastructure to which there is five or more existing planning obligations which provide for the funding or provision of that item of infrastructure (where agreed after April 2010). This is currently being reviewed as part of the

'Supporting housing delivery through developer contributions' consultation and the Government is proposing to amend the operation of planning obligations which may change these limitations.

Further details on the operation and collection of the [Camden and Mayoral CIL](#) are set out on the Council's website at

### **Camden CIL**

- 3.3 The Camden CIL is based on a charging schedule relating to the type and size of development and is collected when planning permissions for new developments are implemented. The 2008 Planning Act introduced the power to allow a levy to be charged on property developers to raise funds for infrastructure and this came into effect through CIL Regulations 2010 (as amended). Camden started charging the CIL on 1 April 2015.
- 3.4 For the purposes of the Act infrastructure includes: roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces. The CIL generates funding to deliver infrastructure projects that support residential and economic growth, provide certainty for future development, and benefit local communities.
- 3.5 The Council currently spends 70% of the Camden CIL collected on Strategic projects which are set out in a strategic funding list. 25% of the CIL is allocated more locally through a member led spending allocation system. These allocations of CIL are based upon local priority lists. Together these strategic and local lists comprise the Regulation 123 lists. These can viewed on the [Camden CIL webpage](#). The remaining 5% covers administration costs.

### **Mayoral CIL**

- 3.6 The Mayor of London's CIL is used towards funding for Crossrail, a new railway connecting central London to Reading and Heathrow in the West and Shenfield and Abbey Wood in the East. The Council collects the 'Mayoral CIL1' for developments in Camden on the Mayor's behalf. The Mayor's charging schedule was adopted in April 2012 with a charge rate of a £50 per square metre of development. This CIL1 charge will be superseded on 1st April 2019 by 'Mayoral CIL2' charging schedule and the current Crossrail S.106 tariff in central London will be incorporated into this CIL. The new charge will be £80per sqm for most development but with higher rates for offices, shops and an hotels in Central London. It will contribute towards the funding of Crossrail 1 and 2..

Full details of the Mayoral CIL can be found at <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/mayoral-community-infrastructure-levy>

## 4 Interaction between CIL and planning obligations

- 4.1 Many planning obligations will be non-financial or relate to funding of items not classified as infrastructure. Regulation 123 (as currently drafted) of the CIL Regulations stipulates that planning obligations cannot be sought to secure infrastructure projects or types of infrastructure that will be wholly or partly funded by the CIL.
- 4.2 The Council publishes a 'Regulation 123' list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL. Funding for the specific types of infrastructure or projects on the list cannot therefore be sought through section 106 planning obligations. The Government is proposing to amend the requirement for a 'Regulation 123 list' and in its place require the publication of 'Infrastructure Funding Statements' that will report the proposed use of CIL and relationship with S106 requirements.
- 4.3 The provision of affordable housing currently lies outside of the remit of CIL and will continue to be secured through planning obligations. Planning obligations will also continue to be used for local infrastructure requirements directly related to development sites, such as provision of open space and landscaping on or in the immediate vicinity of a site, habitat protection, and highways works, which are needed to make development acceptable in planning terms.
- 4.4 The principle is that all eligible developments must pay towards CIL as well as contributing to the costs of any site specific requirements that are necessary to make the development acceptable in planning terms (by way of a s106 Agreement) while adhering to the provisions of Regulations 122 and 123 of the CIL Regulations 2010.
- 4.5 In addition developments may be subject to CIL levied by the Mayor of London (but administered by LBC alongside its own CIL), for some extant permissions (where approved before 1 April 2019) this may also include a further contribution towards Crossrail via S106; further information on the Mayor of London CIL and the funding of Crossrail can be found at <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/mayoral-community-infrastructure-levy>
- 4.6 For a summary of CIL and planning obligations see the table 1. below.



Mechanism	Details	Use
CIL	A standard charge per square metre of all chargeable development as set out in the Charging schedule.	To secure financial contributions for generic Borough-wide infrastructure as specified in the Regulation 123 list which will be likely to include generic projects for transport, education and community facilities
Planning Obligations / Section 106 agreements	Measures required to mitigate the site-specific impacts of development and secured under Section 106 of the Town and Country Planning Act 1990. These could include non-financial obligations and financial contributions (subject to appropriate viability assessments) for both infrastructure and non-infrastructure measures.	Affordable Housing Open space Infrastructure to address the site specific and related impacts of development and which is not included in Regulation 123 list Other financial obligations required to contribute to non-infrastructure projects that mitigate the impact of development , such as employment, apprenticeships / skills training and recruitment. Non-financial obligations such as management plans, or car- free restrictions.

The CIL Regulations allow collecting authorities to accept land in lieu of a CIL payment, although it is not envisaged that Camden will make use of this provision. The regulations also permit the provision of infrastructure as payment towards a CIL. Camden intends to use this power only sparingly and in genuinely exceptional cases where it can be demonstrated that the payment will secure the delivery of a transformative strategic infrastructure project, e.g. though the unlocking of the development potential of a particular area.

## 5 Planning Obligations

### Camden's approach to Planning Obligations (Section 106 agreements)

- 5.1 In dealing with planning applications, local planning authorities consider each proposal on its merits and reach a decision based on whether the application accords with their local plan / development plan, unless material considerations indicate otherwise. Where applications do not meet these requirements, they may be refused.
- 5.2 In some instances, however, it may be possible to make development proposals, which might otherwise be unacceptable, acceptable through the use of planning conditions or, where this is not possible, through planning obligations. Where there is a choice between imposing conditions or entering into a planning obligation the most appropriate mechanism for the particular circumstance will be used.
- 5.3 The use of planning obligations is an important tool in managing the impacts of development and assisting the delivery of necessary infrastructure to support Camden's and London's current and future needs. They will be used to ensure that the strategic objectives of the Local Plan are met through requirements attached to individual development proposals.
- 5.4 Local Plan policy DM1 – Delivery and monitoring supports the use of planning contributions and other Local Plan policies will be used to justify an obligation as appropriate, including those relating to affordable housing, sustainability and transport. Further site specific requirements are set out in our adopted [Site Allocations Plan](#).
- 5.5 This guidance provides general advice on how planning obligations operate and specific planning obligations requirements are set out in the topic based CPG documents. Large scale developments generally have more significant and complex obligations attached to them, but obligations may also be applied to small scale developments to achieve measures such as car free housing or to manage the impacts of construction.

### Use of planning obligations

- 5.6 Camden will use planning obligations where appropriate to mitigate the negative impacts of development which would otherwise not be acceptable through:
- Requiring specified operations or activities to be carried out in, on, under or over the land;
  - Requiring the land to be used in any specified way;
  - Restricting the development or use of the land in any specified way; or

- Requiring a sum or sums to be paid to the authority on a specified date or dates periodically.

- 5.7 Unless it is stated otherwise, planning obligations run with the land in perpetuity and may be enforced against the original covenantor, and anyone else that acquires an interest in the land, until such time as they are discharged or otherwise modified. A planning obligation must be by a deed and is registered as a local land charge and can only be secured through the following ways:
- Bilateral Section 106 agreements between local planning authorities, persons with a legal interest in a piece of land and any other interested parties
  - Unilateral planning obligations, sometimes call “unilateral undertakings” (UUs) signed solely by parties with a legal interest in the land or other interested parties. These are used when only the owner/ mortgagee/ developer (and not the Council) are to be bound by the agreement.
- 5.8 As proposals differ in terms of scale, nature, location and impacts the relative priorities of obligation types will differ on a case-by-case basis. What may be required will be established through the key policies and associated planning guidelines. When assessing the scope of planning obligations the Council will also take into account the range of other benefits provided by a particular development and financial viability issues.
- 5.9 In some cases developers may contend as a background consideration that the economic viability of their development may be compromised by the range and/or scale of any CIL and the obligations being sought. The Council will expect developers to co-operate on an 'open book' basis to provide information to demonstrate these circumstances. The Council supports transparency in decision making and will seek the maximum reasonable disclosure of information in viability appraisals, having regard to the any elements that are commercially sensitive. National Planning Policy Guidance states that "any viability assessment should be prepared on the basis that it will be made publically available other than in exceptional circumstances."
- 5.10 Developers should always make themselves aware of the Council's policies at early stage, so that the policy requirements and potential costs of a CIL and obligations are fully factored into any land purchase or development decisions. National planning policy guidance states that the price paid for land is not a relevant justification for failing to accord with the policies in a Local Plan.
- 5.11 Housing is the identified priority land use of the Local Plan and the delivery of affordable housing will be a high priority in terms of planning obligations. This also accords with the London Plan. The local impacts of individual and cumulative schemes on the local environment and local community infrastructure, and how they are designed and integrated

physically and socially with existing neighbourhoods are also very important issues.

- 5.12 Where the impacts of a use and/or a design go beyond the immediate boundary of a site then these will need to be addressed and this may be through the use of planning obligations. The Council encourages developers to initiate and carry out local consultation where appropriate and take into account local issues in drawing up their detailed proposals, this should include issues that may arise during construction as well as the completed development. The use of forums such as the Development Management Forum as part of the planning application process can also be useful in presenting potential schemes and identifying local issues. Design and Access Statements will be useful tools for developers to assess how their development integrates with local areas in terms of local streets, public spaces and local facilities.

## 6 General procedures for planning obligations

### Pre-application stage

- 6.1 The Council offers a formal pre-application advice service to assist potential applicants when proposals are being drawn up and applicants should familiarise themselves with adopted policies and this supplementary guidance. The pre-application service will be useful in identifying areas that may be subject of planning obligations prior to submission of a planning application.
- 6.2 Where formally required, supporting documents such as a Design and Access Statement, an Environmental Statement and a Transport Assessment will be expected to consider the relevant range of impacts of the proposed development and set out measures proposed to deal with them. Indeed on larger development applicants will be expected to provide a statement setting out their planning obligations strategy. It is therefore important that local consultation takes place on larger schemes to identify these local impacts and issues and how they will be addressed.

### Application stage

- 6.3 The final content and scope of planning obligations will be negotiated through the planning application process which will be carried out by the Council's Development Management Team. Applicants will be expected to enter into an agreement based on the Council's standard agreement which incorporates clauses which are used across all schemes and are generally accepted by developers as a matter of course.
- 6.4 Once an application is identified as potentially requiring one or more planning obligations and an agreement to undertake the fees has been agreed, the Council's legal team will be instructed to produce an early "without prejudice" draft for discussion. Applicants will be required to provide contact details of their advisors as soon as possible in the application process. The Council's Legal team will require a legal

undertaking from the applicant's advisors to cover the cost of drafting the legal agreement as well as any relevant disbursements, e.g. Land Registry title information.

- 6.5 As with any other legal agreement s106s will include appropriate enforcement mechanisms to ensure its terms are complied with. Because s106 obligations must be delivered by the developer in a way that has a neutral impact on Council expenditure and resources , the agreement may provide for payment of associated fees and costs to ensure this happens. In respect of developments raising particularly complex construction or management issues where the Council will have to allocate resources to monitor and support delivery of obligations the Council may require payment of an upfront financial bond which the Council can draw upon if needs be.

### **After planning permission has been granted**

When planning permission has been granted and the legal agreement issued, copies of the documentation will be forwarded to the Council's Planning Obligations officers. Officers will maintain a record of the planning obligation requirements and will monitor the implementation of the legal agreements signed by the owner / developer. It is important that notices of implementation, any plans, payments or other details required through a legal agreement should be sent to the Planning Obligations Officer in the first instance. The Council provides standard templates / proformas for the submission of various Section 106 non-financial requirements, such as Construction Management Plans or Energy & Sustainability Plans - see the [Council's Planning Obligations webpage](#) for the details.

### **Pre-implementation requirements**

- 6.6 Developers and their appointed contractors / agents should ensure that they provide sufficient time for the submission and approval of strategies and plans required prior to implementing a scheme. CMPs are expected to be prepared in consultation with local residents and interest groups. Where this has not been done it can delay the approval of CMPs, which can sometimes take several months to agree.

### **Costs and charges relating to planning obligations**

- 6.7 In addition to any related fees or contributions owed under specific obligations such as highways works, as a principle the Council will also seek to recover all of its costs in relation to the preparation , monitoring, administration and processing of planning obligations and the work arising out of them. These charges fall into two categories
- (i) those relating to work undertaken by legal and other officers in preparing the legal agreement containing the obligations (“Legal and Preparation Charges”) and

- (ii) those relating to work undertaken by officers in processing, monitoring and implementing obligations contained in the Agreement (“Processing and Monitoring Charges”).

Charges will be based on a standard Charging Schedule referencing the number of Heads of Terms in an Agreement and have been agreed by Cabinet under its functions agreeing Council fees and charges.

### **Legal and preparation charges**

- 6.8 To facilitate preparation of consistent agreements standard legal templates can be made available to give an indication of the likely format of an agreement, but the final drafting will be carried out by Camden Legal Services and a charge will be levied. Legal and Preparation Charges are contained in a schedule of fees agreed by the Council's Cabinet on an annual basis and available on the Council's website or from Camden Legal Services upon request. All Legal and Preparation Charges will be payable prior to or at the time that a Section 106 agreement is completed.

### **Processing and monitoring charges**

- 6.9 The processing, monitoring and implementation of planning obligations before and after completion of the Agreement requires the input of significant Council resource.
- 6.10 Costs associated with this work are distinct from any costs associated with processing a planning application and legal fees for preparation of the Agreement, and in many cases will be ongoing after a development has been implemented and would not have arisen were it not for the specific planning impacts of the development and related obligations. Hence it is appropriate that Processing and Monitoring charges relating to such obligations are borne by the developer.
- 6.11 Examples of activities carried out by the Council to facilitate planning obligations are:
- Ensuring the details of all agreements are accurately recorded on a database and Monitoring agreements (including site visits to check for implementation, as necessary);
  - Correspondence associated with requirements and payment of financial contributions (including index linked calculations);
  - Receipt and monitoring of financial contributions and reminders/enforcement action taken if appropriate; and ensuring that contributions are spent in accordance with the terms of agreements including any expenditure deadlines;
  - Coordinating and assessing discharge of both non-technical and technical plans and strategies (e.g. sustainability and energy efficiency plans)
  - The assessment, inspection and supervision of related plans and proposals to manage impacts arising during construction and, where

necessary, liaising with developers, contractors and neighbours to put in place additional measures to alleviate local resident concerns.

- The project management and delivery of specific obligations for which contributions have been made in lieu of meeting on-site requirements and require Council resources to implement, such as off-site affordable housing.

- 6.12 Current Processing and Monitoring Charges have been established by taking into account financial and non-financial clauses and reflect the size and potential complexity of the agreement. In respect of significant major schemes and the delivery of certain obligations bespoke charges will be negotiated with reference to the scale and complexity of the agreement, the nature of the obligations and the resources likely to be required.
- 6.13 For Minor schemes the Processing and Monitoring Charge per head of term is currently £572 (at October 2018) and for Major Schemes the Processing and Monitoring Charge per head of term is £802 (as October 2018). These charges will be subject to review and will increase on an annual basis by up to 3%, to be determined by using the relevant indices published by the Office for National Statistics (ONS) as part of the annual review of Council fees and charges. Any increases in fees and charges over 5% are subject to Cabinet approval. Like legal fees, Processing and Monitoring charges are payable prior to or upon completion of the Section 106 legal agreement. There may be some limited circumstances where the level of monitoring charge may be reviewed if warranted.
- 6.14 Monitoring and legal fees are to be paid on the day agreements are signed.

### **Implementation contributions**

- 6.15 Separate fees in the form of contributions payable through section 106 agreements may be negotiated where warranted and are considered necessary in planning terms and directly related to development where further costs of technical verification, inspection and ongoing supervision are likely to be incurred as a direct result of a particular development. Examples of obligations which may necessitate a contribution for implementation include construction management plans and basement construction plans. Further information on Construction Management Plans is available in CPG on Amenity and further information on Basement Construction Plans is available in CPG on Basements.
- 6.16 Implementation contributions are usually payable on implementation of development.

### **Financial obligations**

- 6.17 To ensure that the necessary measures are in place prior to or as soon as possible after occupation, Section 106 financial obligations related to a development will be payable when implementation of the development



commences, when CIL liability also takes effect. This principle will apply unless an alternative arrangement is specified in the legal agreement and is in accordance with other parts of this guidance or is otherwise justified by the particular characteristics of the development or the obligation. The Council will not normally accept clauses in agreements that place unrealistic time constraints on expenditure of funds. Projects such as transport infrastructure can take many years to deliver. Rather, the Council's usual approach will be for the agreement to specify that monies should be spent on an agreed scope of works and the Council will work with developers and landowners to carry out those works in deliverable time periods.

### **Contact Details:**

The Council's Infrastructure and Growth Team manage and oversee these processes and any queries should be directed to them at either: [planningobligations@camden.gov.uk](mailto:planningobligations@camden.gov.uk) or [CIL@camden.gov.uk](mailto:CIL@camden.gov.uk)

For guidance and enquiries on developer contributions related to a planning application please contact the duty planner via [viaplanning@camden.gov.uk](mailto:viaplanning@camden.gov.uk).