

2 Background

Legal and national policy background

- 2.1 The power of a local planning authority to enter into a planning obligation with the owner of land in its area is contained within Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). Planning obligations made under Section 106 comprise both planning agreements and unilateral undertakings (where a developer independently offers to meet certain requirements, including a contribution towards infrastructure).
- 2.2 Current government advice on the application of Section 106 is contained within Circular 05/2005 as amended by the Community Infrastructure Levy (CIL) Regulations 2010 (122 and 123) which came into effect on 6th April 2010. The Council's approach is based on this national guidance.

Legal tests

- 2.3 The CIL regulations limit the use of planning obligations so that planning permission should only be granted subject to completion of a planning obligation where it meets all of the following tests. A planning obligation should be:

(i) Necessary to make the development acceptable in planning terms:

- 2.4 Planning obligations should be used to make acceptable development which would otherwise be unacceptable in planning terms in accordance with published local, regional or national planning policies.

(ii) Directly related to the development

- 2.5 Planning obligations should be so directly related to proposed developments that the development ought not to be permitted without them. There should be a functional or geographical link between the development and the item being provided as part of the agreement.

(iii) Fairly and reasonably related in scale and kind to the development

- 2.6 For example, developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development.
- 2.7 Legal agreements can be used to prescribe that certain things should happen (e.g. requiring affordable housing or limiting a use); to compensate for the loss of something (e.g. open space); and/ or to mitigate the impact of a development (e.g. contribute to community infrastructure or improve public transport accessibility). Such

agreements may require the direct provision of a facility either on or off the development site or a financial contribution towards the provision of that facility.

- 2.8 Funds may also be pooled between a number of legal agreements provided that there is a 'direct relationship between the development and the infrastructure and the fair and reasonable scale of the contribution being sought.' Camden will operate a pooling system in line with the CIL regulations.

Community Infrastructure Levy

- 2.9 The Community Infrastructure levy (CIL) is a new charge which local authorities will be able to collect on development in their area. It will be based on a formula relating to the type and size of development. The funds gathered must on be spent on infrastructure as defined in the 2008 Town and County Planning Act which includes the following:
- roads and other transport facilities;
 - flood defences;
 - schools and other educational facilities;
 - medical facilities;
 - sporting and recreational facilities; and
 - open spaces.
- 2.10 Local authorities who wish to set a CIL must produce a draft charging schedule which will be subject to a public examination by an independent inspector. CIL can only be collected once the schedule has been adopted following consultation and examination. The process will be similar to that for planning policy documents adopted as part of the Local Development Framework.
- 2.11 The schedule will set out the proposed CIL rate(s) per square metre for eligible types of development. Economic viability will be a key consideration and authorities will be expected to undertake an assessment of land values in their area based on a sample of sites. The Council will be drawing up an approach to the new CIL and S106 system in the future and this will be subject to separate guidance and consultation.

Development Plan polices affecting planning obligations

- 2.12 The content and nature of any legal agreements in Camden needs to be considered having regard to the London Plan 2011 and the Camden Local Development Framework. Policy 8.2 (Planning Obligations) of the London Plan indicates that:

Development proposals should address strategic as well as local priorities in planning obligations. Affordable housing; supporting the funding of Crossrail where this is appropriate (see Policy 6.5 – explained in the transport section of this

guidance); and other public transport improvements should be given the highest importance.

Where it is appropriate to seek a Crossrail contribution in accordance with Policy 6.5, this should generally be given higher priority than other public transport improvements. Importance should also be given to tackling climate change, learning and skills, health facilities and services, childcare provisions and the provision of small shops.

- 2.13 The use of planning obligations has an important role to play in meeting the strategic objectives of the Council's Core Strategy and in particular ensuring that the infrastructure is provided to support new growth, meet Camden's needs for new homes jobs and facilities, and to provide an attractive and sustainable environment as in policy CS19 – *Delivering and monitoring the Core Strategy*.

'The Council will work with Camden's Local Strategic Partnership and its other partners to deliver the vision, objectives and policies of this Core Strategy. We 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 to 2025 are set in Appendix 1;

use planning obligations, and other suitable mechanisms, where appropriate, to:

- support sustainable development,*
- secure any necessary and related infrastructure, facilities and services to meet needs generated by development, and*
- mitigate the impact of development ...'*

Main categories of planning obligations

- 2.14 The areas which may need to be addressed through the use of legal agreements tend to fall under the following broad categories:

- affordable housing;
- transport and other infrastructure;
- tackling climate change and environmental impacts;
- works to streets and public spaces;
- community facilities and services, including education, health and open space;
- training, skills and regeneration; and
- community safety.

- 2.15 This list is not exhaustive and proposals can individually or cumulatively introduce a range of issues, requirements and potential impacts that may require the use of planning obligations to make them acceptable.

As proposals differ in terms of scale, nature, location and impacts the relative priorities of the areas listed above 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.

- 2.16 Housing is the identified priority land use of the LDF 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.
- 2.17 Where the impacts of a use and/or a design go beyond the boundary of the site then these will need to be addressed and this may be through the use of planning obligations. As Design and Access Statements will be required for most planning applications, these 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.
- 2.18 In some cases developers may wish to argue as a background consideration that the economic viability of their development may be compromised by the range and/or scale of any obligations being sought. The Council will expect developers to co-operate on an “open book” basis to provide information to demonstrate these circumstances. Developers should always make themselves aware of the Councils policies at early stage, so that the policy requirements and potential cost of obligations is fully factored into any land purchase or development decisions.
- 2.19 The Council will take the implementation costs of any obligations into account and will expect there to be a neutral impact on Council expenditure and resources. Obligations may need to include fees or associated costs for delivery of obligations where such costs fall to the Council.
- 2.20 The Council encourages developers to initiate and carry out local consultation where appropriate and take into account local issues in drawing up their Design and Access Statements and detailed proposals. The use of forums such as the Development Management Forum can also be useful in presenting potential schemes and identifying local issues.
- 2.21 The use of planning obligations must be governed by the CIL regulations and Circular 05/2005 and the fundamental principle that planning permission may not be bought or sold. It is not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms. Nor is it legitimate to refuse an application that is acceptable on spatial planning grounds and

meets planning policy in other respects because an applicant is not willing to agree to provide unrelated benefits.

Expenditure of funds

- 2.22 To enable the Council to make the most effective infrastructure provision and area enhancement as a result of financial contributions secured through legal agreements the Council will not normally accept clauses in agreements that place unrealistic time constraints on expenditure of funds. Projects such as transport infrastructure and schools 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 or projects and the Council wishes to work with developers and landowners to carry out those works in good time.
- 2.23 The Council will also look to work with developers and landowners to look at opportunities for contributions (and remaining balances from contributions) to be pooled and applied to complementary and beneficial works in the vicinity of the site that may be funded by other developers, the Council or other agencies. For example, this could mean contributions and unspent balances of funds for highways works might be used for other complementary highways or public realm works in that area.
- 2.24 This approach will enable an effective pooling of resources to carry out wider improvements or enhancements in the area of that development, and which can be of benefit to that development. The scope for spending these funds on other works will be agreed with the developer and will be reflected in the clauses of that agreement.

General Procedures

Pre-application stage

- 2.25 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 related LDF 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.
- 2.26 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.

Application stage

- 2.27 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 model agreement and standard clauses.

- 2.28 Once an application is identified as potentially requiring planning obligations, the Council's legal team will be instructed to produce an early "without prejudice" draft for discussion. Applicants will be required to agree and submit items such as an undertaking in respect of costs, legal title and contact details as soon as possible in the application process.

After planning permission has been granted

- 2.29 When planning permission has been granted and the legal agreement issued, copies of the documentation will be forwarded to the Council's Planning Obligations officer. The officer will maintain a record of the planning obligation requirements and will monitor the implementation of the legal agreements signed by 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.

Costs and Charges relating to Planning Obligations

- 2.30 As a principle the Council will seek to recover all of its costs in relation to the preparation and monitoring 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 post completion of the Agreement in monitoring implementing and processing obligations contained in the agreement. ("Processing and Monitoring Charges").
- 2.31 All charges will be based on a standard Charging Schedule referencing the number and type of Heads of Terms in an Agreement. In terms of Legal and Preparation Charges these will be charged at a different rate for major and non major schemes. To facilitate preparation of agreements standard legal templates will be made available on the Camden web site to give an indication of the likely format of an agreement but the final drafting will be carried out by Camden Legal Services. More detail about the principles underpinning Processing and Monitoring Charges are set out in the paragraphs below.
- 2.32 Any changes to charges are subject to Cabinet approval and will be available through the Council's website. All charges will be payable at the time that a Section 106 agreement is completed

Processing and Monitoring Charges

- 2.33 The processing, monitoring and implementation of planning obligations after completion of the Agreement requires the input of significant Council resources. This relates to a range of activities which arise directly from the grant of planning permission for development and are

necessary to ensure that measures required to mitigate the development impacts are properly carried out. Costs associated with this work are distinct from any costs associated with processing a planning application and legal fees and in many cases will be ongoing after a development has been completed. Hence it is appropriate that charges relating to such obligations are borne by the developer.

2.34 Examples of activities carried out by the Council to facilitate planning obligations:

- 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 receipt 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);

2.35 The 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 very significant major schemes bespoke charges will be negotiated with reference to the scale and complexity of the agreement.

(a) Minor schemes

2.36 The Processing and Monitoring Charge per head of term is £365

(b) Major Schemes

2.37 The Processing and Monitoring Charge per head of term is £515

2.38 Both these charges will be subject to review and will be updated on an annual basis and subject to Cabinet approval.

2.39 Monitoring charges are payable upon scheme implementation.