

**Section 106 Planning
Obligations in Croydon and their
Relationship to the Community
Infrastructure Levy
Review 2019**

November 2019

Contents

1. Introduction to Section 106 and the borough’s and Mayoral CIL	2
2. The relationship between the borough’s Section 106 planning obligations and CIL	2
3. What CIL and Section 106 will fund	3
The Infrastructure Delivery Plan (IDP).....	4
Using the IDP Report	4
The IDP Schedule	4
4. What infrastructure will be deemed as standard site/design mitigation and will be sought through Section 106 Agreements.	5
5. Skills, Training and Employment	5
General Principles.....	6
Construction phase	6
End-use / General Employment and Skills	7
Business Support.....	8
6. Carbon Offsetting Guidance	Error! Bookmark not defined.
7. Air Quality	9
8. The Pooling of S106 under CIL Regulation 123 explained, including current position	Error! Bookmark not defined.
9. Guidance on the application of Croydon Local Plan – Strategic Policies – affordable housing policy (include Housing Technical Paper Flowchart)	10
Scenarios of implementing Policy SP2 for on-site provision of affordable housing ...	11
10. The mechanism for the calculation of affordable housing commuted payments in accordance with Croydon Local Plan: Strategic Policies – affordable housing policy	13
Affordable housing review mechanism within the Opportunity Area Planning Framework (OAPF)	14
Viability appraisals and gross development value (GDV) at the point of sale.....	14
Donor Sites	Error! Bookmark not defined.
Default position should a Registered Provider (RP) not pursue a donor site.....	14
11. Role and function of the Council’s Infrastructure Finance Group	14
12. Approach to Section 106 and CIL monitoring and availability / source of information	15
Viability.....	15
Review of Section 106 Agreements	15
Section 106 Planning Obligations, Monitoring and Other Fees	16
Non-financial Planning Obligations	17
Affordable Housing Planning Obligations	17
The Review Mechanism	18
Justification	18
Specific Examples of Obligations and Associated Tasks	18
Project Management Fees	20

1. Introduction to Section 106 and the borough's and Mayoral CIL

1.1 On 1 April 2013, the Croydon Community Infrastructure Levy (CIL) came into force. CIL is a charge which local authorities can levy on most types of new development. All developments permitted after this date in Croydon will potentially be liable to pay the levy. The introduction of CIL changes the way in which developers contribute to the provision of infrastructure in Croydon. The proceeds of the levy will provide new local and sub-regional infrastructure to support the development of the borough in line with Croydon's development plan and infrastructure planning.

1.2 The previous guidance on Planning Obligations (April 2013) has now been withdrawn by the Council and replaced by this guidance which takes account of the Council's CIL and its aim is to better align the Council's requirements with the Infrastructure Delivery Plan. This guidance describes the Council's approach in securing planning obligations and the differences between CIL and Section 106 Agreements and Unilateral Undertakings (collectively referred to as the "S106"), together with the procedures that the Council will employ to collect contributions under both the CIL & S106 regimes.

1.3 This guidance is non-statutory guidance and supplements the Croydon Local Plan – Strategic Policies. The policies are used to determine applications for planning permission in the borough, along with the London Plan, the UDP Saved Policies 2013 and other planning documents, such as Supplementary Planning Documents.

1.4 This guidance document will assist prospective developers by identifying the planning obligations that will be sought by the Council, through the grant of planning permissions for development, where such development generates a need for new infrastructure. The Council considers that acknowledgement and preparation for the required planning obligations should be integral to negotiation of the land transactions, and the formulation of development proposals.

1.5 The Council will expect developers to enter into discussions on planning obligation requirements with Council officers as soon as possible, preferably at the pre-application stage. The Council's aim is to agree in principle the Heads of Terms of any planning agreement before the planning applications are submitted.

1.6 The aim of the guidance is to provide a transparent and consistent basis for the negotiation of S106 contributions by setting out the following:

- The types of developments that would be subject to planning obligations, in terms of their scale, nature, proposed use and their location;
- The broad range of likely contributions that may be sought, why these may be required and a description of any associated policy documentation; and
- The amount of financial contributions and the means by which it will be calculated.

2. The relationship between the borough's Section 106 planning obligations and CIL

2.1 The CIL Regulations (Regulation 122) introduced three legal tests to be considered when negotiating, securing and implementing planning obligations. These tests are:

- a) Necessary to make the development acceptable in planning terms
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development

2.2 Whilst it is the Government's intention to replace planning obligations for general types of community infrastructure, planning obligations will still be used for site-specific mitigation measures that are required to make a development acceptable in planning terms.

2.3 The planning obligations captured in S106 Agreements and Unilateral Undertakings (as mentioned above, the Agreements and Unilateral Undertakings are collectively referred to in this guidance as "S106") are normally entered into in accordance with Section 106 of the Town & Country Planning Act 1990 (as amended). They are intended to make development acceptable which would otherwise be unacceptable in planning terms.

2.4 Planning obligations can be used to prescribe the nature of the development (e.g. a proportion of the housing must be affordable); to compensate for loss or damage caused by the development (e.g. loss of open space) or mitigate a development's impact (e.g. increase public transport provision). The S106 must be governed by the fundamental principle that planning permissions may not be bought or sold.

2.5 CIL provides a more consistent and transparent mechanism to raise financial contributions currently sought through planning obligations. In short planning obligations differs from CIL in that the contributions are tailored to a specific development and must be directly related to its impact, whereas CIL may be applied anywhere in the borough or on Crossrail.

2.6 CIL allows local authorities to raise funds from development to pay for the infrastructure. CIL takes the form of a tariff per m² of additional floorspace. The level of the tariff is set by the local authority based on the needs identified through infrastructure planning, but also tested to ensure that it will not affect the viability of developments. The local levy rate(s) are set out in a CIL Charging Schedule.

<http://www.croydon.gov.uk/contents/departments/planningandregeneration/pdf/cil/cilcharging.pdf> - Charges are index linked.

3. What CIL and Section 106 will fund

3.1 Regulation 122 of the CIL regulations confirms that the planning obligations may only be used if they are necessary to make the development acceptable in planning terms. They must also be directly related to the development; and fairly and reasonably related in scale and kind to the development.

3.2 The Council's Infrastructure Finance Group ensures that CIL and planning obligation income is spent on essential infrastructure needed to support growth in the borough as set out in the Croydon Local Plan, Council's Capital Strategy, Infrastructure Delivery Plan, Growth Zone Programme and with regard to planning obligations, the parent Section 106 agreement.

The Council's Infrastructure Finance Group and Growth Board approved funding for the following as items on the Council's Capital Strategy. This aligns with the February 2017 Full Council Budget Report agreeing to assign borough's CIL to the Council's Capital Strategy to offset borrowing.

The Infrastructure Delivery Plan (IDP)

3.3 In 2010, the Council produced and published for consultation its first draft IDP identifying the Borough's social, physical and green infrastructure needed to support the growth anticipated over the 20 year lifetime of the Local Plan (formerly Core Strategy). The IDP is organised in alignment with the themes of the Vision for Croydon and the Sustainable Community Plan and contains an initial schedule of projects and programmes necessary for the development of the Borough.

3.4 The IDP continues to be updated both in response to public consultation and to reflect changes to national and local policy and circumstance.

3.5. The IDP provides an up to date Infrastructure Delivery Schedule with details of costs, funding, phasing and prioritisation of the planned infrastructure provision to meet the requirements of the growth outlined in the Local Plan. The document can be viewed at www.croydon.gov.uk/planningandregeneration/framework/lpevidence/infrastructure-delivery.

Using the IDP Report

3.6 The IDP identifies the need for and justifies a programme of infrastructure projects required to support the growth objectives under the development plan. It sets out:

- S106 monies can be used in accordance with the planning obligations tests; and
- Other strategies or reports which provide additional evidence as to why infrastructure is required.

3.7 The IDP Schedule can be used to identify specific projects relating to this identified need, in relation to the location, consequence of the scale and use of proposed development.

The IDP Schedule

3.8 The IDP Schedule is a matrix which is an appendix to the IDP, identifying the infrastructure projects needed in order to deliver the growth objectives over the Local Plan period to 2036. It includes the following information for each infrastructure project:

- The lead partner and any other partners / stakeholders involved in the delivery of the project;
- The delivery mechanism / funding source for each project – including where S106 / CIL is expected to contribute to delivery;
- The cost of the project (if known);
- Location;
- The timescale for delivery; and
- The importance to supporting the growth set out in the Local Plan

4. What infrastructure will be deemed as standard site/design mitigation and will be sought through Section 106 Agreements.

4.1 In addition to any CIL payments, the Council will seek to negotiate (within the scope of the revised use of S106), that the developer will mitigate any impact on the environment or local services that arise directly as a result of the development. Affordable housing will also continue to be provided through S106.

4.2 There may be cases where the development proposed results in a specific need for infrastructure (or access to a service) that is not currently available, and has not been identified for investment through CIL or wider investment programmes. For example, a major junction improvement may be required to 'unlock' a site. In such circumstances, the Council would normally expect these aspects to be addressed as part of the proposal at the time planning permission was sought. In which case their delivery will often be secured by a S106 or other mechanisms such as S278 of the Highways Act 1980 (as amended).

4.3 S106 will also continue to be used for local infrastructure requirements on development sites, such as local access or connection to services. Some of these requirements may be physically off site, but will be secured under S106 where they are clearly linked to the development site and needed to make that particular site acceptable in planning terms.

4.4 Many developments will be liable for CIL, and enter into a S106 agreement. The CIL payment and Section 106 obligations will cover different infrastructure projects and types, and developments will not be charged for the same items of infrastructure through both obligations and the levy.

4.5 Planning obligations can be carried out in two ways; either the developer provides the physical measures or makes a financial contribution towards any works to be carried out by the local authority or its partners.

4.6 Regulation 122 of the CIL regulations confirms that planning obligations may only be used if they are necessary to make the development acceptable in planning terms. They must also be directly related to the development; and fairly and reasonably related in scale and kind to the development.

5. Skills, Training and Employment

5.1 Croydon Council is committed to ensuring that all Croydon residents are supported to access the range of positive social, economic and environmental benefits derived from inward investment in the Borough.

5.2 'The Croydon Promise – Growth for All' is the Council's commitment to residents, investors, developers and businesses that the Council will do all it can to deliver growth, which is inclusive and sustainable – for all. The document makes the commitment to support Croydon residents, young and old, into employment, and raise the skills of the workforce so that they can access the new jobs being created across the borough.

5.3 There are over 3,000 residents in the borough claiming Jobseeker's Allowance, 12,000 receiving Employment and Support Allowance, and 13,000 economically inactive working age adults in the borough. Some demographic groups are more likely

to be out of work and/or on benefits than others including the over 55s, BAME groups, people with disabilities and women. There are also geographical variations – people are more likely to be out of work and/or on benefits in the north of the borough and in areas such as New Addington. In addition, over 20% of Croydon residents are in low-paid work, and over 25% of jobs in Croydon are low waged.

5.4 Croydon Council is committed to working with developers through S106 Planning Obligations to achieve social value outcomes from regeneration to improve the well-being of the area.

This applies to the following types of development in the borough:

- All new residential developments providing 10 residential units or more
- All major commercial developments defined as the provision of the building or buildings where the floor space created by the development is 1,000 sq. m or more or developments carried out on a site with an area of 1 hectare or more.
- Policy SP5.1, SP5.14 and SP5.15 of the Croydon Plan – Strategic Policies supports the provision of skills training and further education through the use of planning obligations

General Principles

5.5 Developers will be required to produce a Local Employment and Training Strategy (LETS) for the Construction Phase and/or End-use Phase as appropriate, outlining the approach they will take to delivering employment, training and apprenticeship outcomes and engagement with schools and education providers for the development. The Council will provide relevant advice and support to developers to produce their Strategy, and to deliver the Strategy's objectives.

5.6 The LETS should include details of budget, resources, key delivery targets, delivery methodologies, and a performance and impact management framework with the Council. The LETS must be agreed with the Council's Development Management Service and Economic Growth Team.

5.7 It is expected that best endeavours be used to ensure that the targets for local employment are achieved in both construction and end user phases of new qualifying developments. It is expected that the developer will work closely with the Council and other local partners to achieve this target.

Construction phase

5.8 The Council will seek to secure a minimum of 34% of the total jobs created by the construction phase to be filled by local residents. All vacancies should be advertised via the Council's job brokerage service, and any other agencies as stipulated by the Council.

5.9 The developer and/or its contractors and subcontractors, will offer, as a minimum, an average of one work-based training opportunity / apprenticeship for every 10 construction workers over the life time of the construction contract. This will be subject to feasibility. For larger schemes the Council is willing to negotiate a number of apprenticeships/training opportunities appropriate to the size of the scheme. Apprenticeships must be accredited, recognised apprenticeships, delivered by accredited training providers.

5.10 The Council will seek a financial contribution to cover the Council's costs in the identification, initial pre-employment training and on-going skills development and sustained employment for local people working in construction jobs on the development, which will be delivered through the Council's Job Brokerage service, and other agencies as required.

5.11 A standard charge for training will be made of £2,500 per £1 million of capital construction costs.

5.12 On large schemes there may also be additional requirements negotiated, including dedicated posts at the developer and/ or Council to manage employment and training schemes, specialist training provision or facilities, school or college activities and employment events.

End-use / General Employment and Skills

5.13 The Council will seek to secure a minimum of 34% of the total jobs created by the construction phase to be filled by local residents. All vacancies should be advertised via the council's job brokerage service and any other agencies as stipulated by the Council.

5.14 The Council will seek a financial contribution to cover the Council's costs in the identification, initial pre-employment training and on-going skills development and sustained employment for local people working with end-use businesses, which will be delivered through the Council's Job Brokerage service, and other agencies as required. This will enable the Job Brokerage service to source, train and place local residents into end-user jobs, where appropriate for the development.

5.15 The standard formula for calculating the contribution is as follows:

Net new floor space (m ²) divided by average employment density to give expected number of jobs in new development	Office: 11.6m ² per job Retail: 17.5m ² per job Hotel: 2.85 beds per job ¹	Worked example – office/ retail Retail development with new net floor space of 150m ² $150 / 17.5 = 8.6$ jobs in new development	Worked example – hotel Hotel development with 100 beds $100 / 2.85 = 35$ jobs
Multiply by	X		
Proportion of Croydon residents expected to be working in Croydon jobs	Minimum of 34% ²	$8.6 \times 0.34 = 2.9$ Croydon residents	$35 \times 0.34 = 12$ Croydon residents

¹ Homes and Communities Agency Employment Density Guide, Nov 2015

² Source: Census 2011, Location of usual residence and place of work, and Census 2011, Economic activity

Multiply by	X		
Proportion of Croydon residents with low or no qualifications requiring training to improve employability	31.4% ³	2.9 x 0.314 = 0.9 Croydon residents with low or no qualifications	12 x 0.314 = 3.7 Croydon residents with low or no qualifications
Multiply by	X		
Average cost for job entry	£3,526 ⁴	0.9 x £3,526 = £3,227 (rounded up) contribution	3.7 x £3,526 = £13,208 (rounded up) contribution

5.16 Where the end-use occupier of a development is also the developer the Council will seek an agreement with the developer to provide a specified number of apprentice or trainee places within the development and to agree a minimum of 34% of end-user jobs that should be filled by local residents. All vacancies should be advertised via the council's job brokerage service and any other agencies as stipulated by the Council.

5.17 Where the end-use occupier is not known or is not the developer the Council will seek an agreement to ensure that the Developer brokers a meeting between the new occupier and the Council once confirmed, with a requirement for end-users to engage with the council's Employment and Skills Team and Job Brokerage service to identify training and employment opportunities for local residents.

Business Support

5.18 In order to support local businesses to benefit from new developments within the borough, the Council will require a commitment from developers to engage local business through the supply chain. This will allow local businesses to compete in a local market and also encourage sustainable business eco-systems.

5.19 The developer is required to submit to the Council's Development Management Service their Tender Event Schedule detailing the list of work packages being offered to competitive tender including timeframes, value of packages and framework agreements in the supply chain.

5.20 Local Suppliers are to be provided with information about the development and provided with the opportunity to tender for all appropriate contracts or sub contracts that arise from the development. This will include participating in business support initiatives, supply chain activities and 'Meet the buyer' type of events as required.

5.21 In order to develop local businesses working responsibly, there is an expectation that developers and their contractors/subcontractors will pledge to the Good Employer Croydon accreditation scheme with the intention of becoming accredited Good Employers.

5.22 The Council reserves the right to require a financial contribution to deliver and / or for the developer to be required to deliver such activity as outlined above to ensure local suppliers are not adversely affected by developments.

³ Source: Census 2011, Level of Qualification

⁴ Cost of job entry from best performing programmes, ESF 2007-13 Programme, report by Inclusion and GLA, 2015

5.23 The Council will work with developers and their contractors to achieve the procurement of goods and services from companies and organisations based in Croydon and seek to secure 20% minimum of the total value of all contracts locally.

6. Carbon Offsetting Guidance

6.1 The Croydon Local Plan requires residential and non-residential development to achieve carbon targets in line with those set out in the London Plan. The London Plan (Policy 5.2) states that where it is clearly demonstrated that the specific targets cannot be fully achieved on-site, any shortfall may be provided off-site or through cash in lieu contribution to the relevant borough to be ring fenced to secure delivery of carbon dioxide savings elsewhere in the Borough

6.2 In addition, the London Plan Draft Sustainable Design & Construction (Supplementary Planning Guidance) states that Boroughs should develop and publish a price for carbon dioxide based on either:

- a nationally recognised carbon dioxide pricing mechanism; or
- the cost of reducing off-setting carbon dioxide emissions across the borough.

6.3 Successive UK administrations had intended to introduce a 'Zero Carbon Homes standard' by 2016. This was planned to be implemented through the Building Regulations and the standard included a national carbon offsetting mechanism (known as "Allowable Solutions") for use where developments cannot achieve the defined zero carbon emission standard on-site. The current government has decided not to implement the Zero Carbon Homes standard (including the Allowable Solutions mechanism). However, the last government consultation documents for Allowable Solutions proposed that the price of carbon would be subject to competition, but capped at a value of £36 - £90 per tonne CO₂ (charged over a period of 30 years). Previous government consultation documents adopted a figure of £46 per tonne (based on the non-traded price of carbon, charged over a period of 30 years).

6.4 Croydon Council will adopt the £46/tonne CO₂ price (calculated over a 30 year period), to calculate any cash in lieu contribution where specific targets cannot be fully achieved on-site. The payment will be calculated based on the number of tonnes CO₂ by which the proposed development will miss the required target reduction. All such contributions will be ring-fenced within a "Community Energy Fund" which will be used to deliver CO₂ reduction projects across the local community in the Borough at the Council's discretion.

7. Air Quality

7.1 Croydon has declared the whole of the borough as an Air Quality Management Area for nitrogen dioxide. The majority of emissions of nitrogen dioxide originate from road vehicles with goods vehicles, buses and taxis accounting for more than half of this.

7.2 Croydon Council have developed new and innovative solutions to tackle air pollution to make Croydon a better and healthier place for everyone, see our Air Quality Action Plan at lovecleanair.org

7.3 Developments which are likely to cause deterioration in local air quality (especially if this deterioration occurs in an area which already breaches an air quality objective or results in increased levels of particles) will normally require an air quality impact assessment. In addition, developments located in an area of poor air quality, which will

expose future occupiers to pollutant concentrations above air quality objective levels also require an assessment.

7.4 The overall aim of an air quality assessment is to determine whether the development will have an unacceptable impact on air quality or whether the existing air quality environment is unacceptable for the proposed development. If a development is determined to result in a deterioration of air quality, the Council will aim to reduce this impact by securing mitigation or offsetting measures that will allow the development to progress through the use of planning obligations from Section 106 agreements. Similarly if a development introduced sensitive receptors into an area of poor air quality, the developer will be expected to ensure all measures are taken to secure an acceptable environment for new receptors.

7.5 S106 agreements can be used to enable developers to provide assistance or support to the local authority to implement actions in pursuit of their Air Quality Action Plans (AQAP), in order to offset or mitigate against air quality impacts.

7.6 The full range of measures in the AQAP can be downloaded at: lovecleanair.org

7.7 Any benefits offered by the developer may be a material planning consideration but this will not make a development to which there are fundamental planning objections acceptable. The Council will seek to secure appropriate contributions through the Planning Obligation process for any reasonable measure that can help improve air quality. Planning obligations can significantly increase the quality development. They can secure benefits capable of offsetting the negative impacts of a development.

7.8 In line with Guidance from DEFRA 'Low Emissions Strategies - using the planning system to reduce transport emissions' Croydon are adopting the following formula:

All residential schemes of 10 dwellings and above, and mixed use and commercial schemes of 500m² and above should contribute £100 per dwelling and £100 per 500m² unit.

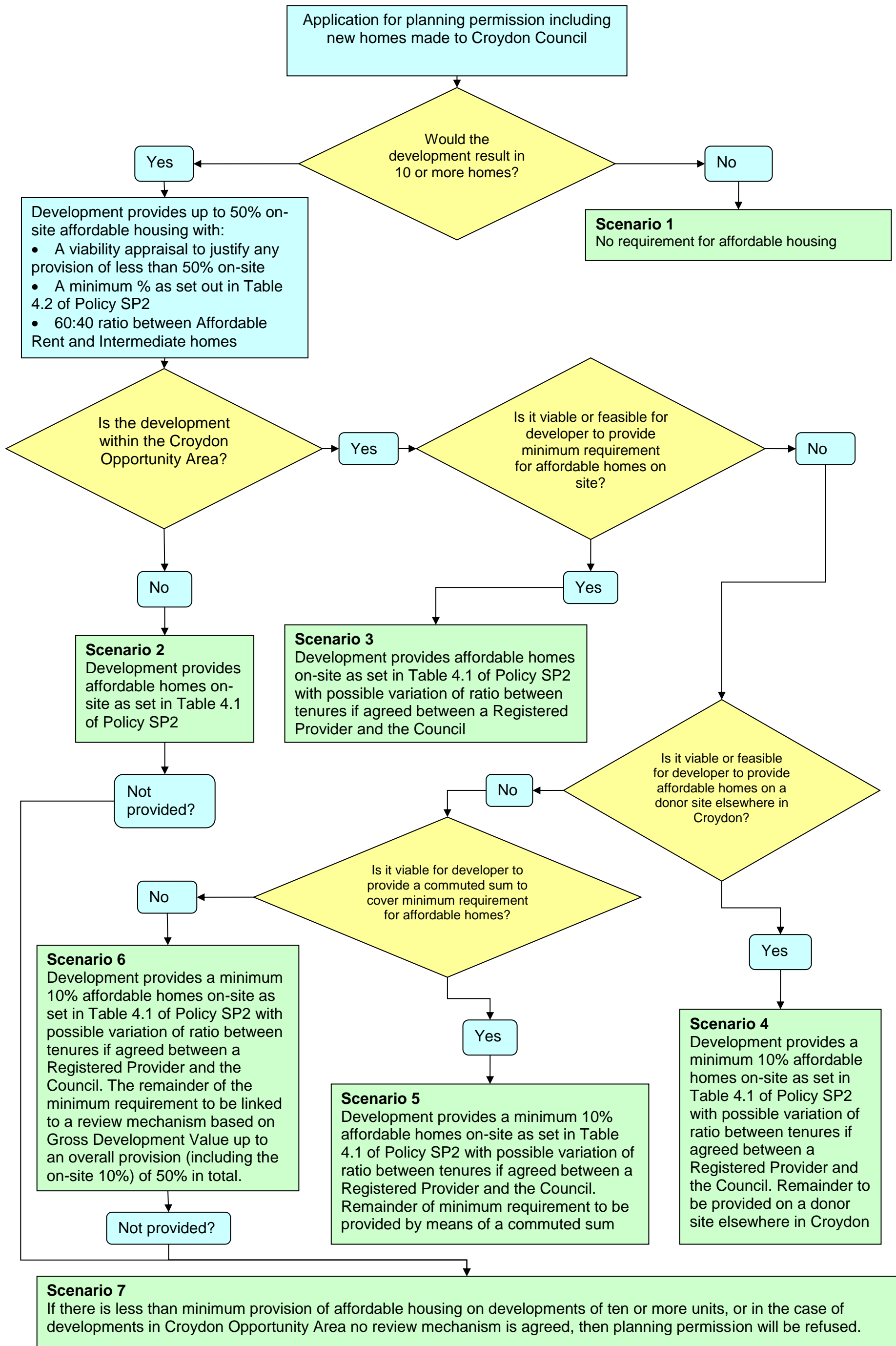
8. Guidance on the application of Croydon Local Plan – Strategic Policies – affordable housing policy (include Housing Technical Paper Flowchart)

8.1 The Council is committed to maximising the provision of affordable housing in line with Policies 3.8, 3.9, 3.10, 3.11, 3.12, 3.13 and 3.14 of the London Plan and SP2.4 of the Croydon Local Plan: Strategic Policies and the Croydon Local Plan: Strategic Policies: Partial Review, 2017. These policies seek to ensure that the Council achieves mixed, balanced and sustainable communities and to deliver high quality affordable housing for local people in housing need.

8.2 Affordable Housing requirements and negotiations will also be guided by the Croydon Local Plan: Strategic Policies. Policy SP2.4 of the Croydon Local Plan: Strategic Policies state that the Council will negotiate to achieve up to 50% affordable housing provision on sites with ten or more units.

Scenarios of implementing Policy SP2 for on-site provision of affordable housing

The flowchart on the next page sets out the seven scenarios envisaged by Policy SP2.4 for dealing with the provision of affordable housing in residential developments in Croydon.



9. The mechanism for the calculation of affordable housing commuted payments in accordance with Croydon Local Plan: Strategic Policies – affordable housing policy

9.1 Table 2 below sets out how the Council will calculate commuted sums for affordable housing in the specific circumstances listed:

Table 1: Calculating commuted sums for affordable homes

The Council will...	Within the Croydon Opportunity Area where a commuted sum or review mechanism is agreed and in exceptional circumstances on developments of ten or more units in any part of the borough where no registered provider can be found to manage on-site affordable units...
Charge a commuted sum based on...	A negotiated value for each square metre not provided on site to be based on the difference in value of affordable homes not provided and the resultant additional private market homes that are built instead
The value of each square metre will be...	Until 1 April 2018 a minimum of £1,831.29 per m ² of affordable housing not provided on site
Each year...	The minimum value per m ² of affordable housing not provided on site will change in line with the national All-in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (as at 1st November of the preceding year).
In the event of Social Housing Relief for the Community Infrastructure Levy charge being granted.	Waive the commuted sum for any additional affordable unit subject to or eligible for Social Housing Relief beyond that agreed at the time of granting planning permission

Affordable housing review mechanism

9.2 Where the Council accepts a lower level of affordable housing (following an open-book assessment of the scheme's costs and revenue) the Council will expect a review mechanism to be agreed which will allow for a payment in lieu of affordable housing to be paid to the Council where higher development values are later realised. The review mechanism aims to set out a clear, simple, and certain method for calculating the amount of this payment that is understood and agreed at the outset by both the Council and the applicant.

The additional payment due at any review shall be calculated using the following formula:

$$(A + B) - C - d - e = F$$

$$a - c - d - e = G$$

$$F - G = Z$$

Where,

A = Sales values achieved for units already sold at the relevant trigger point

B = Predicted values for the remaining percentage of unsold units

C = Actual construction costs associated with the development of the site

c = Original forecast construction costs associated with the development of the site

d = Original value of fees associated with the development

e = Original agreed profit margin for the development

F = Actual Residual Land Value

G = Breakeven Residual Land Value

Z = Development surplus

The 'Development Surplus' would be split with the Council with the proportion to be agreed with the Council on a site by site basis. The total payment by the applicant to the Council will not exceed a maximum agreed sum.

Viability appraisals and gross development value (GDV) at the point of sale

Default position should a Registered Provider (RP) not pursue a donor site

10.8 Should a RP be unable to deliver a donor site to make good the affordable housing provision for a parent site the S106 will include a clause requiring the developer of the parent site to make all reasonable endeavours to secure a new RP. These reasonable endeavours should be undertaken over a period up to 18 months following the withdrawal of the original RP. The all reasonable endeavours clause will also be supported by a Grampian condition on the parent development site, stating that occupation can only reach a certain agreed level without all reasonable endeavours having been made to secure a RP for the donor site

10. Role and function of the Council's Infrastructure Finance Group

10.1 The Council's Infrastructure Finance Group's role is to determine which infrastructure projects will be funded in whole or in part from planning obligations

secured by S106 Agreements and from April 2013 from CIL. The Group would ensure that the money allocated would be in accordance with the terms of the S106 and included in the Council's Infrastructure Delivery Plan / Capital Programme.

11. Approach to Section 106 and CIL monitoring and availability / source of information

11.1 Under the CIL Regulations the Council is allowed to retain 5% of the CIL revenues for the purpose of monitoring and administering CIL in accordance with the CIL regulations. An additional charge on Planning Obligation revenues will also apply for the purpose of monitoring and administration the implementation of planning obligations.

11.2 In the majority of cases payment will be due on signing of the agreement. In exceptional circumstances the Council may consider payment up to 60 days before commencement of the scheme and the applicant will need to notify the Council of intended commencement. On large payments of £500k or more the Council may negotiate phased payments.

11.3 Contributions sought from developers will be index linked with a standard clause to this effect included in the S106, in order to maintain the value of the contributions and inflation proof them.

11.4 The Retail Price Index (RPI) is the most commonly used index of inflation. Financial contributions for off-site works and longer term projects will typically be required to be received by the Council prior to commencement of the development. Infrastructure works and public realm works directly associated with the development are normally required to have been carried out prior to occupation.

11.5 The use of money collected from both S106 and CIL will be reported via the Croydon Monitoring Report available on the council's website.

Viability

11.6 Developers should take potential planning obligations, and any identifiable exceptional site development costs, into account when acquiring land for development. If, during the identification of Heads of Terms and the planning application determination process, it is claimed that the economic cost of fulfilling certain planning obligations would prevent development from occurring, it is expected that developers will also submit detailed 'open book' information about the scheme's economics to the Council prior to the formal submission of a planning application. Before reviewing the nature of the planning obligations sought, the Council may seek valuation advice from an independent third party. All costs incurred by the Council in validating viability claims will have to be met by the developer

Review of Section 106 Agreements

11.7 In the event of stalled developments applicants/developers may wish to come back to the Council seeking to review previous agreements with a view to possible deferred payment of contributions, changes to design and/or flexibility of uses. The Council may consider such a scenario on its merits and in accordance with the viability testing and prevailing legislation.

Section 106 Planning Obligations, Monitoring and Other Fees

Background

11.8 Planning Obligations are always site specific and are negotiated based on the characteristics of an individual site and proposed development. They are used as part of the planning application process to address specific planning issues arising from a development proposal that cannot be adequately dealt with via planning conditions.

11.9 Developments that are expected to require significant infrastructure which is expected to be delivered via Section 106 agreements (or Section 106 Unilateral Undertakings as the case may be) have become increasingly difficult to monitor and manage given the scale, detail and complexity of likely obligations and the need in some cases for phasing over long timescales. The monitoring and administration of Section 106 Agreements (or Section 106 Unilateral Undertakings as the case may be) for such developments is an abnormal and labour – intensive impact of the development which the Council would not have to bear if the development were not to take place. As a result, the Council seeks a fee to contribute to the costs of monitoring the implementation of the measures in such Agreements (and Unilateral Undertakings).

11.10 Developers will be required to pay the Council's reasonable legal costs for negotiating, and preparing an agreement or undertaking.

11.11 In addition to the monitoring fee some major schemes may require the appointment of an Independent Viability Assessment consultant or the provision of independent advice to validate specific aspects of the planning application/agreement/undertaking and this will be secured at the developer's cost.

Planning Performance Agreements

11.12 A planning performance agreement ('PPA') can extend to matters beyond the formal application process – such as programming the negotiation of any section 106 agreement and related non-planning consents. For very large or complex schemes the PPA may also provide a basis for any voluntary contributions which the applicant has offered to pay to assist with abnormal costs of processing the application.

11.13 All S106 Agreements and Unilateral Undertakings are monitored in a transparent manner to ensure that contributions are spent on their intended purpose and that the associated development contributes to the sustainability of the area and the impact of the development is mitigated.

11.14 The monitoring fee is a contractual obligation as well as being an obligation sought pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) and other relevant legislation. It is binding on the Owner and its successors and in some cases it can be associated with a development of a large, complex nature) and could cover a variety of specific tasks undertaken by the Council officers including officers of the Section 106 Monitoring Team of the Council's Spatial Planning Service.

11.15 The Council has Section 106 officers that are responsible for monitoring planning legal agreements and undertakings managing the implementation of planning obligations and non-monetary heads of terms. The Council has an established process for recording and monitoring Section 106 Agreements and undertakings including a database with details of these.

11.16 The process is further governed by the Section 106 Framework Group which meets monthly and includes representation from various Departments such as Legal Services, Finance, Debt Recovery, Spatial Planning and Development Management. This Group deals with variety of matters including allocation of S106 monies to various projects in accordance with the clauses of each particular agreement/undertaking and advice on specific matters.

11.17 Payment of financial contributions should normally be on or before implementation of the development. This will enable mitigation and improvement works to commence during construction of the development and, where feasible, be coordinated with the completion of development.

11.18 For phased developments, the staging of payments may be acceptable. The developer must inform the Council when the relevant stage triggers have been reached. The Council will normally only receive contributions if construction of the development has commenced. Larger infrastructure projects funded through Section 106 contributions may take longer to deliver given the time that may be required to put sufficient additional funding in place, to work up details of projects, undertake consultation, obtain relevant consents and address any other issues that arise.

11.19 Recovering the cost from the person(s) against whom the obligation is enforceable it is the responsibility of the S106 Monitoring officers to:

- monitor the implementation of planning permissions relating to developments,
- monitor developer's compliance with planning obligations,
- report on the status of S106 Agreements and undertakings
- Undertaking a variety of tasks and facilitating S106 funded projects for subsequent approval by the Councils Infrastructure Finance Group. Projects funded through planning obligations will be selected through strategic objectives, which identify the infrastructure needed within the Borough through public consultation and work undertaken by the individual service areas in the Council.

11.20 The monitoring of planning obligations (including the monitoring of non – financial obligations) requires the payment of fees in recognition of the Council's tasks of monitoring compliance as set out below

11.21

Section 106 Financial Planning Obligations payable to the Council and/or third parties

11.22 Normally a fee of £1500 is required for each Financial Planning Obligation.

Non-financial Planning Obligations

11.23 £1500 is required per head of term relating to non- financial planning obligation.

Affordable Housing Planning Obligations

11.24 One or more of the following contributions will be payable depending on the nature of the application:

- £1500 to cover the provision of Affordable Housing onsite
- £1500 to cover the provision of Affordable Housing off-site

- £1500 to cover the Affordable Housing contribution which is paid in lieu of the provision of Affordable Housing

The Review Mechanism

11.25 £1500 is required to cover the Council's costs for time spent on co-ordinating and liaising with the Independent Viability Consultant and liaising with the developer to ascertain if there is deferred affordable housing contribution payable.

Justification

11.26 In addition to the monitoring fee some major schemes may require the appointment of a viability consultant or the provision of independent advice to validate specific aspects of the application/agreement/undertaking. The costs of any consultant appointed by the Council will be required from the developer(s).

Specific Examples of Obligations and Associated Tasks

11.27 The individual obligation clauses would be specific to each development and agreement/undertaking and related to the scale, form and nature of the development.

11.28 Examples of general tasks associated with monitoring (in addition to the preparation of the data base) include:

- Undertaking site visit as necessary
- Liaising (including meetings) with the Developer/Owner as necessary
- Dealing with technical issues relating to specific obligations as they arise.

11.29 Examples of specific clauses and the tasks involved are as follows:

The sum of £1,500 for monitoring the restriction on parking permits obligation.

Currently the restrictions are normally imposed on residential developments of ten units or more. The monitoring includes:

- Keeping records of developments affected by parking restrictions
- Internal consultation between various sections of the Council
- Implementing the parking restrictions.

The sum of £1,500 for monitoring the Skills Training and Employment Obligation

- Setting up of data base recording:
 - a) the site address
 - b) the amount received
 - c) name of the developer
 - d) Whether for construction phase only (applicable if residential development only)
 - e) Whether for construction AND operational phase (applicable if residential and commercial elements in the development)
 - f) date of approval of the Job Brokerage and Training Strategy
- Receiving the Employment Skills Plan
- Checking the plan to ascertain whether it sets out a detailed programme for advertising jobs in the Council's area

- Examining the strategy to ensure that it is robust and sufficiently detailed, offers sufficient value, training opportunities and benefit to the local community having regard to the CIT Construction benchmark.
- Liaising with the developer / agent and requiring amendments to the proposed strategy as required
- Approving the strategy in writing
- Monitoring that the implementation of the strategy is in accordance with the approved written strategy

For the car club monitoring, the sum of £250 from small and medium developments and up to £1000 from large developments alongside a Travel Plan

- Checking to ensure that the Car Club bay is provided, maintained and retained and to ensure that the Car Club operator is accredited with Car Plus UK (or another body as approved by the Council)
- If applicable, checking that membership of a car plus (or equivalent) accredited car club for residents has been paid by the Developer as specified in the S106 agreement

The sum of £250 up to £7500

- Internal meetings with the relevant case officers to assist in monitoring the review of the terms of the Travel Plan
- Monitoring the travel plan to ensure that it is implemented and is operational for the entire duration (which is specified in the S106 agreement).

The sum of £1,500 for monitoring the Affordable Housing obligation

- Maintaining a record of all approved planning applications that contain an affordable housing requirement;
- Monitoring and recording when each such approved planning application starts on site;
- Ensuring that the developer has entered into an agreement to transfer the affordable dwellings to a Registered Provider within the timeframe specified in the Section 106 Agreement; Additionally, ensuring that the developer has subsequently actually transferred the affordable dwellings in compliance with the terms of the Section 106 Agreement
- Ensuring that the Registered Provider has entered into a Nominations Agreement for the Affordable Rented units, as required under the terms of the Section 106 Agreement;
- Monitoring and recording practical completion of the scheme including the Section 106 affordable housing provision;
- Checking that the occupation of any private units on the scheme is in accordance with any trigger points contained within the Section 106 Agreement.
- Ensuring that, where applicable, any commuted sum payments are received in a timely manner.

11.30 In some cases, more intensive monitoring is required, these include situations where the S106 Agreement includes a Review Mechanism to be undertaken at some point during the course of construction and/or includes cascade provisions (that may lead to a commuted sum or allows some, or all, of the affordable housing provision to be delivered off-site on a donor site).

Project Management Fees

11.31 In certain cases, the Council will seek agreement from developers that a percentage of the section 106 contributions paid over to facilitate a given project or project can be applied by the Council to defray costs associated with the management of that project ('project management fees').

11.32 The recovery of project management fees will usually be sought on major projects, where the Council is unable to resource the implementation of the schemes the S106 funds are intended to pay for from current resources, although there may be instances where the recovery of such fees is appropriate on other projects too. Project management fees are required to cover tasks such as internal/external resource co-ordination, managing the scope, schedule and budget of each project, measuring project performance and creating and managing project documentation, although this list is not exhaustive

11.33 The precise percentage that the Council is entitled to apply to project management costs will be the subject of negotiation with developers on the facts of each individual case, but will typically be around 15% (20% in exceptional cases) of the S106 contribution paid.