
SPD 9

LEGAL AGREEMENTS, PLANNING OBLIGATIONS & PLANNING GAIN

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1. Status of this Document

- 1.1 This guidance supplements the policies of the London Plan, adopted in May 2004, and the Ealing Unitary Development Plan (Plan for the Environment) (“UDP”) adopted in October 2004. The key UDP policy is Policy 1.10 (Legal Agreements). It is also intended that it will be a Supplementary Planning Document as part of the Council’s Local Development Framework.
- 1.2 The UDP provides the policy context for decisions on planning applications and other proposals concerning development and transport in Ealing. Under the Planning and Compulsory Purchase Act 2004 the UDP will be progressively replaced by new Development Plan documents in a Local Development Framework. The Council has approved a Local Development Scheme setting out a programme for this work. Relevant Council decisions will be based on UDP policies up until October 2007 and relevant ‘saved’ UDP policies after that time until the new Local Development Framework is adopted. This guidance on Legal Agreements is intended to span both periods, ie before and after October 2007.
- 1.3 The guidance will be used in determining planning applications. It has the legal status of a ‘material consideration’ which the local planning authority is entitled to take into account in making decisions.

2. Legal Agreements, Planning Obligations & Planning Gain

- 2.1 A **legal agreement under s106 of the Town and Country Planning Act 1990** can cover a wide range of social, economic and environmental issues but must fairly and reasonably relate in planning terms to the development proposal. There are **other powers** to enter into legal agreements for appropriate purposes, for example, s111 of the Local Government Act 1972, s16 of the Greater London (General Powers) Act 1974 and s2 of the Local Government Act 2000, and of particular relevance are sections 38 and 278 of the Highways Act 1980.
- 2.1 A **planning obligation** is a legal agreement usually negotiated in the context of a planning application (and enforceable through the Courts) between a local planning authority and a person(s) with an interest in a piece of land. An obligation is recorded on the planning register and is registered as a local land charge.
- 2.2 While the concept of **agreement** is the most usual method of establishing an obligation, a landowner can make a **unilateral undertaking** to commit to undertaking a specific action without the formal agreement of the local planning authority (such undertakings though cannot impose any obligations on the local planning authority). ‘Planning obligation’ is therefore a generic term covering both obligations that have been agreed between the local planning authority and a landowner and those that are part of a unilateral undertaking by the landowner. As the local planning authority, Ealing Council expects to be able to agree planning obligations (and other types of legal agreement relating to development proposals) but will take account in its decisions of any unilateral undertakings offered by a landowner.

- 2.3 At present, **planning gain** is a term used to mean the benefits derived for the community as a result of a legal agreement or unilateral undertaking. Government is currently considering the separation of these benefits into two categories. Benefits relating to the **development site environment** would be (as at present) negotiated or offered as planning obligations in respect of individual development proposals. Benefits regarded as addressing the social infrastructure needs arising from a proposal would be regarded as planning gain, and would not be subject to individually negotiated agreements, but would be provided by the developer on the basis of a tariff set by government. This would be described as the **planning gain supplement**, and would provide an income stream for delivery of the required infrastructure projects, alongside mainstream public sector funding.
- 2.4 Legal agreements as described above, are negotiated by the local planning and highway authorities, ie Ealing Council. Arrangements are being put in place to allow the Greater London Authority to be the planning authority on the most strategically important planning applications (in Ealing and other London Boroughs). These arrangements would enable the Mayor of London to determine applications of a substantial size and waste management projects which are critical to the delivery of the Mayor's waste strategy. In these cases, the Mayor would be the lead party for planning obligations. In other cases of strategic significance, the Mayor will be a statutory consultee.
- 2.5 The supplementary planning document applies to both the present situation and to the local planning authority's role in a situation where these powers are shared by the Greater London Authority, and they take account of the introduction of a planning gain supplement.

3. Introduction to Policy on Legal Agreements

- 3.1 Sustainable development is at the heart of the planning system. Local planning authorities can use various powers, promotional and restrictive, to secure sustainable development. 'Restrictive' powers relate primarily to refusing planning permission for unacceptable development and imposing conditions on a planning permission for development preventing specific actions from happening at all or until another action has taken place. As described above, 'promotional' powers include a local planning authority's ability to enter into **legal agreements (planning obligations)** with landowners regarding the development of their land.
- 3.2 This planning guidance sets out how Ealing will use its ability to secure planning obligations to promote sustainable development. It also covers the use by the Council of other powers to secure legal agreements related to development proposals as, for example, its powers as the local highway authority, and the role of the Greater London Authority.
- 3.3 The Greater London Authority's London Plan expects boroughs to take local and strategic needs into account in their policies for planning obligations. London Plan policy 6A.5 states that:
- 'Boroughs should set out a clear framework for negotiations on planning obligations in UDPs having regard to central government policy and guidance and local and strategic considerations (see Policy 6A.4) to the effect that:*

- *it will be a material consideration whether a development makes appropriate provision for, or contribution towards, requirements that are made necessary by, and are related to, the proposed development;*
- *negotiations should seek a contribution towards the full cost of all such provision that is fairly and reasonably related in scale and in kind to the proposed development and its impact on the wider area;*
- *boroughs should refer to planning obligations that will be sought in the relevant parts of the UDP (such as transport and housing policies).'*

3.4 From a strategic perspective, the Mayor of London wants to explore with boroughs the potential for 'pooling' planning obligations with highest priority to affordable housing and public transport improvements. This could have the greatest relevance in the Opportunity Areas designated in the London Plan, of which there are two in Ealing – Southall (linking with areas in Hillingdon and Hounslow) and Park Royal (linking with areas in Brent and Hammersmith & Fulham).

3.5 Ealing's UDP is in general conformity with the London Plan. UDP Policy 1.10 'Legal Agreements and Partnerships' states that the Council intends:
'To use legal agreements with developers to assist the best use of land and a properly planned environment as a means of ensuring that the wider planning implications of development schemes are taken into account and, where necessary, to enter into partnerships with other agencies to promote appropriate development.'

3.6 **Table 1A in the UDP** sets out the matters that will potentially be covered by legal agreements:

'The range of matters that may be negotiated for inclusion in a legal agreement are listed below.....:

- 1. Recycling installations for products used or traded by occupants of the development, eg. paper, cans, bottles;***
- 2. Access provisions to meet the needs of people with a disability (see also Supplementary Planning Guidance 'Accessible Ealing');***
- 3. Conservation of buildings or places of historic or architectural interest and areas of nature conservation significance, and the provision of education/interpretative facilities;***
- 4. Provision of affordable housing on site, or in certain circumstances using payments 'in-lieu', particularly where this could be used to bring empty property into use;***
- 5. Development schemes incorporating small scale business use which facilitate the future conversion of the premises to an appropriate alternative use compatible with local needs and environment;***
- 6. The provision of small workplaces to let on a rental basis with shared facilities, and business support;***

7. ***Training provisions related to employment required at the site and the employment area, and the needs of local people available to work there;***
8. ***Town centre management;***
9. ***Meeting additional healthcare and other community needs that have been generated as a direct result of the proposed development, or which would otherwise be lost because of the development;***
10. ***The provision of education, childcare and indoor community facilities related to the development;***
11. ***Provision of arts and cultural facilities in the development of appropriate townscape or buildings***
12. ***Provision of art, craft and sculpture situated permanently in and around buildings as recommended by the Percent for Art Scheme;***
13. ***Payments to meet the full cost of the activity arising from the development and its implications for transport and infrastructure, including the need for public transport, parking and highway access and traffic management, and Car Clubs;***
14. ***Infrastructural improvements, eg. improvement of the public transport systems at stations and interchanges (when the development will generate journeys to work using these facilities) to encourage greater use of Public transport;***
15. ***The creation of links in the boroughs network of footpaths and cycle routes on appropriate sites;***
16. ***Environmental improvements in the vicinity of the proposed development, including sign posting and maintenance of public footpaths;***
17. ***Provision of special benefits in the form of buildings, open space, play space, playing fields, built sporting facilities, pedestrian access and other facilities for the use of the public, related to the development itself, or the pedestrian movements which are generated or attracted.'***

3.8 'Topic' policies, eg. on affordable housing (Policy 5.2), transport (Policies 9.2, 9.4 & 9.7- 9.11) and community facilities (Policies 8.2, 8.6-8.8), provide more detail on the requirements that may be embodied in legal agreements. Other Supplementary Planning Documents amplify these further, eg. SPD1 Affordable Housing, SPD2 Community Facilities & SPG21 Sustainable Transport: Green Travel Plans. Appendix 1 provides a full list of UDP policies that indicate how the different elements in Table 1A above are broadly intended to be applied.

4. Objectives of this Supplementary Planning Document

- 4.1 A series of objectives has been set for this supplementary planning document. They are indicated in Table 1 overleaf. These objectives have been established with reference to the Sustainability Appraisal (SA) process, which is a statutory requirement in the document's preparation. The purpose is to ensure that the document contributes positively to the government's key priority for planning, ie sustainable development and the creation of sustainable communities. In undertaking the SA, particular options were assessed and helped focus upon;
- Specific guidance on types of facilities and other improvements the Council will seek in connection with development proposals
 - The inclusion of formulae and thresholds for calculating the type and scale of obligations that will be sought in connection with developments
 - Listing the strategic and area priorities that may be negotiated for inclusion in a legal agreement
- 4.2 Sustainability appraisal also plays a part in ensuring that the transition from draft to final version of the document takes proper account of sustainability requirements in Ealing.

5. Complying with National Policy Directions

- 5.1 Planning Policy Statement 1 establishes **sustainable development** as the key objective of the planning system. Local planning authorities, as a major part of the planning system, are required to:
- *make suitable land available for development in line with economic, social and environmental objectives to improve people's quality of life;*
 - *contribute to sustainable economic development;*
 - *protect and enhance the natural and historic environment, the quality and character of the countryside, and existing communities;*
 - *ensure high quality development through good and inclusive design, and the efficient use of resources; and*
 - *ensure that development supports existing communities and contributes to the creation of safe, sustainable, liveable and mixed communities with good access to jobs and key services for all members of the community.*
- 5.2 Circular 5/05 issued by the Office of the Deputy Prime Minister (now the Department for Communities and Local Government) provides the latest formal guidance on the use of planning obligations. It focuses on the primary use of obligations 'to make acceptable development which would otherwise be unacceptable in planning terms'.
- 5.3 The Circular envisages three functions for planning obligations to:
- **prescribe** the nature of a development;
 - **compensate** for the loss or damage created by a development; or
 - **mitigate** a development's impact.

Where an obligation relates to a contribution from a landowner, it can either be 'in kind' or as a financial payment to the Council.

Table 1: Objectives for Legal Agreements SPD

1.	Set out for the benefit of everyone involved with or impacted by new development how Ealing will use its enabling powers of securing planning obligations, combining as appropriate with wider powers relating to legal agreements, to promote sustainable development.
2.	Detail the factors the Council will take into account in seeking to enter into planning obligations and other legal agreements linked with development proposals, seeking to ensure a fair and transparent process and recognising the need to ensure that development remains financially viable.
3.	Set out the type of measures, facilities and other improvements that, where appropriate, the Council will seek to secure in connection with development proposals.
4.	Bearing in mind the need to maintain the financial viability of a development, detail the system the Council will use to determine the type, scale and extent of required planning obligations, including setting out the priorities that the Council will, in general, apply to promote sustainable development and overall social, economic and environmental improvements in the area of the proposed development.
5.	To set out a clear framework for the process of negotiating S106 agreements in Ealing.
6.	To ensure that the process of allocation of S106 monies is transparent and equitable, both for developers and the community / voluntary sector.
7.	To set out how and when the community / voluntary sector can involve itself in the sS106 negotiation process.
8.	To set out criteria for when a legal agreement will be required.
9.	To be compliant with Circular 05/2005: Planning Obligations and any other relevant guidance.
10.	Ensure that the necessary infrastructure and services meet the needs of the community and also serve the development which are in place at the right time by putting in place mechanisms for securing facilities and that they are implemented so that requirements are delivered.
11.	Limit impacts of new development by mitigating or securing compensation that seeks to enhance the environment.
12.	Ensure that affordable housing is delivered in accordance with local needs.
13.	Limit the impact of the motor vehicle by encouraging other means of transport.
14.	Make available recycling facilities at the outset of new developments.
15.	Ensure adequate recreational facilities (including open space, sports and play space).

- 5.4 This forms the basis of the policy tests set out in the Circular on whether a planning obligation should be linked to a development proposal. However, it also advises that Courts have considered planning agreements that go beyond these three outcomes can still be consistent with the purpose of s106 in the principal legislation. Indeed, one example is the use of agreements to secure the required provision of affordable homes – and that is specifically encouraged by central government.
- 5.5 Using the Circular’s narrower interpretation on the use of planning obligations, the policy tests it suggests should be applied in considering planning appeals or in determining ‘called in’ applications are:
- *relevant to planning;*
 - *necessary to make the proposed development acceptable in planning terms, ie. to bring a development in line with the objectives of sustainable development;*
 - *directly related to the proposed development – a functional or geographical link;*
 - *fairly and reasonably related in scale and kind to the proposed development;*
and
 - *reasonable in all other respects.*
- 5.6 Factors that a local planning authority takes into account in determining a planning application must have a clear basis in planning. However, the scale of obligations sought has to respect the need for the development to be economically viable.
- 5.7 The Circular encourages local planning authorities to set out local policies regarding the use of legal agreements, the factors to be taken into account in determining the nature of obligations and expectations regarding their general scale. It also asks authorities to consider adopting a more standardised approach to planning obligations by applying ‘formulae’ or ‘tariffs’ to development proposals. At the same time the guidance emphasises that, while they need to be applied consistently, standard charges should not be sought without regard to the scale of a development’s likely impacts. It also acknowledges that maintaining scheme viability is essential subject to the proposal being acceptable in other respects.
- 5.8 As indicated in paragraph 2.3 above, government is currently reviewing the arrangements for legal agreements, planning obligations and planning gain. The introduction of a Planning Gain Supplement may be introduced by 2009. This supplementary planning document is therefore set out so that it can assist in both the current and the future systems.
- 5.9 Proposals on how site development environment matters (to be negotiated locally as planning obligations) might be differentiated from planning gain matters (with tariffs to be determined centrally and set out in a planning gain supplement) were published in December 2006 by the government’s Department for Communities and Local Government. At that time, the principles were established although the details were still open to consultation. These principles are shown in Table 2 overleaf.

Table 2
Matters for the Planning Gain Supplement and Planning Obligations for the Site Development Environment

PLANNING GAIN SUPPLEMENT¹
1. New Social and Community Infrastructure – to be delivered through the public sector funding mechanisms, including receipts from Planning Gain Supplement.
NB It is essential that all necessary infrastructure is delivered on a timely basis alongside new development in such a way as to offer confidence to developers and communities, and to address potential shortcomings
PLANNING OBLIGATIONS²
2. Affordable Housing – securing a relevant proportion of affordable housing in a residential or mixed use development, as required by the relevant Local Development Framework policy
3. The direct replacement or substitution of a facility or an amenity which would be damaged or lost as a result of the development proposal.
4. Matters necessary to make the development site acceptable in terms of the following attributes –
• Connectivity to access points
• Physical safety
• Environmental quality
• Biodiversity
• Design or landscaping
• Archaeological protection
• Mix of uses
• Operational effectiveness of the site and other sites functionally linked to it.

¹ Changes to Planning Obligations, a planning gain supplement consultation, DCLG London, December 2006, paras 12 and 13.

² Ibid, Box 7

6. Policy Guidance in Ealing

Policy context

6.1 UDP Strategic Policy 1.10 states that the Council intends:

‘To use legal agreements with developers to assist the best use of land and a properly planned environment as a means of ensuring that the wider planning implications of development schemes are taken into account and, where necessary, to enter into partnerships with other agencies to promote appropriate development.’

6.2 The statutory policies are clarified in section 3 above. Beyond this, the Council’s vision is to make Ealing ***‘a successful borough in the heart of West London where everyone has the opportunity to prosper and live fulfilling lives in communities that are safe, cohesive and engaged’*** (Community Strategy 2006). The Council expects new development to contribute to that objective by maximising the benefits of that development for local communities, minimising the potential adverse social, economic and environmental impacts and ensuring that development contributes to providing the infrastructure needed to support it. Negotiating planning obligations (and other, complementary, legal agreements) is an important part in achieving this.

Planning obligations v planning conditions

6.3 In line with national guidance, planning conditions will be used in preference to planning obligations wherever possible. The advantage of conditions is that they do not delay the issuing of a planning decision notice and they can be appealed if the developer considers them unreasonable. However, conditions are limited in their scope so planning obligations will be needed in many cases to achieve sustainable development objectives.

Principles underpinning the Council’s approach

6.4 The Department for Communities and Local Government published best practice guidance in 2006³. It suggests a series of checklist points based on the principles of transparency, predictability (with flexibility), openness and regular monitoring.

6.5 Grounded in best practice, Ealing’s approach to planning obligations is guided by eight principles, as indicated in Table 3 below.

6.6 National advice asks local planning authorities to consider the use of formulae or tariffs in calculating the scale of obligations sought. At the same time authorities are reminded of the importance of considering commercial viability.

³ Planning Obligations: Practice Guidance DCLG, July 2006

TABLE 3 <i>Planning Obligation Principles</i>	
1.	<i>While planning obligations can help to overcome objections to a proposed development, planning obligations will not be used to justify or support a proposed development that is so contrary to policy or likely to have such severe impacts as to warrant outright refusal</i>
2.	<i>Planning obligations will only be negotiated for measures that relate functionally or geographically to the development for which planning permission is being sought</i>
3.	<i>Guided by the principles of sustainability, planning obligations will seek to:</i> <ul style="list-style-type: none"> ▪ <i>prescribe and promote types of uses/development</i> ▪ <i>mitigate a development's impacts</i> ▪ <i>ensure the required level of transport accessibility to serve the development</i> ▪ <i>secure the provision of the required social and community infrastructure (on/off-site) to support the development</i> ▪ <i>promote environmental improvements in the area surrounding the development to improve safety and amenity</i> ▪ <i>secure measures to target the benefits of development to local communities.</i>
4.	<i>All likely impacts of a proposed development (social, economic and environmental) will be assessed to inform a judgement on what, if any, planning obligations are required to help promote the integration of that development into its local area</i>
5.	<i>Negotiations on the scale of obligations will relate to the scale of the proposed development (and its impacts), recognising the need to maintain its economic viability</i>
6.	<i>While tariffs and formulae will be used as a guide to calculate the scale of some obligations required, the overall approach will remain one of negotiation</i>
7.	<i>Obligations may be 'pooled' to fund strategic investments needed due to the cumulative impacts of a number of developments⁴. Where necessary, obligations will seek 'retrospective' funding to recoup investment committed 'up front' by the public sector to ensure the appropriate provision of facilities in anticipation of the new development. Obligation funding may also be 'pooled' with neighbouring local authorities, eg. in the Park Royal Opportunity Area, to fund appropriate improvements linked to area regeneration programmes</i>
8.	<i>Fees will be deducted from planning obligation funding accounts to defray the Council's costs in managing the overall planning obligations system (including a rigorous monitoring and financial accounting system) and for project management costs.</i>

⁴ For example in Ealing Metropolitan Centre, where a number of strategic developments have been and/or are planned as part of the town centre regeneration.

- 6.7 The approach the Council will pursue balances the benefits of a formula/tariff approach (greater transparency, openness and certainty) with the benefits of a tailored approach to the circumstances of each development proposal. This approach will be informed by standard formulae but the negotiations will not be dominated by them – the Council will retain the flexibility to negotiate up or down depending on the particular development proposed. It will also prioritise the obligations sought depending on the issues in each case. It is recognised that, as indicated in government proposals for planning gain (Table 2 above), the local tariff may be superseded by a planning gain supplement.
- 6.8 The formulae used will be reviewed and updated regularly. Current formulae are attached at Appendix 3. Developers are strongly advised before submitting a planning application (or a pre-application proposal) to check with the Council on what the latest guideline formulae are to ensure they have the most up-to date information.

Potential planning obligations

- 6.9 The UDP lists matters that to be covered by planning obligations (see Section 3 above). These can be grouped into 9 categories, which are capable of future subdivision into planning obligation and planning gain supplement matters:
- **affordable homes** – *on-site and (rarely) off-site provision*
 - **community facilities**– *on and off-site, eg. schools capacity, library facilities, sports and community centres, healthcare facilities, childcare provision;*
 - **community & economic capacity**, *eg. funding employment skills training, commitment to a Local Labour Scheme, building & fitting-out business start-up space, funding business support programmes, establishing a Community Development Trust on a new housing scheme;*
 - **environmental sustainability**, *eg. on-site energy generation, Travel Plan, operation of a Car Club, waste and recycling initiatives;*
 - **building heritage, public realm and community safety**, *eg. securing effective management of listed buildings, street lighting renewal, footpath improvements, town centre improvements;*
 - **green space – play space, amenity space and nature conservation** , *eg., implementing a nature conservation management plan, open space & play area improvements/provision, tree planting, enhancement of green corridors, creation/maintenance of landscaped buffer zones;*
 - **site accessibility**, *eg. funding bus service improvements & new bus routes, pedestrian & cyclist access/safety improvements, increasing off-site junction capacity, building a new access route;*
 - **maintenance & management of on-site facilities**, *eg. open space, play areas, community halls, roads & footways;*
 - **construction phasing**, *eg. to ensure an appropriate mix of uses (especially if part of the development is justified as being ‘enabling’) or linked with access improvements.*
- 6.10 Planning agreements can require both direct payments and in-kind obligations. Direct payments are when the developer directly funds the Council to provide or commission specific improvements, eg. increased schools capacity, employment skills training, new community facilities, environmental and public transport improvements. In-kind

obligations are when the developer undertakes to provide the benefits directly. Examples are the provision of affordable homes as part of a development, the operation of a Car Club, off-site road improvements, providing apprenticeship places and implementing a Local Labour Scheme.

- 6.11 The scale of new development required in the borough to accommodate London's projected population and household growth to 2016 and beyond, requires a substantial investment in supporting infrastructure. The cumulative impact of new development, such as that which has occurred and is continuing within our town centres, increases the need for new investment. To deal with this, there needs to be a system of 'pooling' investment funding secured via planning obligations towards the required capital to provide the infrastructure needed to support a number of developments. Examples of this include building new road infrastructure, new leisure facilities and increased schools capacity. This guidance includes a list of borough-wide and local area priorities (at **Appendix 4**) that the Council intends to promote with pooled funding contributions from individual developments. The list of priorities will be informed by continuing town centre regeneration work and updated as part of the Annual Monitoring Report.
- 6.12 Given both the uncertainty in the timing of new development and the potentially long lead time in implementing infrastructure improvements, the Council (or its public sector service partners) may need to fund 'up front' the required improvements out of its own resources. The Council will then look to recoup that investment from future planning obligations on appropriate individual schemes.

Setting priorities

- 6.13 Planning decisions need to take account of, and balance, a wide range of factors. Circumstances and needs change and specific proposals can present their own unique issues and opportunities. As a result, **any statement of the Council's priorities in seeking planning obligations must be tempered by the need for the Council to retain flexibility in interpreting those priorities in the light of a specific development proposal, in a specific location, at a specific time.**
- 6.14 This may be especially so given the importance the Council attaches to consultation on potential planning obligations both prior to and during the consideration of a planning application for a specific development (see paras. 6.33-6.35 below).
- 6.15 UDP Policy 1.10 and Table 1A (see para 3.6 above) indicate the range of matters that may be included in legal agreements in Ealing borough. Specific policies throughout the UDP provide the basis for applying the 'Table 1A matters' in particular cases. These policies are indicated at **Appendix 1**. They refer to different types of development, different localities, and the different impacts that development may have in these localities. The legal agreement may relate to benefits in kind or in financial contributions, and may be provided on or off site.
- 6.16 Of course, these policies do not cover every eventuality. Having considered the policy context and assessed, using the appropriate formulae, the developer contribution deemed reasonable, there may still be choices about the selection of priorities. For example, there may be a need to decide between levels of affordable housing and

contributions to training schemes that help local residents gain access to employment opportunities.

- 6.18 Clearly, there will be stakeholder and community involvement in these choices, and the arrangements in respect of s106 agreements are indicated in the Statement of Community Involvement. However, other things being equal, decisions on priorities can be made with reference to the type of development proposed. A table indicating strategic priorities in relation to different types of development is set out at **Appendix 2**.
- 6.19 This supplementary planning document is intended to provide guidance not only to supplement the UDP, but in the context of the emerging local development framework (LDF) for the borough. The LDF provides a new spatial planning approach, based on consideration of what development is needed to make Ealing's communities more sustainable. One implication of this approach is that priorities will be determined on the basis of the community needs in each area. It is envisaged that area spatial priorities will ultimately take precedence. An initial list of spatial priorities is set out at Appendix 4. This will be updated annually, as LDF spatial policies evolve.
- 6.20 It is important to consider the total financial demand obligations place on a development. In cases where the developer contends that commercial viability is being substantially prejudiced, a financial appraisal will generally be required to demonstrate whether this is the case. The Council may seek independent advice in assessing an appraisal – if so, the developer will be required to reimburse the Council's costs in commissioning this. The Council will then take that assessment into account in determining the planning application and the scale of obligations required.
- 6.21 When not all desired obligations can be supported by a proposed development (and where the development is still acceptable in principle), Appendix 2 indicates the priorities the Council will be guided by in deciding the appropriate planning obligations related to the type of development proposed. It must be reiterated that, as a matter of principle, planning obligations will not however be used to justify or support a proposed development that is so contrary to policy as to warrant outright refusal.

Calculating the scale of obligations

- 6.22 The scale of obligations sought must relate to the scale of the proposed development and its impacts. **Appendix 3** explains in more detail the type and scale of obligations the Council will seek in connection with appropriate developments. That Appendix will also be reviewed and updated regularly.
- 6.23 In some cases the scale of obligations will be judged by the use of formulae but not all development proposals can be assessed in this way. The formulae in Appendix 3 reflect current general practice. Some flexibility may however be appropriate when considering the impact on the economic viability of a development (consistent with ensuring overall policy compliance).
- 6.24 The table in Appendix 3 summarises the principal obligations that will be sought on different schemes and, where appropriate, indicates the scale of obligations expected. This list is not exhaustive however and the Council reserves the right to negotiate other

obligations in relation to specific development proposals and the needs of a specific area.

Approach to providing community infrastructure

- 6.25 UDP policy resists the loss of community facilities as well as seeking the provision of new or extended existing facilities to cater for a growing population. The Community Facilities Supplementary Planning Document (SPD 2) provides more details on the implementation of this policy.
- 6.26 Community infrastructure covers a wide range of facilities, including community centres, libraries, health centres, schools, sports centres, swimming pools. They are essential components of modern cohesive living. Some need to be in close proximity to local neighbourhoods, eg. schools & community centres (**'local community infrastructure'**), while others serve a wider catchment covering the whole borough (and beyond), eg. larger swimming pools, assembly halls (**'strategic community infrastructure'**).
- 6.27 Developers are advised that if they are directly providing new community infrastructure as part of their development, full regard must be paid to affordability and accessibility issues. Such issues will be expected to be covered in a planning agreement under the maintenance and management category of obligation.
- 6.28 The approach in relation to new development and off-site **'Local Community Infrastructure'** will generally be this. If there is sufficient capacity in existing local provision to accommodate the proposed development, then no contribution will be sought for that element. If there is inadequate capacity, then a planning obligation will be expected to fund the appropriate increase in capacity.
- 6.29 There is a different approach in relation to **'Strategic Community Infrastructure'** which serves the whole borough. As a contribution towards this investment, a funding contribution (calculated as set out in Appendix 3) is expected from all relevant development anywhere in the borough. These contributions will then be 'pooled' to provide the new strategic facility or undertake the required improvements to existing borough-wide provision.
- 6.30 **Appendix 4** lists the s106 priority projects identified as potentially needed to serve the population, household and economic growth projected for the borough. All relevant development within the borough will be expected to contribute towards these strategic, borough-wide projects. This list will be updated every year as part of the Council's Annual Monitoring Report.
- 6.31 One or more of the priority projects may be funded by the Council in advance of new development in order to create the required capacity. New development occurring after this may still be expected to contribute to these projects as set out in the principles in para. 6.7.

Covering the costs of managing the planning obligations programme

- 6.32 With a growing number of legal agreements funding a wide variety of improvement projects (often that need to be linked with other funding streams), the Council has in

place a comprehensive programme management system to ensure effective control. To help resource this, the Council will draw a one-off programme management fee of 3% from each planning obligation sum paid by a developer. This is in addition to charging a project management fee to each planning obligation account to cover the Council's costs in implementing the improvements being funded by specific planning obligations.

Community consultation and planning obligations

- 6.33 The Council's Statement of Community Involvement⁵ sets out how community consultation will take place in relation to identifying issues that should be covered by planning obligations with specific development proposals (at the pre-application stage or once a planning application has been made).
- 6.34 In addition to that, consultation will help support the planning obligations system in two ways by:
- informing a general assessment of specific needs for new community infrastructure or types of housing. This consultation will generally be undertaken in connection with Council-wide strategies or needs assessments, eg. the Community Strategy and Housing Needs Assessment; and
 - informing decisions on what projects should be funded (where it has not been defined specifically in the legal agreement) from resources secured through planning obligations and inputting views on the design of specific projects.
- 6.35 Forums such as Ealing Community Network, the Local Strategic Partnership (Partnership for Ealing) and informal groups such as the Ealing Access Committee will be used as part of this consultation process.

Index-linking of payments

- 6.36 The 'trigger' date for paying funding due under planning obligations can be some time from the date of entering into the actual s106 legal agreement. A surety will often be required. In some cases funding may be required on signing the legal agreement but, typically, it will be due at the start of construction, on first occupation of the development or at different stages of occupation.
- 6.37 All planning obligation payments will be index-linked from the date of the legal agreement to the time when the payment is made using an appropriate index. Usually this will be either the Retail Prices Index or the Building Cost Information Service (BCIS) Index.

Drafting legal agreements and recovery of Council's costs

- 6.38 Detailed heads of terms for the legal agreement will be negotiated as an intrinsic part of considering the planning application. A summary of the Heads of Terms for that agreement will be part of the report to the Planning Committee on the application. The Council will usually draft the Heads of Terms.

⁵ This can be viewed on the Council's website at http://www.ealing.gov.uk/services/environment/planning/planning_policy/local_development_framework/statementofcommunityinvolvement/

- 6.39 When agreed by the Planning Committee, the Council's lawyers will prepare the draft agreement based on the Heads of Terms.
- 6.40 The landowner/developer entering into the planning obligations will be required to reimburse the Council for its reasonable legal and other professional costs, eg. planning officer time, incurred in the negotiation and drawing up of the legal agreement. These costs will need to be paid before the Council will enter into the legal agreement.
- 6.41 Similarly, the Council's costs in assessing financial appraisals of developments (which may involve procuring external consultancy advice) will need to be paid by the landowner/developer. Typically these costs will be incurred during consideration of the planning application and before it has been reported to the Planning Committee. The landowner/developer will be required to agree to reimburse those costs regardless of the eventual decision of the Planning Committee on the planning application and regardless of whether a legal agreement is eventually signed.

Repayment clauses

- 6.42 If all or part of the funding paid by a developer to the Council for a specific improvement or facility is not spent by the Council within the timescale specified in the legal agreement then the original sum (or part as the case may be) will be repaid to the developer on application. Given that funding may need to be assembled from a variety of sources to implement a specific project, the standard length of time in legal agreements for the funding to be spent or contractually committed on the design &/or implementation of projects will be 8 years⁶.

Compatibility with the introduction of Planning-gain Supplement

- 6.43 As indicated above, the Government has announced that Planning-gain Supplement (PGS) may be introduced in 2009. Relating this back to the 9 categories of planning obligations listed in para. 6.9, it suggests that the scope of planning obligations linked with the 'development site environment' in locally-negotiated planning agreements could cover the following matters –

- *affordable homes*
- *environmental sustainability*
- *building heritage & public realm*
- *green space*
- *site accessibility*
- *maintenance & management of on-site facilities*
- *construction phasing.*

- 6.44 Providing the 'off-site' 'local' and 'strategic' community infrastructure needed to support a development, as well as improving community & economic capacity, will be largely outside the scope of obligations (though it seems 'on-site' provision of community infrastructure or direct provision by a developer of, for example, a Local Labour Scheme, could still be included in a local planning obligation).

⁶ 8 years is considered a reasonable period for the improvements to at least be contractually committed recognising that some, eg. strategic infrastructure projects and schools improvements, are likely to need to be combined with funding from other sources &/or other developments

- 6.45 Off-site infrastructure provision will need to be funded by the Council via the Treasury passing back a major proportion of PGS revenue from the site. Whether this funding will be sufficient to provide the required infrastructure cannot be known.
- 6.46 The Council's approach seeks to anticipate the introduction of Planning Gain Supplement. When it is introduced, it is likely that the Council will need to extend the list of strategic community infrastructure projects to include both 'local' and 'strategic' projects for funding via PGS revenues.

Role of the Annual Monitoring Report

- 6.47 In relation to planning obligations, the Annual Monitoring Report will have four roles:
- detail the range of obligations secured in the previous 12 months and the progress on implementing projects resourced via planning obligations;
 - establish the average value of planning obligations negotiated over the previous 12 months to monitor the Council's relative position with other local authorities;
 - review and update the financial tariff/formula used to calculate the scale of obligations sought for each type of obligation
 - review and update the list of Strategic Community Infrastructure Projects.

APPENDIX 1

UDP POLICIES WITH IMPLICATIONS FOR LEGAL AGREEMENTS

As indicated elsewhere in the document, the key policy on legal agreements is UDP Policy 1.10, in conjunction with Table 1A. The table indicates the range of matters that, as a matter of policy, may be the subject of a legal agreement. The UDP policies listed below provide further information on how these matters should be applied.

UDP Policy 2.1 Environmental Resources and Waste

The Council will take decisions on developments on the whole range of sustainability impacts In the case of major developments developers will be expected to consider sustainability issues and ... submission of ... a Sustainability Checklist; (also) an Environmental Statement ... where ... development ... may have significant environmental effects or affect an environmentally sensitive area within the borough.

SPG 1 Sustainability Checklist

UDP Policy 2.2 Regeneration of Special Opportunity Sites

The Council has identified Special Opportunity Sites ... Schemes should deal fully with site and community infrastructure provision and any potential contaminated land issues ... Development should be properly integrated with the adjoining neighbourhood, both functionally and visually

The application of these principles includes ensuring that the ultimate occupiers of the site in question are provided with a basic infrastructure, in terms of their range, capacity and sustainable management.

See Sites and Areas Schedule 10.21 and SPGs on individual sites
SPG21 Travel Plans

UDP Policy 2.5 Water - Drainage, Flood Prevention and Environment

The Council will ensure that there is sustainable management, based on Catchment Management principles ... The Council will seek measures to conserve water in new development, including grey water recycling and rainwater harvesting.

SPG 2 - Water, Drainage, Flood Risk and Development

UDP Policy 2.10 Waste Minimisation and Management

The Council will seek the promotion of waste management good practice in major commercial developments and town centre improvement projects, in co-operation with traders and the occupiers of flats above business premises, and building on the 'Greening the High Street' initiative ... Facilities for the transport of waste by canal and rail, and the safeguarding of railways.

UDP Policy 3.1 Major Open Areas (MOAs) - Metropolitan Open Land and Green Belt

Any development acceptable in Major Open Areas should ... Provide environmental improvements on adjacent or other appropriate land.

UDP Policy 3.2 Green Corridors and the Waterway Network

...development adjoining or affecting the setting of these corridors will be expected to enhance their visual, nature conservation and recreational qualities, and their visual and environmental continuity.

SPG 22 A40 Acton: Green Corridor Strategy

UDP Policy 3.3 Heritage Land

Development will not be permitted on Heritage Land unless it would preserve or enhance the special character, landscape and planting of the Heritage Land.

UDP Policy 3.4 Public and Community Open Space

...development of adjoining land should preserve or enhance the open character ... The Council will seek improved access to Public and Community Open Space and will establish additional Public and Community Open Space, particularly in areas where there is a deficiency in open space provision ... Suitable arts, cultural and entertainment uses of open space will be encouraged.

UDP Policy 3.5 Land for Sports, Children's Play and Informal Recreation

...golf courses and driving ranges ... Development should also facilitate access by public transport and other non car modes ... The Council will seek to ensure the provision of safe children's play facilities in connection with new development, especially in areas of play facility deficiency.

See TABLE 3F - National Playing Field Association Targets for Playspace

UDP Policy 3.6 Allotments

The Council will ... seek opportunities for improved provision (of allotments).

UDP Policy 3.8 Biodiversity and Nature Conservation

...promote conservation and enhancement of important features of the natural environment such as ancient habitats¹, river flood plains, woodland, canals and other locally important habitats.

UDP Policy 4.5 Landscaping, Tree Protection and Planting

The Council will seek to enhance small open sites for landscaped sitting areas, children's play areas and tree planting as appropriate; in shopping and district centres, Major Employment Locations, at Employment Sites and in residential areas.

UDP Policy 4.9 Ancient Monuments and Archaeological Interest Areas

....Design suitable land use and management strategies to safeguard any important remains, with the option to seek an agreement covering access and interpretation arrangements

UDP Policy 5.2 Affordable Housing

For development projects which can accommodate 15 or more residential units, or on sites of 0.5 ha or more, the Council will seek 50% of the units on site as affordable housing.

The benefits of affordable housing are to be extended to successive as well as initial occupiers. Where the agency is not a Registered Social Landlord, agreement will be reached between the Council and the developer, and secured by legal agreement or conditions.

SPD1 Affordable Housing

UDP Policy 5.5 Residential Design

.... Provide adequate play space for children ... Contribute to environmental improvement so that poorer residential communities are brought up to the standard of the best ... contribute to educational and other community provision, and/or access to employment for local residents.

See Table 5E Improving Residential Neighbourhoods

UDP Policy 6.1 Supply of Land and Property for Business Use

The Council will seek to develop a sustainable economic mix in the area

Supporting text - The Council will encourage the retention, location, and expansion of industry ... Permission will normally be granted where the proposal ... Provides small units with shared facilities ... Will meet local employment needs, bearing in mind the location of the development in relation to, for example childcare, public transport, and suitability for people with disabilities.

See Table 1A

UDP Policy 6.2 Proposals for Office Development

Mixed uses will be encouraged where major development is proposed.

UDP Policy 6.5 Ancillary Development in Major Employment Locations

To maximise or retain employment potential and enhance the attractiveness of Major Employment Locations, the Council will seek to ensure that:

- (i) complementary amenities including open space, sitting out areas for employees or the general public, leisure and shopping facilities, will be retained and improved, or augmented. A high standard of design and landscaping will be required in development proposals. New development should make provision for, or be well related to, existing amenities, and where appropriate contribute to their improvement; land for this purpose will be safeguarded;
 - (ii) appropriate physical infrastructure, particularly improved accessibility, is encouraged;
 - (iii) the development of shared services for joint use is encouraged, e.g. energy supply, display facilities, transport, security services, social amenities etc. and that consideration is given to joint sponsorship of such services with existing enterprises.
-

UDP Policy 8.1 Existing Community Facilities

..... resist development proposals that lead to the loss of existing community use of premises unless ... where the need for the facility remains, the developer makes (replacement) facilities available through refurbishment or redevelopment, and provides interim facilities during development.

SPD2 Community Facilities

UDP Policy 8.2 Major Developments and Community Facilities

For all major residential or business proposals, the Council:

- (i) will require developers to prepare a statement of social impacts to address the increase in demand on community facilities;
- (ii) may negotiate with developers to establish a legal agreement to meet the increased demand of community needs.

Table 8C,
Sites and Areas Schedule 10.21 and sites SPGs
10.17 (Built Sports Facilities with Community Access) and Map Sheet 11
SPD2 Community Facilities

UDP Policy 8.6 Facilities for Young Children

The Council will require major development schemes to incorporate a range of facilities for young children and their parents or carers.

The Council will negotiate with developers (by means of legal agreement - (see Policies 1.10 and 8.2)) and employers, and in conjunction with community childcare groups, to secure the provision of facilities for children whose parents are in work or education. In particular, the Council will encourage:

- (i) Nurseries located at or near the workplace, at training and education establishments, and in residential areas where there is a particular need;
- (ii) Play schemes to accommodate children after school and in school holidays, for both nursery age and school age children.

Table 8D – Facilities for Young People
SPD2 Community Facilities

UDP Policy 8.7 Education Facilities

The Council will ... Encourage additional or existing joint use of land or buildings, by other community groups / activities.

Supporting text - New housing and other development generally increases demand on existing education facilities. The Council will maintain and improve educational provision at its school sites, whilst also requiring developers to contribute to the improvements of existing primary and secondary school provision. These include general improvement of classroom and staff facilities, as well as external areas. Ideally, the facilities would be able to complement the immediate environment. The supply of additional facilities will be based on the demographic needs of the local area.

Apart from school buildings, the Council encourages the retention of school playing fields. They not only present a good opportunity for students to enjoy outdoor sporting activities, these playing fields may also be used by local communities to hold sporting and other social events.

SPD2 Community Facilities

UDP Policy 8.8 Health Care Facilities

The Council will:

- (i) Assist primary and strategic health authorities to ensure that health care facilities are provided to meet the needs of the community;
- (ii) Consider proposals for doctors' and dentists' surgeries, clinics and other health provision, in the light of assessment of the need for such facilities in the area, including observations by the Ealing Primary Care Trust and other appropriate agencies;
- (iii) Encourage the provision of health care facilities, within mixed developments, suitably designed, and compatible with adjacent uses.

SPD2 Community Facilities

UDP Policy 9.1 Development, Access and Parking

Planning permission will normally only be granted for development which ensures traffic safety, and:

- (i) Maximises access on foot, and by wheelchair and bicycle, including provision for parking and other facilities;
- (ii) Maximises public transport use by visitors, employees and residents;
- (iii) Considers the availability of car parks and on-street parking in the area, and where necessary, contributes to parking control and other local traffic restraint measures, consistent with the local Area Transport Strategy
- (vii) Provides a Travel Plan and a Transport Assessment when requested by the local planning authority.

SPG 21 Green Travel Plans; SPG 20 Transport Assessments, SPD 7 Car Clubs

UDP Policy 9.2 Stations and Public Transport Interchanges

The Council will encourage improvements to all stations, particularly where interchanges between different modes of transport can be enhanced.

UDP Policy 9.3 Major Transport Projects

The Council, as local planning authority, will facilitate the development of major transport projects consistent with the objectives of the Plan, including ...

4. Interchange station in Park Royal;
5. A406 Green Corridor, Ealing;
6. A40 Green Corridor, Acton;
7. Proposed station associated with Chiswick Works development.

SPG 22 A40 Acton Green Corridor Strategy

UDP Policy 9.4 Buses

Provision for bus routes with new developments ... Funding of improvements to bus services through partnerships with developers.

UDP Policy 9.5 Walking and Streetscape

The Council will ensure that development proposals include footpaths/pavements that are safe, attractive, well-lit, and comfortable for all, particularly for those who have difficulties with mobility, by:

- (i) Requiring that the layout of proposed development includes direct and where appropriate separate footpaths to local facilities and adjacent town centres;
 - (ii) Ensuring that any development proposal which straddles or adjoins a footpath identified on the borough network, includes good links to the route and contributions to its enhancement, where appropriate;
 - (iii) Encouraging surface-level highway crossing points for pedestrians rather than subways and footbridges;
 - (iv) Careful consideration of the choice and location of surface materials and street furniture, including lighting, signposts, planting, seating etc.
-

UDP Policy 9.6 Cycling

The Council will require development proposals to have regard to the safety and ease of movement of cyclists, through:

- (i) The enhancement of strategic cycle routes which cross or adjoin development sites;
- (ii) Cycle crossing facilities; to allow the safe and easy passage of cyclists where cycle routes and lanes cross main roads;

- (iii) Cycle routes within the development and to local facilities, particularly to schools and leisure facilities;
 - (iv) Secure cycle parking facilities, including the provision of fully lockable cycle parking cages for employees, and cycle stands for short term visitors, provided as near as possible to the entrance of the building and under cover where appropriate;
 - (v) Showering and changing facilities for cyclists, in major non-residential development.
-

UDP Policy 9.7 Accessible Transport

1. The Council will encourage development that makes provision for accessible transport, serving people with disabilities and others with mobility difficulties.
 2. Designated drop-off and pick-up points should be provided within the site, which facilitate access for disabled people.
 3. Development which generates large numbers of trips to and from the site, should contribute to accessible transport services through planning obligations.
-

UDP Policy 9.8 Low Car Housing and City Car Clubs

Low car housing will be encouraged where there is evidence that car ownership and use will be low enough to justify the proposal. It is expected that this type of proposal will be appropriate in any of the following areas:

- (i) Town centres,
- (ii) Within 200m of stations,
- (iii) Controlled parking zones where there is a legal agreement preventing residents from having permits,
- (iv) Other areas where on-street parking is subject to control;
- (v) Any area of the borough, on the basis that the developer undertakes to form or contribute to a Car Club, and that the residents and/or employees occupying the development are committed to contribute to its management as indicated in a Travel Plan and confirmed in a legal agreement.

SPD 3 Low car housing in controlled parking zones

SPD 7 Car clubs

UDP Policy 9.10 Freight

The Council will encourage ...

- (iii) The use of non-road freight transport such as rail and canal in industrial and warehousing development;
- (iv) The development of freight partnerships for new developments in Major Employment Locations.

UDP Policy 9.11 Public Car Parks and Private (non-residential) Parking Areas

In areas where the Council is satisfied that there is a shortage of public car parking, developers will be encouraged to enter into legal agreements so that their private non-residential car parking is made available to the public.

SPD 3 Low car housing in controlled parking zones

UDP Policy 10.21 Development Sites

List of sites and their uses, area by area, basis for supplementary planning guidance for each site.

Map Sheet 15
SPGs on development sites

APPENDIX 2

SETTING PRIORITIES IN NEGOTIATING PLANNING OBLIGATIONS

Planning decisions need to take account of, and balance, a wide range of factors. Circumstances and needs change and specific development proposals can present their own unique issues and opportunities. As a result, **any statement of the Council's priorities in seeking planning obligations must be tempered by the need for the Council to retain flexibility in interpreting those priorities in the light of a specific development proposal, in a specific location, at a specific time.**

This may be especially so given the importance the Council attaches to consultation on potential planning obligations both prior to and during the consideration of a planning application for a specific development (see paras. 6.33-6.35 in the main document above).

This table indicates the priorities the Council will be guided by in seeking the appropriate planning obligations related to the type of development proposed. The Council reserves the right to apply different priorities in specific cases.

The categories of planning obligations referred to in this Table are those as set out in para. 6.9 of the main document.

TABLE 4 s106 PRIORITIES BY TYPE OF DEVELOPMENT

TYPE OF DEVELOPMENT PROPOSED	s106 PLANNING OBLIGATIONS SOUGHT
Residential	Affordable Homes Community facilities Green Space Site accessibility Environmental sustainability Construction phasing Centralised energy facility
Offices, Industry and warehousing	Community & economic capacity Site accessibility Environmental sustainability Green Space
Retail	Building heritage/public realm/safety Site accessibility Environmental sustainability Community & economic capacity

Sport and Leisure	Site accessibility Community facilities Environmental sustainability Building heritage/public realm/safety
All other development	Site accessibility Community facilities Environmental sustainability Building heritage/public realm/safety Green Space

APPENDIX 3

INDICATIVE SCALE OF OBLIGATIONS

The approach the Council will pursue on planning obligations balances the benefits of a formula/tariff approach (greater transparency, openness and certainty) with the benefits of a tailored approach to the circumstances of each development proposal. This approach will be informed by standard formulae but the Council will retain the flexibility to negotiate up or down depending on the particular development proposal.

The formulae used will be reviewed and updated regularly. Developers are strongly advised before submitting a planning application (or a pre-application proposal) to check with the relevant Council contact (See Appendix 5) on the latest guideline formulae, to ensure they have the most up-to-date information.

Obligation type	Relevant development	Principal obligations sought	Indicative scale of obligations sought/ Basis of calculating the obligations sought																								
Affordable homes ⁷	<ul style="list-style-type: none"> Housing developments of 15+ dwellings⁸ 	<ul style="list-style-type: none"> % affordable homes (measured either as a %age of total dwellings or of habitable rooms) 	<ul style="list-style-type: none"> 50% on-site provision (taking into account assumptions on likely grant funding) Off-site provision of affordable homes (or payments in lieu) will rarely be acceptable 																								
		<ul style="list-style-type: none"> Specified dwelling size mix 	<ul style="list-style-type: none"> In general, the preferred mix⁹ is: <table border="1" data-bbox="1367 444 1902 716"> <thead> <tr> <th>No. beds</th> <th>%Rented</th> <th>%Intermediate</th> <th>%Total</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>10</td> <td>12</td> <td>22</td> </tr> <tr> <td>2</td> <td>25</td> <td>11</td> <td>36</td> </tr> <tr> <td>3</td> <td>18</td> <td>5</td> <td>23</td> </tr> <tr> <td>4+</td> <td>17</td> <td>2</td> <td>19</td> </tr> <tr> <td></td> <td>70</td> <td>30</td> <td>100</td> </tr> </tbody> </table> <p>Note: This preferred dwelling size mix coincides with an update of the preferred mix in Appendix 3 of SPD1</p>	No. beds	%Rented	%Intermediate	%Total	1	10	12	22	2	25	11	36	3	18	5	23	4+	17	2	19		70	30	100
		No. beds	%Rented	%Intermediate	%Total																						
		1	10	12	22																						
2	25	11	36																								
3	18	5	23																								
4+	17	2	19																								
	70	30	100																								
<ul style="list-style-type: none"> Specified mix of social rented and intermediate units 	<ul style="list-style-type: none"> In general, the preferred mix is 70% of units to be social rented, 30% intermediate 																										
<ul style="list-style-type: none"> Phasing of occupation – to ensure affordable homes are provided and to phase the scheme in relation to the likely availability of grant funding 	<ul style="list-style-type: none"> N/A 																										

⁷ For more details see SPD 1 Affordable Housing at www.ealing.gov.uk

⁸ The potential to reduce the threshold to 10 units/equivalent site area reduction is currently being reviewed as part of the LDF process

⁹ West London Affordable Housing Requirement 2006/08

Obligation type	Relevant development	Principal obligations sought	Indicative scale of obligations sought/ Basis of calculating the obligations sought																				
Community infrastructure	<ul style="list-style-type: none"> Housing developments of 10+ dwellings 	<p>Education:</p> <ul style="list-style-type: none"> Funding to increase capacity or otherwise improve facilities in school(s) and adult education facilities as a consequence of the development On large residential developments, provision of land for a new school at no cost to the Council (where there is not scope to increase sufficiently the capacity of existing schools) plus a contribution towards the building costs 	<ul style="list-style-type: none"> Child yield is calculated based upon the total number of bedrooms in each unit and the types of tenure as per the GLA model¹⁰ below:. <table border="1"> <thead> <tr> <th colspan="5">Child yield multipliers</th> </tr> <tr> <th>No bedrooms</th> <th>1</th> <th>2</th> <th>3</th> <th>4 +</th> </tr> </thead> <tbody> <tr> <td>Affordable</td> <td>0.038</td> <td>0.77</td> <td>0.95</td> <td>1.571</td> </tr> <tr> <td>Private /Owner occ</td> <td>0.049</td> <td>0.236</td> <td>0.532</td> <td>0.914</td> </tr> </tbody> </table> <p>Note: Bedsits and studio flats are excluded from calculations, as is specialist housing for senior citizens and students, because it is expected that they will have little or no impact on the child yield.</p> <p>When the LPA makes its assessment, a number of other factors are taken into consideration when calculating the impact of a housing development. This includes identifying any surplus in schools local to the development, studying the most recent birth and pupil projections for the coming years in the area and whether the development is close to a Borough boundary.</p> <p>The obligation sought uses the outcome of the above model multiplied by the DfES Basic Need cost per Primary/Secondary pupil as of the year of application.</p>	Child yield multipliers					No bedrooms	1	2	3	4 +	Affordable	0.038	0.77	0.95	1.571	Private /Owner occ	0.049	0.236	0.532	0.914
Child yield multipliers																							
No bedrooms	1	2	3	4 +																			
Affordable	0.038	0.77	0.95	1.571																			
Private /Owner occ	0.049	0.236	0.532	0.914																			

¹⁰ This formula is based on a variety of London-wide and other regional data sources, including the Census and London Housing Survey. The multipliers will be under review (Sept 2007) in the light of studies undertaken by Wandsworth and Oxfordshire LPA's.

	<p>Healthcare:</p> <ul style="list-style-type: none"> Funding to increase required capacity or otherwise improve primary and secondary healthcare facilities serving the development site On large residential developments, provision of land for a new health centre or other medical facilities at no cost to the NHS organisation where there is not scope to increase sufficiently the capacity of existing healthcare provision plus a contribution towards the building costs. 	<ul style="list-style-type: none"> To be calculated on a scheme by scheme basis using the health service capacity model developed by the NHS Healthy Urban Development Unit¹¹. The relevant formula is: Number of units X average capital cost of constructing a new GP facility = contribution required
	<p>Community centres, halls, libraries and sports/leisure facilities:</p> <ul style="list-style-type: none"> Funding to increase capacity or otherwise improve facilities in community centres/halls, libraries and sports/leisure facilities serving the development site 	<ul style="list-style-type: none"> 'Local community infrastructure' – full cost of providing necessary increased capacity or other improvements in local facilities to accommodate the likely demands of the development site A commuted sum to cover maintenance of new/improved/extended facilities may be required <p>Suggested formula: Number of units X average household size X average capital cost of constructing a new community facility = contribution required</p>
	<ul style="list-style-type: none"> Funding towards strategic priority projects (see Appendix 4) 	<ul style="list-style-type: none"> £5,000 per dwelling towards strategic priority projects
	<ul style="list-style-type: none"> On large residential developments, provision of land for a new community centre/hall &/or library at no cost to the Council (where it is not possible to increase sufficiently the capacity of existing facilities) plus a contribution towards the building costs 	<ul style="list-style-type: none"> To be calculated on an individual scheme basis

¹¹ For more details visit www.healthyrbandevelopment.nhs.uk

Obligation type	Relevant development	Principal obligations sought	Indicative scale of obligations sought/ Basis of calculating the obligations sought
Community & economic capacity	<ul style="list-style-type: none"> Housing developments of 100+ dwellings 	<ul style="list-style-type: none"> Establishing a Community Development Trust on a new housing scheme 	<ul style="list-style-type: none"> Funding to be assessed in relation to each scheme but is likely to be a minimum of £100,000 to provide 3 years operational funding plus provision of a Trust base.
	<ul style="list-style-type: none"> Commercial developments of 1,000sqm.+ gross floorspace 	<ul style="list-style-type: none"> Funding employment skills training (including the 'Borough Apprenticeship Scheme' targeted at local people 	<ul style="list-style-type: none"> £3,000 per job estimated to be created by the development. Gross Floor Area/ 14 sq m¹⁵ X24%¹⁶ = Target for employees resident in Ealing X 35%¹⁷ = employees requiring training and support X Cost of training and support = Contribution required
		<ul style="list-style-type: none"> Creating & fitting-out units/floorspace for small and medium-sized businesses and, specifically, business start-ups 	<ul style="list-style-type: none"> Space to be negotiated in relation to each scheme
		<ul style="list-style-type: none"> Other matters as necessary as identified in, or arising from, the Social Impact Statement completed for the proposed development 	<ul style="list-style-type: none"> To be determined on an individual scheme basis
	<ul style="list-style-type: none"> Commercial developments of 1,000sqm.+ gross floorspace Housing developments of 10+ dwellings 	<ul style="list-style-type: none"> Commitment to a Local Labour Scheme 	<ul style="list-style-type: none"> Clause in Legal Agreement to confirm Commitment Participation

Obligation type	Relevant development	Principal obligations sought	Indicative scale of obligations sought/ Basis of calculating the obligations sought
Environmental sustainability	<ul style="list-style-type: none"> Housing developments of 10+ dwellings Commercial developments of 1,000sqm.+ gross floorspace 	<ul style="list-style-type: none"> On-site renewable energy generation 	<ul style="list-style-type: none"> On-site energy generation equivalent to at least 10% of likely demand¹²
		<ul style="list-style-type: none"> Measures to conserve water, including grey water recycling and rainwater harvesting 	<ul style="list-style-type: none"> To be determined on an individual scheme basis
		<ul style="list-style-type: none"> Waste recycling provision 	<ul style="list-style-type: none"> Recycling facilities to be provided and maintained on-site
		<ul style="list-style-type: none"> Other matters as necessary as identified in, or arising from, the Sustainability Checklist completed for the proposed development 	<ul style="list-style-type: none"> To be determined on an individual scheme basis
Building heritage & public realm	<ul style="list-style-type: none"> All housing developments of 10+ dwellings All commercial development of 1,000sqm.+ gross floorspace 	<ul style="list-style-type: none"> Building conservation management plan as appropriate Street lighting renewal Footpath improvements Town centre improvements 	<ul style="list-style-type: none"> Building conservation requirements to be determined for each individual development £2,000 per dwelling & £4,000 per 100sqm. gross commercial floorspace for off-site public realm improvements in the vicinity of the development
Obligation type	Relevant development	Principal obligations sought	Indicative scale of obligations sought/ Basis of calculating the obligations sought
Green space	<ul style="list-style-type: none"> All relevant development 	<ul style="list-style-type: none"> Nature conservation schemes on-site or contributions to off-site nature conservation areas Tree planting – off-site 	<ul style="list-style-type: none"> To be determined on an individual scheme basis If a proposed housing development cannot provide

¹² This target is likely to be revised upwards in line with emerging London Plan policy and other best practice.

	<ul style="list-style-type: none"> • Open space – provision and improvement • Play areas - provision and improvement • Enhancing green corridors • Creating/maintaining landscaped buffer zones 	<p>sufficient on-site landscaping, useable amenity space, play areas &/or playspace, provision off-site may be an acceptable alternative subject to opportunities existing sufficiently close to the development to make them useable by future residents. Where this is the case, these off-site works will need to be funded in addition to funding general off-site public realm improvements. This will be calculated at £2,000 - £6,000 per dwelling.</p> <ul style="list-style-type: none"> • Playspace For playspace, child yield calculation uses the London Plan Draft SPG for Play¹³ and the GLA model referenced in Community Infrastructure above. In addition to the above, the potential maximum child yield is calculated on the following basis¹⁴: <table border="1"> <thead> <tr> <th>No beds</th> <th>Child yield age 5-12</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>0</td> </tr> <tr> <td>2</td> <td>2 below age 12</td> </tr> <tr> <td>3</td> <td>2 (inc 1 below 12)</td> </tr> </tbody> </table> <p>Where playspace is not provided within the development, off-site provision should be a minimum of 5 items¹⁵, the current cost for purchase, supply install, protective surface provision, fencing provision and installation of which is £50k total. The SPG highlights the need for toddler play facilities to be provided on-site.</p> <ul style="list-style-type: none"> • To be determined on an individual scheme basis 	No beds	Child yield age 5-12	1	0	2	2 below age 12	3	2 (inc 1 below 12)
No beds	Child yield age 5-12									
1	0									
2	2 below age 12									
3	2 (inc 1 below 12)									
	<ul style="list-style-type: none"> • Areas of identified Park deficiency 	<ul style="list-style-type: none"> • New areas of open space 								

¹³ See www.london.gov.uk/mayor/strategies/sds/spg-children-recreation.jsp

¹⁴ The requirement is to seek provision for child play for the initial child yield as well as the anticipated increase

¹⁵ National Playing Fields Association standards

<p>Site accessibility</p> <ul style="list-style-type: none"> • All housing developments of 10+ dwellings • All commercial development of 1,000sqm.+ gross floorspace 	<ul style="list-style-type: none"> • Public transport service improvements to achieve required level of accessibility and public transport mode share to serve the development 	<ul style="list-style-type: none"> • Where required, funding equivalent to 3 years gross cost of new/improved bus/rail services (equivalent sum to revenue income generated to be retained by the Council and used to promote other off-site accessibility, sustainability and public realm/amenity improvements)
	<ul style="list-style-type: none"> • New and improved foot/cycle paths and pedestrian & cyclist safety improvements – off-site 	<ul style="list-style-type: none"> • As required to achieve the appropriate level of site accessibility and access to surrounding community infrastructure &/or shopping centres
	<ul style="list-style-type: none"> • Off-site junction capacity/safety improvements 	<ul style="list-style-type: none"> • As required to provide appropriate capacity &/or safety improvements
	<ul style="list-style-type: none"> • Operation of a Car Club 	<ul style="list-style-type: none"> • Funding to under-write operation of a Car Club for first 3 years
	<ul style="list-style-type: none"> • Travel Plan • Monitoring implementation of Travel Plan 	<ul style="list-style-type: none"> • See SPG21 Sustainable Transport: Green Travel Plans • Funding to be determined on individual basis dependant upon type and size of development
	<ul style="list-style-type: none"> • Strategic Transport Contribution 	<p>For residential: cost p/p of delivering transport programmes in the LiP x no. residential units x average occupancy rates</p> <p>For commercial: cost p/p of delivering transport programmes in the LiP x net increase in commercial floorspace x average employee density</p> <p>For site specific items, rather than Strategic contributions, 'It is not possible to create a formula for site specific transport items. The planning officer will calculate the charge based on a list of items, for which the costs are regularly updated to reflect changes in build costs.'</p>

Obligation type	Relevant development	Principal obligations sought	Indicative scale of obligations sought/ Basis of calculating the obligations sought
Maintenance and management of on & off-site facilities	<ul style="list-style-type: none"> All relevant development 	<ul style="list-style-type: none"> Contribution to support town centre management programmes (applicable to development within a town centre) 	<ul style="list-style-type: none"> To be determined on an individual scheme basis
		<ul style="list-style-type: none"> Management and maintenance of on-site roads and footpaths Management and maintenance of off -site open space and play areas Management and maintenance of on-site community buildings Maintaining the environmental performance of sustainability measures 	<ul style="list-style-type: none"> Management arrangements to be specified for each development. The Council will require an appropriate 'commuted maintenance payment' before it will take on any maintenance obligations.
Construction phasing	<ul style="list-style-type: none"> All relevant development 	<ul style="list-style-type: none"> Controlling off-site construction traffic access movements 	<ul style="list-style-type: none"> To be determined on an individual scheme basis
		<ul style="list-style-type: none"> Ensuring all uses are developed within a mixed use scheme 	<ul style="list-style-type: none"> To be determined on an individual scheme basis

APPENDIX 4

STRATEGIC AND LOCAL PRIORITIES FOR COMMUNITY INFRASTRUCTURE 2007-2017

Community infrastructure covers a wide range of facilities, including community centres, libraries, health centres, schools, sports centres, swimming pools. They are essential components of modern cohesive living. Some need to be in close proximity to local neighbourhoods, eg. schools & community centres ('**local community infrastructure**'), while others serve a wider catchment covering the whole borough (and beyond), eg. larger swimming pools, assembly halls ('**strategic community infrastructure**').

The approach in relation to '**Strategic Community Infrastructure**' is to secure a funding contribution (as set out in Appendix 3) from all relevant development anywhere in the borough. These contributions will then be 'pooled' to provide the new strategic facility or undertake the required improvements to existing borough-wide provision.

This Appendix lists both the strategic and local priority community infrastructure projects identified as potentially needed to serve the projected population, household and economic growth in the borough. All relevant development within the borough (as set out in Appendix 3) will be expected to contribute towards the strategic, borough-wide projects. Contributions towards local priority projects will be sought where the proposed development is relevant in scale and type.

The lists will be updated every year as part of the Council's Annual Monitoring Report.

One or more of the strategic community infrastructure projects may be funded by the Council in advance of new development in order to create the required capacity. New development occurring after this may still be expected to contribute to these projects as set out in the principles in para. 6.7 of the main supplementary planning document above.

TABLE 5 - S106 PRIORITIES BY BOROUGH AND AREA

AREA	PRIORITIES	EXAMPLES
STRATEGIC		
Borough-wide	<p>Increase access to affordable homes</p> <p>Increase community and economic capacity</p> <p>Improve quality and quantity of community facilities</p> <p>Improve quality and quantity of green/open spaces</p> <p>Improve public realm/built heritage and community safety</p> <p>Improve environmental sustainability</p> <p>Improve site accessibility</p> <p>Maintenance and management of on-site facilities</p>	<p>On-site provision</p> <p>Training, Business support programmes</p> <p>New secondary school, swimming pools, public library, new theatre, health facilities, community hubs</p> <p>Enhance green corridors, new playspace provision, tree planting</p> <p>Town centre improvements, effective management of listed buildings, CCTV</p> <p>Promote car clubs, renewables, energy efficiency measures, waste reduction and recycling</p> <p>Cycle access/safety improvements, bus service improvements, increase junction capacity</p> <p>Open space, footways</p>
LOCAL		
Ealing	<p>Improve quality and quantity of community facilities</p> <p>Improve quality and quantity of open spaces</p> <p>Improve public realm/built heritage and community safety</p> <p>Improve environmental sustainability</p>	<p>Improve arts facilities - eg Pitshanger Manor Provide health care centre in town centre, new sports hall</p> <p>Remedy park deficiency</p> <p>Town centre improvements, shopmobility scheme</p> <p>Provide centralised energy facility</p>

<p>Southall</p>	<p>Improve quality and quantity of open spaces</p> <p>Improve public realm/built heritage and community safety</p> <p>Improve quality and quantity of community facilities</p> <p>Increase community and economic capacity</p>	<p>Remedy park deficiency and improve open space</p> <p>Improve parking facilities</p> <p>New community hub in town centre Improve range of healthcare facilities</p> <p>Facilitate new business units Increase access to employment through training</p>
<p>Acton</p>	<p>Improve quality and quantity of open spaces</p> <p>Improve environmental sustainability</p> <p>Improve quality and quantity of community facilities</p> <p>Improve access to education</p> <p>Increase community and economic capacity</p>	<p>New public space in Park Royal Local park improvements</p> <p>Promote improved waste management</p> <p>New community hub in town centre Relocate swimming pool Provide new sports hall</p> <p>New primary school</p> <p>Increase access to employment through training</p>
<p>Greenford</p>	<p>Improve quality and quantity of community facilities</p> <p>Improve environmental sustainability</p> <p>Improve public realm/built heritage and community safety</p> <p>Improve site accessibility</p> <p>Increase community and economic capacity</p>	<p>Replacement swimming pool New community hub in town centre</p> <p>Additional waste management facilities</p> <p>Environmental improvements to town centre</p> <p>Improved cycle routes</p> <p>Increase access to employment through training</p>
<p>Hanwell</p>	<p>Increase access to affordable homes</p> <p>Improve quality and quantity of community facilities</p> <p>Improve retail offer/town centre environments</p> <p>Increase community and economic capacity</p>	<p>Regenerate Green Man Lane Estate</p> <p>Replace library New neighbourhood policing accommodation Improve health care facilities</p> <p>Environmental improvements to town centre</p> <p>Increase access to employment through training</p>

<p>Northolt</p>	<p>Improve quality and quantity of open spaces</p> <p>Improve site accessibility</p> <p>Improve quality and quantity of community facilities</p> <p>Increase community and economic capacity</p>	<p>Remedy park deficiency and improve open space</p> <p>Improve cycle routes</p> <p>New swimming pool</p> <p>Improve range of Health facilities</p> <p>Increase access to employment through training</p>
<p>Perivale</p>	<p>Improve quality and quantity of community facilities</p>	<p>New secondary school</p> <p>Promote community/dual use of schools (library/policing)</p> <p>Improve community facilities at Horsenden Farm</p> <p>Improve athletics track/develop sports hall</p>

APPENDIX 5

CASE STUDY - Worked example and Heads of Terms

A hypothetical development example will be used to work through the formula listed in the SPD above to calculate the relevant contribution required. A mixed-use development will be used, comprising, for example:

- 40 residential units
- 1000sqm commercial floorspace

From this example, the relevant **Heads of Terms** would comprise:

- 50% affordable homes on-site
- Securing mix of unit size and tenure
- Education contribution
- Health contribution
- Green Space (amenity space, play space and maintenance)
- Car Club (cost to set-up and run or financial contribution to existing)
- Travel Plan
- Commitment to a Local Labour Scheme

A model agreement for the case study will be able to be made be available upon request.

APPENDIX 6

Useful reference maps

Relevant maps from the New Plan for the Environment (Ealing's UDP) can be found at:

http://www.ealing.gov.uk/services/environment/planning/planning_policy/new_plan_for_the_environment/volume2#maps

These can be used to establish various site constraints which may be taken into account in assessing development proposals and determining appropriate s106 contributions.

Examples include:

- Strategic land use
- Park deficiency areas
- Shopping and Town centres
- Cycle routes

For Public Transport accessibility (or PtaL) see map at http://213.219.24.147/reference/PTALS/2001/ealing_os.jpg