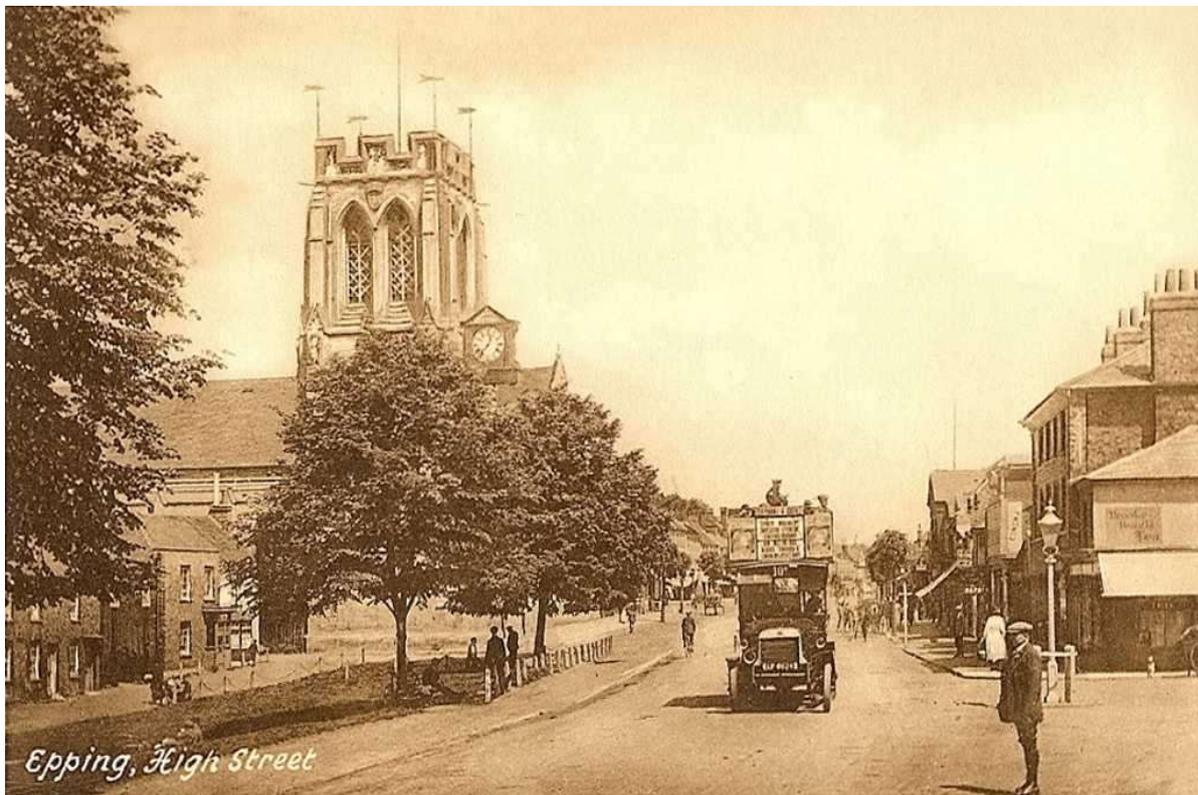


# Delivering Infrastructure in the District: Developer Contributions Strategy

Epping Forest District Council's requirements

June 2019



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# 1. Introduction

1.1 The purpose of this document is to set out the Councils approach, policies and procedures in respect of delivering infrastructure in the District to support the growth identified in the Local Plan Submission Version (LPSV 2017) and Epping Forest District Council's Infrastructure Delivery Plan (IDP).

1.2 Almost all development has some impact on the impact for infrastructure, services and amenities – or benefits from it – so it is only fair that such development pays a share of the cost. The aim of this document is to provide guidance to support the delivery of infrastructure on what, how, and when planning obligations will operate in Epping Forest District. Specifically, it will:

- Set out the types of planning obligations that may be sought to meet the infrastructure requirements to deliver the planned level of housing and employment growth in the District, as set out in the Local Plan with site specific requirements in Appendix 6 and supporting Infrastructure Delivery Plan.
- Support the approach to apportionment, prioritisation of S106 contributions towards projects (highways/education/open space etc.) and thresholds for securing S106 contributions set out in the IDP topic papers & Addendum.
- Provide transparency in the procedures for securing planning obligations;
- Where there are competing priorities, set out the approach to engagement with the Local Plan Officers Working Group/Members around S106 contributions and on/off site infrastructure.
- To set out the approach to viability for contributions in accordance with national policy.
- To support the SAC mitigation strategy in terms of air quality and recreational pressure on Epping Forest.

3.3 It should be noted that there may need to be other obligations, not covered in this document, which may be required, and arise on a case by case basis, to mitigate against specific site development impacts. Some development schemes may have wide ranging impacts, which require more significant measures to be put in place to address them, these will be discussed in detail at the pre-application stage, where relevant.

## 2. The Epping Forest District Local Plan Submission Version 2017

- 2.1 [The Council's Local Plan](#) was submitted for Examination in September 2018. It sets out the policies guiding growth over some 11,400 additional homes and 10,800 jobs over in the District over the plan period 2011-2033. It is anticipated that the local plan will be adopted by the Council in late 2019.
- 2.2 This growth will result in requirements to provide local infrastructure, services and facilities which have been identified in the Infrastructure Delivery Plan and supporting documents. The Council and Land Promoters have a responsibility, through the planning process, to manage the impact of the growth and ensure that any harm caused as a result of development is mitigated and necessary infrastructure is provided. The Council therefore expects new development to contribute to site related and other infrastructure needs.
- 2.3 The over-arching reasoning and justification for planning obligations is set out in the Local Plan strategic objectives as well as policies of the Local Plan. [Appendix 6](#) sets out the site-specific requirements for allocated sites outside the masterplan areas.
- 2.4 The starting point for identifying what infrastructure is required is the [Epping Forest District Infrastructure Delivery Plan \('IDP'\)](#), the [Topic Paper](#) and addendum. The 'IDP' draws on work undertaken by the Council to support the local plan, to align and update the information. It is a live document that identifies the levels of infrastructure required to meet the needs of the growing and expanding population. It will be updated to take account of the evolving plan making development and required changes in infrastructure provision.
- 2.5 The IDP Topic Paper provides more information on infrastructure delivery, as well as a more general update on the work undertaken since the IDP was published. It sets out a high-level framework for apportionment and pooling arrangements to be taken forward for key infrastructure (highways, public transport, education, health, and open space, sports, green infrastructure and community facilities) but does not go as far as grouping developments into specific 'pools'. The Topic paper also provides information on those external funding sources outlined in the IDP, including the work currently ongoing to progress and secure funding, the risks of funding not being in place and contingency measures.
- 2.6 The Addendum to the Topic Papers will demonstrate how required upgrade and implementation of schemes might be apportioned to specific sites and how contributions might be sought. Addendum papers on [Education and Highways](#) have been published and [Sport Infrastructure](#) is currently being produced.

## Harlow and Gilston Garden Town

- 2.7 Three strategic sites identified in the Local Plan are within the Harlow and Gilston Garden Town. A Harlow and Gilston Garden Town IDP and viability study has been published to support infrastructure delivery in the Garden Town and will form the basis of requirements for the Water Lane, Latton Priory and East of Harlow masterplan areas.

### 3. Status

- 3.1 When adopted this document will provide appropriate guidance to ensure consistent delivery of infrastructure in the District, set out the approach and the arrangements required for the consideration of masterplans, concept frameworks and other proposals for development in the District along with the sustainability and long-term stewardship of development. This document will be subject to monitoring and review (see Section 14) and updated, as and when necessary, to ensure it remains consistent with relevant Legislation, National Guidance, Local Plan policy and reflect the Epping Forest District IDP.
- 3.2 This guidance sets out how the Council intends to ensure that a consistent approach is adopted to delivering the necessary infrastructure to support the growth together with other services and the arrangements required to ensure the sustainability and long-term stewardship of the development.

### 4. Delivery Mechanisms

- 4.1 The Council expects new development to contribute to site related and wider infrastructure needs (see Appendix A for a list of infrastructure) through a combination of the following mechanisms:
- Planning conditions (site/development related);
  - Planning Obligations to secure developer contributions or works in kind (s106 agreements and/or site/development related).
  - External funding from Government or other sources e.g. Housing Infrastructure Fund (HIF) bid, Road Investment Strategy (RIS) 1 & 2.
- 4.2 Where there are competing priorities for the types of obligations that may be required this document sets out the process for engagement at the Local Plan Officer Working Group and liaising with members to establish a way forward.

4.3 The type of developer contributions that will be included in the S106 agreement will be identified in the Heads of Terms. The proposed infrastructure to be provided will be reviewed by Members during the Pre-Application, Masterplanning and Concept Framework stage through regular reports to the Local Plan Cabinet Committee or Cabinet.

### **What are Planning Obligations?**

4.2 Planning Obligations will be used where the identified impact of the proposed development cannot be dealt with by planning conditions and the infrastructure requirements relates specifically to the development. A 'Planning Obligation' is a legal document made pursuant to Section 106 of the Town and Country Act 1990 (as amended) also often referred to as a 'S106 Agreement'. This may take the form of an agreement between the Local Planning Authorities ('LPA'), the developer and any persons with an interest in the land or a unilateral undertaking by the developer given to the LPA.

4.3 The purpose of a Planning obligation is to make development 'acceptable' in planning terms which might otherwise be unacceptable development were only the use of planning conditions to be imposed. The outcome of the use of planning obligations should be that the proposed development is brought into compliance with the Local Plan policies and that any development specific works are undertaken satisfactorily. Used properly, planning obligations can significantly increase the quality of development and can do this through:

- prescribing the nature of the development (e.g. by requiring a proportion of affordable housing);
- securing a contribution from the developer to compensate or re-provide for loss or damage created by a development (e.g. through the transfer of land, the requiring of a cash payment to be made, or new habitats to be created etc.) and
- mitigating a development's impact on the locality (e.g. through securing of environmental improvements and the provision of both on an off-site infrastructure and facilities to serve the development such as new roads or junction improvements which, without the proposed development taking place, would not necessarily be required).

4.4 Whilst planning obligations can secure benefits capable of mitigating the adverse impacts of development, they cannot however, be used to make a bad application good where, for example, a scheme does not comply with the spatial strategy and land use principals of the Local Plan. Planning obligations are governed by the fundamental

principle that planning permission may not be bought or sold, and they cannot be used to secure a share in the profit from development.

- 4.5 All planning contributions from new developments must be sought for a specific purpose and this purpose should be finalised before planning permission is issued. To manage this within the tight timescales (and as a starting point for negotiating specific contributions) the Council has a set of agreed, evidence based schedules in the Epping Forest District IDP that are required to mitigate the impact of the new development.
- 4.6 Contributions can be financial or non-financial in nature. Opportunities may therefore arise for provision 'in-kind', where the developer either builds or supplies whatever is required to fulfil the obligation negotiated as part of the planning application. Situations may arise where in-kind provision is preferred, e.g. In cases where finding a suitable site for a facility proves challenging.
- 4.7 However, from time to time and dependent on the specific nature of a development proposal, contributions may be required towards the ongoing costs of running a facility or providing a service, examples of which include the maintenance of parks and areas of open space. This may be necessary to ensure that the specific impacts created by a development are addressed.
- 4.8 S106 developer contributions are not going to fund all the infrastructure needs for the planned growth in the District. The Council will also need to secure external funding to pay for some of the strategic infrastructure through sources such as Road Investment strategy (RIS) i.e. funding the construction of improvements to Junction 7 & 7a of the M11 and the Housing Infrastructure Fund (HIF Bid) that could fund river stork crossings to open up development in Gilston.

## The Council's Approach to Delivering infrastructure

### 5. The use of Planning Agreements

5.1 The Council expect applicants to undertake the correct process when negotiating, preparing and completing planning obligations to ensure that applications and obligations are dealt with in a timely and efficient manner. It is essential that the applicant and council engage in pre-application discussions as early as possible.

5.2 The main stages of the procedure are:

- Stage 1: Strategic Sites – Masterplan /Concept framework; or Allocation Sites outside masterplanning - Pre-application;
- Stage 2: Submission of the planning application (including accompanying proposed Heads of Terms or draft planning obligations); and
- Stage 3: Appraisal, validation and agreement of a related planning obligation

#### Stage 1: Pre-Application Stage

5.3 The Council will consider each proposed development on its merits against relevant policy and other material planning considerations, and will negotiate and secure planning obligations on a site-by-site and application-by-application basis. The starting point will be identification of requirements in the Epping Forest District Local Plan including Appendix 6 and supporting evidence including the Infrastructure Delivery Plan, Topic papers and associated Addendum.

#### a) Strategic allocations

5.4 Where appropriate the Local Plan has identified the strategic sites allocated which will need to be subject to masterplanning – either through a strategic masterplan or concept framework. Any planning proposals for these allocations will need to be supported by an endorsed masterplan (see [The Strategic Masterplanning Briefing Note and Concept Framework Note](#), - this was agreed by the Council on 18 October 2018). This sets out the process which will need to be followed and the Council must endorse a developer's masterplan before they can make a formal planning application. Masterplans are high level documents, which sets out what the Council expects from a new development including the provision of the necessary infrastructure. Masterplans will help well

designed new communities and make sure the development delivers what the area needs, while giving the developer some flexibility.

- 5.5 [The Strategic Masterplanning Briefing Note and Concept Framework Note](#) provide guidance on the nature and extent of the community and stakeholder engagement that the Council will expect each Masterplan and Concept Framework to undertake, whilst also setting out the key principles that should be followed. Members will be expected to play a key role throughout this process, and regular briefings will be held. It is not proposed to utilise the Council's Development Management Forum through the preparation of the Masterplan itself, though the forum will have an important role once proposals are firmed up at pre-application stage.
- 5.6 Endorsement of the Strategic Masterplans and Concept Frameworks (and potential adoption as SPDs) is an essential stage if the documents are to be - material planning considerations against which future planning applications will be assessed. The Local Plan makes it clear that sites identified as requiring a Strategic Masterplan must have the Masterplan completed and endorsed by the Council prior to the granting of a planning permission. The Strategic Masterplans and Concept Frameworks therefore set the fundamental parameters that each subsequent planning application will need to adhere to.
- 5.7 The Strategic Masterplans and Concept Frameworks are firmly linked to the timely delivery of high quality development and infrastructure, a key requirement of central government policy and the Local Plan. It will therefore be critical that the Council can move quickly and can commit to endorsing a finalised masterplan in a timely manner.
- 5.8 The Council's Local Plan Cabinet Committee (LPCC) or Cabinet Committee will approve draft Strategic Masterplans and Concept Frameworks for consultation. The Implementation Team will provide regular updates to the committee on progress in the preparation of masterplans and concept frameworks to ensure that Members are kept fully up-to-date with the progression of each plan. Upon completion of the final draft document for consultation, it is proposed that this is taken to the LPCC to agree consultation on the draft Strategic Masterplan.
- 5.9 Following a six weeks consultation period, and subsequent amendments made to address issues arising, the Masterplan will then be taken to Cabinet for formal endorsement as a material planning consideration. The Cabinet may also adopt the masterplan as a SPD, should this be required, after the adoption of the Local Plan. The process would be broadly similar for a Concept Framework, however owing to their smaller scale, it is envisaged that these will only be taken to LPCC once for final endorsement only.

#### **b) Non strategic allocations or proposals**

- 5.10 For other allocations, officers should notify the relevant internal Officers when they receive a pre-application request **for developments of 6 units or more units or on a**

**site of more than 0.2 hectares** to enable them to have the necessary in-put into the discussions and identify the infrastructure requirements at an early stage. Consideration should be given as to whether or not infrastructure requirements for the proposed development should be considered by the Local Plan Officer Working Group or the Quality Review Panel and/or reported to members at this stage.

- 5.11 Where development sites are subdivided or developed in phases to ensure that the separate planning applications fall below any specified policy threshold for which obligations may be sought, the Council will, as far as possible, consider sites in their totality. Similarly, proposals that are judged not to make the best use of land, so as to result in underdevelopment, will be resisted and a revised scheme will be sought.

### **Stage 1 - Pre-Application Discussions**

- 5.12 Applicants, agents and developers are encouraged to seek pre-application advice prior to the formal submission of major development proposals within the district. The pre-application process offers the opportunity for the applicant and Council officers to discuss, without prejudice, the acceptability of the proposed scheme. This will enable informed and detailed discussions on the types of obligations to be entered, and further discussions can be undertaken relating to 'in kind' either on or off site, or if a financial contribution is needed. If discussions for draft heads of terms fail to result in an agreement, the applicant will be invited to provide justification and alternatives for consideration, and assessment by the Council.
- 5.13 A strong emphasis is placed on the increasing importance of pre-application discussions and the planning process as a method of creating a faster, more responsive and transparent planning system. [Pre-application advice](#) is provided by planning officers, which outlines how the Council are likely to determine any subsequent planning application, and any changes that are likely to be needed, to give development schemes the best chance of being granted a planning permission. The service provided by the Council is set out on the website. For larger schemes the Council will generally expect a Planning Performance Agreement to be used – see <https://www.eppingforestdc.gov.uk/wp-content/uploads/2019/02/pre-app-charging-scheme-june-2018.pdf>
- 5.13 The guidance given at this stage is informal advice and does not bind the Council in any future decision it makes. However, where pre-application advice is obtained and incorporated into any development scheme including the infrastructure provision this is likely to ensure a more efficient processing of any subsequent application. The benefits to seeking pre-application advice include:
- an opportunity to understand how the Council's policies will be applied to the proposed development

- identify at an early stage where there is a need for specialist input, for example regarding listed buildings, trees, landscape, noise, transport, contaminated land, ecology or archaeology issues.
- Identify any planning obligations that will be required to mitigate development including infrastructure requirements
- Confirm any consultation requirements including whether the proposed development should go to the Quality Review Panel, Development Management Forum or be reported to members at an early stage

## **Stage 2: Application Stage**

- 5.14 Where it is identified that infrastructure provision will be required to support the application, the information set out in the local validation checklist and all agreed information identified at the pre-application stage should be submitted with the planning application.
- 5.15 In addition to the draft Heads of terms, developers should also submit with their planning application the necessary title information. The Council should also be notified and informed of any changes in land ownership throughout the application process. Planning Obligations are registered as a Local Land Charge and will remain on the register until they have been discharged.

## **Stage 3 – Approval and agreement of a planning obligation**

- 5.16 When the Council resolves to grant planning permission, either by way of delegated powers or Committee decision, the resolution may be subject to the completion of the planning obligations. The planning obligations will usually need to be formally completed and sealed within an appropriate timescale (3 months as standard) prior to the decision notice being issued and the obligations being placed on the local land charges register.
- 5.17 If the S106 Agreement is not formally completed by the end of the 3 months, and the Council and developer have not agreed an extension to this period, the application will automatically default to a refusal (this trigger being included in the recommendations of the Planning Sub-Committee report or the planning Officer report if made under delegated authority).

## **6. Drafting the S106 Agreement**

- 6.1 The legal costs of drafting a S106 Agreement are an impact of a development, one which the Council would not have to bear if the development were not to take place. Therefore, the developer will be asked to cover the Council's legal and associated costs incurred with the negotiation, preparation and completion of the planning agreement, the

cost of the transfer of any land, as well as payment of a contribution towards the cost of monitoring for compliance.

- 6.2 In terms of the approach to the drafting of the Section 106 Agreement, the Council have appointed Legal Advisors to develop a standard format agreement (the Template Agreement) (Appendix F) which will be used for the new Garden Communities and the basis of the Councils' template for development in the Epping Forest District. Whilst there may be some minor variations in agreements, reflecting the particular requirements of individual developments, the aim will be to ensure a consistency of approach as far as practicable.
- 6.3 Dependent upon any site-specific requirements and the nature and scale of the development, matters to be dealt with in the Template Section 106 agreement may include:
- I. A delivery table identifying key infrastructure provision and delivery phasing;
  - II. Requirements for affordable housing including number of homes, tenure and how and when these will be provided;
  - III. Requirements for all other provisions including but not limited to education, health, community and leisure facilities including how and when these will be provided;
  - IV. The package of measures intended to achieve the 60/40% mode share target for the Garden Town of active healthy sustainable travel and measures for monitoring and managing the 60/40%% mode share target, including any interim phased targets (on the understanding that the general approach should be to establish this mode share from the outset in order to encourage and support behavioural change as new residents arrive). Provision should also be made for taking further measures should these be necessary to address any shortfall against these targets;
  - V. The approach to delivering high quality design where not specifically dealt with in the development proposals and any associated conditions;
  - VI. Triggers for delivery of on-site infrastructure and caps on the commencement/occupation of development until that has been agreed/delivered. This will include which infrastructure will be directly delivered and which will be funded through contributions in cash or in kind;
  - VII. Triggers for delivery of off-site infrastructure and caps on the commencement/occupation of development until that infrastructure has been agreed/delivered. This will include mechanisms to ensure infrastructure delivery where dependent upon contributions or actions from third parties;

- VIII. Approach to stewardship and estate management including any provision of assets or funds into a management body to ensure its long-term financial health and viability and the mechanism for agreeing that such management body includes representation from the community and meets key principles for stewardship;
  - IX. Stages or circumstances in which viability may be re-appraised (Appendix D);
  - X. The approach to monitoring generally (section 18 below).
- 6.4 The intention is to promote a consistent approach to the negotiation of Section 106 agreements to provide certainty for those who are engaging with the Councils. The developer should provide the Legal Advisors with the details of the Solicitors instructed to act on their behalf, so they can provide a solicitor's undertaking to pay the Council's reasonable legal fees before they commence any work related to the matter.
- 6.5 Developers should inform and involve landlords or anyone else with an interest in the land (e.g. a bank with a legal charge) at an early stage. If such parties are not involve early enough and only become involved on first draft of the S106 Agreement or later this may slow down the process to completion significantly and increase costs.
- 6.6 The Council's Legal Services charge a fee for drafting the S106 Agreement that will be discussed and agreed. On major developments, the Councils will use external solicitors to act on their behalf, and will charge for their work on an hourly rate basis. The costs are likely to be higher and the Strategic Infrastructure and Planning Obligations Officer will be able to advise on the amount of legal fees payable and undertaking requirements. Protracted negotiation by the developer's lawyers will also result in higher legal costs. The Council's legal costs, will be payable, whether or not the matter proceeds to completion.
- 6.7 The Council's Legal Advisors will draft the S106 Agreement once they have been supplied with title information, costs undertaking and officers have confirmed that the Heads of terms are agreed. The infrastructure types that could be required by S.106 Agreement are included at Appendix A. The Council's Legal Advisors will usually prepare the first draft of the S106 Agreement and Officers will review this before it is sent to the Land Owner for their agreement. The Councils Legal Advisors will deal with the agreement until completion when the planning permission will be issued.
- 6.8 Where obligations are secured towards the provision of facilities, it may be appropriate for the developer to make provision for the physical upkeep of those facilities. A one off financial contribution may be required to cover ongoing maintenance requirements. For all maintenance payments, the Council and the developer will need to negotiate the type of payments to be made, including staged payments for phased development, if

appropriate. Where the financial contribution is solely for maintenance, no repayment should be required.

### **Trigger Points for Payments and Timing of Obligations**

- 6.9 Financial contributions will be payable at specific stages in the development process. The Council wants to ensure that infrastructure, works and community facilities are available as they are needed when the first residents move into the development. During the process of drafting S106 Agreements, trigger points for each obligation will be agreed between the Council and the Land Owners.
- 6.10 The established trigger points are:
- Upon the date the S106 Agreement is completed;
  - Upon or prior to commencement of the development or phase therein;
  - Upon or prior to practical completion of the development or phase therein (as confirmed by the Council); and
  - Upon or prior to occupation of the development or phase therein.
- 6.11 The Land Promoter must inform the Council when the relevant trigger points (or stages in the development), have been reached so that the necessary invoice(s) can be raised by the Council and forwarded for payment.

### **Transfer of Land**

- 6.12 Occasionally obligations will require land to be transferred to the Council or another public body, usually in respect of public realm or open space obligations. In such cases the S106 Agreement will contain a requirement to pay the Councils or the public's body's legal costs in respect of the land transfer and provisions relating to the condition of the land to be transferred.

### **Deed of Variation**

- 6.13 Following the completion and signing of a S106 Agreement, either the Developer or the Council may find it necessary to modify the contents of an Agreement. Additional time, and therefore cost, will be required by the council and in the negotiation, preparation and the drafting of such agreements. Reasonable fees will be charged for this, which will vary dependent on the complexity of the matter.

## **7. Monitoring and Delivery of Section 106 Planning Obligations**

- 7.1 Given the scale of growth proposed across the District, monitoring arrangements are important in order to ensure the appropriate delivery of housing, infrastructure and local services. To this end, it is expected that monitoring data will be collected and compiled of the rate and mix of housing, service and infrastructure delivery, in addition to data showing the annual level of contribution made through the Section 106 process. This

will form part of a Monitoring Framework which will track how the requirements in the IDP are being addressed.

- 7.2 In accordance with the [Planning Practice Guidance](#) (Reference ID: 10-023-20180724) a copy of any planning obligation together with any details of any modification or discharge of the planning obligation will be made publicly available by the local authorities; and (Reference ID: 10-022-20180724) monitoring information will be regularly published so that the public are able to easily see where contributions towards infrastructure and affordable housing have been secured and spent. To achieve this:
- I. A copy of any signed S106 Agreement will be published on the website of the Local Planning Authority that determined the application along with any modification to the S106 or statement confirming discharge of any of the planning obligations;
  - II. A quarterly monitoring report will be taken to the Local Plan Cabinet Committee (LPCC) or Cabinet and included as part of the Council's Annual Monitoring Report.
  - III. Developer Contributions will be published on a regular basis as an 'Infrastructure Funding Statement' in accordance with the CIL regulations and National Planning Policy Framework in the agreed format.
- 7.3 The delivery of non-financial contributions, or in-kind obligations, will be monitored by the appropriate service areas responsible for project delivery. For example, where there is an Affordable Housing element to a legal agreement, the Affordable Housing Team will monitor this section of the agreement to ensure that it is complied with.
- 7.4 The Council's Strategic Infrastructure and Planning Obligations Officer is responsible for the monitoring of S106 Agreements.
- 7.5 All developers that enter into planning obligations will be required to pay a monitoring contribution in order to contribute towards the Council's costs incurred in the administration, monitoring, and reporting of the discharge of the obligation. Work involved includes maintaining the spreadsheet [database], logging individual obligations, checking triggers, ensuring indexed amounts are correct, arranging receipt of contributions, alerting service areas of receipts so that the required actions can be programmed, the completion of actions, making sure that records are kept of discharge of clauses, removing discharged obligations from the Local Land Charges Register, etc.
- 7.6 The current fees for monitoring contributions will be:
- five percent (5%) of the cost value of the financial planning obligations included in the agreement (up to a maximum of £50,000).
  - a flat rate of £500 per each non-financial obligation.

## Complex/Major Development

- will be considered on case by case basis. It may be agreed by negotiation, subject to an additional management and administration charge.
- The default position for administration charges being 5% of the total contributions

7.7 The monitoring fee will be payable upon completion of the agreement or later in exceptional cases. Any revenues generated from the fees will be used for S106 administration, monitoring and management purposes only. The monitoring contributions will be payable on the trigger of the first obligation unless otherwise specified within the terms of the agreement. The Monitoring contribution will not be subject to any repayment provisions.

## Enforcement and Late Payments

7.8 Agreements made under S106 are binding contracts that run with the land. They may be enforced against both the person(s) originally entering into the agreement and against anyone subsequently acquiring an interest in the land. Only those persons having a legal interest in the land can enter into obligations even if a prospective purchaser/developer of the land has applied for the planning permission (although it is possible for prospective purchasers to also be party to the obligations where they have exchanged contracts to purchase

7.9 The developer should notify the Council upon commencement of development (using the Notification Form at Appendix E) or when other agreed triggers have been reached. Where the Council is not notified of this, and obligations become overdue, the Council will seek to enforce the obligation. Where the Council is not notified of these and obligations become overdue, the Council will seek to enforce the obligation and, in the case of financial obligations, there will be a late payment clause. In the event of any delay in making any payment required under a planning obligation, interest and indexation will be charged to allow for fluctuation of prices between the date the agreement is signed and the date the payment is made.

7.10 The Council will enforce obligations through the relevant legal channels once other reasonable approaches to address non-compliance have been taken. In such cases, the Council will seek to retrieve its legal costs in taking action from the party that is in breach of its obligations as well as any additional indexation or interest on the sum that is due.

## 8. Parish Councils

8.1 The Council recognise that when developers build new houses, the development will have an impact on the local community e.g. the growth in the local population might lead to greater pressure on social or sports facilities; or an increase in traffic. The Council can

use Section 106 Agreements to require developers to pay for projects to help manage the impact of developments.

- 8.2 Parish Councils will be consulted as part of the statutory process and for larger sites at the pre-application stage through the master plan/concept framework process or through the Development Management Forum to establish the most appropriate form of provision taking account of the location, scale and form of the proposed development in their area. A S106 agreement may include works that the developer has to do, or a payment of a financial contribution in order that their development does not adversely affect the local community. The S106 can only be for site specific measures such as Highways improvements, tree planting etc which are necessary to mitigate the impact of development in their area and must be in compliance with the CIL regulations.
- 8.3 There is always the continual demand on planning contributions, despite the current economic climate. The Council has to consider the validity of requests and priorities these. Inevitably some requests, although considered essential to one body, may not be included in agreements because of viability issues(section?) and CIL compliance (Section 3).

## **9. Neighbourhood Plans**

- 9.1 Neighbourhood plans that have been through the statutory process are part of the development plan framework for the District and where they have identified infrastructure requirements these will need to be provided as part of a proposed development. The Council must use any 'made' Neighbourhood Plans in the District to inform the Council's IDP.

### **Review of Strategy**

- 9.3 This document will be reviewed and updated as is considered necessary. Such review will ensure that the information used in calculating contributions (i.e. building costs, census information) is up to date and base figures accurately reflect costs to ensure that it remains fit for purpose, legislative compliant and in line with the Epping Forest District IDP.

## APPENDIX A: Infrastructure Types

### 1. Affordable Housing

- 1.1 The provision of affordable housing is integral to meeting the balanced mix of different sizes, tenures of housing required to address these demands. The Council's Local Plan SV and previous versions of the Local Plan set out clear requirements for planning applicants on provision of affordable housing in the District.
- 1.2 Annex 2 of the NPPF defines affordable Housing as 'housing for sale or rent to those whose needs are not met by the market'. The Council's housing policies require that this is provided in the form of affordable rent which is allocated to applicants on the Housing Register and shared ownership which is allocated on a cascade basis, prioritising Housing Register applicants and local residents. These requirements and the main terms are set out in the Council's Deed of Nominations which is appended to relevant s106 agreements.
- 1.3 The Council's Affordable Housing Policy H\_2 states on development sites which provide 11 or more homes, or residential floorspace of more than 1000sq m (Combined gross internal area), the council will require 40% of those homes to be for affordable housing provided on site. The affordable housing provided should not be larger than 3 bed, as the Council has little need for larger units. The minimum size should be 1 bed 2 person units and no garages should be provided.
- 1.4 The mix of units in respect of size will be determined on a site by site basis dependent on the overall needs for the local area and on the specific characteristics of the individual site. The Council will expect the mix of affordable housing to reflect the mix of market housing, in terms of ratio types, sizes and the overall number of habitable rooms. Mixed tenure residential development proposals must be also designed to be 'tenure blind' to ensure homes across tenures are indistinguishable from one another in terms of quality of design, space standards and building materials.
- 1.5 The Council will expect planning applications to include proposals to meet the Local Plan SV requirements for the provision of affordable housing in full unless the applicants can demonstrate that this would make the proposed development unviable to deliver (Appendix D).
- 1.7 The Council will expect the affordable housing contributions to be provided in the form of on-site housing. However, under exceptional circumstances the Council will accept financial contributions in lieu of this. Financial contributions should be at least equivalent to the increased gross development value if the affordable housing is not provided on site.

- 1.8 The Council expects on-site affordable housing to be provided by one of the Council's Preferred Partner Registered Providers. Applicants should not automatically assume that affordable housing grant will be made available for private sector developments. Typically, applications for grant are only considered for schemes that can demonstrate additionality (i.e. that the grant will enable more affordable housing to be delivered than policy requirements alone would deliver). The applicant should liaise with one or more of the Council's Preferred Partners to determine the prices they will be willing to pay for the affordable housing units.

## **2. Transport**

- 2.1 Highways infrastructure covers both the strategic road network and local roads within the District. Highways England is responsible for providing and managing the strategic network, whilst the road network is managed by Essex County Council, which is the Highways Authority.
- 2.2 At the District level, Local Highways Panels (LHP) are responsible for setting local priorities in their areas. LHPs cover a broad scope, including traffic management tackling congestion, road safety, passenger transport, cycling schemes and major improvement schemes. The Councils Transport Policy T1 & T2 aims to work in partnership to promote a safe, efficient and convenient transport system, it will also minimise the need to travel, promote the opportunity for sustainable transport modes, improve accessibility to services and support future transition to a low carbon future.
- 2.3 As far as possible in accordance with the relevant regulations, new developments should meet their own infrastructure needs. For highways, this is often done through seeking Section 106 contributions to deliver the required infrastructure to support development, delivery through a Section 278 Agreement or Section 38 Agreement (commuted sum for maintenance following adoption). Any commuted sums for maintenance will be required in accordance with [Essex Highways Developer's Construction Manual](#) and the IDP.

## **3. Education**

- 3.1 Essex County Council is the Children's Services Authority, and has the statutory duty to secure sufficient places in state funded schools, free early education and post-16 education for all children and young people. The County Council and Council will therefore work in partnership with a wide variety of education providers to ensure that the needs of the District are met to reflect the Epping Forest District IDP.

- 3.2 The Council's policy D2 aims to achieve access to high quality education as it is an important element of building and supporting sustainable communities and promoting economic prosperity. Essex County Council seeks contributions, where appropriate, from developments of 10 or more dwellings to mitigate impact on education facilities. Contributions on sites smaller than ten dwellings will not be sought, unless their co-location with other sites would create a cumulative impact.
- 3.3 The IDP and Infrastructure schedule sets out the future requirements for education services over the plan period and further information is included in the ['Essex County Council's: Developers Guide to Infrastructure Contributions \(2016\)](#). Any contributions will still need to comply with the pooling restrictions.

#### **4. Open Space, Community Facilities and Green Infrastructure**

- 4.1 For some types of open space – particularly amenity greenspace, and in some cases children's play – the provision of new space to meet newly arising demand will be expected as part of developments. For larger development, more strategic open space as well as community facilities will be expected.
- 4.2 The Council's Policy DM6 states that where appropriate development proposals will be required to provide open space, or links to open space in accordance with the guidance contained in the IDP and open space strategy.

#### **5. Sports and Leisure**

- 5.1 The Council will take a two-pronged approach to ensure the delivery of sport infrastructure through the Local Plan and planning process. For sites that are allocated in the Local Plan, all relevant projects have been captured through the Infrastructure Delivery Plan.

#### **6. Healthcare**

- 6.1 The NHS is undergoing a shift in service in response to rising demands and decreasing resources. New models of service provision are focused on a more integrated network of community and social care services, enhanced out of hours services, and the collaboration of a more diverse range of healthcare professionals. The Council's policy D2 states that development proposals will be permitted only where they provide improved essential facilities and services required to serve the scale of the proposed development.

#### **7. Emergency Services**

- 7.1 Police and fire and rescue services are funded through a combination of Central Government grant and council tax revenues. Ambulance services are funded by

NHS England. There are no identified physical infrastructure requirements associated with the quantum and distribution of growth proposed in Epping Forest District.

## **8. Managing Recreational Pressure and Air Quality Impact on the Epping Forest Special Area of conservation ('SAC')**

- 8.1 Epping Forest (the Forest) is London's largest open space, it also provides recreational open space for residents from within Epping Forest District. It covers some 2400 hectares and is run by the Conservators of Epping Forest owned and managed by the Corporation of London. The Council's policy DM2 states that the Council will expect all relevant development proposals to assist in the conservation and enhancement of the biodiversity, character, appearance and landscape setting of Epping Forest SAC.
- 8.2. [An Interim Approach to Managing the Recreational Pressures on the Epping Forest Special Conservation Area \(SAC\)](#) was adopted by Cabinet on the 18 October 2018. It is a material consideration in determination of planning applications and permitted development rights proposals for residential development which would result in net increase in new homes within the Epping Forest District administrative area.
- 8.3 The interim approach recognises that visitors from one local authority administrative area often go to a part of the SAC that lies within a different local authority administrative area. The Interim Approach identifies schemes and their associated costings developed and programmed to cover the period up to 2033. Contributions will be sought to mitigate the impact of the recreational pressures on the Epping Forest SAC. The route for securing the contributions will be by way of a Section 106 legal obligation in accordance with the Strategy. The monies secured are not subject to CIL Regulations pooling restrictions.
- 8.4 The Interim Approach referred to above does not, however address the significant effect that all residential and employment development within the District is likely to have on the SAC with regards to air quality. There is currently no interim approach to managing air quality for the District and the Council and other partner organisations continue to work together to identify an acceptable air quality mitigation strategy.

## **9. Stewardship**

- 9.1 Delivering a successful new community requires a clear understanding of how assets generated by the development process will be managed in perpetuity. New development must demonstrate how such management will be undertaken on behalf of the community. Putting local people at the heart of this process can generate increased local support, creativity, and entrepreneurialism. The right stewardship models can also

provide reassurance for local authorities who may be worried about taking on the management of such assets at a time of increasing budgetary pressure.

- 9.2 There is a range of types of stewardship bodies that take on responsibility for green space management, in which an organisation committed to charitable objectives for a town commits to proactively share and reinvest money created through the town's development and management in order to look after a range of community services, ranging from art to healthcare. Such bodies can take a range of organisational and legal forms, depending on the type of development, the delivery vehicle used, and the assets being managed.
- 9.3 Local Plan Policy SP 3 and SP 4, refer to stewardship principles for infrastructure and services required as a consequence of development, provision for their maintenance will be sought from developers which could include transport, community facilities, parklands, open spaces etc.
- 9.4 The sustainable, long-term success of a stewardship model can only be achieved with an effective means of income generation. Assets require maintenance and management over the long term, which requires security, flexibility and transparency in funding from the stewardship body.

## **10. Other Potential Development Specific Requirements**

- 10.1 This Strategy may not identify all possible planning obligations requirements that may be applicable to any individual development. The precise circumstances of each development will be different and therefore there may be additional development specific requirements, such as mitigation measures, that may be needed to address the impact of individual developments. Such requirement, by reason of their nature, will need to be assessed on a site by site basis.

## Appendix B: Planning Conditions

1.1 New development will contribute to site related and other infrastructure needs through a combination of either:

- Planning Conditions (site/development related) or;
- Planning Obligations to secure developer contributions or works in kind (strategic, local requirements & site/development related).

What are Planning Conditions?

1.2 Planning conditions are requirements made by the Council, in the granting of planning permission, to ensure that certain actions or elements related to the development proposal are carried out. Planning conditions are likely to cover, amongst other things,

- the submission of reserve matters;
- controls over the materials to be used;
- controls over the occupation of new buildings or further stages of development until certain other actions are completed;
- the requirement to undertake further investigations as work proceeds (e.g. archaeological recording);
- construction in accordance with the submitted method statement;
- the requirement to implement works in accordance with the submitted plans such as landscaping, tree planting, drainage works etc.;
- and requirements for the certification of works following completion.

1.3 Where there is a choice between imposing planning conditions and entering into a planning obligation to manage the impacts of a new development, the use of planning conditions is always preferable.

1.4 When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development.

1.5 The main powers relating to Council's use of conditions are in sections 70,72,73,73A and Schedule 5 of the Town and Country Planning Act 1990. Section 70(1)(a) of the Act enables the Council in granting planning permission to impose "such conditions as they think fit". This power must be interpreted in light of material factors such as the National Planning Policy Framework, this supporting guidance on the use of conditions, and relevant case law.

## Appendix C: Legislative contact

### National

- 1.1 The [Planning Practice Guidance on Planning Obligations](#) states these assist in mitigating impact of development to make it acceptable in planning terms (Reference ID: 23b-002-20190315) entered into by landowners and developers (and others) through Section 106 agreements (Reference ID: 23b-001-20190315). Under [Section 106 of the Town and Country Planning Act \(1990\)](#) a planning obligation may:
- I. Restrict the development or use of the land in any specified way;
  - II. Require specified operations or activities to be carried out in, on, under or over the land;
  - III. Require the land to be used in any specified way;
  - IV. Require a sum or sums to be paid to the authority on a specified date, dates or periodically

### Planning Obligations

- 1.2 The [National Planning Policy Framework \(NPPF\) \(February 2019\)](#) (Paragraph 56) and Regulation 122(2) of the [Community Infrastructure Levy \(CIL\) Regulations \(2010\)](#) place into law for the first time, the Governments policy tests on the use of S106 Agreements. As of 6 April 2010, It therefore became unlawful for planning obligations to be taken into account when determining a planning application for a development, if the obligation does not meet any of the following tests:
- I. Necessary to make the development acceptable in planning terms;
  - II. Directly related to the development; and
  - III. Fairly and reasonably related in scale and kind to the development.
- 1.3 At present these legal tests (often referred to as 'Regulation 122 tests) restrict the use of Planning Obligations by prohibiting pooling where five or more separate S106 Agreements already exist in the LPA area for a particular project or infrastructure.
- 1.4 In November 2015, the Government commissioned a review of the CIL system. The results of the CIL review, published in February 2017 alongside the Housing White Paper, concluded the current CIL system was not fulfilling the original intention of providing a faster, fairer, simpler, more certain and more transparent way of ensuring that all development contributes something towards cumulative infrastructure need.

On the 1<sup>st</sup> September 2019 (CIL Regulations 2019) the restrictions on the 'pooling' of section 106 planning obligations to fund infrastructure will be removed.

- 1.5 Where Planning Obligations are necessary, the Councils require applicants for major development to enter into Planning Obligations that capture the value of land for consented development to deliver required infrastructure on site and across the District. Applicants are required to support their applications at submission stage with:
- I. Proposed draft Heads of Terms for a Section 106 agreement including itemised schedule of infrastructure, phasing, cost and responsibility for delivery based upon the Policy, the IDP and as identified through engagement with the Councils. This should reflect requirements of the Template Section 106 Agreement (below) or, for smaller sites, such other agreed process;
  - II. A Statement of Delivery. This statement will confirm the Applicant's position in relation to the viability and deliverability of the development (see Appendix D).
- 1.6 The provision of many items of infrastructure across the District is the responsibility of Essex County Council under its statutory duties. In addition to the District Council's IDP and supplementary guidance, developers will also be expected to refer to the County Council's Developers' Guide to Infrastructure Contributions

## **2 Section 278 Agreement**

- 2.1 Agreements to authorise work on the public adopted highway network are made under section 278 of the Highways Act 1980, as amended by section 23 of the New Roads and Street Works Act 1991. These agreements facilitate works that have been identified and determined as necessary for planning permission to be granted. This strategy does not specify the circumstances in which a S278 agreement will be required. Requirements for S278 agreements will be identified separately, although this will often take place alongside negotiation of the S106 agreement.
- 2.2 Essex County Council is responsible for delivering and maintaining highways, transport, and schools Infrastructure, in addition to providing libraries, adult social care and youth services. The County Council is also responsible for waste and is the lead flood authority. The Council is working with ECC to assist in identifying the additional infrastructure that is needed to support growth in the Local Plan.

## **3. Section 38 Agreement**

- 3.1 Should the construction of a new road be required for residential, industrial or public the normal method for the road to be adopted and therefore become part of the existing

public highway network is through an agreement struck under Section 38 of the Highways Act 1980.

- 3.2 Section 38 Agreements are negotiated between the Local Highway Authority's engineer and the developer's Highway Engineer. Plans showing all elements of construction and specifications should be provided. The plans and details will be similar to those required for highway improvements under a Section 278 agreement (see above). Additional guarantees may be required between the developer and the Local Highway Authority to ensure that the proposed works can be satisfactorily completed in the event of any default or unforeseen circumstances.
- 3.3 The adoption process can be lengthy. For the period of time which the road lies unadopted, the developer is responsible for maintenance and upkeep of the road until adoption happens. On larger developments, the completed road may be used as site access for later phases of the development; adoption under a Section 38 normally takes place on or after completion of the whole development.

## Appendix D: The Council's Approach to Viability

### 1 Viability Testing

- 1.1 Viability testing is an important part of the planning process. The requirement to assess viability forms part of the National Planning Policy Framework (NPPF), and it is a requirement of the CIL Regulations. In each case the requirement is slightly different, but all have much in common.
- 1.2 All considerations and approaches to assessing Viability will be based upon the context of the guidance set out in the [PPG on Viability](#) and Paragraph 57 of the [NPPF \(February 2019\)](#).

### 2 National Planning Policy Framework (July 2018)

- 2.1 As in the 2012 NPPF, viability remains a core area of the plan-making process. The 2018 NPPF does not include detail on the viability process, rather stresses the importance of viability.
- 2.2 The main change is a shift of viability testing from the development management stage to the plan-making stage.
- 2.3 The 2018 NPPF does not include technical guidance on undertaking viability work. This is included within the PPG that was also updated in July 2018.

### 3. National Planning Practice Guidance (July 2019)

- 3.1 When the use of land changes, for example from agricultural to residential, the value of that land changes. [National Planning Practice Guidance \(PPG\) on Viability](#) sets out how the value of land should be considered (Reference ID: 10-013-20180724 and 10-019-20180724). Provided that the value generated by a development is more than the cost of developing it and that a sufficient incentive exists to provide the land and build the development, then the scheme is viable. The aim is to ensure an approach that balances reasonable landowner incentive and developer profit with appropriate benefits to the public through high quality development and infrastructure. The provision of these benefits is what is referred to as Land Value Capture.
- 3.2 The Council will ensure that any increases in land value that arise from the granting of planning consents are used to ensure that high quality development proposals are delivered that are supported by necessary infrastructure. Illustrated simply:

- 3.3 The form that this equitable Land Value Capture may take is varied and will include a combination of the following:
- I. Achieving high quality design – through collaborative engagement on masterplans and planning applications between Councils, developers, stakeholders and the community on the appearance and form development takes in response to its surroundings. Investment in high quality design by the developer enhances the overall value of the development;
  - II. Delivering infrastructure on-site – through approval of design details via applications, planning conditions and planning obligations in **Section 106** agreements (see below) including affordable housing and education, health and community facilities. These are necessary to make development acceptable and are funded by the developer and landowners;
  - III. Contributing to infrastructure – through planning obligations in Section 106 agreements including public transport and highway improvements. Contributions to infrastructure may come from more than one development and there is also the possibility of additional funding from external sources (see below);
  - IV. Providing services, endowments/assets and governance arrangements to support on-going stewardship – through planning obligations in Section 106 agreements and planning conditions including measures to support public transport such as subsidised travel for residents and cycle hire, provision of assets or funds into a management organisation for the long-term stewardship of the development and its buildings and spaces. Garden City Principles state that Stewardship should include community ownership

#### **4. Viability Guidance**

- 4.1 The need to deliver strategic infrastructure items across the District and the Garden Town including on a 'pooled' basis, through co-ordinated contributions of land and/or infrastructure costs, such as the STC, mean that it is important to adopt a consistent and transparent approach to viability assessment.
- 4.2 Alongside the IDP and as a part of the Plan-making processes, viability assessment for each of the allocated sites will be undertaken in order to determine the appropriate level of developer contributions to be sought given the need to deliver the necessary infrastructure whilst ensuring that the sites remain viable and deliverable.
- 4.3 For any major development (applications for 10 or more homes or 1,000m<sup>2</sup> for non-residential development) applicants will be required to demonstrate that the application will meet requirements of policies and is considered viable and deliverable. This should be through the provision of a Statement of Delivery (paragraph 4.4) comprising:

- I. Gross Development Value for the application scheme\*;
- II. Benchmark Land Value based upon existing use value (EUV) plus the assumed Landowner Premium (EUV+)\*;
- III. Development Costs including build costs, site-specific infrastructure costs, total cost of meeting Policy requirements including contributions to infrastructure set out in the IDP, General Finance Costs, Professional Fees, and any project contingency costs as well as any assumed provision of external funding\*;
- IV. A comprehensive development programme indicating assumed phasing and/or timing associated with the delivery of infrastructure and, specifically, where such phasing and/or timing does not accord with policy, the IDP or requirements identified as necessary through engagement with the Councils for reasons of viability this should be supported by a details of development cash flow;
- V. List of Abnormal Costs that the applicant has identified which have been taken into account when defining the Benchmark Land Value;
- VI. Financial return assumed by the Developer.

\* The Applicant will be required to include explicit agreement to the assumptions of the most recent viability assessment published for the District or Garden Town or, alternative assumptions where clear evidence is provided to demonstrate what has changed since that viability assessment was undertaken.

- 4.4 The Statement of Delivery should reflect the requirements set out in Policy, the IDP and as otherwise agreed through engagement with the Councils and should, wherever appropriate, include explicit agreement to the assumptions within the most recent viability assessment published for the District or Garden Town. Where the applicant wishes to rely upon different assumptions these must be clearly evidenced so that they can be assessed by the Council.
- 4.5 The Councils recognise that delivery of growth in the district will extend over many years during which, from time to time, external factors could improve or reduce viability of development. The viability of development may also be affected by the accuracy of assumptions made at the stage of assessment which may vary during planning for outline or detailed/reserved matters stages and again at the commencement of, and during, the construction phase.
- 4.6 As set out in PPG (Reference ID: 10-009-20180724) the potential risk to developers is accounted for in the assumptions for developer return in a viability assessment. Realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project. As a general rule, re-appraisal of policy compliant will not be entertained.

- 4.7 Where Applicants fail to demonstrate full compliance with policy requirements through reasons of viability they will be required to provide detailed information to support all assumptions made within the Statement of Delivery in order that the Council can assess the case. As set out in the PPG (Reference ID: 10-009-20180724), the applicant will also be required to commit to re-appraisal and agree a clear process and terms of engagement for how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. Circumstances where re-appraisal will be undertaken may include:
- I. Detailed planning stage (if viability only assessed at plan-making or outline planning stage);
  - II. Change in scheme proposals, where the Council deem this to have a bearing upon viability;
  - III. Change in market conditions, where the Council deem this to have a bearing upon viability;
  - IV. Approximately every 3 to 5 years, or the occupation of 500 homes or completion of an agreed phase on the development since the last viability appraisal, whichever the Council deem to establish new market evidence to be considered;
  - V. Provision of any external funding contributions which may reduce the apportionment of infrastructure costs, or improve cash flow, for the development.
  - VI. Where the Council agrees that schemes are unviable. Mechanisms for re-appraisal will be written into Section 106 agreements. If viability improves, applicants will be required to rectify any short fall in later stages of the development.
- 4.8 Statements of Delivery, viability evidence and viability re-appraisal will be reviewed by the Council. In accordance with the PPG (Reference ID: 10-021-20180724) viability assessment will be made publicly available and should be prepared on that basis.
- 4.9 In accordance with the PPG (Reference ID: 10-021-20180724) viability assessment will be made publicly available and should be prepared on that basis.
- 4.11 Where the Council is satisfied that the applicant has demonstrated that the submission of a viability assessment is justified, the Council will give due weight to the assessment having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, any change in site circumstances since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment. The Council will undertake an independent review of that assessment for which the applicant will bear the cost. Where the Council is satisfied that the viability assessment justifies the provision of affordable housing below the level required by Policy H 2, where appropriate, the Council will expect additional affordable

housing provision to be made if viability improves before full completion of the development permitted.

- 4.12 Proposals that do not accord with the requirements of paragraph A of Policy H2 must be accompanied by a financial and viability assessment appraisal (with supporting evidence), which is transparent and complies with relevant national or local guidance applicable at the time. Where a viability assessment is submitted, it must be based upon and refer back to the viability evidence which informed the Local Plan. The applicant must demonstrate what has changed since the evidence was produced which justifies the need for a viability assessment.
- 4.13 In determining the weight to attach to a viability assessment submitted, the Council will have regard to:
- I. How up to date the Local Plan and viability evidence underpinning the plan is;
  - II. Any change in site circumstances since the plan was brought into force; and
  - III. The transparency of assumptions behind evidence submitted as part of the viability assessment.”

## APPENDIX E: NOTIFICATION FORM

### EVENT NOTIFICATION AND PAYMENT

PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING	
Dated	
Made Between	
Planning Ref:	EPF/ / /
Site Address	
Agreement Date	

SITE OWNER DETAILS	
Name	
Contact name	
Address	
Main	
Mobile	

EVENTS BEING NOTIFIED	
Commencement Date	
Occupation of Development (Number if relevant) & date	

COMPLIANCE WITH OBLIGATION(S)	
Schedule	Paragraph
Details of Obligation and compliance	


### PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Indexation	Total	Payable to
Example Education (primary)	X £	Y £	X+Y £	ECC
Example (Affordable Housing)	A £	B £	A+B £	EFDC

### METHOD OF PAYMENT

Payment of S106 contributions can be made by BACS, CHAPS or cheque.

National Westminster Bank Plc

279 High Road

Epping CM16 4BT

Sort Code: 60 07 39

Account No: 56340001

Please quote reference – EPF/ /

This form should be completed and sent to:

Strategic Infrastructure & Planning Obligations Officer

Epping Forest District Council, Civic Offices, High Street, Epping, CM16 4BZ

## APPENDIX F: S106 PRECEDENT AND NOMINATION AGREEMENT

### **S106 PRECEDENT**

#### **NOMINATION AGREEMENT**

**THIS DEED OF NOMINATION** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2019

#### **BETWEEN**

**(1) THE COUNCIL** and

**(2) THE ASSOCIATION**

#### **DEFINITIONS**

"Affordable Housing Unit" any dwelling for use as self-contained housing accommodation provided by the Association within the District either as a Rented Unit or as a Shared Ownership Unit

"Affordable Housing Land" the land upon which the Affordable Housing Units are constructed

"Applicant" either a Rented Unit Applicant or a Shared Ownership Applicant as appropriate

"Association" [INSERT DETAILS]

"Bidding Cycle" the period between vacant possession of a Rented Unit being first advertised through the Choice Based Lettings Scheme and the closing date for applicants to express expressions of interest to receive a tenancy offer for vacant properties

“Broad Market Rental Area”	the geographical area set by the Valuation Office Agency which is used to define the amount a household might be able to claim in housing benefit to support their housing costs
“Capital Funding Guide”	the Affordable Housing Capital Funding Guide hosted by the Homes and Communities Agency
“Choice Based Lettings Scheme”	a process through which applicants on the Council’s Housing Register and existing tenants seeking a transfer can apply for vacant Rented Units which are advertised locally
"Council"	Epping Forest District Council of Civic Offices, High Street, Epping, Essex CM16 4BZ
“Council’s Housing Register”	a list of applicants for Council and Housing and Association accommodation held by the Council in accordance with the Housing Act 1996
“Deed”	this deed
“District”	the administrative area of Epping Forest District Council
"Expert for Affordable Housing”	an independent chartered surveyor with not less than 10 years post qualification experience in the valuation of residential dwellings and residential development land to be appointed (in default of agreement on appointment) by the President for the time being of the Royal Institution of Chartered Surveyors
“Help to Buy Agent”	the organisation selected by the Homes and Communities Agency to assist Shared Ownership Applicants find Shared Ownership Units and to assist Registered Providers of Social Housing to find suitable Shared Ownership Applicants
“Homes and Communities	the organisation of that name (trading as Homes England) or

Agency”	such other body for the time being having or being entitled to exercise the power to regulate Registered Providers of Social Housing now conferred on such body under the Housing and Regeneration Act 2008
“Housing Allocation Scheme”	the Council’s written statement of how it allocates its own housing and makes nominations to Registered Providers of Social Housing
“the List”	the Rented Unit List or the Shared Ownership List (as applicable)
“Local Housing Allowance”	the maximum amount that would be paid in housing benefit for different types of Rented Unit within the Broad Market Rental Area
“Local Letting Plan”	an arrangement between the Council and the Association for the nomination of applicants with specific recognised needs related to the type or design of the Affordable Housing Units being provided by the Association
“Mortgagee”	is any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver))
“New Affordable Housing Unit”	any Affordable Housing Unit ready for its first occupation as self-contained housing accommodation provided by the Association within the District

“New Rented Unit”	any Rented Unit ready for its first occupation as self-contained accommodation provided by the Association within the District
“New Shared Ownership Unit”	any Shared Ownership Unit ready for its first occupation as self-contained accommodation provided by the Association within the District
"Nomination Rights"	the rights of the Council to nominate people for occupation of the Affordable Housing Units
"Notice"	written notice by the Association to the Council of the completion of or the vacancy of a Rented Unit in respect of which the Council has Nomination Rights and will include full details including the amount of rent payable, number of bedrooms, services, floor level, lift availability
“Open Market Value”	the market value of the Affordable Housing Units or the Affordable Housing Land as appropriate as determined in accordance with the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual Practice Statement 4.2 or other replacement guidance current at the date of valuation provided that the terms within this Deed relating to the provision of Affordable Housing shall be disregarded in such determination. In the event of disagreement the Open Market Value shall be referred to the Expert for Affordable Housing
“Priority Bands”	the criteria within the Housing Allocation Scheme used to prioritise between Applicants
“Receiver”	any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed

under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator

“Registered Provider of Social	means a landlord on the Register of Providers of Social Housing maintained by the Homes and Communities Agency or Housing” successor body under Section 1 Housing Act 1996
“Rented Unit”	an Affordable Housing Unit let at a rent in accordance with the Homes and Communities Agency Rent Standard applicable to Registered Providers of Social Housing or any replacement arrangement and which shall be no more than the Local Housing Allowance relating to the Broad Market Rental Area in which the Affordable Housing Unit is situated
“Rented Unit Applicant”	a person applying to be nominated for a Rented Unit
“Rented Unit List”	a written list of names and addresses of suitable nominees in priority order in respect of the Rented Unit nominated in accordance with the criteria set out in Clause 4
“Schedule”	the written list of Shared Ownership Applicants for Shared Ownership Units identified and considered by the Association in accordance with the criteria set out in Clause 5
“Shared Ownership”	disposal by means of a shared ownership lease which is a lease granted on payment of a premium calculated by reference to a percentage of the value of the demised premises the cost of providing them and under which the tenant is entitled to acquire a maximum of a 75% interest initially but with the entitlement to acquire additional shares to a 100% leasehold interest or a freehold interest in the demised premises as appropriate

“Shared Ownership Applicant”	a person applying to be nominated for a Shared Ownership Unit within the District
“Shared Ownership Unit”	an Affordable Housing Unit that is disposed of as Shared Ownership
“Shared Ownership Unit List Shared”	the written list of Shared Ownership Applicants identified in the Schedule prioritised by the Council in respect of each New Shared Ownership Unit in accordance with the criteria set out in  Clause 4
“Site”	[INSERT DETAILS]

This Deed is made pursuant to the Housing Acts 1985 and 1996 (as amended) and Section 111 of the Local Government Act 1972 and in each case any statutory amendment variation substitution or re-enactment thereof together with all other statutory powers and Acts pursuant to which the parties hereto shall be empowered to enter into this Deed.

**IT IS AGREED AS FOLLOWS:**

**Existing Nomination Agreements**

1. As from the date hereof any nomination agreements made previously between the Council and the Association shall be revoked and the Council's Nomination Rights in respect of New Affordable Housing Units and Affordable Housing Units shall be in accordance with the terms of this Deed.

**Nomination Rights**

2. The Council shall have the right to nominate Applicants for selection for 100% of New Affordable Housing Units and for 75% of lets of Rented Units thereafter (that is the

first 3 out of every 4 lets) as the Rented Units become vacant in each instance except where:

(a) The Council has previously owned the land on which the Rented Units are situated, in which the case the Council shall have the right to nominate Rented Applicants for 100% of Rented Units; and

(b) the Council and Association agree a higher percentage figure than 75% of lets of Rented Units.

3. The Council's nomination of Applicants will be in accordance with its Housing Allocations Scheme, pursuant to Part VI of the Housing Act 1996 (as amended).
4. When compiling the List the Council will generally prioritise the Applicants in the following order:
  - 4.1 people who are on the Councils Housing Register – ranked according to the Priority Bands set out in the Councils Housing Allocations Scheme and the Applicant's Registration Date on the Council's Housing Register
  - 4.2 other residents of the District – ranked by length of residency in the District
  - 4.3 people who work in the District – ranked by length of time worked in the District
  - 4.4 people who have a parent or child living in the District
  - 4.5 people who do not meet any of the above criteria
5. When compiling the Schedule the Association must include the full postal address and the number of bedrooms for each Shared Ownership Unit and in respect of each Shared Ownership Applicant include the following information:
  - 5.1 their full name and address;
  - 5.2 whether or not they are on the Councils Housing Register;
  - 5.3 whether or not they are otherwise a resident in the District and if so their length of residency in the District together with the addresses where they have lived in the District and the dates of residency for the previous 5 years;
  - 5.4 whether or not they currently work in the District and if so:

- (a) the name of their current and previous employers relating to when they have worked in the District for the previous 5 years;
  - (b) the address(es) of their place(s) of employment in the District for the previous 5 years; and
  - (c) how long they have worked for each employer in the District;
- 5.5 whether or not a parent or child currently lives in the District and if so the name and address of the parent or child

### **Council's Exercise of Nomination Rights for Rented Units**

- 6. The Association shall give the Council a minimum of two months' Notice of the expected date of availability for occupation of a New Affordable Housing Unit and as much notice as possible of a vacancy of a Rented Unit in respect of which the Council has Nomination Rights
- 7. On receipt of the Notice for a New Affordable Housing Unit or a Rented Unit the Council will advertise the vacancy in the next available Bidding Cycle for the Choice Based Lettings Scheme and shall then provide the List to the Association within 5 working days of the closing date for the bids received in that Bidding Cycle
- 8. The Association shall have the final right to approve those Rented Unit Applicants nominated by the Council but in the event that a Rented Unit Applicant is not approved the Association shall invite the Council to make further nominations in accordance with Clause 11.
- 9. The Association shall use reasonable endeavours to offer the Rented Unit to the Rented Unit Applicants in the order of priority on which they appear on the List.
- 10. The Association shall advise the Council, in writing, of the Rented Unit Applicant selected and, if not in the order of priority on the List, the reasons for refusing each of the other nominated Rented Unit Applicants
- 11. If the Association does not accept any of the Council's nominated Rented Unit Applicants on the List or all of those nominated refuse a tenancy, the Council will be invited by the Association to provide another List within ten working days for a New

Affordable Housing Unit or five working days for a Rented Unit of written notification of same and the provisions of Clauses 7 8 and 9 of this Deed shall apply

12. If the Council does not provide a List in accordance with the provisions of Clause 7, the Association shall be free to let the New Rented Housing Unit or the Rented Unit to someone other than a nominee of the Council and the Council shall forego its Nomination Rights in respect of such letting in that particular instance PROVIDED the allocation is made in accordance with the Capital Funding Guide
13. In such circumstances as described in Clause 12 the Council may nominate Rented Unit Applicants to Rented Units in respect of the next 3 lettings and the Council's continuing right to nominate Rented Unit Applicants in respect of the Rented Units remains unchanged

#### **Councils Exercise of Nomination Rights for Shared Ownership Units**

14. The Association must market the availability of New Shared Ownership Units so as to achieve the highest possible number of Shared Ownership Applicants such marketing to include liaising with the Help to Buy Agent and obtaining a list of Shared Ownership Applicants
15. The Association shall serve the Schedule on the Council no less than two months before the proposed date of completion of a New Shared Ownership Unit or Units for which the Council has Nomination Rights
16. The Council shall provide the Shared Ownership List to the Association:
  - 16.1 within five (5) working days of receiving the Schedule in respect of the New Shared Ownership Units where the number of Shared Ownership Applicants is five (5) or less; and
  - 16.2 within ten (10) working days of receiving the Schedule in respect of the New Shared Ownership Units where the number of Shared Ownership Applicants is six (6) or more
17. The Association shall use reasonable endeavours to offer each New Shared Ownership Unit to the Shared Ownership Applicants in respect of that unit in the order of priority on which they appear on the Shared Ownership List EXCEPT THAT

- 17.1 in circumstances where the total number of Shared Ownership Applicants on the Schedule and any subsequent Schedule is less than the total number of available New Shared Ownership Units then none of the New Shared Ownership Units shall be offered to any Shared Ownership Applicant who only meets the criteria set out at Clauses 4.4 or 4.5 above for a period of six (6) months from the date that the relevant New Shared Ownership Unit is ready for first occupation
- 18 The Association shall advise the Council in writing of the Shared Ownership Applicant selected and, if not in the order of priority, the reason for refusing each Shared Ownership Applicant
- 19 If all of the Shared Ownership Applicants identified on the Shared Ownership Unit List in respect of the New Shared Ownership Unit refuse the offer of that Shared Ownership Unit the Association will re-market that unit to include writing to all those listed on the Council's Housing Register who have a housing need for a property with the number of bedrooms provided by that Shared Ownership Unit or for a property with one bedroom less than provided and thereafter provide another Schedule to the Council following receipt of reservation forms in respect of that Shared Ownership Unit and the provisions of Clauses 16 and 17 of this Deed shall apply PROVIDED THAT the Association shall be under no obligation to provide more than two Schedules to the Council in any circumstances
20. If the Council does not provide a Shared Ownership List in accordance with Clause 16 or the Association has provided two Schedules in accordance with Clause 19 the Association shall be free to offer the Shared Ownership Unit to any Shared Ownership Applicant and the Council shall forgo its right to nominate in respect of that Shared Ownership Unit Provided that the allocation is made in accordance with the Capital Funding Guide
21. The Association shall be responsible for investigating and assessing that the Shared Ownership Applicant is financially able to afford the Shared Ownership Unit having regard to the Home and Communities Agency's guidelines.

## **Mortgagee Provisions**

22. Nothing within this Deed shall prevent or restrict the mortgaging or charging of an Affordable Housing unit
23. It is hereby agreed that the provisions of this Deed shall not be binding upon nor enforceable against the following: -
- (a) Any tenant of an Affordable Housing Unit exercising a statutory or voluntary right to buy or right to acquire pursuant to the Housing Act 1985 or the Housing Act 1996 or any statutory amendment modification or re-enactment thereof
  - (b) Any lessee of a Shared Ownership Unit whether or not such lessee has staircased to 100% ownership
  - (c) Any mortgagee, chargee or receiver appointed by a mortgagee or chargee of a Shared Ownership Unit (not being a Mortgagee)
  - (d) The successors in title to the persons or bodies referred to in paragraphs (a) (b) and (c) above or any persons or bodies deriving title through a Mortgagee.
24. The parties agree that if a Mortgagee seeks to dispose of the Affordable Housing Units or any one of them pursuant to its power of sale or other power or powers within the mortgage:
- 24.1 it shall give notice to the Council in writing of its intention to dispose (“the Initial Notice”) and thereafter first seek to dispose of the Affordable Housing Units or any one of them to another Registered Provider of Social Housing provided that if within a period of one calendar month from the date of the Initial Notice the Mortgagee is unable to so dispose at the price it may desire it shall offer to transfer its interest to the Council or the Council’s nominee (“the Mortgagee Notice”) and the parties hereto acknowledge that the Mortgagee may serve the Mortgagee Notice simultaneously with the Initial Notice or at any time within 1 month after service of the Initial Notice;
  - 24.2 the consideration for any transfer to the Council or the Council’s nominees shall be the Open Market Value
  - 24.3 if the Council or the Councils nominee and the Mortgagee have not agreed the consideration for the said transfer within 2 weeks after the Mortgagee Notice then the

matter shall be referred to the Expert for Affordable Housing and the procedure detailed in clause 25 shall apply;

- 24.4 if the Council fails to complete the transfer or their nominee fails to the transfer within 3 months from the date of the Mortgagee Notice, notwithstanding the procedure detailed in clause 25 applying, the Mortgagee shall be entitled to dispose of its interest in the Affordable Housing Units to whomsoever it wishes at whatever price free from the obligations and restrictions contained in this Deed.

#### Appointment of Expert for Affordable Housing

25. If the matters in clause 24.3 occur then the appointment of the Expert for Affordable Housing shall be made jointly by the parties or, if they do not agree on the appointment within 2 weeks after the Mortgagee Notice, the appointment shall be made by the President of the Royal Institution of Chartered Surveyors or his duly appointed deputy, or other person authorised by him to make such appointments on his behalf within 4 weeks after the Mortgagee Notice;
- 25.2 the parties shall ensure that the terms of the appointment of the Expert for Affordable Housing shall require him to give his written decision within two weeks of receipt by him of the submissions referred to in the preceding paragraph;
- 25.3 if the expert refuses to act, becomes incapable of acting or dies, either party may request the appointment of another expert in his stead under this clause 25;
- 25.4 the determination of the Expert for Affordable Housing, except in case of manifest error, is to be binding on the parties and time shall be of the essence in respect of all timescales referred to in this clause 25.

#### Local Letting Plan

26. The parties agree that in respect of some Affordable Housing Units that the Association develops and/or manages within the District it will be appropriate to look at Local Letting Plans to create sustainable communities;

26.1 where it is agreed in writing between the parties that a Local Letting Plan is appropriate in respect of identified Affordable Housing Units it is agreed that this Deed shall not apply to those identified Affordable Housing Units whilst the Local Letting Plan is in operation.

### **Allocations based on false information by a Rented Unit Applicant**

27. The Association agrees that if it comes to its attention that a Rented Unit has been allocated to a person on the basis of false information supplied by that person it will at the first opportunity take steps to investigate and establish (to include obtaining legal advice) if it is reasonable in all the circumstances to seek to terminate the tenancy of that person with a view to obtaining vacant possession of the Rented Unit;

27.1 the Association shall inform the Council in writing as soon as possible if an investigation is commenced in accordance with clause 27 and will share with the Council the results of the investigation and provide to the Council a copy of the legal advice obtained;

27.2 if the legal advice obtained in accordance with Clause 27 states that there would be a reasonable chance of success in obtaining a court order for possession the Association will institute legal proceedings without delay to seek to repossess the Rented Unit.

27.3 In the event that the Council does not agree with the legal advice given under clause 27.1 then the Council will at its own cost obtain a second legal advice and the Association will cooperate with the Council and provide to the Council all necessary information and documents to enable the Council to seek the second legal advice;

27.4 where the second legal advice generally accords with the original legal advice the action recommended by the original legal advice will be taken by the Association without delay;

27.5 in the event that the second legal advice is fundamentally different to the original legal advice the Council and the Association shall liaise and jointly decide on the appropriate course of action to be taken PROVIDED always that the overriding objective of both parties is to ensure that the Affordable Housing Unit is occupied by a person who meets the relevant criteria and that the action taken is both lawful and proportionate in the circumstances.

**THE COMMON SEAL OF** )

[ )

**Was affixed in the presence of:**

**Signature of [Director]**

**Signature of Director [Secretary]**

Common Seal
-------------

**THE COMMON SEAL OF** )

**EPPING FOREST DISTRICT COUNCIL** )

**was affixed in the presence of:** )

**Signature:**

**Job Title:**

The Common Seal of the Council
--------------------------------

**UNILATERAL AGREEMENT – SPECIAL AREA OF CONSERVATION ('SAC')**

DATED

201

(1) [INSERT NAME]

in favour of

(2) EPPING FOREST DISTRICT COUNCIL

---

**DEED OF UNILATERAL UNDERTAKING**

---

under Section 106 Town and Country Planning Act 1990

relating to land at [INSERT SITE DETAILS]

**THIS DEED OF UNILATERAL UNDERTAKING** is given on

20[ ]

**BY:**

(1) **[INSERT NAME]** of **[INSERT ADDRESS]** ("**the Landowner**"); [and]

[(2) **[INSERT NAME]** (Company Registration Number **[INSERT NUMBER]**) whose registered office is at **[INSERT REGISTERED OFFICE ADDRESS]** ("**the Mortgagee**")]

**in favour of**

(3) **EPPING FOREST DISTRICT COUNCIL** of Civic Offices, High Street, Epping, Essex CM16 4BZ ("**the Council**")

#### **BACKGROUND**

(A) For the purpose of the 1990 Act, the Council is the local planning authority for the area within which the Site is located.

(B) The Landowner is the freehold owner of the Site with registered title number **[INSERT TITLE NUMBER]** at the Land Registry

[(C) The Mortgagee is the proprietor of a charge dated [ ] registered against title number **[INSERT TITLE NUMBER]**

(D) The Planning Application has been made to the Council by the Landowner and in granting the Planning Permission the Council consider it expedient that provision should be made for regulating or facilitating the Development or use of the Site in the manner hereinafter appearing and that entering into this Deed will be of benefit to the public

- (E) In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 the Council and the other parties are satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms are directly related to the Development and fairly and reasonably relate in scale and kind to the Development
- (F) The Landowner has agreed to enter into this Deed with the intention that the obligations contained in this Deed may in the event that the Planning Permission is granted be enforced by the Council against the Landowner and their respective successors in title.
- (G) This Deed is entered into by the Landowner to mitigate any adverse effect on the integrity of the European Site as a result of the Development

**IT IS HEREBY AGREED AS FOLLOWS:**

**1. OPERATIVE PROVISIONS**

- 1.1 This Deed is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Landowner and its successors in title and assigns and the persons claiming under or through them.
- 1.2 This Deed creates planning obligations for the purposes of Section 106 of the 1990 Act and such obligations and covenants hereinafter contained shall be enforceable by the Council acting under the powers contained in Section 106 of the 1990 Act
- 1.3 This Deed shall come into effect on the date of this Deed

**2. INTERPRETATION**

- 2.1 In this Deed, the following words and expressions have the following meanings:

<b>"1990 Act"</b>	the Town and Country Planning Act 1990 as amended
<b>"Commencement"</b>	means solely for the purposes of this Deed and for no other purpose to initiate the Development by carrying

out a material operation as defined in section 56(4) of the 1990 Act. Where used in the context of part of the Development commence means the carrying out of a material operation on that part. The terms "**Commenced**" and "**Commence Development**", "**Commencement Date**" and other congruent terms are to be construed accordingly. The following matters do not constitute a material operation and consequently shall not individually or together constitute Commencement:

- (a) Demolition;
- (b) Site clearance;
- (c) Site investigations, testing or surveys;
- (d) The provision of underground drainage and sewers and the laying and diversion of other services and service medium;
- (e) Archaeological investigations and digs;
- (f) Ecological surveys, investigations or assessments;
- (g) Decontamination and remediation works;
- (h) The construction of boundary fencing or hoardings (including the erection of an enclosure for the purpose of site security);

**"Development"**

[INSERT DESCRIPTION OF DEVELOPMENT] all in accordance with the Planning Permission

**"European Site"**

all that land designated on 1 April 2015 under Article 4(4) of Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna known as the Epping Forest Special Area of Conservation (SAC)

designated for the purpose of protecting three qualifying habitats namely beech forests on acid soil, European dry heaths and North Atlantic wet heaths with cross-leaved heath and one qualifying species namely the Stag Beetle

**["Index Linked"]**

means the recalculation of any payment specified in this Deed by applying the following formula:-

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Deed

B = the figure shown in the relevant Index for the month last published prior to the date the payment is made under this Agreement

C = the figure shown in the relevant Index for the month immediately prior to the date of this Agreement

D = the recalculated sum payable

and "Index-Linked" and other congruent terms shall be construed accordingly]

**"Mitigation Strategy"**

means the interim mitigation strategy adopted by the Council on [INSERT DATE] in respect of the European Site

**"Plan"**

the site plan attached to this Deed

<b>"Planning Application"</b>	the planning application submitted to the Council and given application reference number EPF/[INSERT NUMBER]
<b>"Planning Permission"</b>	the planning permission granted pursuant to the Planning Application
<b>"Regulations"</b>	means the Conservation of Habitats and Species Regulations 2017.

**“SAC Contribution”**

means the sum of [£XXX] Index Linked payable to the Council as a financial contribution towards:

- i. mitigating air pollution impacts on the European Site as a result of increased vehicular activity; and
- ii. maintenance, improvement, management, access management and monitoring of the European Site

to mitigate the impact of the Development on the European Site in accordance with the Mitigation Strategy

**["Seven Day LIBID Rate”**

means an assessment of the rate of interest the Council can expect to earn on investments through the money market, the rate being the average interest rate at which banks are willing to borrow Eurocurrency deposits or in the event that the rate is no longer published or the calculation method is substantially altered then an appropriate alternative rate nominated by the Council]

**"Site"**

means [INSERT DETAILS] shown for identification purposes edged red on the Plan

2.2 References in this Deed to the Landowner the Council [or the Mortgagee] any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them.

- 2.3 Words importing the singular meaning where the context so admits shall include the plural meaning and vice versa
- 2.4 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner
- 2.5 Words denoting an obligation on the Landowner to do any act matter or thing shall include an obligation to procure that it be done and words placing the Landowner under a restriction shall include an obligation not to cause permit or allow infringement of the restriction
- 2.6 Any reference to an act of parliament shall include any modification extension or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom
- 2.7 Headings contained in this Deed are for reference purposes only and should not be incorporated into this Deed and shall not be deemed to be any indication of the meaning of the parts of this Deed to which they relate
- 2.8 Reference to any recital, clause, sub-clause, paragraph number, schedule, appendix or plan is a reference to a recital, clause or sub-clause of, paragraph number of, schedule to, appendix to or plan annexed to this Deed;
- 2.9 The applicable law for this Deed shall be English law

### **3 NOTICES**

- 3.1 Any notice or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if received by electronic mail received by facsimile delivered by hand or sent by

recorded delivery post to the party upon whom it is to be served or to whom it is to be given provided that the notice or other communication is marked as follows for each recipient:

3.1.1 for the Landowner it shall be marked for the attention of [INSERT NAME] of [INSERT ADDRESS]

3.1.2 for the Council it shall be marked for the attention of the Service Director – Planning Services, Civic Offices, High Street, Epping, Essex, CM16 4BZ quoting reference EPF/[INSERT NUMBER]

3.1.3 for the Mortgagee it shall be [INSERT DETAILS]

#### **4. OBLIGATIONS OF THE LANDOWNER**

4.1 The Landowner undertakes to comply with the obligations set out in the **Schedule**

4.2 The Landowner shall upon the date hereof pay to the Council its reasonable and proper legal expenses in connection with the preparation completion and registration of this Deed in the sum of £500.00 (no VAT)

4.3 The Landowner shall upon parting with all of its interest in the Site be released from all obligations rights and duties under the terms of this Deed but shall remain liable for any breaches of this Deed occurring before parting with such interest.

4.4 The Landowner covenants to give the Council written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged.

4.5 The notice referred to in Clause 4.4 above shall give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

## **5. GENERAL**

- 5.1 Any covenant by the Landowner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred
- 5.2 The Landowner acknowledges that nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions in any capacity and the respective rights powers duties and obligations of the Council under private public or subordinate legislation may be effectively exercised
- 5.3 Any obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately
- 5.4 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend those provisions in such a reasonable manner so as to achieve the intention of the parties provided that any party may seek the consent of the other or others to the termination of this Deed on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties
- 5.5 No variation to this Deed shall be effective unless first approved by the Council and made by deed or pursuant to the determination of an application made under Section 106A of the 1990 Act

- 5.6 Failure by the Council to enforce at any time or for any period any one or more of the terms or conditions of this Deed shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Deed
- 5.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 5.8 This Deed will end (to the extent it has not already been complied with), if the Planning Permission
- 5.8.1 is quashed, revoked or otherwise withdrawn at any time so as to render this Deed or any part of it irrelevant, impractical or unviable; or
- 5.8.2 expires before Commencement
- 5.9 It is hereby agreed and declared that a person who is not a local planning authority shall not be entitled in his own right to enforce any term of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999
- 5.10 This Deed shall be enforceable as a local land charge and shall be registered as such

## **6. VAT**

- 6.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any properly payable VAT.
- 6.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT has not been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

**7. INDEX-LINKING**

7.1 Any sum referred to in this Deed or in the Schedules to this Deed as being payable by any party shall be Index-Linked using the Retail Prices Index

**8. LATE PAYMENT**

8.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if any payment which is due to the Council under the terms of this Deed is made later than the date such payment is due it shall attract interest at the Seven day LIBID Rate from the date payment was due until the payment is received by the Council

**9. SPEND IN ADVANCE**

9.1 If prior to the receipt of any SAC Contribution payable under the terms of this Deed the Council incurs any expenditure in providing facilities or services to which this Deed authorises a SAC Contribution to be applied then the Council may immediately following receipt of such SAC Contribution deduct therefrom sums equivalent to such expenditure

**10. MORTGAGEE'S CONSENT**

10.1 Subject to Clause 10.2 the Mortgagee acknowledges and declares that this Deed has been entered into by the Landowner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed

10.2 The Mortgagee shall have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations, covenants and undertakings as if it were a person deriving title from the Landowner]

**IN WITNESS** whereof this document has been executed as a Deed and delivered the day and year first before written

### **SCHEDULE**

The Landowner agrees and covenants that from the date of [this Deed] [Commencement of the Development] the Site shall be permanently subject to the following obligations:

#### **NOTICE OF COMMENCEMENT OF DEVELOPMENT**

1. At least ten (10) working days prior to Commencement of Development written notice confirming the date of Commencement of Development shall be given to the Council (in accordance with the notice provision in Clause 3 of this Deed) such notice to include the proposed date for such Commencement of Development together with details of the person or body who or which shall constitute the owner at the time of such Commencement of Development.
2. Not to Commence Development unless and until the written notice referred to in paragraph 1 above has been given to the Council.

#### **PAYMENT OF FINANCIAL CONTRIBUTIONS**

3. To pay the SAC Contribution to the Council in cleared funds [on the date of this Deed] [prior to the Commencement of Development].
4. Not to Commence Development unless and until the SAC Contribution has been paid in full to the Council

**SIGNED AS A DEED by the said** )

**[INSERT NAME]** )

in the presence of: )

*Sign:*

*Name:*

*Address:*

*Occupation:*

**SIGNED AS A DEED by the        said    )**

**[INSERT NAME]                                )**

**in the presence of:                                )**

*Sign:*

*Name:*

*Address:*

*Occupation:*

## **APPENDIX G: Useful References**

- [National Planning Policy Framework \(NPPF\) \(February 2019\)](#)

- [National Planning Practice Guidance \(PPG\) Planning Obligations](#)
- [National Planning Practice Guidance \(PPG\) Viability](#)
- [Harlow and Gilston Garden Town IDP \(April 2019\)](#)
- [Harlow and Gilston Garden Town Strategic Viability Assessment \(April 2019\)](#)

