



UTTLESFORD DISTRICT COUNCIL

DEVELOPERS' CONTRIBUTIONS SUPPLEMENTARY PLANNING GUIDANCE 2022

(V1. Draft Text for Consultation)



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Purpose of this supplementary planning document

1.1. This supplementary planning document (SPD) sets out how the District Council will seek contributions from developers via planning obligations that are required to make development proposals acceptable in planning terms. It replaces guidance previously issued in 2015 and which was adopted in that year by the Council as a material planning consideration. That guidance was subsequently withdrawn.

1.2. As it is required to do, this SPD is based upon policies contained in the adopted 2005 Uttlesford Local Plan (ULP 2005). As a new local plan is produced, a new draft SPD will emerge, reflecting the content of the new plan and the associated infrastructure delivery plan. The intention is that a new SPD document will be adopted after the adoption of the new local plan, replacing the existing one.

1.3. Contributions towards affordable housing, open space, landscaping and education, amongst others, are frequently required - mainly for new housing development. These contributions are in recognition that incoming residents will need access to amenities, often generating a requirement for additional or improved facilities where there is an identifiable material deficiency. Contributions towards highway and public transport improvements may also be required on a site-by-site basis. The provision of conveniently located, accessible, safe and attractive communal facilities integrated into, or in close proximity to residential areas can substantially improve the quality of life of residents and has social and health benefits.

1.4. This SPD is primarily intended for use by developers of residential schemes to ensure the consistent application of policies by the Council. A main aim of the SPD is to assist developers in making planning applications (particularly during pre-application negotiations) and to minimise planning delay.

1.5. The Council has reviewed and updated its statement of community involvement (SCI); the latest version being approved by cabinet on 9th March 2021 ([SCI](#)). The SCI sets out the consultation process the Council will adopt for all planning applications and pre-application processes. It encourages applicants to involve the community, including the relevant town or parish council or meeting before a formal application is submitted. Early involvement will help to address issues of concern and may help to avoid objections being made at a later date.



The SCI should assist developers in carrying out effective community involvement, particularly where the use of planning obligations is anticipated to be necessary.

1.6. All planning applications are determined on their own merits and on a site-by-site basis. This SPD will not cover every circumstance, and there may be occasions where a bespoke approach to contributions is required.

1.7. If you require further information that is not available on the Council's website, please either email planning@uttlesford.gov.uk or contact the customer service centre on 01799 510510.

Council priorities

1.8. The Council's corporate plan 2022-2026 (CCP) ([*UDC Corporate Plan*](#)) sets out its key priorities, the principles that inform everything that it does and how they will be done. The Council's vision is:

"making Uttlesford the best place to live, work and play".

1.9. The CCP puts residents, who are the electors, first. Residents' needs and welfare are the first and highest priority. Under the key priority of being an active place-maker for the district's towns and villages the Council will secure greater benefits for the community from new development. This will be delivered in four ways:

implement the community infrastructure levy (CIL) along with s106 to deliver strategic community projects and greater local benefit from development.

- 1) increase the transparency of the s106 agreement process and councilor engagement in it;
- 2) ensure that strong planning enforcement holds developers to account; and
- 3) require developers to be considerate of the communities in which they build.

1.10. This SPD will help both the Council and developers to deliver points 1) and 2) on behalf of Uttlesford residents. Points 3) and 4) are of equal importance but are beyond the scope of this guidance.



Statute

2.1. Planning obligations are legal obligations that are entered into to mitigate the impacts of a development proposal. Section 106(1) of the Town and Country Planning Act 1990 (as amended) – (TCPA) allows planning obligations to be entered:

- a) restricting the development or use of land in any specified way.
- b) requiring specified operations or activities to be carried out in, on under or over the land.
- c) requiring the land to be used in any specified way; or
- d) requiring a sum or sums to be paid to the authority (*subsequent wording deliberately omitted*)on a specified date or dates or periodically.

2.2. Sections 106A and B of TCPA set out the circumstances in which planning obligations can be modified or discharged, including the mechanisms for an appeal.

2.3. Under regulation 122(2) of the CIL Regulations 2010 (as amended), planning obligations must only be sought where they meet all the following tests:

- a) necessary to make the development acceptable in planning terms.
- b) directly related to the development; and
- c) fairly and reasonably related in scale and kind to the development.

2.4. Planning obligations can be in the form of an agreement (commonly referred to as a section 106 (s106) agreement) by a person with an interest in the land and a local planning authority, or a unilateral undertaking by a person with an interest in the land. Planning obligations run with the land, are registered as a local land charge and are legally binding and enforceable through the courts. A unilateral undertaking is not binding against a local planning authority as it is not party to it.

Government policy and guidance

2.5. The tests referred to in paragraph 2.3 are reiterated in paragraph 57 of the latest version of the National Planning Policy Framework (NPPF) 2021. Paragraph 55 of



the NPPF emphasises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable using conditions or obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

2.6. Online guidance on planning obligations is available via GOV.UK ([planning obligation guidance](#)).

2.7. This SPD presumes that the issue cannot be dealt with by the imposition of planning conditions.

The development plan

2.8. The development plan consists of the Essex Minerals Local Plan (adopted in July 2014), the Essex and Southend-On-Sea Waste Local Plan (adopted in July 2017), ULP 2005 and the “made” (completed) neighbourhood plans in Felsted, Great Dunmow, Newport and Quendon and Rickling, and Thaxted.

2.9. Section 70(2) of TCPA requires the local planning authority, in dealing with a planning application, to have regard (inter alia) to the provisions of the development plan so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA) requires that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

2.10. Whilst the ULP 2005 is now an ageing plan, many of its policies were “saved” by a direction made by the Secretary of State for Communities and Local Government under paragraph 1(3) of schedule 8 to the PCPA. The direction was dated 21st December 2007. Unserved policies expired on 18th January 2008 and accordingly carry no weight. The purpose of saving policies in this way was to ensure continuity in the plan-led system and a stable planning framework locally, and, a continual supply of land for development. Policies were saved in the expectation (at that time) that they would be replaced promptly and by fewer policies making maximum use of national and regional policy.

2.11. The direction stated:

“Following 18 January 2008 the extended policies should be read in context. Where policies were adopted some time ago, it is likely that material considerations, in

particular the emergence of new national and regional policy and new evidence, will be afforded considerable weight in decisions”.



2.12. The mere act of “saving” a local plan policy does not mean that the policy automatically attracts significant weight in decisions and that weight is set in stone. Weight may well decrease over time, with the ULP 2005 being viewed as out of date where there is more up-to-date government policy and guidance.

2.13. The ULP 2005 has as part of its vision the securing of the necessary infrastructure to support the level of development proposed in the plan. Saved policy GEN6 of the plan states that:

“Development will not be permitted unless it makes provision at the appropriate time for community facilities, school capacity, public services, transport provision, drainage and other infrastructure that are made necessary by the proposed development. In localities where the cumulative impact of developments necessitates such provision, developers may be required to contribute to the costs of such provision by the relevant statutory authority”

2.14. The Council considers that significant weight can still be attached to policy GEN6, reflecting the importance that the Government attaches to improvements in infrastructure and affordable housing in paragraph 41 of the NPPF.

2.15. The Council is now going through the process of producing a new local plan following the withdrawal of the draft Uttlesford Local Plan 2019 in 2020. The new plan is required to be in place by December 2023. It is a key document which seeks to ensure that the Council has the right facilities and infrastructure in place to support the community and grow the local economy up to 2040. The new plan will set out the policies which are the starting point for the consideration of planning applications, including the identification of suitable locations for development. New local plan policies will cover (for instance):

- a) new housing, including:
 - how much housing*
 - in which locations*
 - whether certain sites should include affordable housing*
- b) employment, including:
 - how much is needed*
 - for which industries*
 - in which locations*
- c) transport required to support new developments and existing communities
- d) parks and green spaces
- e) community facilities, such as halls and community centres
- f) heritage, listed buildings and conservation areas
- g) health facilities
- h) leisure facilities



2.16. Once this SPD has been adopted, the Council will begin the preparation of a replacement SPD as the new local plan progresses through to adoption. This subsequent version will align with the new local plan policies and accompanying infrastructure delivery plan and any introduction of CIL. The Council paused progress on introducing CIL after the withdrawal of the 2019 plan.

2.17. In February 2021, the Council approved an interim climate change planning policy document [\(interim climate change policy\)](#) as non-statutory development management guidance. The aim of the document is to ensure that development contributes to climate change mitigation and adaptation. This follows the Council's declaration of a climate and ecological emergency in 2019 which is a commitment to achieving net zero carbon status by 2030. As the new local plan moves forward to a draft plan, the Council will be giving weight to the policy document and seeking contributions where necessary.



3. GOVERNANCE – ROLES AND RESPONSIBILITIES AND PROCEDURES

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Negotiation of s106 agreements

Pre-application

3.1. It is the developer's responsibility to begin pre-application discussions with the Council as the local planning authority as soon as possible. The Council offers a paid pre-application advice service, details of which are available on its website ([*UDC pre-application advice*](#)).

3.2. As part of the pre-application advice system, the Council strongly urges the use of planning performance agreements (PPA) for new housing or commercial schemes. These are voluntary agreements between the local planning authority and an applicant aimed at delivering high quality sustainable development that is based on a clear vision and development objectives. The Council currently offers five PPA band categories based on the size of the proposed development in terms of the number of homes or area of commercial floorspace. Each band includes meetings with council officers (and appointed specialists if necessary), engagement with the town or parish council and a presentation to members.

3.3. A PPA will deal with several issues including s106 agreement negotiations but not legal and monitoring fees. It is the ideal forum for beginning to look at what the agreement needs to include (or the unilateral undertaking should offer if the developer chooses that route), considering the CIL regulations tests. Entering a PPA does not, of course, guarantee the outcome of a planning application but it does guarantee the availability of resources via an agreed project plan and work programme.

3.4. If a developer does not wish to enter a PPA, paid pre-application discussions with the Council can still take place. These would not include presentation to members, appointment of specialists or multi meetings.

Planning application submission

3.5. Once a planning application has been submitted to the Council and validated, a case officer will be appointed. The case officer will work with the developer and others to identify what obligations need to be included in the s106 agreement – a process which will be easier if there is a PPA. At this stage the case officer will notify the Council's solicitor, with formal instructions to follow later. Initially, the obligations will be expressed as Heads of Terms. These are the issues on which contributions are based and around which the details of the obligations are negotiated by the interested parties. If instead a developer chooses to submit a unilateral undertaking,

a complete, signed copy is required so it can be considered in the application determination process.

Planning application determination

3.6. The approval of all major planning applications is a matter for the planning committee. Heads of Terms and their justification in accordance with the CIL regulations tests will be clearly set out in the committee report written by the case officer. The report will set out a timescale for completion of the s106 agreement. If a unilateral undertaking has been submitted, it will similarly be assessed against the CIL regulations tests in the committee report.

3.7. An obligation, whether set out in an s106 agreement or a unilateral undertaking, can only be a material planning consideration if it meets the CIL regulations tests. It is not the role of the case officer to decide between what a developer is willing to provide and what a local community might want. The case officer's job is to identify what mitigation is necessary, conforming to the provisions of the CIL regulations.

3.8. When a planning application has been resolved to be granted subject to a S106 agreement, the Council will send appropriate formal instructions to its solicitor. If not already provided, the developer will need to provide certain information to the Council's solicitor so that the negotiation process can commence. The information required is:

- name and contact details of the developer
- name and contact details of the developer's solicitor
- name, address, and post code of the land involved
- a current copy of the title to the land involved
- a solicitor's undertaking to meet the Council's costs of preparing the agreement

3.9. If the application is for outline planning permission, it may not be possible at that stage to fully detail the obligation particularly, say, if it is a payment relating to the number of homes provided. At that time the Council will want to agree with the developer how the obligation payment will be calculated, with the precise calculation left until full details of the development are provided at the reserved matters stage.

3.10. Failure to complete the s106 agreement within the given timescale will result in the application being refused for the reasons as set out in the committee report.



Model agreements

3.11. The Council provides an s106 agreement template on its website ([S106 Templates](#)). The Council strongly advises developers to use the standard wording to avoid delay in the negotiation process. If the standard wording is used, this should help the developer to submit a draft s106 agreement with the planning application.

3.12. The template clauses include procedures for the provision, construction and transfer of affordable housing and include a sample “Mortgagee in Possession” clause.

Charges for monitoring of obligations

3.13. The Council has a schedule of monitoring charges, which is set out in appendix A in Section 6. The charges (in draft now) are graded according to the number of homes that are to be built. In relation to strategic sites (>800 homes) and mixed-use sites, a bespoke monitoring charge will be negotiated.

Timing and triggers for action or payment

3.14. The s106 agreement or unilateral undertaking will set out the relevant timings and trigger points. As a rule, it is better to have fewer different ones as this makes monitoring easier for everyone including the public. Development related trigger points should be used (such as prior to commencement or prior to first occupation) rather than fixed dates. Fixed dates can become nonsensical if there is slippage in the development programme. On larger developments, the phasing of payments (such as for the provision of school places) may be acceptable where this is compatible with infrastructure delivery.

3.15. If a developer considers that there is a case either for later or lower payment or later on-site delivery, this needs to be supported by evidence at the planning application stage. The case officer will need to set out a reasoned and evidenced justification in the committee report. Similar justifications will be required from the Council if it considers that earlier or higher payment or earlier on-site delivery is necessary.

Monitoring

3.16. The Council’s s106 monitoring and enforcement officer is responsible for logging all obligations and associated trigger points on the Council’s s106 database, which ultimately will be publicly accessible on a read-only basis. The officer will act

on all trigger points to ensure that obligations are met. The officer will check that all payments are made in a timely manner, are forwarded to the appropriate third party where required and are spent in accordance with the CIL regulations. The officer will also check that the transfer of land and/or buildings to third parties takes place on time and any agreed contributions paid (such as for future maintenance).

3.17. A summary of money held and spent is available in the Council's infrastructure funding statement which can be viewed on its website ([infrastructure funding statement](#)).

3.18. As the signatory to the s106 agreement, the Council is responsible for the collection and spending of the money and, ultimately, the delivery of a project. This remains the case if delivery is by a third party such as a town or parish council. This might be, for instance, for the building of a new village hall or the refurbishment of an existing one. Most s106 agreements include a "pay back" clause. This means that if the money is not spent within a set period, it must be paid back to the developer with interest. Prior to releasing any initial money to a third party, the Council will require evidence of impending project delivery, and itemised invoices for phases of work subsequently undertaken.

3.19. If the developer becomes aware of any reason why trigger points may not be able to be met, it is the developer's responsibility to contact the s106 monitoring and enforcement officer immediately.

Index-linking of payments

3.20. Unless otherwise agreed, all payments will be index-linked using the retail prices index. Indexation will be calculated from the date of the s106 agreement to the date of payment. The Council's monitoring officer will be able to provide a calculation of the amount due.

Payment of the Council's legal fees

3.21. The Council's legal fees will be paid by the developer. The fees are as per the solicitors' guideline hourly rates set out on GOV.UK (last updated 1/10/21). Uttlesford is in national band 1, so the fee charged will currently range from £261/hour - £126/hour depending upon the grade of the solicitor involved.



Affordable housing

4.1. The NPPF (annex 2) defines affordable housing as:

“housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following:

- a) affordable housing for rent.*
- b) starter homes.*
- c) discounted market sales housing.*
- d) other affordable routes to home ownership.*

4.2. In 2017, an affordable housing update to the West Essex and East Hertfordshire Strategic Housing Market Assessment (SHMA) was published ([SHMA](#)). The update calculated that 2,200 affordable houses within Uttlesford were needed between 2011-2033, of which 1,600 should be for affordable rent, and 600 shared ownerships. The Council has published its housing strategy 2021-2026, which sets out more local background detail ([housing strategy](#)).

4.3. Where a need for affordable housing on market-led developments is identified, the NPPF expects it to be met on-site in most circumstances. Affordable housing should only be sought for major developments (defined as 10 or more homes or a site area of greater than 0.5 hectares or more). To support the re-use of brownfield land, where vacant buildings are being re-used or redeveloped, any affordable housing contribution should be proportionately reduced.

4.4. The Government published guidance in May 2021 on the provision of First Homes and their implementation ([insert link](#)). The guidance sets out the instances when the First Homes policy does not apply. The Council will seek the provision of First Homes in all appropriate instances.

4.5. First Homes are the Government’s preferred discounted market tenure and should account for at least 25% of all affordable housing delivered by developers. First Homes should be physically indistinguishable from the equivalent market homes in terms of quality and size.

4.6. First Homes:

- a) must be discounted by a minimum of 30% against open market value.
- b) must be sold to a person or persons meeting the First Homes eligibility criteria.
- c) must have this discount (as a percentage of current market value) and certain other restrictions passed on at each subsequent sale; and,
- d) after the discount has been applied, the first sale must be at a price no higher than £250,000 (or £420,000 in Greater London).

4.7. An s106 agreement should secure the necessary restrictions on the use and subsequent resale of the property. Local authorities and neighbourhood planning groups do have the discretion to require a higher minimum discount of either 40% or 50% if they can demonstrate a need for this. Through the plan-making process they can also set an evidenced lower price cap.

Council policy on affordable housing

4.8. The CCP recognises the importance of the delivery of more affordable homes for the district. In accordance with policy H9 of the ULP 2005, the Council will seek 40% affordable housing provision on all market-led developments of 15 homes or more, or on a site with an area of greater than 0.5 hectares, but this may be the subject of negotiation at the pre-application stage, such as on grounds of viability.

4.9. Where issues of viability progress through to the submission of a planning application, the developer will be required to submit a viability assessment. The Council will seek an independent audit of that assessment as part of the consideration of the planning application.

4.10. The Council expects affordable housing to be distributed in non-contiguous clusters throughout the development and will not allow this policy to be circumvented by artificially subdividing sites. Where sites are subdivided for other reasons, the Council will expect each subdivision or smaller development to contribute proportionately towards achieving the amount of affordable housing which would have been appropriate on the whole or larger site.

4.11. With the introduction of First Homes, the Council will seek an affordable housing split of 70% affordable rent, 25% First Homes and 5% shared ownership.

4.12. To prevent the loss of affordable housing to the general housing market the Council will, where appropriate, require long term safeguards to be in place to ensure the affordable housing benefit passes to successive occupiers. This will normally be secured by an s106 agreement.

4.13. In exceptional circumstances where on-site provision cannot be achieved, off-site provision and/or commuted payments in lieu may be supported where this would offer an equivalent or enhanced provision of affordable housing. Paragraph 62 of the NPPF requires off-site provision or a financial contribution to be robustly justified.

4.14. The Council recommends using one of the Altair set of methodologies for calculating commuted payments. These methodologies, samples of which are set out in Appendix B, establish the commuted payment as the uplift that a developer would obtain by selling the affordable homes on the open market in comparison to selling them to a registered provider as affordable homes. Whatever methodology is used it should be agreed with the Council during pre-application discussions, but certainly before a planning application is submitted.

Biodiversity

Essex Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS)

4.15. The Council has adopted the RAMS, ([*RAMS SPD*](#)) as an SPD. It focusses on the mitigation that is necessary to protect the birds of the Essex coast and their habitats from the increased visitor pressure associated with new residential development in-combination with other plans and projects.

4.16. Although Uttlesford is not coastal, research has shown that some of its residents are likely to travel to the coast for recreational purposes. These residents live within what is referred to as the zone of influence (Zol). All new residential developments within the Zol where there is a net increase in homes are included in the RAMS. In Uttlesford, parts of the parishes of Barnston, Felsted, High Easter and Stebbing are in the Zol.

4.17. The RAMS identifies a detailed programme of strategic mitigation measures that are to be funded by developer contributions from residential development schemes. The payment relates to all applications that would result in a net increase in housing in the Zol. It applies without exemption to all full applications, outline applications, hybrid applications, prior approvals and permitted development. Reserved matters applications will be considered on an individual basis. Applications for outline planning permission should state a maximum number of homes. Applications where the RAMS applies will be refused if a RAMS mitigation payment has not been paid or secured via a planning obligation. The current charge (as of 1 April 2021) is £127.30 per new home. This will be updated each year in line with the Retail Price Index, with any increase coming into force on 1 April.

Hatfield Forest Mitigation Strategy (HFMS)

4.18. Hatfield Forest is both a site of special scientific interest and a national nature reserve. Natural England is working alongside the National Trust to carry out research into visitor patterns, impacts and mitigation measures. To date, the work has included winter and summer visitor surveys and has identified a 14.6km Zol within which residents of new housing are expected to generate increased visitor pressure on the Forest and its ecosystem. Both organisations are working towards a strategic, tariff-based solution, but in the meantime a proportionate, bespoke interim mitigation package will be sought from developers of schemes of 50 houses or more within the Zol. This interim package should be designed in consultation with the National Trust, which is the site manager. The need for the package is consistent with paragraph 174 of the NPPF whereby planning policies and decisions should protect and enhance valued landscapes and sites of biodiversity value.

4.19. A joint letter from the National Trust and Natural England dated 28th June 2021 [\(insert link\)](#) has been received by the Council which sets out the current position and which includes a costed mitigation strategy (the Hatfield Forest Mitigation Strategy - HFMS) prepared by the National Trust. The HFMS aims to secure 22% of the total site management costs from developer contributions based on the predicted 22% rise in visits to the Forest over the next 15 years. Where possible, any interim package should be designed in line with the HFMS. The letter emphasises that it should also be ensured that new housing developments include adequate and well-designed on-site green infrastructure so that residents have access to greenspace within easy reach of their home and are less likely to rely on the Forest for routine access to nature. This could include, for example, high-quality, informal, semi-natural areas, a circular dog walking route within the site or a dedicated 'dogs-off-lead' area.

Offsetting

4.20. In some instances, it will be necessary to safely remove protected species from a development site to a replacement receptor habitat. There is a need to identify a suitable replacement habitat as close to the development site as possible and ideally larger to allow for better growth and natural dispersal of the protected species. Unless the replacement habitat is within the developer's control, a willing third party will be needed and a side-agreement between the third party and the developer.



Libraries

4.21. Essex County Council's Developers' Guide to Infrastructure Contributions (revised 2020) ([***ECC Developer Guidance***](#)) contains an updated requirement for financial contributions from developments of 20+ homes, depending upon local requirements. Contributions will be sought for the library that will be most affected by a proposed development, which may be a larger sub-regional library rather than a local community one. It is unlikely that there would be a need for a new library in Uttlesford except for site allocations of 5,000 people or more. A library extension is currently costed at an average of £244.92/home, and an upgrade at £77.80/home.

Education and school transport

4.22. In paragraph 95 of the NPPF, the Government attaches great importance to a sufficient choice of school places being available to meet the needs of existing and new communities. Local authorities are required to adopt a proactive, positive and collaborative approach to meet these needs through the creation of new schools or the expansion or alteration of others.

4.23. It is a particular requirement of the NPPF that local authorities work with school promoters, delivery partners and statutory bodies to identify and resolve key planning issues at the pre-application stage. The Council takes this responsibility extremely seriously as it is a vital part of the rollout of the CCP.

4.24. The County Council's developers' guide sets out the trigger points for education contributions (generally starting at 20+ homes). These range from the cost of a new place at an existing school to land for a new school and, where required, the cost of school transport for seven years for a primary school pupil and five years for a secondary school pupil. The guide sets out the evidence for the contributions and that evidence is not repeated here.

4.25. Paragraph 5.2.2 of the guide explains how the need for additional school places is assessed. As a reference point it states:
*"The Essex School Organisation Service's 10 Year Plan, 'Meeting the demand for school places in Essex', ([***School organisation plan***](#)) is published on the Council's website on an annual basis and sets out the forecast availability of school places in each area of the county, during each year's admissions round for Reception and Year 7 (the start of secondary school) places. These forecasts are based on G.P.*

registration data, planned housing development, historical trends and other factors likely to affect admissions to particular schools".

4.26. Paragraphs 5.4.1 – 5.4.5 set out new provisions for an employment and skills strategy (including employment and skills plans) for developments of 50+ homes. Where necessary, financial contributions are required for 250+ homes and 2,500sqm of employment floorspace.

4.27. Attention is also drawn to guidance published by the Department for Education “Securing developer contributions for education” (updated in November 2019). This guidance underlines the following principles:

- housing development should mitigate its impact on community infrastructure, including schools.
- developer contributions towards new school places should provide both funding for construction and land where applicable subject to viability assessment when strategic plans are prepared and using up-to-date cost information; and
- the early delivery of new schools within strategic developments should be supported where it would not undermine the viability of the school, or of the existing schools in the area.

Flood and water management

4.28. Essex County Council’s Sustainable Drainage Systems (SuDS) Design Guide for Essex 2020 ([*SUDs Design Guide 2020*](#)) sets out the procedure for obtaining SuDS advice from the County Council. This includes procedures for securing adequate maintenance and adoption. The County Council’s preference as the lead local flood authority is for the drainage network and its accompanying SuDs features to be adopted by a public body (such as a water authority) to ensure lifelong maintenance. The County Council will adopt only in exceptional circumstances. Private adoption is not desirable. The adoption of features is often the most challenging part of designing a drainage scheme. Who will be carrying out the maintenance is very important, and whoever it is should be engaged early in the design process to ensure that features meet adoptable standards. It is often the case that town and parish councils are reluctant to adopt SuDs features because of the specific maintenance requirements attached to them.

4.29. The District Council will work with the developer to secure the long term maintenance of SuDS through a combination of planning obligation, planning



condition and commuted sum payment. Whichever SuDS maintenance option is chosen by the developer, early engagement with the relevant adopter and the Council is essential to a successful outcome.

Healthcare

4.30. NHS West Essex Clinical Commissioning Group (CCG) will assess planning applications for the effect they have on primary healthcare provision within the healthcare catchment of the proposed development. The capacity of a general practice (whether there is a surplus or a deficit) is a factor of the net internal area in m² occupied by the practice and the size of the practice list.

4.31. If the baseline position is that the general practice is in deficit or does not have sufficient surplus to accommodate the additional catchment population growth caused by the development, a financial contribution will be required. The contribution will pay for the additional primary healthcare provision required to serve the needs of the occupiers of the development. The contribution will be calculated by the CCG based on a standard m² cost multiplier for primary healthcare in the East Anglia region, adjusted for professional fees, fit out and contingencies.

4.32. According to current figures provided by the CCG, there should be 120 sqm for every 1,750 patients in a catchment. An occupancy assumption is made of 2.4 persons/house and a contribution of £3k/sqm is required (2022 figures) if an enhancement of existing facilities is needed.



Landscaping and open space

Provision

4.33. The Uttlesford District Council Open Space Standards Paper (OSSP) 2019 ([Open space standards paper](#)) identifies the deficiencies and surpluses in existing and future open space provision. It informs an approach to securing open space facilities through new housing development and helps form the basis for negotiation with developers for contributions towards the provision of open space. Part 5 of the OSSP sets out advice and recommendations regarding when on-site provision or off-site contributions would be appropriate.

4.34. One piece of advice in the OSSP is those small areas of open space hold less recreational use and value. They may also add to existing pressure on maintenance regimes and safety inspections. Table 5.3.2 of the OSSP sets out the minimum site area required to be provided and the house numbers needed to warrant on-site provision opposed to off-site contributions. This table is set out in Appendix C. Mostly, it is anticipated that developments will need to provide open space via off-site contributions.

Stewardship

4.35. The Council considers that the best owners and maintainers of landscaping and/or open space are the appropriate town/parish council. Developers should open pre-application discussions with these bodies at the earliest opportunity, assisted by council officers. It is vitally important to agree the specification of any planted and/or seeded areas, and any play equipment prior to submitting a planning application so that maintenance implications are known and agreed. This should avoid subsequent delay in or refusal of asset transfer, which can occur if town/parish councils feel that they are being presented with a *fait accompli*.

4.36. On completion of the on-site provision, and prior to occupation of the first home (or such other time as agreed), the developer will notify the Council in writing. Council officers will convene a site inspection to ensure that all requirements of the planning permission have been met. Upon completion of works to the written satisfaction of the Council, the transfer of the landscaping and/or open space will be arranged to the appropriate town/parish council together with the maintenance contribution. The developer will pay the legal costs for both parties of the transfer. The developer will be responsible for maintenance until such time as the transfer takes place.

4.37. The maintenance contribution will be site specific and ringfenced. It will be for a 15-year period and will cover the initial establishment period and the maintenance of the land through to early maturity when the design intentions are beginning to be realised. The rates to be applied for the maintenance operations are based, in the

main, on current measured rates set out in SPON'S External Works and Landscape Price Book, which is an industry recognised pricing book. The anticipated operations for each year of the maintenance period are costed. The sums are then adjusted year on year applying the current LIBOR swap rate for interest rate and the RPI for inflation at the time the calculations are made. The total sum is then indexed linked using RPI up to the day the land is conveyed. Applying this method is perhaps the most accurate and fairest means to arrive at an appropriate sum for individual development sites and has been approved by the Council. Where SuDS are to be managed as part of the public open space, the same calculation can be applied. Beyond this, future maintenance and other recurrent expenditure will be borne by the town/parish council to which the asset has been vested.

4.38. If a planning application is submitted in outline, a rough maintenance calculation can only be provided by the Council if an illustrative landscape masterplan has been provided. In all instances, it would save time if the developer can do the calculations and table them for the Council to consider.

4.39. Where the landscaping and/or open space is to remain in the ownership of the developer, or under the ownership of a management company, an agreement will be required to ensure that the site is adequately maintained and will be retained as recreation open space with public access. The details of the management company will be agreed between the developer and the Council.

Moving around

4.40. The County Council's developers' guide sets out the requirement for contributions under four headings:

- Highways and transportation
- Sustainable travel planning
- Passenger transport
- Public rights of way

4.41. In accordance with section 9 of the NPPF, early discussion with the County Council is essential to establish the scope of the evidence that will need to be submitted with a planning application, which may be a full transport assessment or a transport statement for smaller developments (generally residential schemes for less than 50 homes). Whatever the scope of the evidence submitted, it will need to demonstrate how the site will be accessible by a choice of travel modes and how residual impacts on the existing highway network will be mitigated.



4.42. In relation to passenger transport, the County Council's developers' guide predates the Government's recent "Bus Back Better" national strategy ([bus back better](#)) and the County Council's Bus Service Improvement Plan 2021–2026 (BSIP) ([BSIP plan](#)). Importantly, the BSIP includes the impact of the pandemic, the barriers to growing and improving the network and what the County Council will do, in cooperation with others, to tackle those barriers and deliver improvements. It is very important and in everyone's interests that developers' discussions with the County Council include "Bus Back Better" and BSIP. This is so that mitigation can be shaped to take account of the unique circumstances that are currently faced by the transport industry and how the future may evolve.

Highways and transportation

4.43. Where highway works are required as mitigation, these are to be fully funded and delivered directly by the developer. The developer will be required to enter a section 278 (s278) agreement with the County Council to deliver the works. Section 278 is a section of the Highways Act 1980 that allows developers to enter into a legal agreement with the highway authority to make permanent alterations or improvements to a public highway, as part of a planning approval. Contributions for highway works will only be taken in exceptional circumstances, such as for schemes that are designed to mitigate the impact of more than one development. In these circumstances it is likely to be more appropriate for the County Council to secure financial contributions and procure the work.

4.44. Linked to the carrying out of highway works will be the lodging of a bond with the County Council in the event that the works are not completed by the developer. Inspection fees will be payable where a developer is working in the highway and a fee payable for the processing and advertising of any traffic regulation order that is required, such as for waiting restrictions. Where highway assets are to be transferred to the County Council, a contribution towards lifetime maintenance and end-of-life replacement will be sought.

Sustainable travel planning

4.45. Paragraph 113 of the NPPF states that all developments that will generate significant amounts of movements should be required to produce a travel plan. Travel plans (for the workplace, school or residential where more than 80 homes are proposed) can help to reduce the use of the private car and tackle localised congestion. The County Council charges a fee for the monitoring and review of each travel plan for a five-year period following first occupation. Details of the fees charged are set out in the County Council's developers' guide and will be secured by an s106 agreement.

Passenger transport

4.46. Paragraph 5.7.1 of the County Council's developers' guide states that:
"Public transport allows residents to reach essential key amenities and services (such as employment, health, education and shopping) and has a major influence on our overall quality of life. Such services are particularly important in rural communities and for sections of society that do not have access to a car, such as young people, but also make a major contribution to ensuring long term sustainable development".

4.47. Appendix M of the County Council's developers' guide sets out the County's view of the appropriate levels of infrastructure and service support that are generally required although assessment will be on a site-by-site basis. These are based on the scale of the development that is proposed, ranging from improvements to existing bus infrastructure up to new integrated packages focused on establishing mode share and financial and environmental sustainability.

Public rights of way

4.48. The County Council's developers' guide emphasises the importance of protecting public rights of way (PROW) and seeking works or financial contributions to accommodate increased use that results from new development. An s278 agreement will be required for works to a PROW on land within the developer's control. Where third party land is involved, the County Council may take a financial contribution via a s106 agreement to deliver the PROW works provided the works are proved to be achievable.

Sports facilities

Playing pitches

4.49. In determining need, the Council will be informed by the findings of the UDC Playing Pitch Strategy & Action Plan (PPS&AP) – headline findings (Part 1.4) [\(insert link\)](#). More detailed qualitative and site-specific findings are in Parts 4 and 6. These relate to football, cricket, rugby union, hockey, bowls, tennis, athletics and netball.

4.50. The conclusions in Part 1.4 are:

"The existing position for all pitch sports is either; demand is currently being met, or there is a current or future shortfall. There are current shortfalls on grass pitches for

football, rugby union and cricket.

For football, current shortfalls are identified across all four analysis areas, with the largest shortfalls existing in the Saffron Walden and rural analysis areas. It is anticipated that these shortfalls will be exacerbated in the future.

For rugby union and cricket, both current and future shortfalls can be attributed to specific club sites. Both current and future shortfalls for rugby union are attributed to Saffron Walden Rugby Club and Carver Barracks.

Likewise, for cricket, current shortfalls are attributed to Saffron Walden County High School; however, future shortfalls are attributed to a combination of lack of actual spare capacity at peak period and lack of provision available. As such, should future demand (as predicted through population growth, club growth aspirations and NGB predictions) be realised, there will be a requirement for additional provision. This could be in the form of both natural turf and NTP provision. All future shortfalls are predicted to be in the Saffron Walden analysis area.

For tennis and bowls, there will be a need to monitor demand, with several sites operating over recommended capacity. This is particularly the case at Dunmow Tennis Club, Castle Hill Tennis Club, Stebbing Tennis Club and Elsenham Bowls Club. At the identified tennis clubs, shortfalls are already significant enough to be creating latent demand.

As a result, there is a need for targeted work to better accommodate current demand and future growth. This may involve exploring options of secondary (satellite) sites for clubs. There will also need to be support around management and maintenance. For both bowls and tennis, monitoring of membership numbers will be key.

There will also be a need to improve management and maintenance of netball provision in the district to ensure that there is provision of a sufficient quality to meet both current and future demand.

Notwithstanding the above, there are clear shortfalls identified for 3G pitches which cannot be alleviated unless new provision is created. Given this, there is a need to explore the feasibility of future provision at strategic sites in Saffron Walden, Great Dunmow and Stansted Mountfitchet analysis areas. This is due to these analysis areas being based around key settlements, which can also serve significant parts of the rural analysis area.

With resources to improve the quality of grass pitches being limited, an increase in 3G provision could also help reduce grass pitch shortfalls through the transfer of play, thus reducing overplay, which in turn can aid pitch quality improvements.



As there is identified shortfalls on grass pitches, there is a need to protect both playing pitch provision currently in use and pitches that are no longer in use due to the potential that they may offer for meeting current and future need. In addition to providing new 3G provision, there is believed to be enough demand to sustain a compact athletics facility. At present, no formal athletics provision exists in the district; however, demand exists and is anticipated to increase.”

4.51. The Council will use Sport England’s Playing Pitch New Development Calculator ([Pitch calculator](#)) as a tool for determining developer contributions linking to sites within the locality.

4.52. Where it is determined that new provision is required to accompany a development, priority should be placed on providing facilities that contribute towards alleviating existing shortfalls within the locality. To determine what supply is provided, it is imperative that the PPS&AP findings are taken into account and that consultation takes place with the relevant statutory bodies. This is to avoid what is being provided becoming unsustainable and unused, such as single grass pitch football sites without adequate ancillary facilities or new cricket/rugby grounds located away from existing clubs. Instead, multi-pitch and multi-sport sites should be developed, supported by a clubhouse and adequate parking facilities.

4.53. The PPS&AP will form the basis for negotiation with developers to secure contributions to include provision and/or enhancement of appropriate playing fields and subsequent maintenance. Section 106 contributions could also be used to improve the condition and maintenance regimes of the pitches in order to increase pitch capacity to accommodate more matches.

Indoor and built sports facilities

4.54. In determining need, the Council will be informed by appendix 1 (planning gain contribution toolkit) of the UDC Indoor and Built Facilities Strategy (IBFS) ([insert link](#)), which is based on the evidence provided in the UDC Sports Facilities and Recreation Strategy Indoor Needs Assessment Report. Sports specific recommendations are made in relation to badminton, basketball, gymnastics, netball and swimming/aquatic sports.

4.55. Appendix 1 will be used by case officers and other stakeholders to work out the potential demand that a new housing development generates. A six-stepped approach is put forward:

1. Determine the indoor sports facility requirement resulting from the development.



- 2. Determine the other indoor sports and community facilities that are required as a result of the development.*
- 3. Demonstrate an understanding of what else the development generates demand for.*
- 4. Consider if there are existing facilities within close proximity that could be enhanced or extended to accommodate increased demand.*
- 5. Consider the design principles for new provision; and*
- 6. Strategic pooling of financial contributions to deliver new provision.*

4.56. The Council will use the Sport England Sports Facilities Calculator ([sports facilities calculator](#)) to calculate the contribution required from each housing development to go into a strategic fund. This will be the basis for negotiations with developers on the contribution from each development.



Appendix A – Monitoring charges schedule (draft)

The Council will seek a charge to fulfil its role to monitor all the required clauses for s106 obligations. This charge does not include any charges sought by partner organisations such as Essex County Council

Basis of Charges

£416 general administrative fee on all s106s for setting up and ongoing processing system.

Specific charges on each scheme based upon 40 units pa build out:

For larger schemes (>120 units)

In addition to **£416** general admin fee

1 hour per site visit x 15 based on 1 year site build - £52 x 15 = £780.00

30-50 hours Admin/emails/telephone calls based on 1 year site build - £52 x 50 = £2,600.00

Total for 1 year = **£3,796.00** per one year site build.

Assume 40 units pa build out lifetime of monitor would be number of units ((u) / 40) rounded up x £3,796.00

For medium schemes (40-119)

In addition to **£416** general admin fee

1 hour per site visit x 8 based on 1 year site build - £52 x 8 = £416.00

20-35 hours admin/emails/telephone calls based on 1 year site build - £52 x 35 = £1,750

Total for 1 Year = **£2,582.00** per one year site build

Assume 40 units pa build out lifetime of monitor would be number of units ((u) / 40) x £2,582.00

41-80 Units $2 \times £2,582.00 = £5,164.00$

81-119 Units $3 \times £2,582.00 = £7,746.00$

For smaller schemes (<40 units)

In addition to **£416** general admin fee

1 hour per site visit x 4 based on 1 year site build - £52 x 4 = £208.00

10-20 hours admin/emails/telephone calls based on 1 year site build £52 x 20 = £1040.00

< 40 units based upon 1 year build out **£1664.00**

Others

Strategic sites (>800) and mixed schemes. A bespoke monitoring charge will be negotiated

Appendix B – Calculation of affordable housing commuted payments

Acknowledgement: a sample of methodologies, as explained by Altair to the Essex & Suffolk Enablers Group in July 2021.

Approach	Payment in Lieu Calculation	Comment
Method 1: The equivalent value of providing affordable housing on site	<i>Equals</i> The value of affordable housing <i>Less</i> RP on costs	This calculation is in effect the offer a Registered Provider would make for the affordable housing element of a scheme.
Method 2: The equivalent value of providing affordable housing on site (alternative calculation)	<i>Equals</i> Open market value of affordable units <i>Multiplied by</i> Average	This calculation is similar to the above method but uses a different approach to calculating the value of the affordable housing.

	residual land value percentage <i>Plus</i> Cost of site acquisition	The Council would need to undertake a study to determine the average residual land value percentage, as well as determining an appropriate cost to the site acquisition.
Method 3: The equivalent value of the increase in the residual land value gained by substituting private for affordable	<i>Equals</i> Number of private units gained <i>Multiplied by</i> Average open market value <i>Multiplied by</i> Average residual land value percentage	This calculation attempts to determine the increase in land value through the additional private housing and attempts to strip the developer of that value.
Method 4: The equivalent value of the additional benefit of providing additional market sale properties on the development	<i>Equals</i> The open market value of the affordable housing <i>Less</i> Value of the affordable housing (less RP fees) <i>Less</i> Additional developer costs	This calculation attempts to remove the additional value that is achieved through providing additional private sale – it does allow additional costs. The attempt here is to leave the developer in the same position as providing on site affordable housing.

Appendix C – House numbers to warrant on-site open space provision

Source: Table 5.3.2 of Uttlesford District Council Open Space Study Standards Paper, February 2019 (Knight, Kavanagh & Page).

Classification		Minimum size of site	Number of dwellings required to trigger on-site provision
Allotments / community food growing		0.4ha (0.025 per plot)	834
Amenity greenspace		0.4ha	104
Natural and semi natural		0.4ha	29
Parks and gardens		2ha	8,334
Play areas	Equipped	0.04ha	165
	Informal / casual	0.1ha	417