



# Planning Obligations Supplementary Planning Document

[Text Box]

**December 2019**

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## **Introduction**

### **Purpose of this Document**

The Council and developers have a responsibility, through the planning process, to manage the impact of growth upon infrastructure and ensure that any harm caused by development is mitigated and that the necessary infrastructure is provided. The Council expects new development to contribute to site related infrastructure needs.

The purpose of this document is to set out the Borough Council's general approach towards seeking planning obligations, taking into account the requirements of national and local guidance. The document takes the form of a Supplementary Planning Document (SPD), which is a subsidiary element of the Local Plan providing greater detail on the Council's policies set out in the main Local Plan. This guidance will be an important material consideration in the decision-making process.

SPDs cannot create new policy themselves but must instead relate to planning policies contained within a council's Local Plan. There are policies in both the adopted Colchester Local Plan and the Emerging Local Plan that can be used to provide the 'policy hook' for this SPD. This document can be reviewed if required following adoption of the emerging Local Plan if necessary.

### **Scope of Document**

This draft SPD sets out what will be required through Section 106 planning obligations. It identifies topic areas where planning obligations may be applicable and outlines the Borough Council's general procedural approach to securing planning obligations. For topic areas requiring further guidance, the document provides links to separate detailed policy documents.

This draft SPD has been produced as a general guide based on varying scales of development, but proposals will be assessed on a site by site basis with the individual circumstances of each site being taken into consideration. The document is also not intended to be exhaustive; other obligations may be required.

The Council may at a later stage adopt a Community Infrastructure Levy (CIL) to run alongside a new Local Plan, however CIL would complement and not duplicate planning obligations. A CIL charging schedule linked to the plan would stipulate a charge, per square metre of gross internal floorspace, for relevant classes of development and projects that would be agreed

### **Public Consultation**

In accordance with the Government guidance in the Town and Country Planning (Local Development) (England) Regulations 2004, Regulation 18, and the Council's Statement of Community Involvement; the SPD will be the subject of public consultation for a period of six weeks. The consultation for this will run from: 24 January – 6 March 2020.

Ways to respond to the consultation include:

By email to [planning.policy@colchester.gov.uk](mailto:planning.policy@colchester.gov.uk)

By post to: Planning Policy, Colchester Borough Council, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG

All consultation responses must be received no later than 5pm on 6<sup>th</sup> March 2020.

If you have any questions about the consultation, please contact the Planning Policy Team via [planning.policy@colchester.gov.uk](mailto:planning.policy@colchester.gov.uk)

If you would like this document in an alternative format such as large print, braille or another language please contact the Planning Policy Team.

Following this consultation, the final version of the document will be amended and presented for consideration of the Local Plan Committee before adoption.

## **Sustainability Appraisal**

A Sustainability Appraisal (SA) Report has been prepared for the Local Plan which appraises the policies this supplementary guidance relates to. This can be **viewed online.**

An SEA Screening Opinion and Habitats Regulations Screening has been undertaken for this SPD. This concludes that there will not be significant environment effects. These opinions can also be viewed online <**INSERT LINK**>.

## **Policy Background**

### **National Policy**

The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended. Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended); the National Planning Policy Framework (March 2012 and revised July 2018 and February 2019) and Planning Practice Guidance (PPG) on Planning Obligations set out the Government's policy on planning obligations.

In addition to Section 106 planning obligations associated with individual planning obligations, national policy also provides scope for a Community Infrastructure Levy (CIL). CIL is a charge which local authorities can place on developers to help fund infrastructure needed to support new development in their areas. Unlike Section 106 Planning Obligations, CIL receipts are not earmarked for particular infrastructure. Instead, CIL monies are pooled into one fund which can be used for infrastructure, as set out in what is termed a Regulation 123 List. The 123 List set out a list of infrastructure needed to support new development across the administrative area. Planning obligations may not currently be used to fund an item that is locally intended to be funded by CIL. Colchester has periodically researched the deliverability of adopting a CIL charging schedule but like most other Councils in Essex has not proceeded to adoption. This will be kept under review. This guidance accordingly focuses on planning obligations only.

### **National Planning Policy Framework (NPPF)**

The NPPF 2019 requires that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. They must only be sought where they meet all of the following statutory 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.

Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable (See paras 54-57 2019 NPPF).

Given that the 2019 NPPF requires that its policies are material considerations for planning applications from the day of its publication, its guidance informs the SPD's approach to how planning obligations are treated in the development management process.

## **Colchester Approach to Planning Obligations**

Colchester assesses requirements for planning obligations in line with its evidence base on infrastructure requirements and agreed processes for setting contributions through the planning application process. These processes are intended to ensure that, in line with national policy, all planning obligations meet the tests of being necessary; directly related to the development; and fairly and reasonably related in scale and kind. This means that all planning obligations will be justified based on the particular circumstances of each case and will be required to mitigate and/or address specific infrastructure needs and impacts arising from a development.

### **Local Plan Policy**

Government policy is clear that an up-to-date Local Plan ensures that developers have greater certainty over where development can take place, what type of development is appropriate and what policy requirements will be expected of them. This allows developers to identify all the costs of development at an early stage and factor this in to the price paid for land. This level of certainty has been provided in Colchester through both the adopted Local Plan as well as the emerging Local Plan.

Current policy on planning obligations is based on the following:

#### **Adopted Core Strategy (2008, Focused Review 2014)**

##### **Policy SD2 Delivering Facilities and Infrastructure**

*The Borough Council will work with partners to ensure that facilities and infrastructure are provided to support sustainable communities at both the local and strategic level.*

*The Council will seek to ensure new development makes a reasonable contribution to the provision of related facilities and infrastructure through either planning obligations, or if adopted, a Community Infrastructure Levy. The viability of developments will be considered when determining the extent and priority of development contributions.*

##### **Policy SD3 Community Facilities**

*The Borough Council will work with partners to deliver strategic and local community facilities.*

**Table 6d – Key Facilities and Infrastructure** – provides a list of projects, categorised as either ‘necessary’ or of ‘local and wider benefit’ to be delivered for Growth Areas specified in the plan.

### **Existing Guidance**

The Council has adopted Supplementary Planning Guidance for several areas related to the provision of planning obligations. This document updates guidance contained in the following SPDs:

Community Facilities – adopted 2013



Open Space, Sport and Recreation Facilities (2006, charging schedule update 2017)

Affordable Housing (adopted 2011, updated SPD prepared alongside this document)

The following additional Council guidance documents remain relevant:

[Cycling Delivery Strategy SPD \(adopted 2012\)](#)

[Planning for Broadband \(adopted as guidance 2016\)](#)

## **Development Policies (2010, Focused Review 2014)**

### **Policy DP3 Planning Obligations and the Community Infrastructure Levy**

*The Council may choose to implement a Community Infrastructure Levy to help fund necessary local and strategic infrastructure. The Council will continue to seek planning obligations through Section 106 agreements with details set out in Supplementary Planning Documents.*

### **Site Allocations (2010)**

The Site Allocations document identifies key infrastructure requirements for allocations.

### **Emerging Local Plan (submitted for Examination October 2017)**

The Emerging Local Plan continues requirements to ensure new development supports delivery of required infrastructure and carries forward the approach in the adopted Local Plan.

### **Section 1 Policy SP5 Infrastructure and Connectivity**

*Development must be supported by provision of infrastructure, services and facilities that are identified to serve the needs arising from new development.*

### **Section 2 Policy SG7 Infrastructure Delivery and Impact Mitigation**

*All new development should be supported by, and have good access to, all necessary infrastructure. Where a development proposal requires additional infrastructure capacity, to be deemed acceptable, mitigation measures must be agreed with the Local Planning Authority and the appropriate infrastructure provider. Such measures may include (not exclusively):*

- (i) Financial contributions towards new or expanded facilities and the maintenance thereof;*
- (ii) On-site provision (which may include building works):*
- (iii) Off-site capacity improvement works; and/or*
- (iv) The provision of land.*

*Developers will be expected to contribute towards the delivery of relevant infrastructure. They will either make direct provision or will contribute towards the provision of local and strategic infrastructure required by the development either alone or cumulatively with other developments.*

*Small sites can have a cumulative effect on infrastructure and proportional contributions will be sought from all developments where this is demonstrated to be the case. Developers and land owners must work positively with the Local Planning Authority, neighbouring authorities and other infrastructure providers throughout the planning process to ensure that the cumulative impact of development is considered and then mitigated, at the appropriate time, in line with published policies and guidance.*

*Exceptions to this policy will only be considered whereby:*

- (i) It is proven that the benefit of the development proceeding without full mitigation outweighs the collective harm;*
- (ii) A fully transparent open book viability assessment has proven that full mitigation cannot be afforded, allowing only for the minimum level of developer profit and land owner receipt necessary for the development to proceed;*
- (iii) Full and thorough investigation has been undertaken to find innovative solutions to issues and all possible steps have been taken to minimise the residual level of unmitigated impacts; and*
- (iv) Obligations are entered into by the developer that provide for appropriate additional mitigation in the event that viability improves prior to completion of the development.*

*The site policies in the emerging Local Plan set out the amount and type of development provided within each site allocation. They also set out what specific supporting infrastructure and other requirements are needed for each site. Policy PP1 provides generic requirements for infrastructure and mitigation. (policies attached as appendices).*

## **Evidence Base**

The Council maintains an up-to-date evidence base on infrastructure requirements in the Borough, reflecting the need to support Local Plan work.

## **Infrastructure Delivery Plan**

The Infrastructure Delivery Plan (IDP) (May 2017) provides the basis to determine general requirements for a wide range of infrastructure. The IDP shows what infrastructure is required; how it will be provided; who will provide it; how it will be funded; and when it could be provided for the following areas:

- Schools and other educational facilities
- Health and social wellbeing

- Utilities
- Transport, including pedestrian facilities
- Flood defences
- Managing the impact of unstable land
- Emergency services
- Waste
- Social and community (including libraries, allotments and community halls)
- Leisure and recreational facilities (including children's play, youth and sports facilities)
- Open space/green infrastructure

In most cases, information contained in the IDP is based on and supplemented by more detailed supporting work which is referenced in the document and available on the Council's Local Plan evidence base website. Other departments within the Council also maintain their own evidence which is used to inform requests for contributions.

### **Design Review Panel**

The Council has a variety of internal specialists who will provide comments on planning applications regarding urban design, landscape, arboriculture, archaeology, listed buildings and heritage. For large scale developments, it may be appropriate for a Design Review Panel to be formed in order to ensure high standards of design within the Borough to ensure the highest possible quality of development. In this instance, the Council will form a Panel of independent and impartial individuals. This could be drawn from the Design Council who will assess the design quality of a proposal, or alternatively through the Essex Quality Design Review Panel. Design review can be at the pre application early design stages or through the master planning process. The cost will be borne by the site promoter/developer.

This can help to ensure planning obligations are met within the development and enables the land to be used most efficiently.

More information can be found on the [Design Council](#) and [ECC Design Review Panel](#) websites.

### **Obligation Types**

The following sections of this document set out the obligation types which may be required as part of any Planning Obligation Agreement. Each section sets out the policy background to requiring such obligations, the relevant points at which such a contribution may be required, when the obligation is expected to be provided, any exceptions and any other relevant information. For the following topics the general information is supplemented by a further detailed guidance note or SPD:

- Housing Issues, including affordable housing, self and custom-build, rural exception sites, and specialist residential

- Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS)
- Green Infrastructure, including Colchester Orbital

However, it should be noted the above list is not exhaustive, and other topics may be added as required.

Essex County Council's (ECC) Developer's Guide to Infrastructure Contributions (2016) provides details of the impacts that development may have on ECC services and infrastructure, and guidance to developers regarding how Section 106 agreements and CIL may be used to secure works, finance and/or land to mitigate impacts. This should be read alongside this document. This is available on the [ECC website](#).

### **Process for identifying and agreeing planning obligations associated with new development proposals**

The Council's Local Plan contains high level information about what planning obligations a developer can expect to consider when thinking about purchasing land or working up a scheme for development. The LPAs Development Management Team encourages all applicants to contact it in the early stages of development proposals for pre-application advice. At this stage, applicants will be made aware of policies and potential requirements for planning obligations which could be relevant to their particular proposal. Further information regarding the Councils pre-application process can be found [online](#).

Consideration of appropriate planning obligations will involve an assessment by the Council of the potential impact of a proposal on the infrastructure and impact issues highlighted above. Both local and strategic projects will be addressed, with the proviso that contributions to any strategic project will need to provide essential mitigation for the impact of the proposed development in order for the scheme to be acceptable.

The Council's Development Team meets regularly to provide a co-ordinated approach to planning obligations for larger projects involving assessment and identification of key projects in the context of local and national policy.

The evidence-based package of proposed planning obligations form the basis for negotiating an agreed approach with the applicant.

## **Housing**

### **Policy Background**

The NPPF states that Local Planning Authorities (LPAs) should deliver a wide range of high quality homes and create sustainable, inclusive and mixed communities. LPAs are required to plan for a mix of housing to meet the needs of different groups in the community, including older people, people with disabilities and people wishing to build their own homes (See paragraphs 61 –64 of the NPPF).

### **Adopted Local Plan**

Core Strategy Policy H3, Housing Diversity, provides that housing development will need to contribute to the provision of affordable housing and homes that are suitable to the needs of older persons, persons with disabilities and those with special needs. Policy H4 provides guidance on affordable housing, including a 20% affordable housing requirement for new development on sites of 10 or more dwellings within Colchester Town, Stanway, Tiptree, Wivenhoe and West Mersea; and developments of 5 or more dwellings in other villages.

### **Emerging Local Plan**

Policy DM 10 Housing Diversity provides that the LPA will seek to secure a range of housing types and tenures on developments and should provide for the needs of particular groups including older people, specialist housing, self-build/custom build, gypsies and travellers, students, and hospice.

Policy DM8 provides guidance on affordable housing, including a 30% affordable housing requirement on sites of more than 10 dwellings in urban areas and above 5 units in designated rural areas; which reflects updated Strategic Housing Market Assessment evidence and evidence on the overall quantum of housing requirements contained in the Objectively Assessed Housing Need Study.

### **Guidance on Housing**

The Council has prepared a SPD on Affordable Housing which contains more detailed guidance. Planning obligations will be used to secure the following elements related to the provision of affordable housing:

- the number of units;
- the type of units;
- the tenure of units;
- the location of units;
- commuted sums in lieu of provision where appropriate.

The definition of affordable housing that the Council uses will reflect the most up-to-date definition contained in national guidance.

The Affordable Housing SPD should be reviewed when considering the planning obligation requirement in the first instance, however some key points are highlighted below:

**Calculation of contribution:** The affordable housing contribution percentage will be confirmed at the time an application is submitted. Regard to the Adopted and Emerging Local Plan will be required until such a time as the Emerging Local Plan is adopted. Sites allocated in the emerging Local plan will be expected to provide 30% affordable housing in line with emerging policy in the same plan.

**Location of affordable housing:** Affordable housing is expected to be provided in-kind and on-site. Financial contribution in lieu of on-site provision of broadly equivalent value will only be considered in exceptional cases, once it has been demonstrated that off site provision is not possible.

**Mix of Affordable Housing:** To ensure affordable provision is weighted to make a proportionate contribution to the assessed need, the Council will expect the affordable housing mix to be no less than 80% market rent and no more than 20% other routes to home ownership (as defined in the NPPF).

The Council has also prepared a SPD on Self and Custom Build and Specialist Housing which contains detailed guidance on those forms of housing.

## **Physical Infrastructure – Highways, Access and Sustainable Transport**

### **Policy Background**

The NPPF requires the planning system to promote sustainable transport. (See Section 9 of the NPPF). Transport issues are to be considered from the earliest stages of plan-making and development proposals so that the potential impact of development on transport networks can be addressed and sustainable transport options are delivered.

### **Adopted Local Plan**

Policy TA1 of the adopted Core Strategy provides that the Council will work with partners to improve accessibility and change travel behaviour through means such as travel plans, improvements to gateways and by managing travel demand.

Policy TA2 Walking and Cycling promotes walking and cycling and provides that development shall contribute towards these connections and quality cycle parking where appropriate.

Policy TA3 Public Transport promotes improving public transport and increasing modal shift towards sustainable modes.

Policy TA4 Roads and Traffic requires developers to contribute towards transport infrastructure improvements to support the development itself, and to enhance the broader network to mitigate impacts on existing communities.

### **Emerging Local Plan**

The Emerging Local Plan carries forward the focus on sustainable transport. The strategic Section 1 policy SP5 highlights the requirement for transport infrastructure to support new strategic and local developments and to improve connectivity by promoting more sustainable travel patterns and choices.

Policy PP1 Generic Infrastructure and Mitigation Requirements includes requirements for mitigation for area-wide transport issues and safe pedestrian access. Policies for site allocations include site specific transport infrastructure requirements as relevant.

The objectives of the Core Strategy policies noted above are restated in Policy DM20 Promoting Sustainable Transport and Changing Travel Behaviour which provides that the Council will work with developers and other partners to increase modal shift towards sustainable modes by improving accessibility of development through the promotion of walking and cycling, further improving public transit, enhancing personal safety, and accommodating necessary car travel.

Policy DM21 Sustainable Access to Development requires development to provide safe and secure access and to enhance wider accessibility for sustainable modes of transport. Developers can be asked to produce Travel Plans in accordance with Essex County Council guidance for non-residential development generating significant amounts of movement, all new residential developments and schools; and where

appropriate for non-residential developments, become members of the Colchester Travel Plan Club.

### **Possible S106 Obligations**

Essex County Council (ECC) is the Highway Authority for the Colchester Borough area. Colchester Borough Council consults Essex County Council on planning proposals that affect the highway network. Essex County Council provides advice on the scope of obligations for highway infrastructure works where it is considered that there is a need to mitigate the impact of new development(s) on the highway network. Developers should refer to [The Essex County Council Developers' Guide to Infrastructure Contributions](#) for detailed information further to the process described below. In general, the delivery of highway improvements is secured by agreement under s.278 of the Highways Act 1980. These agreements with ECC Highways require the developer to carry out works at their expense as opposed to securing a financial contribution towards works. Colchester Borough Council also provide additional advice on sustainable access and connectivity linked to safe and alternative modes of travel.

All development proposals will be assessed on their own merits in relation to the impact they have upon the highway network. There are no types of development which are exempt from such highway infrastructure obligations, but each will be considered having regard to the network capacity, trip generation and safety. Development proposals need to mitigate their own impact through the provision of appropriate mitigation measures. These may include:

- Contributions to Colchester Travel Club
- Contributions to improving Bus services and infrastructure
- Contributions to Car Clubs/Car Sharing schemes
- Cycling and footway links/improvements/crossing
- Cycle/footbridges
- Electric Vehicle Charging Infrastructure
- Link roads
- New and/or improved junctions
- New roads
- Pedestrian crossings
- Raised kerbs
- Signage
- Traffic Regulation Orders e.g. to impose waiting restrictions
- Traffic lights

Please refer to the Council's [Cycling Delivery Strategy SPD](#) for further information on cycling-related planning contributions.



### **Timing/Trigger for payment or provision of works**

The developer is required to implement and secure the agreed highway infrastructure works in such a way that the works can be adopted by the Highway Authority once it has been agreed that they are in an adopted standard. In general, the developer is obliged to submit suitable detailed engineering drawings to the Highways Authority prior to any commencement of the development on site, for the Highway Authority's approval.

Before occupation of a development, the developer is usually obliged to implement the approved scheme and the Highway Authority will issue a certificate of practical completion. The developer will still have responsibility for maintaining the highway works for a minimum of 12 months and to carry out any remedial works required following the issue of the certificate of practical completion. After the 12-month period, or when the remedial works have been satisfactorily completed, a certificate of adoption will be issued, and the works adopted by the Highway Authority.

Developers will be required to pay fees to cover ECC's costs incurred in approving the detailed engineering drawings, and for inspecting the highway works and issuing the relevant certificate. Details of these fees are to be included in a Section 106 Agreement, or where appropriate a Section 278 Agreement as above. The full details of the processes will be set out in any relevant Section 106 or Section 278 Agreements.

### **Maintenance Payments**

Where the infrastructure works include items with the possibility of a major maintenance requirement e.g. traffic signals or where the works are beyond the usual ECC specification, the Highway Authority will require a commuted sum from the developer to maintain that infrastructure for 15 years after adoption. The borough council may also seek maintenance payments for items of infrastructure for which it is responsible.

### **Further Information**

Where a developer intends to carry out works to/in the public highway they will be required to provide third party insurance.

Developers will be required to enter into a bond for an amount specified by the Highway Authority to ensure that the highways works are completed to the Authority's satisfaction, should the developer default on any of its obligations in relate to the works. This bond will vary dependent on the works required. The bond can be a formal bond with an approved third-party surety, or it can be a deposit in cash to Essex County Council as the Highway Authority.

Land compensation bonds will be required where there is a possibility of existing properties being affected by new highway development, e.g. by increased noise resulting from new highway development, including the possibility of a reduction in price.

## **Flood Protection and Water Management**

### **Policy Background**

The NPPF deals with the challenge of climate change, flooding and coastal change (See Section 14 of the NPPF). Planning authorities should adopt proactive strategies to mitigate and adapt to climate change, taking full account of flood risk, coastal change and water supply and demand consideration.

### **Adopted Local Plan**

Development Policy DP20 Flood Risk and Management of Surface Water Drainage provides that development will only be supported where it can be demonstrated that it meets flood defence requirements and minimises flood risk both within the development boundary and off site in Flood Zones 2 and 3. All development proposals shall incorporate measure for the conservation and sustainable use of water including Sustainable Urban Drainage (SuDS) for managing surface water runoff.

### **Emerging Local Plan**

Emerging Local Plan Policy DM23 Flood Risk and Water Management carries forward the requirements to address flood risk contained in the adopted Local Plan. Development proposals will be required to deliver or contribute to the delivery of flood defence/protection and/or flood mitigation measures.

Policy PP1 Generic Infrastructure and Mitigation Requirements includes requirements for wastewater treatment and SuDS.

In considering proposals for development the Council will follow a sequential risk-based approach in line with national guidance, including the application of the 'exception test' which should consider flood risk from all sources when considering whether development in that location is appropriate.

### **Possible S106 Obligations**

Areas of flood risk include risk from all sources of flooding such as rivers and the sea, directly from rainfall onto the ground surface and rising groundwater, overwhelmed sewers and drainage systems, and from other water bodies.

As a coastal and estuarine area, in addition to storm rainfall issues, Colchester is vulnerable to flood risk from the North Sea and the Colne and Roman Rivers including tidal surge.

As the Lead Local Flood Authority, Essex County Council is responsible for the production of a Surface Water Management Plan (SWMP) for the Colchester area. There may be instances where individual sites come forward for development, which in turn raises issues of flood risk or water management, particularly if development is proposed within a Critical Drainage Area as identified in the SWMP. If these cannot be addressed on site or by way of condition, it is anticipated that a Section 106 Agreement

may be needed. These may need to alleviate any/all forms of flood risk and such techniques could include:

- Flood alleviation controls - new or enhanced provision such as flood plain, levees, reservoirs.
- Bio-retention areas
- Wetlands
- Channels
- Detention basins
- Ponds
- Infiltration/filtration
- Green Roofs
- Permeable paving

Further information regarding SWMP can be found on the [Essex County Council website](#).

### **Timing/Trigger for payment or provision of works**

There is no general rule for the timing of payments as each scheme will be judged on a case by case basis. Should off-site works be required, it is expected these would be in place prior to the first occupation or completion of the development.

### **Maintenance Payments**

Where the flood protection and water management infrastructure works include items with the possibility of major maintenance requirements or where works are beyond the usual specification, the Council will require a commuted sum from the developer to maintain that infrastructure for 15 years after adoption.

## **Sport, Recreation and Leisure**

### **Policy Background**

The NPPF states that the planning system has an important role in facilitating active environments, social interaction and creating healthy, inclusive communities. Access to high quality open space and opportunities to increase physical activity, sport and recreation can make an important contribution to the health and well-being of communities (see Section 8 of the NPPF).

The Council recognises the important role community facilities such as social facilities, sports and leisure, parks and green spaces have in well-being for residents of existing and new communities.

### **Adopted Local Plan**

Core Strategy Policy PR1 Open Space requires not only the protection and enhancement of the existing network of green links and open spaces but also sports facilities, and to secure additional areas where deficiencies are identified.

Development Policy DP15 (Retention of Open Space and Indoor Sports Facilities) protects existing open space and indoor sports facilities and provides that if justified, alternative and improved provision can be created elsewhere in a location well related to the functional requirements of the relocated use.

Development Policy DP16 (Private Amenity Space and Open Space Provision for New Residential Development) set standards for the provision of private amenity space and new public areas of accessible strategic or local open space. Precise levels of provision depend on the location of the proposal and the nature of open space needs in the area, but 10% of the gross site area provides a general rule of thumb. Commuted sums are only likely to be acceptable for certain developments, including small sites, dwellings for the elderly, or town centre locations.

### **Emerging Local Plan**

Policy ENV3 The Colchester Green Infrastructure Strategy identifies a network of enhanced green links and spaces in the borough, including a new multi user route, the Colchester Orbital, around urban Colchester. The Local Planning Authority will seek opportunities from future developments, where appropriate, to improve the Green Infrastructure network including connectivity between the Colchester Orbital route, new developments and the wider countryside.

Policy DM4 provides that new residential development will be required to contribute to the provision or enhancement of sport or leisure facilities where a need has been identified and outlines the criteria that must be satisfied where development includes change of use.

Policy DM17 provides the Council's default position to protect and enhance the existing network of green links and open spaces and outlines a number of criteria that must be satisfied where development includes change of use of any existing or proposed public or private open space.

Policy DM18 Provision of Public Open Space and DM19 Private Amenity Space carry forward the Council requirements for private and public amenity space.

### **Possible S106 Obligations**

Sufficient leisure and recreation facilities should be provided or existing facilities enhanced to meet the needs of a development and should be secured in perpetuity. Colchester Borough Council has identified its current needs in the Indoor Sports Facilities Strategy and Action Plan and Playing Pitch Strategy and Action Plan 2015-2037. The future maintenance and management of such provision will also need to be secured. Further detailed information on planning obligations for sport, leisure and recreation is contained in **Appendix 2**.

### **The Evidence**

Playing Pitch and Indoor Sports Facilities studies were completed in 2015 by KKG for the Council in line with the NPPF and Sport England guidance. These studies informed Table 11.1 of the Council's Infrastructure Delivery Plan which shows the needs for play and youth facilities arising from future growth by location for the plan period. Figures currently reflect 2011 Census mean occupancy rates of **2.3** people per dwelling.

Table 11.3 of the Council's Infrastructure Delivery Plan lists grass sports pitch requirements. This information has been included in Appendix 1 of this document and will underpin Council requests for planning contributions arising from new development. The requirements and costs for these facilities will be updated as appropriate.

Indoor sports hall requirements are outlined in Table 11.5 of the Council's Infrastructure Delivery Plan. There may be other needs for health and fitness stations (e.g. gymnasias) and other specialist provision e.g. squash, indoor bowls, indoor tennis etc., which are usually provided by the private sector and have not been included within the IDP assessment.

A need for a 25m 6 lane swimming pool is outlined in paragraph 11.58 of the Council's Infrastructure Delivery Plan following Sports England's Facilities Planning Model. Funding provision for this facility is currently unknown and it is assumed this would be funded solely through developer contributions.

Where a proportion of on-site provision is made, a pro-rata reduction will be made in calculating the level of the off-site contribution.

For non-sporting activities and facilities see the Community Facilities section in this document and Appendix 3.

Category	Facility	Sources of detailed information in addition to Appendix 2
Indoor and Outdoor Playing Pitches	Strategic and local pitches, both grass and artificial, including rugby, football, cricket, baseball, hockey, netball and tennis	See CBC Indoor Sports Facilities Strategy and Action Plan CBC Playing Pitch Strategy and Action Plan 2015-2037.
Indoor Sports Facilities	Sport including: team sports, training and conditioning, gymnastics, group exercise classes, etc.	Sport England guidance

For allotments, children's play, youth facilities, informal local space, amenity greens, green infrastructure including the Colchester Orbital and green links, country parks, natural and semi-natural greenspace, parks and recreation grounds see the Green Infrastructure and Open Spaces section of this document and Appendix 2.

Note: the calculation of planning obligations within the above categories also need to be considered in terms of whether they serve local or strategic catchment areas.

New facilities should seek to offer flexible uses and combine facilities and services which might have historically been provided on a separate basis. For instance MUGAs provide scope for a range of playing pitches and outdoor activities. The potential for mixed use of new facilities could mean that recreation and leisure facilities could be combined with other areas of planning gain covered within this guidance, including health, education and community facilities.

### **Maintenance Payments**

An appropriate maintenance contribution will be required for all adopted open space and associated facilities such as play equipment provided on-site. Where provision is provided offsite, a maintenance contribution may be required, this will be dependent upon the type of provision and facilities. This will be calculated according to the landscape layout and quantified elements to be provided by the developer. Should a developer wish to self-manage such areas the Council would consider this subject to public access and agreeing a maintenance specification and inspection regime, secured through a legal agreement.

### **Timing/trigger for payment or provision of works**

In the case of a large-scale development, it may be that the payments or provision would be phased to meet the proportional impact of each phase. Trigger points for payments or provision will be included in the legal agreement, as will the period in which any contribution will have to be spent.

## **Green Infrastructure & Open Space**

Green infrastructure is defined in the NPPF as a network of multifunctional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities.

Paragraph 170 and 171 of the 2019 NPPF outline that policies and decisions should contribute to and enhance the natural and local environment including by providing net gains for biodiversity, creating ecological networks and taking a strategic approach to green infrastructure.. Paragraph 185 further seeks the conservation of the historic environment. Paragraph 91 and 150 identify the role that green infrastructure plays in supporting healthy lifestyles and climate change adaptation.

Paragraph 96 identifies the importance of a network of high-quality open spaces as well as opportunities for sport and physical activity for health and well-being. Paragraph 98 details how public rights of way and access should be protected and enhanced.

### **Policy Background**

#### **Adopted Local Plan**

Core Strategy Policy PR1 outlines the Council's aim to provide a network of strategic green links between the rural hinterland, river corridors and key green spaces within Colchester Town. PR1 requires the protection and enhancement of the existing network of green links, open spaces and sports facilities and to secure additional areas where deficiencies are identified.

Core Strategy Policy ENV1 requires the protection and enhancement of a network of strategic green links between the rural hinterland, river corridors and key green spaces and areas of accessible open space that contribute to green infrastructure across the Borough.

#### **Emerging Local Plan**

Policy ENV3 seeks to protect, enhance and deliver a comprehensive green infrastructure network comprising strategic green links between the rural hinterland, urban Colchester, river corridors and open space across the Borough.

The Council are working with stakeholders to support the delivery of a new multi user route, the Colchester Orbital, around urban Colchester.

Policy ENV3 states the LPA will seek opportunities from future developments to improve connectivity between the Colchester Orbital, new developments and the wider countryside. The LPA will seek contributions or require work to be undertaken as part of new developments to create new paths where gaps are evidence in the existing green infrastructure network or Orbital or to enhance the quality of the existing route.

#### **Possible S106 Obligations**

Strategic and local green spaces, including urban parks, semi-natural greenspace and children's play are important for people of all ages and backgrounds, particularly for those from lower income areas. They contribute to sense of place, quality of life and the economic energy of our towns and countryside.

A wide range of local and strategic green space needs and opportunities has been identified through the evidence base. The future management and maintenance of such provision will also need to be secured through obligations.

Further detailed information on planning obligations for Green Infrastructure, Open space and Children's Play is contained in **Appendix 2**.

## Evidence Base

Colchester Borough Council has identified its current needs for green infrastructure and open space in the Green Infrastructure Strategy 2011 and the Open Space, Sport and Recreation Study 2007. The latter study identifies specific quantity, accessibility and quality standards for new development that needs to be met for open space and children's play provision.

In line with this document, the Council will a Green Infrastructure SPD which sets out the requirements for green infrastructure, including the Green Orbital surrounding the urban area of Colchester.

Where a proportion of on-site provision is made, a pro-rata reduction will be made in calculating the level of the off-site contribution.

Category	Facility	Sources of detailed information in addition to Appendix 2
Local Open Space	Allotments, Children's play and youth facilities, Informal local open space or amenity green	See Green Infrastructure SPD See CBC Open Space, Sport and Recreation Study See Fields in Trust guidance for designated play areas
	Cycle and footway links and improvements	See Cycle Delivery SPD
Strategic Open Space	Green infrastructure, including Colchester Orbital and other links, country parks, natural/semi-natural green space, parks and recreation grounds	See Green Infrastructure SPD See CBC Open Space, Sport and Recreation Study

Note: the calculation of planning obligations within the above categories also need to be considered in terms of whether they serve local or strategic catchment areas. Local Open Space should be provided in accordance with the requirements of specific site policies where appropriate, alongside requirements in the evidence base referenced above.



Strategic Open Space should be provided in accordance with the requirements of specific site policies of the emerging Local Plan and Appendix 1, Colchester Green Orbital, alongside requirements in the evidence base referenced above..

Proportionate contributions to strategic open space and green infrastructure could take the form, as appropriate, of enhancement to the strategic infrastructure and/or connectivity improvements to access from the local site area to the strategic location

New facilities should seek to offer flexible uses and combine facilities and services which might have historically been provided on a separate basis. MUGAs provide scope for a range of playing pitches and outdoor activities. The potential for mixed use of new facilities could mean that recreation and leisure facilities could be combined with other areas of planning gain covered within this guidance, including health, education and community facilities.

### **Timing/Trigger for payment or provision of works**

In the case of a large-scale development, it may be that the payments or provision would be phased to meet the proportional impact of each phase. Trigger points for payments or provision will be included in the legal agreement, as will the period in which any contribution will have to be spent.

### **Maintenance payments**

An appropriate maintenance contribution will be required for all adopted open space and associated facilities such as play and outdoor gym equipment provided on-site. Where provision is provided offsite, a maintenance contribution may be required, this will be dependent upon the type of provision and facilities. This will be calculated according to the landscape layout and quantified elements to be provided by the developer. Should a developer wish to self-manage such areas the Council would consider this subject to public access and agreeing a management plan including maintenance specification and inspection regime, secured through a legal agreement.

## **Natural Environment**

### **Policy Background**

The NPPF seeks to conserve and enhance the natural environment. It states that the planning system should contribute to and enhance the natural and local environment. The planning system is intended to minimise impacts on biodiversity and provide net gains in biodiversity where possible, thereby contributing to the Government's commitment to halt the overall decline in biodiversity. Remediating and mitigating despoiled, degraded, contaminated and unstable land are other ways of enhancing the environment (See Paragraph 170 of the 2019 NPPF). Paragraphs 175 and 176 of the 2019 NPPF, states that where significant harm to the environment resulting from a development proposal cannot be avoided, adequately mitigated, or, as a last resort, compensated for, planning permission should be refused.

The Essex coastline stretches over 350 miles, extending from the Thames Estuary to the Port of Harwich and to the Store Estuary, with majority of the coast designated under the UK Conservation of Habitats and Species Regulations 2017 as part of the European Natura 2000 network. To understand the recreational impacts affecting different areas along the Essex coastline as a result of increased visitor numbers from new residential developments; Natural England, the Statutory Authority responsible for the conservation of habitats and species, identified the need for a strategic approach.

### **Adopted Local Plan**

Core Strategy Policy ENV1 Environment provides that the council will conserve and enhance Colchester's natural and historic environment, countryside and coastline. It will safeguard the Borough's biodiversity, geology, history and archaeology through the protection and enhancement of designated sites, with more detailed requirements on biodiversity and environmental requirements contained in Policy DP21 Nature Conservation and Protected Lanes, Policy DP22 Dedham Vale Area of Outstanding Natural Beauty and Policy DP23 Coastal Areas.

Policy UR2 Built Design and Character includes a commitment to enhancing Colchester's unique historic character, and DP14 Historic Environment provides detail on measures to protect and enhance historic assets.

### **Emerging Local Plan**

The emerging Local Plan ENV1 policy carries forward the wording of the adopted ENV1 policy on conservation and enhancement of Colchester's natural and historic environment, countryside and coastline.

More detailed requirements are carried forward in policies ENV2 Coastal Areas, ENV4 Dedham Vale Area of Outstanding Natural Beauty, ENV5, Pollution and Contaminated Land, CC1, Climate Change and PP1 Generic Infrastructure and Mitigation Requirements.

## **Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS)**

Following Natural England's requirement for a strategic approach to protect the internationally designated Essex Coast from the effects of increased recreational disturbance as a result of population growth throughout Essex, eleven Essex LPAs have been working together to prepare a [RAMS Strategy](#) and [SPD](#). These documents outline the measures to avoid and mitigate likely significant effects to the Essex coast and ensure compliance with the Habitats and Species Regulations 2017.

### **Possible S106 Obligations**

Any environmental mitigation measure will be considered on a site by site basis. Many issues will be localised and, where small scale, will be dealt with by way of planning conditions. There may be circumstances where schemes require environmental mitigation measures to be included within a Section 106 Agreement.

All residential development in Colchester Borough is likely to significantly affect Habitats sites, through increased levels of recreational disturbance, in-combination with other plans or programmes. All residential development proposals will be required to avoid/mitigate the impacts of recreational disturbance on Habitats sites. The RAMs set a tariff of £122.30 per dwelling. This tariff will apply to all residential proposals, even proposals for one dwelling. This is because the whole of the Colchester borough is within the Zone of Influence and the RAMS seeks to avoid and mitigate the in-combination effects from all new dwellings.

For larger strategic residential sites, it will be necessary for the tariff payment as outlined above to be provided in addition to bespoke mitigation measures. Bespoke measures are not a replacement of the tariff payment.

Further detail on this is available in a separate Supplementary Planning Document. The background and evidence is included in the [RAMs Strategy Document](#).

Some cases may require payments, other cases may require the details of the mitigation measures, to be included in an agreement so that a robust legal mechanism is in place to ensure appropriate mitigation is carried out. Each site will be considered on its own merits. Environmental matters which may be included in a Section 106 Agreement include, but are not limited to:

- Major contamination issues
- Biodiversity offsetting
- Ecological mitigation/remediation
- Climate change mitigation
- Environmental enhancements
- Mitigating the likely significant effects, alone, from development on Habitats sites

- Biodiversity net gain
- District licensing for great crested newts

The Government's Spring Statement (March 2019) confirmed that the Environment Bill will mandate biodiversity net gain for all new developments in England being required to deliver an overall increase in biodiversity. Currently, the Environment Bill has not been published, this should be reviewed for more specific details in the first instance.

### **Timing/Trigger for payment or provision of works**

The cost of such mitigation measures will normally be covered in full by the developer. Any contamination matters will usually be required to be dealt with fully prior to commencement of any development or in accordance with an agreed phasing strategy.

Environmental mitigation will largely be required to be carried out prior to the commencement of the development, with some further works being complete prior to first occupation of the development. Some further environmental issues may require ongoing mitigation. Where the development cannot fully mitigate its impact on environmental matters, compensatory measures may be sought. This will only occur when all other avenues of mitigation have been exhausted. The appropriate level of contribution will be considered on a case by case basis.

Further information on Biodiversity Offsetting can be found at:

<https://www.gov.uk/biodiversity-offsetting>

This covers all aspects of Biodiversity Offsetting and offers links to useful guidance documents produced by Natural England and DEFRA. These include a guide for developers and information on pilot schemes taking place.

## **Historic Environment**

### **Policy Background**

National policy seeks to conserve and enhance the historic environment (see paragraph 192 of the 2019 NPPF). Paragraph 195 of the 2019 NPPF, states that where proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits or outweigh that harm or loss.

### **Adopted Local Plan**

Policy UR2 Built Design and Character states that the council is committed to enhancing Colchester's unique historic character. It highlights areas and buildings that will be required to be preserved and protected and requires that archaeological assessments will be required as appropriate.

Policy DP14 provides more detail on the protection of heritage assets and makes provision for Conservation Areas, locally listed buildings, preserving the wider setting of heritage assets and identifying and protected sites of archaeological importance. Heritage Statement and/or Archaeological Evaluations will be required for proposal affect the setting of heritage assets and/or known or possible archaeological sites.

### **Emerging Local Plan**

Policy DM16 carries forward the requirements of UR2 and DP14 in the adopted Local Plan to protect and enhance heritage assets and distinguishes between different magnitudes of harm identified reflecting the 2019 NPPF (para.195-196). Policy PP1 and the site allocation policies include requirements in respect of archaeological investigation and action as appropriate.

### **Possible Planning Obligations**

The majority of heritage asset issues will be dealt with through conditions, given that the historic character of the development will be fundamental to how its further development is managed. There are occasional circumstances however, where a legal agreement may be required to manage complex financial and/or phasing arrangements, as in the repair of a derelict building. More often legal agreements will be required to secure archaeological works and the display of significant finds. Please see the Council's guide to [Managing Archaeology in Development](#) for further information on the requirements for archaeological investigation, recording and management

## **Community Infrastructure**

### **General Introduction**

National and local policy increasingly recognises the links between well-being and the provision of integrated services that promote cross-over benefits from one area to another. While the sections below separate out education from health and community facilities, where appropriate, community infrastructure contributions will be consolidated to allow co-location of services in multi-purpose buildings to encourage efficient use of community spaces; creation of community gathering places; and synergies between different uses.

### **Early Years, Childcare and Education**

#### **Policy Background**

The commitment to ensuring a sufficient choice of school places is found in Paragraph 94 of the 2019 NPPF.

#### **Adopted Local Plan**

Core Strategy Policy SD3 Community Facilities provides that the Council will work with partners to deliver key community facilities including educational facilities. A list of area specific educational facility requirements is found in Table 6d Key Facilities and Infrastructure.

Policy DP4 supports the provision of new community facilities. The Council will also seek to maximise the shared use of education and community facilities.

#### **Emerging Local Plan**

Section 1 Policy SP5 Infrastructure requires the provision of sufficient school places in the form of expanded or new primary and secondary schools together with early years and childcare facilities, with larger development setting aside land and/or contributing to the cost of delivering land for new schools where required.

Policy DM3 Education Provision notes the Council's positive approach to appropriate and well-designed new school educational facilities. Please refer to the [Essex Design Guide](#) for further guidance on school design.

#### **Essex County Council Requests**

The Education Act 1996 outlines local authorities with a responsibility for providing sufficient school places. Essex County Council is the local authority with such responsibility. The

All residential developments of 20 or more dwellings will be assessed to establish if a developer contribution towards additional Early Years and Childcare is necessary.

Commercial developments that will employ 50 or more people may also be expected to provide a contribution.

Contribution requests for school places will be calculated in line with the number and type of houses and flats that are being proposed that are suitable to accommodate children.

Further information can be found in the ECC Developers Guide to Infrastructure Contributions available online.

### **Possible S106 Obligations**

Strategic site on-site facilities will be required where justified by the level of growth.

The Department for Education published guidance for 'Securing developer contributions for education' in April 2019, which underlines the principles that:

- 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 existing schools in the area.

Sites of a strategic nature specified in the emerging Local Plan include:

- Policy SP8 Tendring/Colchester Borders Garden Community (E14):  
A secondary school, primary schools and early-years facilities
- Policy SP9 Colchester/Braintree Borders Garden Community (E15):  
At least one secondary school, primary schools and early-years facilities
- Policy WC2 – Stanway, land to the North of London Road:  
A new primary school with co-located early years and childcare nursery places.

It is also expected that other developments will need to make provision on site or a financial contribution.

### **Provision of works**

Details of the criteria that any new school or pre-school site must meet and requirements for the provision of land for new facilities are set out in the Essex County Council Developers' Guide to Infrastructure Contributions which is available to download from Essex County Council's website.

Where appropriate Section 106 Agreements will seek to secure a community use agreement for the public use of school sports facilities, and a separate contribution will be levied for this purpose. It should be noted that the Sport England Strategy 2016-2021 includes goals relating to schools opening up, or keeping open, their sports facilities for local community use. Sport England also offers a range of Design Guidance and advice to maximise the public benefit of community use of sport facilities on education sites.

**Timing/Trigger for payment or provision of works**

The timing for the provision of any required education facility contributions will be considered on a case by case basis, with the specific requirements being set out within any Section 106 Agreement. It is likely to be linked to phases of a development, with facilities being required either upon a certain level of units being completed, or when a certain threshold of occupation at a development is reached.



## **Community Infrastructure – Health and Social Wellbeing**

### **Policy Background**

An important element of creating sustainable communities is the provision and protection of community uses such as health, well-being and recreation. Local authorities are required to work with public health leads and health organisations to understand and take account of the health status and needs of the local population (See paragraphs 91 and 92 of the 2019 NPPF). This requirement is actively pursued in North Essex, through a range of cross-sectoral groups developing innovative approaches to the provision of coordinated services. For example, the North Essex Health and Local Authority Strategic Planning Working Group includes representation from a wide range of health providers, planners, public health, emergency services, and health sector estate management representatives and considers a range of health and planning issues, including a coordinated approach amongst all health-related services to planning obligation requests.

### **Adopted Local Plan**

Core Strategy Policy SD3 Community Facilities provides that the Council will work with partners to deliver key community facilities including health facilities. A list of area specific facility requirements is found in Core Strategy Table 6d Key Facilities and Infrastructure. Development Policy DP2 states that all development should be designed to help promote healthy lifestyles and requires Health Impact Assessments for larger developments (excess of 100 residential units or non-residential development in excess of 2500 sqm). Policy DP4 supports the provision of new community facilities.

### **Emerging Local Plan**

Section 1 Policy SP5 Infrastructure and Connectivity seeks to ensure that new development maximizes its positive contribution to the creation of healthy communities and that access to essential health and care infrastructure is provided as part of new developments. Policy DM1 carries forward the requirements found in adopted Policy DP2 for developments to promote healthy lifestyles and to provide Health Impact Assessments on larger developments (excess of 100 residential units or non-residential development in excess of 2500 sqm).

### **Possible Section 106 contributions**

The approach to section 106 contributions to health, care and wellbeing is evolving in the wake of increasing demands on health from a growing and aging population; health workforce recruitment and retention issues; incorporation of digital options; and recognition of the importance of preventive, self-care and well-being measures. More information on the evolving nature of healthcare provision is available in the Council's [Infrastructure Delivery Plan](#). Health Impact Assessments (HIAs) will highlight how

developments will positively impact on key elements of health and wellbeing and allow for the early identification of potential unintended consequences. Mitigation may be sought from a developer should a HIA identify unintended impacts and will, therefore, be site specific.

New healthcare provision may be provided through Section 106 Agreements where contributions toward it are justified by evidence from relevant providers. In light of the wider well-being agenda, health requests for Section 106 contributions will include innovative ways of delivering health services using digital technology; promotion of active lifestyle initiatives such as fitness/sports participation, and co-location of health facilities (potentially including primary, acute and emergency services) in shared use community buildings. Where a number of sites generate the need for a health facilities pooled Section 106 contributions will be required. Requests for contributions will be made using the Health and Wellbeing Statement developed by the Suffolk and North East Essex Integrated Care System (attached as Appendix 4). Social care requirements can be found in the ECC developer's contributions guide

### **Timing/Trigger for payment or provision of works**

The timing for the provision of any required healthcare facility contributions will be considered on a case by case basis, with the specific requirements being set out within any Section 106 Agreement. It is likely to be linked to phases of a development, with facilities being required either upon a certain level of units being completed, or when a certain threshold of occupation at a development is reached. The relevant health sector and local authority bodies will continue to develop whole system processes to ensure that planning and health provide opportunities for improved and integrated health and wellbeing outcomes for communities

## **Community Infrastructure – Social and Community Facilities**

### **Policy Background**

National guidance seeks to deliver social, recreational and cultural facilities and services needed by the community. (see paragraph 91 and 92 of the 2019 NPPF). It requires planning authorities to plan positively for the provision and use of shared space, community facilities and other local services to enhance the sustainability of communities and residential environments through access to essential facilities set out below.

### **Adopted Local Plan**

Core Strategy Policy SD3 Community Facilities provides that the Council will work with partners to deliver key community facilities including educational facilities. A list of area specific community facility requirements is found in Core Strategy Table 6d Key Facilities and Infrastructure. Policy DP4 supports the provision of new community facilities more generally.

### **Emerging Local Plan**

Policy DM2 provides that new development will be required to provide or contribute towards the provision of community facilities to meet the needs of new and expanded communities and mitigate impacts on existing communities, which will be secured by Section 106 or CIL contributions.

### **Possible S106 Obligations**

All new residential development is likely to generate a need for community facilities, so requests for contributions will cover all applications for additional residential development. This may be addressed through the provision of new facilities or by enhancing and expanding existing ones. Larger residential developments may be required to include land or buildings on-site to address the needs of new residents. Such facilities may include:

- Multi-use space for community groups and clubs
- Community centres or village halls
- Place of worship
- Cemeteries
- Public house
- Local shops
- Playgrounds, formal activity spaces and informal play spaces
- Libraries

The Essex County Council Developers Guide to Infrastructure Contributions March 2016, outlines where contributions may be sought for community facilities which are operated by the County Council. Further Information can be found in the [ECC Guide](#).

Other factors to consider will include the ability, or otherwise, of nearby existing facilities to serve the community and the particular needs and requirements of the local area.

As part of the Section 106 agreement a nominated partner or organisation may be required to be identified as the future operator/manager of any building or space provided as an on-site community facility for a specified period of time. This can be a Parish Council, charity, or other community group.

There are a variety of ways with which the Council identifies community facility need. These include regular consultation with key community groups in the area, community led/parish plans and audits of existing facilities.

The Council maintains a Community Facilities Audit which provides a catalogue of community facilities in each ward and information on usage of those facilities. It also includes any works needed in order to improve the space for community use. The Audit is be regularly updated with input from local community representatives including: local councillors, parish councillors, members of Neighbourhood Action Panels, local community and voluntary sector groups.

Location of the facility in relation to the development Contributions to community facilities off-site will be calculated based on identified need in the local area. **Appendix 3** provides a schedule of expected contributions per residential unit which reflects the following factors:

- Building Cost Information service (BCIS) cost estimates for community centres
- Census figures for average household size (currently 2.3 people)

The schedule will be updated as required to reflect updated cost and statistical information.

### **Timing/Trigger for payment or provision of works**

Such facilities should be provided once a proportion of a proposed development is occupied,. This will vary depending on the scale of development and will be agreed as part of the Section 106 Agreement.

## **Community Infrastructure – Public Realm**

### **Policy Background**

Section 7 of the NPPF states that the Government attaches great importance to the design of the built environment. It is important to plan positively for high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development proposals.

### **Adopted Local Plan**

Policy UR2 Build Design and Character provides that the council will promote and secure high quality and inclusive design in all developments to make better places and which enhances the built character and public realm of the area. Policy PR2 People-friendly Streets promotes improvements to streets in their function as important public spaces and states that centres will be the focus for streetscape improvements. New developments will be required to contribute towards public realm improvements.

### **Emerging Local Plan**

Policy TC1 identifies the Town Centre as the priority focus for new Town Centre development and seeks to deliver more attractive public spaces and streetscapes there by support for proposals that positively contribute towards creating an attractive, vibrant and safe Town Centre. Policy DM15 Design and Amenity requires that development proposals provide attractive, well connected and legible streets and spaces.

### **Possible S106 Obligations**

#### **General**

For developments large enough to have public space within the site, most matters will be covered by planning conditions. Each case will be considered on its individual merits.

Section 106 Agreements may require the following issues to be addressed in respect of on-site and off-site public realm improvements:

- Improvements to paving, street furniture and planting on the adopted public highway and other public space directly adjoining the site.
- Where a development site is adjacent to an open space and requires direct mitigation e.g. to link the open space into the development or replacement boundary treatment to open space.
- Adoption of the improvements and maintenance costs.
- Financial arrangement for their management.
- Access and use restrictions/assurances.

## **Town Centre**

Developments within the Town Centre boundaries, as illustrated on the Policies Map, will be expected to contribute to the Town Centre public realm projects listed in **Appendix 4**. The list will be updated as required.

This reflects the benefit that all new residents to Colchester derive from access to the facilities, activity and public realm in the Town Centre and the additional pressure they add to its access and capacity. An attractive public realm is vital for enhancing resident and visitor experiences and as town centre uses change and move away from retail and towards a more experiential offer. Additionally, public realm improvements can address ASB issues associated with run down areas of the town centre. The Better Town Centre SPD provides detailed information on the context and approach to town centre enhancement.

For non-residential projects, contributions will be proportionate to the scale of the proposal. Given the role the Town Centre plays in serving as the main sub-regional destination for comparison retail, leisure and services, other new developments outside the boundary of the Town Centre may be requested to contribute to Town Centre public realm improvements if there is a direct relationship with enhancements, or if justified by potential levels of additional Town Centre footfall and usage generated by the development. Planning contributions will strengthen Council bids for other funding sources where match funding or alignment with other related development is involved.

### **Timing/Trigger for payment or provision of works**

On-site public realm improvements can be phased alongside the development. There is a requirement for a developer to design and construct the area of public realm to a design and specification agreed by the Council. It will then be transferred to the appropriate Council (Parks or Highways) once it is in an adoptable condition, unless a management company is being established to manage future maintenance. Upon transfer, a commuted maintenance payment will be required to cover the initial costs of maintaining the public realm. Development will not commence until the developer has submitted to and received written approval for a public realm Scheme from the Borough Council.

Once the scheme has been implemented and the Council are satisfied the scheme is acceptable, a Certificate of Practical Completion will be issued and a 12-month maintenance period will commence. At the end of this maintenance period a Certificate of Adoption will be issued. It will then be transferred to the relevant Council and a commuted maintenance payment will become payable. The amount will vary from site to site depending on the materials used and cost of maintaining the area of public realm. The maintenance period shall cover a period of 15 years with details of the appropriate payment of this being set out in any Section 106 Agreements.

## **CCTV**

### **Policy Background**

CCTV can be required if necessary to enhance security within the wider area. Developers will need to work with the local authority to deliver CCTV packages that integrate it within overall provision of digital connectivity for developments.

The provision of CCTV is to be considered where it enhances the security and safety of the locality and contributes to the cumulative impact on the public realm across the wider Borough.

In addition, it may be identified as a need from the outset of a large scale development, particularly mixed use schemes and those incorporating entertainment and leisure venues, commercial and retail. Other isolated areas may also require CCTV. All these cases will be looked at on an individual basis.

Where it is felt necessary as a consequence of development, the provision of or a contribution towards CCTV will be required. This will include the cost of the equipment, its initial set up, linking to the control centre, maintenance and running costs over an agreed time period.

Developers will need to work with the local authority to deliver CCTV packages that integrate it within overall provision of digital connectivity for developments. Where it is known at the planning stage that CCTV is required, developers will be expected to lay the necessary cabling and connections at the outset. This will avoid unnecessary disruption to local residents when the cameras are installed and linked to the control centre.

### **Adopted Local Plan**

Policy DP1 (iv) Design and Amenity requires that development proposal must demonstrate that they create a safe and secure environment.

### **Emerging Local Plan**

Policy DM15 (vi) Design and Amenity requires that development proposals must demonstrate that they create a safe, resilient and secure environment which supports community cohesion and is not vulnerable to neglect

### **Possible Section 106 contributions**

Each case will be considered on its individual merits.

Section 106 Agreements may require the following issues to be addressed in respect of CCTV in the locality and the Town Centre.

- Improvements to CCTV coverage of key transport links and walkways

- Where a development site is adjacent to an open space that has a risk or history of anti-social behavior and crime and requires direct mitigation
- Adoption of the improvements and maintenance costs.
- Financial arrangement for their management.
- Access and use restrictions/assurances.



## Implementation of the Planning Obligations SPD

### Negotiations/Viability

The NPPF provides in paragraph 57 that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. The Council has tested the viability of its policies as required, both through work on CIL viability carried out in relation to the adopted Local Plan, and with the full plan Viability Report forming part of the evidence base of the emerging Local Plan. ([attach links](#))

Paragraph 57 provides that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage, and that the weight to be given to such an assessment is a matter for the decision maker having regard to the circumstances of the case.

The use of further viability assessments at the decision-making stage should not therefore be necessary. In exceptional circumstances where a viability assessment is submitted to accompany a new planning application this should be based upon, and refer to, the latest plan-wide viability work completed by the Council. The applicants should provide evidence of what has changed since the Council's work was conducted.

Where an applicant formally requests the Borough Council to consider a reduced level of obligations for a scheme, a full viability report, prepared by the applicant, should be enclosed as part of the submission of the planning application. The information to be provided as part of a Financial Viability Assessment on any development scheme can be found on the Borough Council's Validation Requirement List (see Financial Viability Checklist). This list includes all documents that should be submitted with a planning application, and details on the content of the Financial Viability Assessment.

Once submitted, this report (including scheme viability statements, appraisals and relevant information) will be considered and assessed by the Borough Council and an independent viability advisor appointed by the Council with reasonable agreed costs borne by the Applicant. Financial Viability Assessments will be published in full by the Council unless exceptional circumstances can be demonstrated.

Essex Planning Officers Association have produced a Viability Protocol that sets out overarching principles for how Essex Local Planning Authorities will approach development viability. The protocol does not alter Local Plan policies or the guidance set out in this SPD but provides additional advice and guidance on the information requirements and approach taken when assessing viability at the decision-making stage.

[Attach link](#)

The viability assessment will need to address the fundamental issue of whether an otherwise viable development is made unviable by the extent of the planning obligations. The assessment will need to derive a Residual Value for a proposed scheme, which can then be compared against the Existing Use Value or in certain circumstances an

Alternative Use Value. It is important to note that Planning Practice Guidance states that land values used to inform viability assessments should be calculated using a site's existing use value plus a premium for the landowner and should **not** be based on the price paid for a site.

If the viability report submitted by the Applicant fails to satisfy the Council that a reduced level of contributions should be applied or that the level of planning contributions that the development can viably support cannot mitigate the impact of the proposed development, then the planning application may be refused.

Where the level of planning contributions that the development can viably support cannot mitigate the impact of the proposed development, the development will need to wait until development values improve, land values can be re-negotiated, or alternative funding sources can be secured.

If the Applicant can demonstrate, to the satisfaction of the Borough Council, that the scheme cannot be fully compliant and remain financially viable, the Council may consider a reduced level of contributions in one or more areas through consideration at regularly scheduled Development Team meetings of relevant officers.

### **Drafting of Section 106 Agreements**

Section 106 Agreements will be drafted by the Council's Legal Services team, or by external solicitors acting on behalf of the Council. Applicants will be required to pay the Council's reasonable costs incurred in drafting and completing the agreement or the costs of external solicitors acting on behalf of the Council, where relevant.

Straightforward obligations which require only a financial contribution and/or planning obligations on one party only will normally be the subject of a Unilateral Undertaking (rather than an agreement). The Council has a number of standard templates that can be used for public open space, sport and recreation and community facilities. These are available on the planning validation pages of the Council's website. Where individual Unilateral Undertakings are required the applicants legal team can prepare a draft for approval or it can be prepared by the Council's Legal Service. Applicants will be expected to meet the Council's reasonable costs incurred in preparing or approving an Undertaking.

In all circumstances where a legal agreement is required, the applicant will be expected to provide details of land ownership at the beginning of the application process. These should be copies of the Title document and plan obtained within the preceding 3 months from the Land Registry, or if the land is unregistered, copies of the most recent conveyance.

### **Unilateral Agreements for developments under 10 units**

As noted in the relevant sections above, the Council collects contributions for community and sport/recreation projects to mitigate the impact arising from small scale housing

development. As these developments of less than 10 units are exempt from affordable housing contributions, a s.106 agreement will not be sought and instead a unilateral undertaking will be required to facilitate payment in accordance with the schedule of payments derived from the adopted SPD and draft unilateral undertaking as set out in Appendix X for Community Facilities and Appendix X for Sport and Recreation.

### **Financial Contributions**

Where a financial obligation is necessary, payment would normally be required on commencement or on first occupation of a development. However, in the case of a large-scale development, it may be that the payments would be phased to meet the proportional impact of each phase. Trigger points for payments will be included in the legal agreement, as will the period in which any contribution will have to be spent.

It is reasonable to expect that, when contributions are paid to the Council the monies will be held in an interest-bearing account. Those that remain unspent at the end of the period specified in the obligation from the date when the money was paid will be returned to the payee in accordance with the terms of the individual agreements.

### **Index Linking**

All financial contributions will be subject to indexation from the date of agreement of this SPD. The indexation period will therefore start with the date of adoption and end with the date when each payment becomes due. The indices to be used are the BIS PUBSEC Tender Price Index of Public Sector Building Non-Housing Indices.

### **Monitoring and Enforcement of Obligations**

Monitoring of obligations will be undertaken by the Council's Planning Contributions Officer to ensure that all obligations entered into are complied with by both the developer and the Council. A monitoring fee will be charged and this will be based on the number of clauses to be monitored and the reasonable costs incurred by the Planning Contributions Officer. This fee is payable prior to commencement of the development.

In cases where developers have difficulty making payments at the appropriate times as required by the legal agreement, the Council will work with the developer to find a solution. This may involve the payment of an obligation at a later stage in the development, or payment by installments. However, where it is imperative that the relevant measure is in place prior to a development being occupied, the obligation to fund it will always become payable on commencement.

If enforcement of financial obligations fails then the Council will use the relevant legal channels to remedy this, and the party in breach will be liable for any legal costs incurred by the Council.

### **Reporting on the use of Section 106 Obligations**

The Council will report at least annually on Section 106 monies received, held and spent and this will be available on the Council's website. The report cover the previous financial year from 1 April to 31 March and will include information relating to money received and for what purpose as well as information about schemes funded through Section 106 monies.

## Appendix 1 - Glossary of Terms

**Affordable Housing** – The Council's definition of affordable housing is drawn from latest Government guidance, currently the February 2019 National Planning Policy Framework:

**Affordable housing** - 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 definitions:

- a. **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).
- b. **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.
- c. **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.
- d. **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public

grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision or refunded to Government or the relevant authority specified in the funding agreement.

**Biodiversity offsetting** -Biodiversity offsetting is a policy approach that seeks to minimize the environmental impacts of a development project by ensuring that any damage in one place is compensated for somewhere else, maximising overall biodiversity gain where possible.

**Community Facilities** – Buildings which enable a variety of local activity to take place including, but not limited to, the following:

- Schools, universities and other educational facilities
- Libraries
- Community centres
- Health, wellbeing and care facilities
- Museums and art galleries
- Child care centres
- Sport and recreational facilities
- Youth clubs
- Playgrounds, other formal activity spaces and informal play space
- Places of worship
- Emergency services

Some community activities can also be provided via privately run facilities (e.g. pubs and village shops).

**Community Infrastructure Levy (CIL)** - A mechanism by which local authorities can set a standard charge on specified development in their area to pay for new infrastructure required to support growth.

**Green and Blue Infrastructure** – A network of multi-functional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities. ‘Green’ applies to most open space, while ‘blue’ applies to water-related infrastructure.

**Habitat Regulations Assessment (HRA)** -The Habitat Regulation assessment is a statutory requirement under The Conservation of Habitats and Species Regulations 2017. A HRA is required for a plan or project which, either alone or in combination with other plans or projects is likely to have a significant effect on the integrity of a Habitats site (Special Protection Area, Special Area of Conservation and Ramsar sites).

**Infrastructure** – Infrastructure means any structure, building, system, facility and/or provision required by an area for its social and/or economic function and/or well-being including (but not exclusively)

- Footways, cycleways and highways
- Public transport
- Drainage and flood protection
- Waste recycling facilities
- Education and childcare
- Healthcare
- Sports, leisure and recreation facilities
- Community and social facilities
- Cultural facilities
- Emergency services
- Green infrastructure
- Open space
- Affordable housing
- Broadband
- Facilities for specific sections of the community such as youth or the elderly.

**Local Plan** - A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law this is described as the development plan documents adopted under the Planning and Compulsory Purchase Act 2004.

**National Planning Policy Framework (NPPF)** - Government policy which sets out in one document planning requirements and objectives in relation to a wide range of planning issues including housing, employment, transport, and the historic and natural environment.

**Neighbourhood Plan** – A Plan prepared by a Parish Council, Neighbourhood Forum, or other locally constituted community group, for a particular neighbourhood. Once “made” it comprises part of the Development Plan

**Open space**- All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity. See also Green and blue Infrastructure

**Planning obligation** - A legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal. It can restrict development, activities or uses required, or stipulate provision of a financial contribution.

**Recreational disturbance Avoidance and Mitigation Strategy (RAMS)** - A strategy to avoid and mitigate likely significant effects from increased recreational disturbance, in-combination with other plans and projects on Essex Coast Habitats sites.

**Section 106 contribution** – See Planning obligation

**Section 278 agreement** - Section 278 of the Highways Act 1980 allows a developer to carry out works to the public highway. This is generally necessary where planning permission has been granted for a development that requires improvements to, or changes to, public highways.

**Supplementary planning documents** - Documents which add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.

**Travel plan** - A long-term management strategy for an organisation or site that seeks to deliver sustainable transport objectives and is regularly reviewed.

**Unilateral Undertaking** - A legal agreement entered into under Section 106 of the Town and Country Planning Act 1990 to secure payments in the form of planning contributions. This type of planning obligation can only be entered into by the owner of the land.



## Appendix 2 – Supporting information and calculations for Sport, Leisure and Recreation



## Appendix 3

### **Health and Well-being statement to be included in responses to planning applications for Suffolk and North East Essex Integrated Care System**

As an Integrated Care System it is our ambition that every one of the one million people living in Suffolk and North East Essex is able to live as healthy a life as possible and has access to the help and treatment that they need in the right place, with good outcomes and experience of the care they receive.

Suffolk and North East Essex Integrated Care System, recognises and supports the role of planning to create healthy, inclusive communities and reduce health inequalities whilst supporting local strategies to improve health, social and cultural wellbeing for all aligned to the guidance in the NPPF section 91.

The way health and care is being delivered is evolving, partly due to advances in digital technology and workforce challenges. Infrastructure changes and funds received as a result of this development may incorporate not only extensions, refurbishments, reconfigurations or new buildings but will also look to address workforce issues, allow for future digital innovations and support initiatives that prevent poor health or improve health and wellbeing.

The NHS Long term plan requires a move to increase investment in the wider health and care system and support reducing health inequalities in the population. This includes investment in primary medical, community health services, the voluntary and community sector and services provided by local authorities so to boost out of hospital care and dissolve the historic divide between primary and community health services. As such, a move to health hubs incorporating health and wellbeing teams delivering a number of primary and secondary care services including mental health professionals, are being developed. The Acute hospitals will be focussing on providing specialist treatments and will need to expand these services to cope with additional growth. Any services which do not need to be delivered in an acute setting will look to be delivered in the community, closer to people's homes.

The health impact assessment(HIA) submitted with the planning application will be used to assess the application. This HIA will be cross-referenced with local health evidence/needs assessments and commissioners/providers own strategies so to ensure that the proposal impacts positively on health and wellbeing whilst any unintended consequences arising are suitably mitigated against.

## Appendix 4 – Supporting information and calculations for Community Facilities

The Council has adopted a simple formulaic approach to the calculation of this contribution, which reflects the average build costs for new community centres currently is £2400 per square metre, (provided by BCIS technical indices 2019). The standard community floorspace to be provided by each new dwelling (0.75 square metres), and household size (expressed as the number of bedrooms).

The census 2011 indicated that the average number of persons per household in Colchester Borough was 2.33 persons. The financial contribution per dwelling is therefore  $£2400 \times 0.75 = £1800$ , and the average contribution per person is therefore  $£1800 \text{ divided by } 2.33 = £772.53$

In order that the amount of contribution reflects the size of the dwelling, the contribution sought from each dwelling for the provision of community facilities will be based on the minimum estimations of household size below

Minimum estimations on household size;

- Studio and 1 bed: 1 person = £772.53
- 2 bedrooms: 2 people = £1545.06
- 3 bedrooms: 3.5 people
- 4 bedrooms 5 people
- 5 bedrooms: 6 people
- 6 bedrooms: 7 people

35% of contribution to 'boroughwide' community facilities

65% of contribution to 'catchment area' community facilities.

No. Bedrooms	Total Contribution	Boroughwide Contribution	Catchment Contribution
Studios and 1 bedroom	£772.53	£270.38	£502.14
2 bedrooms	£1545.06	£540.77	£1004.29
3 bedrooms	£2703.85	£946.35	£1757.50
4 bedrooms	£3862.65	£1351.93	£2510.72

5 bedrooms	£4635.18	£1622.31	£3012.87
6 bedrooms	£5407.71	£1892.70	£3515.01

The most up-to-date data will be used at the time of the application; the figures quoted in this SPD are subject to changes made periodically to building costs in BCIS classification CI/SfB 532.

Worked Example: For a 6 unit development consisting of 3 nos. 2-bedroom dwellings and 3 nos. 3-bedroom dwellings, the contribution payable would be:

3 x £1545.06 (2-bedroom unit contribution rate) = £4635.18 +

3 x £2703.85 (3-bedroom unit contribution rate) = £8111.55

**Total Contribution toward Community Facilities = £12 746.73**

## Appendix 4 – Supporting information and calculations for Town Centre public realm improvements

### Contributions requested

No. Bedrooms	Boroughwide Contribution
Studios and 1 bedroom	£270.38
2 bedrooms	£540.77
3 bedrooms	£946.35
4 bedrooms	£1351.93
5 bedrooms	£1622.31
6 bedrooms	£1892.70

### Potential Town Centre S106 Projects

Project	Details
St Nicholas's Square Public Realm	New Public Realm scheme looking to create a vibrant, safe public space, drawing footfall into and through the town centre, extending the perception of the East of the town centre beyond to firstsite and providing attractive outside dining opportunities for the new restaurants and hotel situated on the square.
Balkerne Gardens Public Realm	New Public Realm scheme looking to capitalise on the Mercury Theatre redevelopment and create an attractive gateway from the Hole In the Wall through to Head Street and beyond
Holy Trinity Church	Historic Church in Colchester Town Centre owned by CBC with restrictive covenant from the Diocese of Chelmsford limiting tenancy to community use only.
High Street improvements	Improvements and upgrading of pavements and street furniture along High Street

