

# **Planning Obligations Supplementary Planning Document Review**

Draft for Public Consultation



Derby City Council

This page is intentionally left blank

<b>Contents</b>		<b>Page</b>
<b>1</b>	<b>Section One-General Principles</b>	<b>1</b>
<b>2</b>	<b>Section Two- Contributions</b>	<b>12</b>
<b>2.1</b>	<b>Affordable Housing</b>	<b>12</b>
<b>2.2</b>	<b>Transport</b>	<b>19</b>
<b>2.3</b>	<b>Public Green Space</b>	<b>27</b>
<b>2.4</b>	<b>Education</b>	<b>37</b>
<b>2.5</b>	<b>Community Facilities</b>	<b>43</b>
	Community Centres	43
	Built Sports Facilities	46
	Health Facilities	48
<b>2.6</b>	<b>Flooding and Drainage</b>	<b>51</b>
	Drainage and Flood Prevention	51
	Development Sites in the River Derwent Corridor	53
<b>2.7</b>	<b>Student Accommodation</b>	<b>55</b>
<b>3</b>	<b>Section Three- Site Specific Contributions</b>	<b>58</b>
<b>Appendix A: Contribution Thresholds</b>		<b>62</b>
<b>Appendix 2: Financial Contributions Matrix</b>		<b>64</b>

This page is intentionally left blank

# Section One – General Principles

## Introduction

- 1.1 New development often creates a need for additional or improved community services and facilities, without which there could be a detrimental effect on local amenity and the quality of the environment. There is also a requirement for new development to provide affordable housing. Planning Obligations, also known as Section 106 Agreements, are a mechanism by which these measures are secured in order to enhance the quality of both the development and the wider environment.
- 1.2 The City Council can seek planning obligations when they assist in mitigating the impact of unacceptable development to make it acceptable in planning terms.

## Purpose of SPD

- 1.3 The purpose of this Supplementary Planning Document (SPD) is to set out the City Council's approach to planning obligations for development in Derby. It provides further guidance to the policy approach set out in Policy MH1 'Making in Happen' of the Derby City Local Plan, Part 1: Core Strategy (January 2017) (DCLP1). The SPD details the obligations that may be required from different types and scales of development and sets out the basis on which the level of obligation will be calculated, where appropriate.
- 1.4 By setting out the contributions up front, it should enable developers to take into account the potential costs of a proposed development at the earliest stage and assist in pre-application discussions.
- 1.5 Through the use of planning obligations, the Council will ensure that new development will be supported by necessary and appropriate infrastructure, which meets the tests set by Regulation 22 of the Community Infrastructure Levy (CIL) Regulations 2010. The infrastructure includes:
  - Affordable housing
  - Education facilities
  - Pedestrian, cycle and public transport facilities, disabled people's access and services
  - Traffic management and road improvements
  - Water, sewerage, surface water drainage and flood defences
  - Health and community facilities
  - Provision of green infrastructure, including public green space, sport and recreation facilities
  - Public realm improvements and public art
  - Protection and enhancement of the City's cultural heritage

- Any other infrastructure deemed necessary to mitigate the impact of the development
- 1.6 The SPD is made up of three Sections. Section One sets out the Council's principles and legislative context of Planning Obligations. Section Two explains the thresholds and formula used to calculate the levels of Planning Obligations that the Council may wish to seek. Section 3 explains the Council's tailored approach to site specific contributions.

### **Status of the SPD**

- 1.7 Development proposals requiring the provision of Planning Obligations should be made in accordance with the relevant policies of the DCLP1, and this SPD, which constitutes an important material consideration in the decision making process.
- 1.8 This is a consultation draft of the review of the SPD and once adopted, this SPD will be a material consideration in determining planning applications and if development proposals do not comply, the SPD may be used as a reason or reasons for the refusal of planning permission by the City Council.

### **National Policy Framework**

- 1.9 The legislative framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the 1991 Planning and Compensation Act. Further legislation is set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010, and the CIL (Amendment) Regulations 2015.
- 1.10 Government policy on planning obligations is set out in Paragraphs 203 to 205 of the National Planning Policy Framework (NPPF) (March 2012). In accordance with Paragraph 153 of the NPPF, this Planning Obligations SPD is intended to provide guidance for applicants and to aid infrastructure delivery. The City Council is aware that unnecessary financial burdens should not be placed on development and a fair approach will be pursued in negotiations to secure infrastructure.
- 1.11 Regulation 122 and Paragraph 204 of the NPPF set out the following tests that must be satisfied in order for obligations to be required in respect of development proposals:
1. The obligation must be necessary to make the proposed development acceptable in planning terms;
  2. The obligation must be directly related to the proposed development
  3. The obligation must be fairly and reasonably related in scale and kind to the proposed development.

## **S106 Agreements and CIL**

- 1.12 The Government views S106 as providing only a partial and variable response to capturing funding contributions for infrastructure. As such, provision for the Community Infrastructure Levy (CIL) is now in place through the 2008 Planning Act.
- 1.13 In terms of developer contributions, the Community Infrastructure Levy (CIL) has not replaced Section 106 agreements. However, the introduction of CIL has resulted in a tightening up of the S106 tests. S106 agreements, in terms of developer contributions, should be focused on addressing the specific mitigation required by a new development, whilst CIL has been developed to address the broader impacts of development. There should be no circumstances where a developer is paying CIL and S106 for the same infrastructure in relation to the same development.
- 1.14 Since 6 April 2015, the CIL Regulations have taken full effect and there are restrictions on the pooling of planning obligations. Local authorities can no longer pool more than five s106 obligations together (dating back to April 2010) to pay for a single infrastructure project or type of infrastructure. An explanation of how the Council monitors the pooled contributions is included in paragraph 1.63.

## **The City Council's response to the CIL Regulations**

- 1.15 The Council undertook a viability study in 2013 to investigate whether the local economy in the Derby Housing Market Area could sustain the introduction of a Community Infrastructure Levy (CIL). The study showed that due to the market conditions at the time, CIL would deliver very little in terms of developer contributions.
- 1.16 An update to the viability study was carried out in 2016 to determine whether the viability of development sites in Derby has improved since the 2013 study. The update revealed that although there had been a general uplift in the housing market and house values, this increase did not translate to the chargeable CIL rates, which remained low.
- 1.17 In weighing up the relative benefits of CIL over S106 in the context of the current conditions in the housing market and the limitations through the pooling regulations to S106, the Council considers that S106 still represents the best option for maximising contributions towards infrastructure whilst not constraining housing supply. As such, the Council will continue with the S106 regime and keep the option to introduce CIL under review.

## **Derby City Local Plan Part 1 (DCLP1)**

- 1.18 The City Council is the local planning authority for determining planning applications. The infrastructure and community facilities required by the DCLP1 policies, the types of development they apply to and the trigger thresholds are set out in Section Two of the SPD.
- 1.19 Any development proposal that requires the use of Planning Obligations will require a number of planning issues to be considered and consequently a selection of policies in the DCLP1 will apply.

The following policies are of particular relevance:

- CP1(b) Place-making Principles for Cross Boundary Growth
- CP3 Place-making Principles
- CP7 Affordable and Specialist Housing
- CP17 Public Green Space
- CP21 Community Facilities
- CP22 Higher and Further Education
- CP23 Delivering a Sustainable Transport Network
- CP24 Transport Infrastructure
- AC8 Our City, Our River

## **Derby City Council Plan 2016-19**

- 1.20 The aim of the Council is to be a modern, flexible and resilient council. The Council's priority outcomes are:
- Protecting vulnerable children and adults
  - Enabling individuals and communities
  - Promoting health and wellbeing
  - Raising achievement and skills
  - Improving housing, supporting job creation and regeneration
  - Making the most of our assets
  - Being more commercial
  - Delivering services differently
- 1.21 These priorities, and any future changes in the Council Plan's priorities, will be taken into consideration when negotiating Planning Obligations.

## **Priorities**

- 1.22 Planning Obligations will be negotiated on a site-by-site basis. The priority given to any particular type of Planning Obligation will be at the discretion of the City Council. It would not be possible to set out citywide priorities relating to development types in any sort of priority order as each development proposal will have different circumstances, and these will change over time.



Priorities may vary and will depend on a number of factors including local need as well as central, regional and local government guidance and the current political agenda.

- 1.23 There may be site-specific requirements other than those highlighted in this SPD that are flagged up whilst an application progresses and these would also need to be included in the planning agreement.
- 1.24 In certain situations, such as where the full requirement for Planning Obligations contributions cannot be met, or on key strategic sites, contributions secured will be prioritised based on evidence, and the advice and guidance of Lead Officers, Neighbourhood Forums where appropriate, Planning Control Committee and Councillors.

### **Input from Councillors and Neighbourhood Managers**

- 1.25 Councillors and Neighbourhood Managers can register their views on the community impact of a development proposal and highlight priorities for infrastructure in their wards during the consultation period for the planning application. These views can be taken into account in drafting the heads of terms for the S106 agreements.
- 1.26 The Council produces a quarterly monitoring report which informs officers, Councillors and Neighbourhood Managers what contributions have been secured and received and what funds are available to allocate to projects. For those funds that have been received, Councillors can make suggestions for the expenditure of S106 contributions. These suggestions will be considered, and decisions reached, in the context of the individual constraints of the S106 agreement and the tests under CIL Regulation 122.

### **Types of Obligations and Thresholds**

- 1.27 The thresholds for seeking planning contributions are set out in Appendix A. These thresholds should be read as a guide for normal procedure and are set at practical levels that can be easily identified and measured. However, each planning application will be judged on its own merits and in light of local and citywide concerns.
- 1.28 There may be some issues, such as biodiversity or historic environment, where no minimum threshold is applied. This will be negotiated where the impacts of even the smallest development will need to be mitigated.
- 1.29 Planning obligations may be sought on developments below these thresholds if the Council feels that the site in question is part of a larger development site, particularly where the smaller application is being used as a way to avoid Planning Obligations. When determining contributions, the Council will look at the cumulative impact of a number of adjoining small developments, or

additional developments on the edge of previously developed sites. Developing sites incrementally or sub-dividing a site to avoid contributions will not be acceptable.

- 1.30 This includes cases where one site is divided between different developers, or is proposed to be developed in a phased manner. The needs generated by the site as a whole should be assessed and used as the basis on which to seek contributions. This is to ensure that the necessary contributions are divided fairly between developers on the whole site and so that services and facilities, to meet identical needs, can be delivered in a comprehensive, rather than piecemeal fashion.

### **In-Kind Contributions**

- 1.31 The presumption will be that the developer will undertake the provision of facilities themselves either on-site or off-site. There will however be times where the Council wishes to provide certain facilities themselves. Under these circumstances the Council may wish to receive a land parcel free of charge from the developer, together with a financial contribution in lieu of the developer providing the facilities.

### **Financial Contributions**

- 1.32 In cases where it is not possible to provide facilities on or off site a financial contribution will be required to mitigate this. For residential development contribution rates will be charged per occupant and for commercial development the rates will be charged per 100sqm of gross floor area.
- 1.33 Where the dwelling types and bedroom numbers are known, the population of a residential development will be estimated using the following assumptions:

**Table 1: Population assumptions**

1 bed flat	1.5 people
2 bed flat	2 people
Flats with 3 beds or more and houses with 1-4 bed	2.5 people
Houses with 5 beds and above	3 people

- 1.34 Contribution rates towards transport, open space, community centres and indoor sports facilities will be charged on a per person basis, using the assumptions in Table 1 above.

- 1.35 Contributions rates towards education will be calculated per school place generated by a residential development. Financial contributions rates towards health facilities will be calculated by the South Derbyshire Clinical Commissioning Group using their own formula, as set out in Section 2.5.
- 1.36 Payment of financial contributions will normally be expected upon commencement of development. There may however be circumstances where payments can occur at different stages during development, such as upon first occupation.
- 1.37 All Section 106 Agreements will include trigger dates for the payment of financial contributions in addition to specifying time scales for spending of contributions.
- 1.38 All financial contributions received by the City Council will be held in separate departmental accounts by the department that will assign contributions to the capital programme. Any contributions that remain unspent at the end of the time period specified in the planning agreement may be repaid to the developer upon their request.
- 1.39 The rates in the Financial Contributions Matrix in Appendix B will be updated every year on 1 April using the Retail Prices Index to reflect current costs. Unless stated otherwise the formulae for calculating contributions will remain the same and only the figures will be updated.

### **Existing uses**

- 1.40 For the majority of contributions that the Council will be seeking the existing use of the site will be taken into account when determining the levels of contributions. For example, for residential developments, all contributions, with the exception of affordable housing, will be based on the increase in population caused by the new development. If the new proposal will result in a lower population then no contributions would be sought. For transport contributions, the level will be dependent on the increase in trip generation.
- 1.41 The exception is affordable housing. As this is not a requirement that is linked to the demands of an increasing population, existing uses will not be taken into account. The level of affordable housing will be determined by the total number of dwellings proposed in the new development.

### **Unilateral Undertakings and Planning Appeals**

- 1.42 A Unilateral Undertaking is a legally binding document. Where used to secure Planning Obligations this will normally be entered into by the developer and persons with interests with the land for which planning permission is sought. The City Council is not a party to the document so the Unilateral Undertaking will bind the developer and/or owners to its terms but cannot impose

obligations on the City Council or impose any obligation to grant planning permission. Unilateral Undertakings are usually drafted conditionally on the basis of taking effect only where planning permission is granted.

- 1.43 Unilateral Undertakings are most commonly used in cases where the parties cannot reach agreement on the terms of the obligations, usually on appeal. Where used on appeal, it will then be for the Inspector to determine the appropriateness of the obligations being sought. Unilateral Undertakings tend to be drafted by or on behalf of the applicant, but will be vetted by the City Council's legal department.
- 1.44 Where there is an appeal the Inspector will require details of any Planning Obligations that the City Council considers would be required, supported by a CIL compliance statement, to cover circumstances where the appeal is successful and permission is granted. In addition the Inspector will require this to be formalised by way of either a Planning Agreement or a Unilateral Undertaking before the appeal proceedings are concluded. Cases involving Planning Obligations are unlikely to be appropriate to be dealt with through written representations.

#### **Index Linking and Late Payment Interest**

- 1.45 In order to ensure that the value of contributions are maintained from the date the Heads of Terms are agreed until the date that the contribution is paid, all financial contributions will be index linked.
- 1.46 All financial contributions specified in Section 106 Agreements will be index linked from the date of final agreed Heads of Terms. All contributions will be index linked using the Retail Price Index, with the exception of all education contributions, which will be index linked using the BCIS All in Tender Price Index. Developers will however be granted a six month grace period from this date before payment will be subject to index linking.
- 1.47 Late Payment Interest will be payable when any payment due under a Section 106 Agreement is late. This will be charged at 4% over the base lending rate of the Lloyds Bank with such interest to run from day to day from the date payment is due until the date of payment.

#### **Maintenance Costs**

- 1.48 If a developer elects to transfer the ownership and responsibility for a piece of infrastructure, facility or a piece of land to the Council, the Council only accept it with a full maintenance sum to allow the Council to maintain the infrastructure for an agreed timeframe. In cases where a developer chooses to retain responsibility for a facility they will be bound to keep hold of it and maintain it to an agreed specification in perpetuity through the Section 106 Agreement.

## Viability

- 1.49 For all developments, both residential and non-residential, the Council expects the full relevant Planning Obligation requirements, as outlined in this document, to be taken into account when negotiating the price of the land. Therefore, before entering into a commitment to purchase a site, applicants should refer to this SPD and engage in pre-application discussions with the Council. In order for the Council to consider reducing or waiving certain requirements, the developer must be able to show that there are abnormal development costs associated with the site that could not reasonably have been foreseen at the time the land was bought. If a legal commitment to purchase the land has not been entered into, the Council will expect the developer to renegotiate the price of the land to reflect our requirements. It is not acceptable for a developer to pay, or to commit to pay, an enhanced purchase price in the expectation that they can then use this to minimise the Planning Obligation requirements.
- 1.50 If, despite this reflection of the Planning Obligation requirements in the purchase price, the developer claims that they are unable to provide the full Planning Obligation requirements, they will be required to prove their case through a viability appraisal.
- 1.51 The City Council will employ an independent Valuer to undertake an assessment of viability appraisals for all planning application where viability is an issue. The appraisal will be undertaken by the developer and submitted to the Council and the independent Valuer. The developer will cover the costs of both the economic appraisal and the independent Valuer's fees.
- 1.52 If the independent assessment shows real viability issues then it will be possible to renegotiate some of the terms of the Section 106 Agreement.
- 1.53 Where any contributions are waived or reduced for viability reasons, the S106 will include an overage clause which will capture any uplift in profit at the time that the development is built out. A further viability appraisal will have to be submitted towards the end of the development (or in the case of large scale, phased developments, at agreed points throughout the development) to show the actual costs and values for the development. If this new appraisal shows a higher profit level than the allowance in the original assessment, then that uplift is to be shared equally between the Council and the applicant, up to the value of the policy compliant contributions for that scheme. The Council's minimum share will be 50%.

## **Development Management Performance Targets**

- 1.54 Once a planning application is registered, a S106 must be completed within the application's 13 week deadline. If the application does not have a Planning Performance Agreement or an extension of time in place, it may be refused if the S106 is not completed within this timescale.
- 1.55 If the application has not been refused before the 13 weeks deadline and if progress has not been made, the Council may seek to refuse it before 26 weeks.

## **Drafting of Agreements and Legal Costs**

- 1.56 Section 106 Agreements will be drafted by the City Council's Legal Services Team or by Solicitors acting on the City Council's behalf. Applicants will be required to pay the Council's reasonable legal and professional costs in drafting the agreement. If any work is done on a draft but it is never completed then the applicant will still be required to cover any costs already incurred.
- 1.57 In order to improve the speed, efficiency and consistency of the preparation of Section 106 Agreements, the Council's Legal Team use standard templates to draft the agreements. The Council will expect that this standard template will be used for each S106 agreement and that the clauses will only be adapted to the individual circumstances of the application where it is necessary.

## **Monitoring contributions and Council expenditure**

- 1.58 The Council has an established process for monitoring and managing Section 106 Agreements, including a database with details of all agreements.
- 1.59 The allocation and expenditure of Planning Obligation contributions together with the progress of works and projects will be monitored. It will be the responsibility of benefiting departments to monitor their contributions but the Implementation Team will provide an overarching monitoring system. All Council Officers who use Planning Obligation contributions will supply information about the spend programme and progress to the Planning Implementation Team to enable them to provide this system.
- 1.60 Quarterly monitoring reports will be submitted to Members with details of contributions held by the Council and details of where funds have been committed for projects through the capital programme.

## **Charging for administration fees**

- 1.61 In light of the CIL Regulations and the High Court ruling on the case of Oxfordshire County Council v Secretary of State for Communities and Local Government, where the S106 contributions are to be paid on commencement, a fee should not be charged. Where a contribution is phased or requires further monitoring throughout the development's construction, then this may incur costs additional to the Council's normal planning function.
- 1.62 The rate for the administration fee will be based on an Implementation Officer's hourly rate multiplied by the number of hours expected to carry out the additional monitoring. This rate will be applied per unit proposed. It will be calculated on a site by site basis.

## **Monitoring Pooled Contributions**

- 1.63 Regulation 123 of the CIL Regulations 2010, limits the number of planning obligations that can be used to fund a project or type of infrastructure, to five. In respect of this, the Council will monitor the number of S106 agreements that have been entered into since the regulation was introduced in April 2010 towards specified projects or types of infrastructure.

## **Cross Boundary Agreements**

- 1.64 Developments outside the City boundary can have an impact on the City in terms of infrastructure and facilities. Developments in neighbouring authorities which abut the City boundary will introduce a new population who will naturally gravitate towards the City and use City infrastructure, facilities and services. To ensure that the proper mitigation is agreed, the Council will work closely with neighbouring authorities to ensure that appropriate contributions are made to address the pressures the City will face in such circumstances.

## **Section Two- Contributions**

### **2.1 Affordable Housing**

#### **Introduction**

- 2.1.1 The City of Derby has a pressing need for affordable housing. A Strategic Housing Market Assessment update (SHMA) was carried out in 2013. This considered future housing requirements over the period to 2028. It considered how many and what types of homes are needed, both market and affordable. It also assessed what housing is needed to meet the needs of specific groups within the population including older people and those with disabilities. It showed that the need for affordable housing within the City is significant and therefore all opportunities to secure affordable housing need to be explored.

#### **Local Plan Policy**

- 2.1.2 Policy CP7 – Affordable Housing and Specialist Housing states that ‘The City Council will require the provision of a maximum of 30% affordable housing on residential developments on sites of 15 or more dwellings’.

The Policy goes on to describe the factors that will be taken into account in applying the policy. These include:

- Evidence of local need for affordable housing and other types of specialist housing
- Site size, suitability and the economics of provision
- The presence of competing planning objectives.

- 2.1.3 In terms of the mix of tenure, the balance between different types of rent and intermediate housing will be agreed on a site by site basis. The expectation in the policy is that the affordable housing will be provided on site and properly integrated with the market housing. Off-site provision and financial contributions will be agreed only in exceptional circumstances.

#### **Threshold**

- 2.1.4 Affordable housing will be sought on all applications for residential developments of 15 units or more.

#### **Level of Contribution**

- 2.1.5 The policy requires that a maximum of 30% of units on qualifying sites should be provided for affordable housing. The exact percentage of affordable on any given site will depend on the site location and specifics, viability and competing planning objectives.



- 2.1.4 The SHMA 2013 shows that the need for affordable housing in Derby is significant. House price increases, restrictions on borrowing, increases to the cost of living relative to wages and a shortage of properties to rent, mean that many more people are unable to access the housing market, either to buy or rent on the open market. Therefore the starting point for negotiation on most sites will be 30%. This will include applications for the renewal of permission.

## **Viability**

- 2.1.5 The general presumption is that the cost of providing affordable housing will be offset in the negotiation of the land purchase or option. Paragraph 173 of the NPPF states that when Local Authorities are requiring contributions towards affordable housing and other planning obligations they must allow a competitive return for a willing landowner and willing developer to enable the development to be deliverable.
- 2.1.6 Where the applicant proposes to demonstrate that there are particular or abnormal costs that cannot be offset by depreciated land value, where they could not reasonably have been known prior to purchase, or where they cannot be recouped in the open market sale price of the new homes, a financial appraisal will have to be submitted.
- 2.1.7 In most instances, provision at less than 30% will require a full financial assessment to be submitted and independently verified by an Independent Valuer as agreed by the Council. If this assessment shows that 30% is not achievable whilst allowing the land owner and developer a competitive return, then the Independent Valuer will carry out sensitivity testing to show what level of affordable housing can be provided to allow the development to go ahead. At this point in the negotiations, as well as looking at the level of contribution, the Council will also look at changes to the tenure or property types to maximise the benefits of the affordable housing and ensure that the right level and type is provided on every site.

## **Affordable Housing Tenure and Property Type**

- 2.1.8 In order to meet the needs identified in the SHMA 2013, as well as those identified by an analysis of applicants on the waiting list, our priority is to secure properties firstly for social or affordable rent and secondly for intermediate tenure, for example shared ownership. These tenures help to meet the needs of a larger proportion of those in housing need and ensure a range of accommodation options for prospective residents, as well as promoting social inclusion and contributing to the long-term sustainability of housing developments. For many sites the Council will have a starting point of 80% of properties for social or affordable rent and the remaining 20% of properties for intermediate tenure.

- 2.1.9 Although the preferred ratio is for 80% social or affordable rent and 20% intermediate tenure properties, it may not always be appropriate to seek this quota for each development site and other tenures may be acceptable. The need for particular house types and tenures can vary greatly between the different Housing Market Areas in Derby, and within the Areas themselves. Therefore, the exact tenure and mix will address specific local housing needs and will be negotiated on each site. In seeking to address local needs and plan for mixed and balanced communities we will consider a range of affordable tenures. We may also consider a small element of developer own products on suitable sites. Table 2 below illustrates the different affordable tenure types. This list is not exhaustive and will be subject to change depending on prevailing Government policy.
- 2.1.10 The types and size of properties sought for affordable housing on any given site will be dependent on the affordable housing requirements, specific mix in the area and the mix of properties proposed on the wider site. The aim is to plug the gaps in the local affordable housing supply whilst integrating well with the new market housing on the development.
- 2.1.11 For the avoidance of doubt, affordable housing refers to general needs housing, extra care and any other forms of specialist or adapted housing for affordable rent or sale.

**Table 2: Affordable Tenure Types**

<b>Affordable Housing Tenure</b>	<b>Definition</b>
Social Rent	Affordable Housing which is provided as social rented housing as defined in Annex 2 to the National Planning Policy Framework 2012 or any replacement or supplemental guidance issued with the rent set at the target rent for the location as defined by the Homes and Communities Agency
Affordable Rent	Affordable Housing which is provided as affordable rented housing as defined in Annex 2 to the National Planning Policy Framework 2012 or any replacement or supplemental guidance issued with the rent being no more than 80% of market rent
Shared Ownership	Affordable Housing Units that shall be sold on a long lease on a shared ownership basis whereby the lease granted by the Registered Provider shall not exceed 70% of the value of the property and the annual rent charged on the retained share shall not exceed 2.75% of the value of that share
Starter Homes	Affordable Housing Units that shall be sold to first time buyers, under the age of 40 and at the Discounted Purchase Price of 20% discount of the

	market value. A restriction will be included so that on any future sale the sale price shall not be greater than the Discounted Purchase Price and that on any future letting the rent shall not be greater than the a Discounted Rent of a 20% discount of the market value
Rent to Buy	New built homes offered at 80% of market rent, typically on a 5 year tenancy, to non-home owners with a household income of less than £80,000. Tenants can purchase or part-purchase the property during or at the end of the tenancy.

## **Design and Accessibility standards**

2.1.12 At the current time the DCLP1 does not have any policies for enhanced standards above the Building Regulations. The Council is however exploring options within the Derby City Local Plan Part 2 (DCLP2) to include enhanced standards including dwellings constructed to Part M4(2) (Accessible and Adaptable Dwellings) and Part M4(3) (Wheelchair User Dwellings) of the Building Regulations. If a future DCLP2 policy requires other standards, these will be included in any Heads of Terms for S106 Agreements. In advance of that, we would encourage developers to include an element of wheelchair units on all schemes.

2.1.13 The Council will expect applicants to ensure that the affordable properties are integrated into the overall development, in terms of their built form and external appearance, so that they are indistinguishable from the market properties. Affordable properties should not be marked out by being of poorer design, specification and quality of finish than neighbouring market properties. It is recommended that the skills and experience of a Registered Provider (RP) be employed at an early stage in the design process to ensure that the future management of the affordable housing units is fully considered.

## **Pepper Potting**

2.1.14 The Council supports the development of sustainable, mixed and balanced communities. In order to avoid the negative implications of social exclusion and isolation, affordable homes within housing schemes should be evenly distributed across the site and not disproportionately allocated to the periphery or in one particular area. The Council will not support affordable homes being grouped together in clusters of more than 10 properties.

2.1.15 In apartment schemes, the Council recognises that other issues impact upon the provision of affordable units, including difficulties in their management and financial concerns regarding levels of service charges. The benefits of pepper

potting will be weighed against these issues and the degree of pepper potting in apartment schemes will be negotiated on a site by site basis.

- 2.1.16 The Council expects that the location of the affordable housing will be discussed and agreed with the Council at an early stage, and in conjunction with the developer's appointed Registered Provider. The final location of the affordable units must be agreed with the Council before development starts. On large schemes, that are to be developed in phases, it is expected that a phasing plan will be agreed prior to commencement, with an even spread of affordable housing across the phases. The location of the affordable housing for each phase must be agreed before development starts on that phase.

### **Funding for Affordable Housing**

- 2.1.17 The Homes and Communities Agency is the main provider of funding for affordable housing. Their approach is that affordable housing on Planning Obligation sites should be delivered without the input of Grant. If Grant were to be considered on a site, their objective would be to ensure that the site delivers more affordable housing, a different mix or higher standards, than would have been possible without Grant. The Homes and Communities Agency will assess the 'additionality' offered by a scheme in making a decision regarding potential funding.
- 2.1.18 Developers should therefore assume that no Grant will be available to fund the affordable housing, unless an agreement has been made with the Homes and Communities Agency.
- 2.1.19 If the developer cannot deliver the required amount of affordable housing through the Section 106 Agreement, the developer or their selected Registered Provider partner may be required to submit a bid to the Homes and Communities Agency through regular market engagement for funding to bring the affordable housing element of their development proposal up to the required standard.
- 2.1.20 The Council may also choose to allocate some of their own Right to Buy (RtB) receipts to allow for a higher level of affordable housing to be provided on site. This will normally be on sites that cannot provide the full 30% affordable housing in those areas where affordable housing need is high or where there are few opportunities for new affordable properties. On these sites the S106 will include a 'without grant' and a 'with grant' scenario as the final decision to allocate receipts is taken by the Council outside the planning process. The 'with grant' scenario will allow for the Council to pay a grant equivalent to up to 30% of the total acquisition costs.

## **Registered Providers (RP)**

2.1.21 To ensure the affordable homes are available in perpetuity, and that they are satisfactorily managed and maintained, the Council prefers all affordable homes to be provided through a Private Approved Registered Provider able to provide a local management presence. The Council may decide to own and manage the properties themselves.

## **On-site provision**

2.1.22 The expectation is that the affordable housing will be provided on site as part of the proposed development unless the City Council and the developer consider that it is preferable for the affordable housing to be provided off-site or a financial contribution to be made towards the provision of an element of affordable housing on another site.

2.1.23 Where provision is to be made on-site, or off-site, the Section 106 Agreement will require the developer to carry out the following before the occupation of an agreed percentage of the market units:

- Complete the affordable housing in accordance with the agreed standards and specification
- Complete an agreement with an approved RP to transfer the affordable units to the RP in accordance with the agreed terms
- Unless otherwise agreed, the timescale for this will be before the occupation of 50% of the market units.

## **Off-site Provision and Financial Contributions**

2.1.24 In exceptional circumstances, where it can be robustly justified, the Council may accept all, or part, of the affordable housing to be provided off site or a financial contribution in lieu of affordable housing on site. In these circumstances the first preference is for those units to be provided by the developer on another site. The Council will have absolute discretion on the location of the alternative site and if a suitable location cannot be agreed, then a financial contribution may be accepted.

2.1.25 Developers will be required to provide more affordable units on the off-site land than was originally proposed on the application site due to the increase in market units on the original site. The working example in paragraph 2.1.30 shows how this calculation will work.

2.1.26 In exceptional circumstances, where on site and off site provision of affordable housing is not an option, the Council may accept a financial contribution in lieu. Any financial contributions will be negotiated on a site by site basis and will reflect the on-site enhancement in value to the developer or

the level of subsidy required for the Council to secure equivalent dwellings off site, depending on the circumstances of the individual site.

## **PRS Schemes**

2.1.27 Recently, an increasing number of Private Rented Sector (PRS) schemes have been coming to market in Derby. These are apartment schemes where none of the units are sold on the open market as all the units are retained by an institutional investor and rented out on an individual basis. The funding of such schemes can be undermined by a requirement for traditional affordable housing through an RP.

2.1.28 Therefore on PRS schemes within the Central Business District, as defined by the DCLP1 Policy AC2 Delivering a City Centre Renaissance, the Council will look to secure on site affordable housing at an Affordable Private Rent which will be no more than 80% of market rent. As it is Affordable Private Rent, there will be no involvement from a RP and the units will be rented by the developer, with the restriction on rent in place. The Council will explore opportunities for aiming the units at specific target populations for these schemes, for example health professionals or teachers. In exceptional circumstances, off site provision or a financial contribution may be considered as outlined in paragraph 2.1.24 above.

2.1.29 Outside the Central Business District, the Council will assess the affordable housing requirements on a site by site basis.

2.1.30

### **Working example**

#### **Off-Site Provision:**

Development of 60 houses.

Affordable provision at 30% - 18 units.

(Number of affordable units if provided on site / Number of market units on site) x Total number of units on site = Off site affordable housing requirement

$$(18/42) \times 60 = 26$$

Therefore the number of affordable units required off site is **26**.

## **2.2 Transport**

### **Introduction**

- 2.2.1 New developments often increase and/or change the pattern of trip making from a site. This can include trips by pedestrians and cyclists, as well as by public transport and car. To accommodate this increase in demand and to facilitate a change to more sustainable modes of transport, additional infrastructure may need to be provided. In these circumstances the developer may need to undertake highway works to secure access and address the short term impacts and/or provide financial contributions to mitigate the longer term cumulative impacts of the development.
- 2.2.2 Developers have a responsibility to provide facilities within the vicinity of their site to cater for increased vehicular movement, or increased size of vehicles needing to use nearby junctions. The extent of any facilities required to ensure the safe and efficient operation of the development and the local highway network will be determined by the Transport Assessment (TA). Any works required under the TA will need to be secured through the planning process. Highway access improvements will normally be conditioned and secured through a Section 278 Agreement (S278) under the Highways Act 1980. These improvements will only be required where they are necessary for the operation of the development and the adjacent highway network. Highway mitigation measures on the wider network will normally be secured through a S106 and will often be in the form of financial contributions.

### **Planning Policy**

- 2.2.3 The National Planning Policy Framework promotes sustainable transport and states that encouragement should be given to solutions which support reductions in greenhouse gas emissions and that reduce congestion. Local planning authorities should support a pattern of development which facilitates the use of sustainable modes of transport.

### **Local Plan Policies**

- 2.2.4 The DCLP Policy CP23 Delivering a Sustainable Transport Network, seeks to deliver a sustainable transport network in Derby. It supports proposals that promote greater travel choice and equality of opportunity for all through the delivery and promotion of high quality and accessible walking, cycling and public transport networks, while maintaining appropriate access for car users and the movement of goods.
- 2.2.5 The policy supports initiatives that will manage down traffic impacts and promote sustainable transport. This also helps to tackle climate change through low carbon travel and lifestyle choices.

- 2.2.6 The Council will ensure that new developments implement and/ or contribute to appropriate on-site measures and off-site measures to mitigate the impact of the development, and contribute to public transport, cycle and pedestrian infrastructure and to public transport service provision.
- 2.2.7 The policy requires proportionate Transport Assessments and Travel Plans for all major applications and any proposal where transport issues are likely. Developers will be expected to agree appropriate transport modelling for use in their evidence with the Council. The Council will seek to ensure that new development is not permitted where it would cause or exacerbate, severe transport problems including congestion and safety.
- 2.2.8 The DCLP1 Policy CP24 Transport Infrastructure, refers to a number of strategic transport initiatives and proposals which are identified by the Council's Local Transport Plan and which make up the Council's long-term transport strategy. The policy states that the Council will seek to negotiate financial contributions to these schemes in appropriate circumstances.
- 2.2.9 Some of the schemes outlined in this policy have been fed into the basis for the contributions in the Financial Contributions Matrix in Appendix B.

### **Works identified in the Transport Assessment**

- 2.2.10 The Council will scrutinise the evidence from the Transport Assessments to evaluate the likely impact from proposed development on the road network and to assess if the alleviating measures proposed by the developer are sufficient to address that impact. This process will guide what form and type of contributions will be required from the developer.
- 2.2.11 The works required can only be determined on a site by site basis. If there is an existing active use on the development site, the traffic generation from that use will be taken into account when determining the impact of the new proposal. The developer will only be expected to mitigate the impact of the additional traffic caused by their new use. Historic uses which are no longer active or occupy the site will not be taken into account.
- 2.2.12 The full cost of the mitigation measures will need to be met by the developer. The presumption will be that the developer will carry out the work which will be secured through a S278 with the Council. The S278 will include timescales for the works.
- 2.2.13 There will be circumstances where a financial contribution for the Council to carry out these works will be acceptable. In these cases, the contribution will need to cover the Council's estimation of the full cost of the works, including any design fees and statutory undertaker costs. Progress of the development or occupation may be managed until those works are carried out.



2.2.14 Where a number of different developments will give rise to a need for off-site highways improvements, contributions will be required from each development towards those works, subject to the limit on pooling contributions (see paragraph 1.63). The level of contribution for each development will be determined by applying a pro-rata contribution based on the trip generation of each development.

### **Transport Contributions**

2.2.15 The provision of a reliable, safe, secure and sustainable transport system that responds efficiently to the needs of individuals and business is fundamental to the future vitality of Derby. In order to sustain the economic and residential land use growth that is planned for Derby in the future, significant investment will need to be made to transport infrastructure and services.

2.2.16 National and local transport policy recognises the need for sustainable transport solutions, and that current trends in increased car ownership and usage cannot be supported in the longer term. As such, future transport investment needs to focus on measures that encourage modal shift away from the car and increase travel choice by improving conditions for pedestrians, cyclists and public transport users, as well as providing for increased capacity on the network. Together these will help to reduce congestion and greenhouse gases.

2.2.17 Derby City Council receives Central Government funding through the integrated transport block. However, in recent years this allocation has been reduced and diverted to specific competitive transport funds that transport authorities have to bid for. The Council has been successful in a number of these funding bids. However, this funding does not provide improvements to mitigate the direct impacts of development or to resolve the cumulative impacts of new development or the wider long term challenges.

### **Thresholds**

2.2.18 Contributions to transport improvements will therefore be sought, from new developments of 10 residential units or more and 1,000sqm or more of commercial development. These will be used to increase network capacity and to support improvements that would encourage the use of public transport, cycling and walking and would be of benefit to the development.

### **Local Transport Plan**

2.2.19 The Local Transport Plan 2011-2026 (LTP3) recognises that new development and growth create demand for travel and new trips on the network. A large proportion of these new trips will be by car. This long term trend of increased car journeys and longer distances travelled add to the

associated environmental, health and social impacts of congestion. New developments which exacerbate this will need to contribute to their mitigation.

2.2.20 One of the goals of LTP3 is to provide and promote greater choice and equality of opportunity for all through the delivery and promotion of accessible walking, cycling and public transport networks, whilst maintaining appropriate access for car users. It goes on to identify gaps in pedestrian, cycling and public transport provision and funding to do this is identified as a constraint. Contributions can be used to plug those gaps and increase the modal split.

2.2.21 In developing the long term strategy to tackle the issues identified in the LTP3, three principles have been set. These guide potential interventions and therefore underpin all contributions that will be sought through S106 Agreements. These principles are:

- Measures to reduce the need to travel
- Measures to increase use of alternatives to the car
- Measures to make best use of the available road capacity, supported by targeted new infrastructure.

2.2.22 The long term strategy identifies the role that planning has to play in terms of the DCLP1 policies and by ensuring that developments negate their impacts through S106 Agreements towards necessary infrastructure and soft measures to encourage more sustainable choices.

### **Level of Contribution**

2.2.23 To determine a reasonable and proportionate level of contribution to meet the DCLP1 policies, the aspirations of the LTP3 and to ensure that developments mitigate their impacts, the starting point is to look at the cost of providing transport infrastructure and services to existing residents and businesses over the LTP3 5 year programme. The transport contribution rates have been calculated by proportioning the total costs of projected transport capital projects to the 109,000 households in Derby. From this a standard value per residential trip has been derived and transposed to non-residential land uses using average trip rates. Table 3 provides a breakdown of the transport capital projects that have been included.

**Table 3: 5 Year LTP3 Programme Costs included in the Transport Contribution Calculation**

<b>Programme Element</b>	<b>Cost</b>
Integrated Transport	£14,750,000
Transport Infrastructure	£78,400,000
Strategic Transport	£13,000,000

Improvements, including Park & Ride	
Clean Air Zone	£50,000,000
Bus Initiatives	£7,000,000
OLEV	£325,000
<b>Total</b>	<b>£163,475,000</b>

## Differential Land Use Rates

2.2.24 Different types of land use have different levels of trip generation. Trip rates used in the calculation of contribution rates were derived from the TRICS database. The rates are based on the AM and PM weekday peak traffic periods when demand on the transport network is greatest.

2.2.25 Residential land use for the purpose of calculating transport contributions is separated into houses and flats. For houses the contribution rate has been calculated as a direct relationship between the total LTP programme costs and the total number of dwellings in Derby. This provides the base contribution and other land use contributions have been calculated from this depending on their individual trip generation rates, relative to residential.

2.2.26 The rates for employment uses have been adjusted to avoid double counting residential development trips on the transport network. Similarly, the rate for retail uses has been adjusted to reflect that certain levels of trips are already on the transport network.

2.2.27 Please refer to the Financial Contributions Matrix in Appendix B for the transport contribution land use rates. The amounts are payable per unit for residential and per 100 sqm for commercial development. Land uses which are not shown in Appendix B will be calculated on a site by site basis.

## Local Circumstances

2.2.28 The contribution rates in Appendix B are maximum levels. If the TA for an individual application shows that lower trip generation rates are applicable, the Council will look at lower contribution rates on a site by site basis, but only if backed up with reliable evidence.

2.2.29 Contributions may also be reduced on a site by site basis where there is an existing land use or where viability, backed up with an appraisal, is an issue on the site.

## How Contributions Will Be Used

2.2.30 Contributions will be used to provide transport improvements that will directly benefit the development. When dealing with traffic flows and alternative

modes of transport, improvements further away from the development site can often provide benefits for the development site. Therefore contributions may be spent on wider transport schemes if it can be demonstrated how it relates to the development in question. These would normally be public transport, pedestrian and cycling improvements, or works to improve the road capacity or traffic flow, near to the site. This may include revenue funding to support bus services or Council staff time to support design and implementation of schemes.

#### 2.2.31

##### **Working Example**

##### **Development of 70 dwellings (30 x 3-bed houses and 40 x 2-bed flats)**

Rate per house - £1,500

Rate per flat - £780

$30 \times £1,500 = £45,000$

$40 \times £780 = £31,200$

$£45,000 + £31,200 = £76,200$

Therefore the total sum required for Transport contribution in the example above would be **£76,200**

### **Travel Plans**

2.2.32 Travel plans can be secured through conditions on the planning permission, rather than through the S106 Agreement. However, there will be circumstances where the Travel Plan will be required through the S106. This will be on sites where there are particular concerns that the targets within the Travel Plan will not be met or where they are so critical to the decision to grant planning permission that they must be adhered to. In these cases the S106 will secure the submission of the Travel Plan and will also put in place measures to ensure the targets are met.

2.2.33 There will be a requirement placed on the developer to submit annual monitoring reports, usually over a five year period, on whether, or to what extent, the Travel Plan targets have been met for that year. If the targets have not been met then the developer will be required to pay a financial contribution to the Council to cover measures to implement the Travel Plan to hit the targets or for other measures to mitigate the impact of missing those targets.

2.2.34 The Council will charge a maximum of £50,000 per year for missed targets. There will be a sliding scale incorporated into the agreement so that the degree to which the target has been missed is taken into account.

2.2.35 When the Travel Plan targets are not met and the contributions have to be paid, the sums secured will be directly spent on schemes or measures that will influence modal shift from single occupancy car trips from the development and other measures to meet individual travel plan targets.

### **Travel Plan Monitoring**

2.2.36 There are a number of costs borne by the Council in terms of reviewing Travel Plans and the potential monitoring reports as required in the previous section. The Council will seek to recover these costs from applicants where Travel Plan monitoring forms part of the S106 Agreement. The fees that will be charged reflect the amount of officer time required to undertake the evaluation of the initial plan, assess the monitoring data and participate in consequential reviews and discussions to agree any amendments to the travel plan in the future.

2.2.37 The travel plan monitoring fees will cover the pre-approval of travel plan including:

1. Assessment of travel plan drafts
2. Site visit and travel expenses
3. Approval of action plans and targets

2.2.38 The fees will also cover work required during the operation of travel plan including:

1. Receipt and checking of monitoring data and tracking of actions implemented
2. Site visits and travel expenses
3. Approval of conditions and obligations (where fulfilled) relating to the implementation of actions and achievement of modal split targets
4. Provision of travel plan advice and materials and liaising with Travel Plan Coordinator

2.2.39 Please refer to the Financial Contributions Matrix in Appendix B for the fee levels that are being sought. The fee level is based on the size of the development.

2.2.40 If the Travel Plan monitoring includes targets to be met over a specified number of years but those targets are met early, the City Council will refund an unspent contribution for each full year left.

## **2.3 Public Green Space**

### **Introduction**

2.3.1 Public open space is land that is freely available to the public without charge for recreational, general amusement and incidental uses. It includes formal parks, local amenity space, and green spaces in and around housing. It should help to create a quality public realm environment. New development puts pressure on existing open space facilities. This impact needs to be mitigated through planning obligations for new and improved open space. In this guidance, incidental areas of open space will be referred to as 'amenity green space' and parks and outdoor sports facilities will be referred to by the more general term of 'major open space'.

### **Planning Policy**

2.3.2 The National Planning Policy Framework states that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.

2.3.3 The DCLP1 Policy CP16, Green Infrastructure, seeks to ensure that new residential development provides improvements to the public green space network either through new provision or improvements to existing spaces.

2.3.4 The DCLP1 Policy CP17 Public Green Space, expresses the Council's commitment to ensuring that everyone has access to a network of multi-functional public green spaces. The emphasis of the policy is to reinforce and improve the public green space network and to focus resources on improved quality and accessibility. The Council will seek to secure developer contributions either by financial contributions for improvements to existing open space, or through the provision of new public green space.

2.3.5 The Council's Open Space Study highlighted that some areas of the City are deficient in the provision of public green space whereas other parts have a surplus. In order to address this, Policy CP17 has broadened the scope of public green space so that this network is made up of Local Nature Reserves and wildlife sites, parks, allotments, outdoor sports facilities and playing fields such as playing pitches, tennis courts and bowling greens and amenity green space.

2.3.6 Under Policy CP17, public green space offers a wide range of functions. For the majority of residential development, the functions of amenity green space, parks and outdoor sports facilities are most likely to directly meet the needs of the occupants

## Functions of amenity green space and major open space

2.3.7 The functions offered by amenity green space and parks are set out as follows:

- **Amenity Green Space**

Amenity green space is the updated term for what has been previously known as incidental open space. Amenity green space is most commonly found in residential areas. It includes informal recreation spaces, green spaces and village greens in and around housing, with a primary purpose of providing opportunities for informal activities close to home or work such as young children's play areas (Local Equipped Areas for Play, LEAP's), kick-about areas, and spaces for going for a run or taking a dog for a walk.

- **Major Open Space**

Major open space refers to formal green spaces including urban parks, country parks and formal gardens. These should contain a reasonable range of activities for children's' play (LEAP's and Neighbourhood Equipped Areas for Play, NEAP's) and adult recreation. Major open space tends to contain facilities that draw users from greater distances and may be associated with sports clubs and organisations such as outdoor sports facilities, playing fields and playing pitches, tennis courts or bowling greens.

The parks in Derby are broadly grouped under three categories:

- Neighbourhood Parks – These provide for people's daily informal sport and recreation needs and should contain children's play facilities, kick-about areas, sports pitches, where space allows, and pleasant seating areas.
- District Parks –These provide a more local function than City Parks and will include those facilities required for neighbourhood parks plus additional facilities such as wheeled sports areas, park pavilion/ changing rooms, network of connected footpath and cycle routes and larger scale landscape features such as woodland and ponds.
- City Parks –These provide a wide range and high standard of complementary facilities of broad interest to visitors.

2.3.8 In areas of the city where it is difficult to find more traditional parks and amenity green space within reasonable walking distance from a development site, contributions may be sought towards alternative types of public green space such as wildlife site or allotments. The open space formula will be applied to calculate contributions for these alternative types of public green space.



2.3.9 Land used for indoor leisure uses, stadia and essentially private open spaces, such as private golf courses, are not included under the definition of public open space. However, some private and education facilities in dual use may, under certain circumstances, be included.

### **Thresholds**

2.3.10 Policy CP17 contains a public green space standard of 3.8 hectares per 1,000 population. This SPD breaks this figure down so that it can be applied practicably, as follows:

- Amenity green space of 1.4 hectares per 1,000 population
- Major open space of 2.4 hectares per 1,000 population

2.3.11 Provision of amenity green space will be sought from developments of 10 or more dwellings. Provision of major open space will be sought from developments of 25 or more dwellings.

### **Amenity Green Space**

2.3.12 For developments of 10 units and above, Amenity Green Space is to be provided and will be calculated on the basis of 14 sqm per person.

2.3.13 The population of a development will be based on the assumptions set out in Table 1 under paragraph 1.33. The assumed total population for the development will be multiplied by the figure of 14sqm to calculate the level of amenity green space that should be provided.

2.3.14 On-site Amenity Green Space open space will need to be provided in line with the standards set out above and laid out to a specification that has previously been agreed by the Council. In the majority of cases it will have to be laid out before the occupation of 50% of the dwellings on the site. There may be certain circumstances where the Council agrees a different timescale.

### **Financial contributions in lieu of Amenity Green Space**

2.3.15 The presumption is that amenity green space will be provided on-site as an integral part of the development. However, where suitable land for amenity green space is not readily available to a developer, or where amenity green space cannot be satisfactorily incorporated into a development, a financial contribution in lieu of on-site provision may be acceptable. This would be an index-linked payment based on the cost to the Council of acquiring, laying out, equipping and maintaining land.

- 2.3.16 This may particularly be the case on small high density apartment schemes where provision of on-site open space would not be possible due to the relative size of the site and population generated.
- 2.3.17 Please refer to the Financial Contributions Matrix in Appendix B for the level of financial contribution.
- 2.3.18 In certain circumstances it may be acceptable for part of the open space requirement to be provided on site, with the remaining as a financial contribution. The open space element must be a useable piece of open space for this to be acceptable. In these cases the amount that can be accommodated on site will be deducted from the total open space requirement and the financial contribution calculated based on the population attributable to that outstanding requirement.

### **Major Open Space**

- 2.3.19 For sites of 25 units and above, major open space is to be provided and will be calculated on the basis of 24sqm per person.
- 2.3.20 The population of a development will be based on the assumptions set out in Table 1 (paragraph 1.33).
- 2.3.21 The assumed total population for the development will be multiplied by the figure of 24 sqm to calculate the level of major open space that should be provided.

### **Financial contributions for Major Open Space**

- 2.3.22 Major Open Space contributions will usually be in the form of financial contributions to be spent on enhancing existing Major Open Space in the City. As a general guide, the financial contributions will be directed towards City Parks within a 10 minute drive time (or approximately 8000m); Districts Parks within 15 minute walk time (roughly 1200m); or Neighbourhood Parks within 10 minute walk time (roughly 800m).
- 2.3.23 Please refer to the Financial Contributions Matrix in Appendix B for the level of financial contribution.

### **Requirements for on-site Major Open Space**

- 2.3.24 However, there may be certain situations where the developer may be able to provide a suitable parcel of land on-site. This will usually only be on large scale housing sites. Where this is possible the open space will need to be provided in line with the standards set out in paragraph 2.3.26, must be capable of fulfilling the functions of major open space outlined in paragraph 2.3.7 and laid out to a specification that has previously been agreed by the Council.

## **Design of On-site Open Space**

2.3.25 Amenity green space provides a need for the local area in satisfying immediate recreational and amenity uses and contributes to providing a high quality natural environment. Use of suitably experienced and qualified landscape consultants to design the overall landscape scheme is recommended to ensure all aspects are taken into consideration.

2.3.26 The design of the open space should:

- relate directly to adjacent houses in the form of small squares, courtyards or greenways and pocket parks. Odd pieces of land for example located at end of gable walls, backing onto rear gardens and not overlooked and other pieces of land left over because they serve no other purpose are not acceptable.
- be of sufficient size to be used for small scale recreation, such as sitting, playing and walking, without impacting on adjacent land uses or putting site users at risk.
- be designed so it is an integral part of the overall development layout to ensure that open space is safe and welcoming. Design shall ensure there is natural surveillance from neighbouring paths, roads and houses to discourage vandalism and other anti-social behaviour. Open space should not be located to the rear of properties.
- make a positive contribution to the environmental amenity of the area through careful design of earthworks, planting, and incorporating existing natural landscape features such as trees.
- where appropriate, include hard surface footpaths providing recreational routes and access to any recreational facilities.

2.3.27 Developers are encouraged to provide fewer but larger pieces of amenity green space wherever possible, rather than a large number of small and fragmented sites that offer little recreational and environmental value. The larger areas offer greater scope for a wider range of recreational use and introduction of large scale tree planting, without having a negative impact on neighbouring properties.

2.3.28 Detailed design of open space shall include measures to ease maintenance, such as mowing strips under railings and against boundaries, use robust materials and street furniture and provide any necessary boundary protection measures to prevent unauthorised access.

## **Maintenance and Management of Open Space**

2.3.29 Depending on the circumstances of the development, a developer may either offer to transfer the ownership and responsibility for the open space to the Council or choose to keep the land in private ownership to maintain and manage itself or employ a private management company to maintain the open space. The Council may choose to not accept transfer and in these circumstances the developer would be required to retain ownership and manage the open space.

2.3.30 Where the Council has agreed to take on the open space the developer will have to maintain the open space to the Council's reasonable satisfaction for a reasonable period (usually a minimum of 12 months) after the Council has certified that it has been laid out satisfactorily. At the end of the maintenance period the developer will transfer ownership of the land to the Council and pay a commuted sum to cover the maintenance costs for 30 years. There may be circumstances where the period will be longer.

2.3.31 Should the developer wish to maintain the open space themselves they will have to do so in perpetuity to the Council's reasonable satisfaction to an agreed management plan. The Council will seek to ensure that new open spaces will remain accessible to the public and will be maintained to an acceptable standard in perpetuity.

2.3.32 Developers will be required to submit the following to the Council for approval before development starts on site:

- **An open space plan**

The on-site open space plan should be drawn at identified standard metric scale (1:500), should show the direction north and show the positions of the open space areas in relation to the site boundaries. The plan should enable the boundaries of the open space areas to be clearly identified on the ground.

- **Specification for the on-site open space and play areas**

The specification should show the location, size, layout and proposed landscaping of the open space on the application site. It should include detail of any equipment being installed and identify the position, format, size and specification for the LEAP and NEAP Play areas, as appropriate.

- **A management plan for securing the future maintenance in perpetuity (if transferring to a Management Company)**

The management plan should include details of the proposed management company or other appropriate organisation, its corporate

structure, directors and officers. It should also set out the funding mechanism for the proposed management company to demonstrate how the open space will be maintained in perpetuity.

### **Public access during the period before transfer**

2.3.33 If the owner has elected to transfer the open space and play areas to the Council, the open space and play areas should be accessible to the public during any maintenance period before transfer to the Council.

### **Public access to privately managed open space**

2.3.34 The Council will expect that new areas of amenity green space and major open space provided by development will be for public use. This means that the open space should be freely available to the public without charge for recreational, general amusement and incidental uses. The open space should be accessible to the public in perpetuity.

2.3.35 Where the management of the open space is the responsibility of a private management company, there will need to be contact details for the management company on display at the open space so that public can report any problems concerning maintenance such as littering or damage to the play equipment.

### **Play Areas and Changing Facilities**

2.3.36 The Fields in Trust guidance for Outdoor Sport and Play, 'Beyond the Six Acre Standard' (2015) sets design standards for play areas. Locally Equipped Areas for Play (LEAPs) are aimed at toddlers to junior aged children (4-8). Neighbourhood Equipped Areas for Play (NEAPs) are aimed at older children of 8 -12 years.

2.3.37 The provision of play areas within on-site open space will be sought from development that includes 50 or more family houses, as follows:

- Developments of 50 or more dwellings to provide one or more equipped play area to LEAP (Locally Equipped Areas for Play) standard for children up to 8 years old. The minimum area required is 400m<sup>2</sup>.
- Developments over 100 dwellings shall include provision for the above plus additional provision for junior children up to the age of 12 (NEAP's). The total area required for Toddler and Junior is 600m<sup>2</sup>.
- Developments over 350 dwellings shall include provision for the above plus additional provision for senior children aged from 12 to 16. Total area for a senior facility is 1000m<sup>2</sup> plus allowance for Toddler and Junior.

- 2.3.38 It is expected that the LEAP standard play area will in most cases be provided on site and provided directly by the developer. Provision for junior and senior play are likely to be provided off site and paid for through a financial contribution, except in the largest developments where it may be possible to locate these as part of the on-site open space network.
- 2.3.39 The play facilities will be provided as part of the on-site open space provision. The developer will be expected to locate and design the on-site open space provision to take account of the specific needs of the play areas.
- 2.3.40 For developments at the smaller end of the scale this may require amalgamating the amenity green space into a larger unit to provide sufficient area for the play facilities and an adequate buffer between the play area and adjacent houses. The precise design and specification will need to be agreed with the Council within the wider specification for the open space. The Council is able to offer guidance at an early stage on the design of play areas.
- 2.3.41 Where playing fields are being provided and there are insufficient existing facilities, changing rooms will also be required. These would need to be built to a specification agreed with the Council and would be negotiated on a case by case basis.
- 2.3.42 Developers will be expected to display approved estate layout drawings showing the location and type of play areas clearly marked for the information of prospective buyers/tenants at the time of initial interest, prior to purchase.

### **Design of Play Areas**

- 2.3.43 The basic play area shall comply with the LEAP standard and take into account the design standards set out in the following paragraphs for each of the different type of play facility.
- 2.3.44 Play areas should be designed so as to provide a quality play setting that incorporates a variety of different play spaces/ environments. These could include use of mounding, changes in level, incorporation of natural features and planting, creation of quiet spaces, use of logs and other items for seating. While the standards set out a minimum size requirement, there may be circumstances where the actual fenced play area is extended beyond this to incorporate existing natural features on site that will contribute to the play environment, such as mounding and slopes and established trees or groups of trees.
- 2.3.45 Play area design should be inclusive and offer play opportunities for children with disabilities. This includes ensuring that equipment is accessible and that children with disabilities are able to feel integrated into the play experience. More advice is available from the Council on request.

- 2.3.46 All types of play facility should include an area of grass for informal play and sitting.
- 2.3.47 Equipment should be located so as to create a progressive play experience around the site. Where a play facility caters for a wide age range then play equipment should be located to provide a progression from equipment for the very young towards older children.
- 2.3.48 Play areas should be located away from roads and car parks and at the minimum distances from surrounding homes set out in the Fields in Trust standards.
- 2.3.49 The Council can offer further guidance on the design and lay-out of play areas on request.
- 2.3.50 On completion of the play facilities the developer shall provide to the Council an independent post inspection report for the play facility confirming that it:
1. Conforms to all European and British guidelines and standards current at the time of completion
  2. Has been designed to a minimum LEAP and NEAP standards (note in some sites the play area may be required to exceed these standards in design and range of age groups catered for and equipment provided).
  3. Is fully accessible by all groups of children including children with disabilities

### **Maintenance of play areas and changing facilities**

- 2.3.51 For children's play areas and changing facilities the commuted sum will cover a 15 year period which will be payable on transfer, once the Council is satisfied that the facilities have been built to the correct standards. If requested, the Council will adopt play areas and changing rooms without the 12 months maintenance period by the developer as long as 12 months defects liability is provided. If the Council takes ownership without a 12 months maintenance period, the commuted sum will cover 16 years to account for that first additional year maintenance.
- 2.3.52 Please refer to the Financial Contributions Matrix in Appendix B for the level of financial contribution for maintenance of play areas.

(see next page for Working Example)

**Working Example: Financial contribution**

**Development of 25 flats (12 x 2-bed & 13 x 1-bed) and 10 houses**

12 x 2 = 24 people

13 x 1.5 = 19.5, rounded up to 20 people

10 x 2.5 = 25 people

Total assumed population – 69

Rate per person for amenity green space - £742

69 x £742 = £51,198

The total sum required for amenity green space in the example shown above would be **£51,198**

Rate per person for major open space - £1,043

69 x £1,043 = £71,967

The total sum required for major open space in the example shown above would be **£71,967**



## **2.4 Education**

### **Introduction**

- 2.4.1 Education infrastructure is an integral part of new residential development and is essential in order to achieve sustainable communities. There has been unprecedented growth in primary pupil numbers in recent years and secondary pupil numbers are projected to grow significantly in the future. New developments are likely to put increased pressure on school places.
- 2.4.2 Derby City Council is the local education authority responsible for the provision of school places in the City of Derby. Developments that are likely to generate an increased demand for school places will need to contribute towards education facilities where existing facilities are not sufficient to support the development. This will include the provision of land and built school provision in relation to new schools and/ or contributions towards school extensions and new facilities.

### **Local Plan Policy**

- 2.4.3 The DCLP1 Policy CP21 Community Facilities seeks improvements in school provision in the form of improvements and extensions to existing secondary schools, new primary schools to serve larger developments, and improvements and expansions of existing primary schools. Developments which increase the demand for these facilities will be required to make contributions towards them.
- 2.4.4 The policy highlights the potential need for a new secondary school, located in South Derbyshire, to serve the southern part of Derby. This need arises from growth and developments within Derby, but predominantly from those sites outside the City boundary. Contributions may be required from sites which would benefit from the new school.

### **Threshold**

- 2.4.5 Contributions towards education will be sought from residential developments of 25 dwellings and above. Contributions will only be sought for these developments where there is insufficient existing capacity in local schools. For Outline applications, an assessment of capacity will be undertaken at Reserved Matters stage.

### **Assessing Capacity**

- 2.4.6 When assessing available capacity, the Council will look at the number of children on the school roll at the local primary and secondary school that would be capable of serving the application site. The Council will also take into account information on projected future pupil numbers and other

developments served by those particular schools where reserved matters have been submitted. Where there is available capacity to school some of the children generated by a development, a pro-rata contribution would be sought.

2.4.7 The following formula will be used to calculate the available capacity:

**Available capacity = a – (b+c), where:**

**a = the number of pupil places at the existing school;**

**b = the number of pupils recorded on the school roll at the existing school**

**c = the number of pupil places required at that school by other development sites within the school's catchment area**

2.4.8 The capacity assessment will be carried out at the time that the Heads of Terms are being negotiated on Full applications. For Outline applications, the assessment will be carried out at Reserved Matters stage, when further details of dwelling numbers and types in the development are provided, and when there is a better understanding of the timing the development. This should ensure that the contributions towards the school places will directly relate to the development at the time when it is likely to come on stream.

2.4.9 Where there is sufficient available capacity in the catchment area local schools to accommodate a proposed development, a contribution will not normally be required.

## **Primary Schools**

### **On-site Provision**

2.4.10 For developments of 750 dwellings or more, a primary school will normally be required on-site, subject to available capacity in local schools. On large sites under this threshold, a primary school may still be required on site, depending on whether local schools can be expanded and what other developments may be coming on stream in the local area in the future.

2.4.11 In cases where a school is to be provided on site, the developer will normally be expected to set aside sufficient, fully serviced land and to construct educational facilities to the Council's design and specification at the developer's own cost.

2.4.12 The Council will produce the design and specification for all new schools, in discussion with the developer of the wider site. The developer will be responsible for paying all the Council's design fees. The specification will

include the design, technical specification, build, fit out, furnishing and equipping (including ICT equipment) of the school.

2.4.13 Before the design and specification is to be drawn up, the developer will need to agree the location of the school with the Council. The size of the plot must be large enough to accommodate the school building and all ancillary facilities such as car parking, playground and playing fields. On some sites, where the Council can demonstrate that further expansions of the school will be required in the future, the developer will be required to provide the land and core facilities for a larger school at the time it is built. This will enable easier and less disruptive expansion at a later date.

2.4.14 The S106 agreement will include timings for when the school will have to be constructed and open by. These timings will differ on individual sites and will depend on how critical early opening is in that location. Some areas will be able to temporarily accommodate children at existing schools whilst the school is built, but in other areas the school will have to be open by the time any occupations take place. The S106 agreement will restrict occupations until the school is open and this will be negotiated on a case by case basis.

2.4.15 In exceptional circumstances the Council may be willing to accept a parcel of land on site together with a financial contribution to cover construction costs, which would be used to construct new education facilities. The financial contribution would have to be sufficient to fully cover all the design, construction and fit out costs, as well as the equipment needed, and will be index linked using the BCIS All in Tender Price Index.

### **Off-site Provision**

2.4.16 It is the expectation of the Council that where a school is to be provided, it will be built on site. However, in exceptional circumstances, the Council may accept a school to be provided off-site. In these cases the Council will expect the same procedure and standards as for on-site provision, as outlined above. If the land is not in either party's ownership, the developer will be expected to acquire the site for the construction of educational facilities. The location of any off-site facility must relate to the development site in question and must be agreed with the Council at its absolute discretion.

### **Financial Contributions**

2.4.17 The Council will apply the following assumptions for primary pupil numbers generated by development:

- 28 children per 100 houses
- 7 children per 100 flats

- 2.4.18 The Financial Contribution rates are based on Department of Education costs for the provision of school places. The rates are updated annually by the Council to maintain their value using RPI. Contributions will be spent on extensions to existing local primary schools to provide additional school places.
- 2.4.19 The current primary school child place costs for Derby are set out in the Financial Contributions Matrix in Appendix B of this document and are also published on the Council's website. All education contributions will be index linked using the BCIS All in Tender Price Index.
- 2.4.20 Where possible, the standard formula will be used to fund school expansions to accommodate pupils from housing developments. However, each individual school site has its own set of circumstances and therefore funding received through the standard formula may not be sufficient to cover expansion costs in all cases. Each site will need to be considered on an individual basis having regard to factors such as site constraints, site abnormalities and scale of the expansion work required to accommodate pupils from the development. In some cases it may be necessary for the Council to indicate that no expansion work can take place on a particular school site or to carry out a feasibility study to establish if necessary expansions are possible and the actual costs of the work. Developers will, in these situations, be required to pay a bespoke contribution, to be negotiated on a site by site basis.

## **Secondary schools**

### **New school buildings - on-site and off-site provision**

- 2.4.21 The provision of a secondary school on-site would only be required in exceptional circumstances. A much more likely scenario is where a number of developments are planned for an area where a new secondary school would be required. In this case, developer contributions would be sought from all developments that would serve the new school and those contributions would be pooled to enable that school's provision. The contributions would be secured subject to the provisions of Regulation 123 of the CIL Regulations 2010.
- 2.4.22 In this situation, a site might need to be reserved within a development, together with a pro- rata contribution from each development towards its provision. In this case the contribution would be based on the cost of the provision of the new school, rather than the formula outlined below. Each development would pay a pro-rata contribution in proportion with the number of children it is expected to generate. For the development that would be providing the land, the value of that land would be taken into account when determining its financial contribution.

2.4.23 Where housing growth is taking place on the edge of the City, there may be circumstances where contributions towards secondary school provision may be sought from local authorities adjoining Derby City's boundaries.

2.4.24 Only in an exceptional circumstance, such as a large urban extension, would the provision of a secondary school be required on-site from an individual scheme.

### **Financial contributions**

2.4.25 The Council will apply the following assumptions for pupil numbers generated by development:

- 20 children per 100 houses
- 0 children per 100 flats

2.4.26 The Financial Contribution rates are based on Department of Education costs for the provision of school places. The rates are updated annually by the Council to maintain their value using RPI.

2.4.27 The current secondary school child place costs for Derby are set out the Financial Contributions Matrix in Appendix B of this document and published on the Council's website. All education contributions will be index linked using the BCIS All in Tender Price Index.

2.4.28 Contributions will be spent on extensions to existing local schools to provide pupil places.

2.4.29 As outlined in paragraph 2.4.20 above for primary schools, there are some secondary schools within Derby that have difficult site circumstances that mean the formula outlined here would not be sufficient to provide the necessary extensions to school the new children. These sites will be dealt with on a case-by-case basis after site feasibility has been undertaken.

2.4.30 In these cases the cost of the actual extension will be determined and applied pro-rata to the number of children being generated by the development. So, for example if a development was generating 150 secondary school children and the extension would cost £4 million, but would house 200 children, the development would pay £3 million.

(see next page for Working Example)

### **Working Example**

#### **Financial Contribution**

**Development of 150 houses and 75 flats in an area with no spare capacity.**

Primary children generated from houses –  $28/100 \times 150 = 42$

Primary children generated from flats –  $7/100 \times 75 = 6$  (rounded up from 5.25\*)

Secondary children generated by houses –  $20/100 \times 150 = 30$

Primary contribution –  $48 \times £14,609 = £701,232$

Secondary contribution –  $30 \times £21,988 = £659,640$

The total sum required for education in the example shown above would be **£1,360,872**

(\*Note: when estimating the number of children generated, all figures will be rounded up)

## **2.5 Community Facilities**

### **Introduction**

- 2.5.1 The NPPF requires local 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. The DCLP1 Policy CP21 identifies that community facilities include, amongst other things, community centres, training facilities, indoor sports venues, libraries and health facilities.
- 2.5.2 To create sustainable and successful communities it is essential that all the appropriate community facilities are provided. This is particularly important on large sites where new communities are being created. It is also important however, to ensure that the scale of existing facilities keep up with expanding populations through smaller incremental developments.
- 2.5.3 The following approaches will be taken for calculating contributions towards community centres, built sports facilities and health facilities. Contributions towards other types of community facilities, such as libraries (see Section 3) will be worked out on a case by case basis.

## **Community Centres**

### **Introduction**

- 2.5.4 Community centres provide an important focus for local people and contribute to the economic, social and cultural life of neighbourhoods by providing leisure, recreation, education and job training opportunities for a range of groups. They can help to create sustainable neighbourhood centres that contribute to the local economy through provision of affordable space for meetings, training and functions together with workspace for local businesses, organisations and community enterprises. These centres also provide a vital resource for building a cohesive community and as such are important in residential developments.

### **Local Plan Policy**

- 2.5.5 The DCLP1 Policy CP21 Community Facilities states that the Council will work with strategic partners and developers to provide City-wide, high quality, accessible and inclusive facilities and services for the community. It will do this by supporting the retention of existing facilities or providing new, or investing in improved, community facilities to serve new development or meet an identified need. Policy CP21 states that 'Developments that increase the demand for community facilities and services will be required to make contributions towards or provide for new or improved facilities'.

## **Assessing Capacity**

- 2.5.6 The Council will liaise with community centre associations to provide evidence regarding available capacity at existing centres. Timetables of current activities for example, may help to indicate the degree of available capacity at the community centre.
- 2.5.7 In situations where it can be demonstrated that the existing community facilities can accommodate the level of additional capacity created by a development, a contribution will not be required. If, however, there is no existing capacity to successfully accommodate the new population, a contribution will be required. The capacity will be assessed on a case by case basis.

## **Identifying appropriate centres for expansion**

- 2.5.8 New community facilities and services need to be located so that they are accessible to their potential users, such as in new or existing centres or in locations well served by public transport. The Council will encourage the co-location of community facilities with similar or complementary uses where appropriate.

## **Threshold**

- 2.5.9 The size of residential development at which contributions to community centres will be sought, is 50 dwellings.

## **Level of Contribution**

- 2.5.10 Contributions will be sought on a cost per person basis for new or improved community centres. This contribution has been based on recent City Council costs for building new community facilities. For the rate of contribution required for a qualifying development please see the Financial Contributions Matrix in Appendix B.

## **On-site Provision**

- 2.5.11 On large residential sites, where a new community centre is required on-site, or where an existing centre is to be extended, there may be the option for the developer to build the facilities themselves, to the Council's design. This will depend on the specific details of the development and may include the transfer of land, in addition to the build.
- 2.5.12 In this circumstance, before commitment to providing the new facility is made, the Council will require evidence that a community association responsible for running and managing the centre has been established.



## Maintenance

2.5.13 In situations where the developer has provided a new community centre facility that is to be transferred into the Council's ownership, the Council will seek a commuted sum to provide for the maintenance of the facility for an agreed period. In most circumstances this will be 15 years, however there may be situations where a different maintenance period is required. Where the Council takes on a facility there will need to be 12 months defects liability provided by the developer.

## Financial Contributions

2.5.14 Where there is need to accommodate additional capacity from new development, a specific centre will be identified that relates to the proposed development. The Council will seek a financial contribution towards increasing the capacity of the community centre provision. This will either be through internal alteration or extension to an existing centre, or through the provision of a new building. Please refer to the Financial Contributions Matrix in Appendix B for the level of financial contribution required.

2.5.15 In certain exceptional circumstances the Council may accept a parcel of land, to enable the extension or construction of community centre facilities, in lieu of a financial contribution.

2.5.16

### Working Example

#### Development of 80 dwellings (60 x 3-bed houses and 20 x 2-bed flats)

$60 \times 2.5 = 150$

$20 \times 2 = 40$

Total assumed population number = 190 people

Per person rate = £279

$190 \times £279 = £53,010$

Therefore the total sum required for Community Centre contributions in the example above would be **£53,010**

## **Built Sports Facilities**

### **Introduction**

2.5.17 The provision of local sports facilities is essential to the health and well-being of the population. Where new development occurs it is vital that sufficient sports provision is made to ensure that new communities are successful and sustainable.

### **Local Plan Policy**

2.5.18 DCLP1 Policy CP21 Community Facilities seeks to improve the range of sports facilities by delivering the aspirations of the Council's Leisure Strategy, including:

- the provision of a new 'leisure water' facility in the City Centre
- redevelopment of the Moorways Sports Complex, Allenton, and
- the provision of a new 25m swimming pool at Springwood Leisure Centre, Oakwood.

2.5.19 The policy states that 'Development that increase the demand for community facilities and services will be required to make contributions towards, or provide for, new for improved facilities'.

### **Threshold**

2.5.20 Contributions towards built sports facilities will be required for development of 50 dwellings or more. They will only be sought where the existing local facilities do not have any spare capacity for the new population and where there is a clear relationship to the development proposal.

### **Level of Contribution**

2.5.21 The contributions sought for sports facilities will vary depending on the type of sports provision that is needed. There are three types of sports facility for which contributions will be sought:

- Health and Fitness Suites
- Swimming Pools
- Sports Halls

2.5.22 The Council's Leisure Facilities Strategy will form the evidence base for assessing the capacity of these facilities. The Strategy takes into account the findings from an assessment of sports halls in 2013 and of swimming pools in 2015, using Sport England's Facility Planning Model. The planning models for

these sport facilities have assessed the level of provision required up to 2028. The Strategy also takes into account the outcome of a consultant's assessment of the supply and demand in Health and Fitness in the city, undertaken in 2017.

2.5.23 In addition, Sport England uses a tool called the 'Sports Facilities Calculator' that can be used to determine the number of facilities that are needed to meet a population's sport facility needs.

2.5.24 These two tools used together can pinpoint exact requirements from new developments. Therefore for all residential developments of 50 dwellings or more the Council will be able to calculate whether the existing facilities within the local area can cope with the demand generated by the new development.

2.5.25 The costs of the different types of sports facilities are also shown within Sport England's tool. Therefore using this information, together with assumptions about usage from Sport England, appropriate contribution levels have been calculated and can be found in the Financial Contribution Matrix in Appendix B.

2.5.26 Contributions will be used to extend existing sports facilities or put towards the construction of new facilities.

### **On-site provision**

2.5.27 In exceptional circumstances and on larger housing sites, the Council may wish to see a parcel of land provided for new built sports facilities. This may be in addition to a contribution towards building those facilities.

2.5.28

#### **Working Example**

##### **Development of 80 dwellings (60 x 3-bed houses and 20 x 2-bed flats)**

Requirement for Health & Fitness contribution and Swimming Pool contribution

$$60 \times 2.5 = 150$$

$$20 \times 2 = 40$$

Total assumed population number = 190 people

Per person rate for Health & Fitness = £89

Per person rate for Swimming Pools = £168

$$190 \times £89 = £16,910$$

$$190 \times £168 = £31,920$$

$$£16,910 + £31,920 = £48,830$$

Therefore the total sum required for Sports contributions in the example above would be **£48,830**

# Health Facilities

## Introduction

- 2.5.29 The NHS Southern Derbyshire Clinical Commissioning Group (CCG) brings together the combined expertise of 55 local GP practices to commission health services on behalf of 546,000 patients in Southern Derbyshire.
- 2.5.30 One of the functions of the CCG is to understand the population of their catchment area and identify areas where additional development may put a strain on existing facilities to ensure that services adequately meet the health and wellbeing needs of the population
- 2.5.31 New residential developments in the City will place increasing pressure on local health facilities. The health and well-being of Derby residents is an important part of delivering sustainable communities. This includes access to a wide range of services and facilities across the whole city. It is therefore reasonable for residential developments to contribute to the provision of new health facilities proportionate to the likely increase in population from the scheme.

## Local Plan Policy

- 2.5.32 The Council recognises that facilities that meet Derby's health needs are key to how the City functions and enable the development of thriving communities.
- 2.5.33 The DCLP1 Policy CP 21 Community Facilities states that the Council will work with strategic partners and developers to provide City wide, high quality, accessible and inclusive facilities and services for the community. This can involve providing new, or investing in improved, community facilities to serve new development or meet an identified need. It is expected that developments that increase the demand for community facilities and services will be required to make contributions towards, or provide for new or improved facilities, through S106 agreements.

## Threshold

- 2.5.34 The threshold for contributions to health facilities is 75 dwellings or more.
- 2.5.35 The requirement for contributions will be based on spare capacity. The City Council will consult with the CCG whenever there is qualifying development to determine whether a contribution is required. The CCG have a standard formula which they use to determine the population increase from the development and therefore the impact it will have on local GP practices. If GP practices do not have the capacity to take the anticipated new population then a formula will be applied to determine the level of contribution required. One or more local GP practices will be identified where the contribution will be

applied. The practice identified for receipt of contributions may not always be the one nearest to the development in question as that practice may not have a space to expand.

- 2.5.36 Contributions will only be required if it can be demonstrated that there will be a deficiency in health provision as a result of the development under consideration. If there is sufficient spare capacity in the catchment area then a contribution will not be required.

### **Level of Contribution and Formula**

- 2.5.37 The formula is based on the Department of Health guidance in HBN11-01: Facilities for Primary and Community Care Services. The CCG therefore use a standard requirement of an additional 0.08m<sup>2</sup> per person, together with an assumption of 2.5 people per dwelling, and this will be applied to all new development over the threshold outlined above. The cost per sqm of an extension is set by the CCG and is set out in the Financial Contributions Matrix in Appendix B. This cost will be updated by the CCG from time to time.

- 2.5.38 Therefore the following formula shall be used by the CCG to determine the level for contribution towards health facilities:

$$A \times B = C$$

A – 2.5 people per dwelling

B – Number of dwellings

C – Assumed population

$$C \times D \times E = F$$

D – 0.08m<sup>2</sup> per person

E – Cost per m<sup>2</sup> of extension

F – Total contribution payable

- 2.5.39 Contributions will be used to improve or extend existing facilities or pooled to match fund the construction of new facilities, taking into account CIL regulations. In the vast majority of circumstances, a named facility will be included in the Section 106 agreement.

### **On-site Provision**

- 2.5.40 On very large developments or where an existing facility cannot be extended, in consultation with the CCG, the City Council may seek on-site provision of health facilities. This will normally be in the form of land reserved for this

purpose which will be made available at a commercial rate, but could also include a financial contribution towards the construction of the facility.

## Maintenance

2.5.41 In exceptional circumstances when the developer has provided land or facilities on site in lieu of financial contributions, a commuted sum may be payable to cover the costs of maintaining the building for an agreed period of time.

## Financial Contributions

2.5.42 Financial contributions will be held in an account by the City Council for a period of 10 years from receipt. The Council will notify the CCG when funds have been received and the CCG will be able to call upon these funds at any time during this period by submitting a project to the Council for consideration. The money will only be transferred to the CCG for spending if the project is line with the definition of health facilities set out in the Section 106 agreement. The project will also have to be approved by Council Cabinet.

2.5.43 On request of the City Council, the CCG will be required to provide evidence of the expenditure on the project for which approval has been given.

2.5.44

### Working Example

Development of 130 dwellings. Cost per m<sup>2</sup> of £1,902.

A x B = C

**2.5 x 130 = 325**

A – 2.5 people per dwelling

B – Number of dwellings

C – Assumed population

C x D x E = F

**325 x 0.08 x 1,902 = £49,452**

D – 0.08m<sup>2</sup> per person

E – Cost per m<sup>2</sup> of extension

F – Total contribution payable

The total sum required for Healthcare in the example shown above would be **£49,452**.

## **2.6 Flooding and Drainage**

### **Introduction**

2.6.1 Flooding can result from a number of different sources; including surface water run-off, groundwater and from overflow from watercourses, such as rivers and streams. The Strategic Flood Risk Assessment (SRFA) indicates areas of the known flood risk.

2.6.2 The Council seeks to ensure that all development is flood resilient and resistant and that unacceptable harm would not be caused to people or property through flooding. It also seeks to ensure that development will not lead to an increased risk of flooding elsewhere. Where development takes place close to watercourses, or on sites where there are drainage issues, measures will be required to reduce the risk of such harm.

### **Drainage and flood prevention**

#### **Policy Context**

2.6.3 The House of Commons written statement (HCWS161) and the National Planning Policy Framework, sets out central government's policy on the use of Sustainable Drainage Systems (SuDS) on new developments. The DCLP1 policy CP2 Responding to Climate Change, therefore encourages the use of SuDS in all new developments, and requires all developments of 10 dwellings or more and major commercial development to incorporate SuDS, to manage surface water run-off. All new developments in areas at risk of flooding should give priority to the use of SuDS.

#### **Thresholds**

2.6.4 The provision of SuDS within development sites will generally be secured through planning condition, but there may be circumstances where planning obligations will be sought to secure any necessary SuDS management or off-site works for flood alleviation. In these circumstances, contributions will be sought from residential developments of 10 dwellings or more and major commercial developments of and above 1000 sqm floor space or a site area of one hectare or more, in line with Policy CP2.

#### **Provisions for Management and Responsibility for SuDS on site**

2.6.5 Where a SuDS is being provided on-site, the Council will seek to ensure that its design and layout meets a specified standard. By their nature, SuDS require regular maintenance to keep them working effectively. To ensure the maintenance of the SuDS during their operative life will likely require securing by way of a legal agreement.

2.6.6 Prior to commencing the development, the developer will need to submit a location plan, a SuDS specification and a SuDS management plan to the City Council.

- The Location Plan should show the location, size and layout of the SuDS on the application site. Where appropriate, the plan will also need to show how the SuDS will be phased during the construction period.
- The SuDS specification must include details of the provision, construction, operation and future lifetime maintenance of the SuDS.
- The SuDS management plan should clearly detail future governance, organisation and funding criteria.

2.6.7 Development will not be permitted to start on site until the City Council has approved these required items.

2.6.8 The SuDS will need to be constructed to the agreed specification and the Council will restrict occupation of any units until the Council is satisfied that this has been done. The maintenance period, as outlined below, will not start until the Council has certified that the SuDS have been constructed satisfactorily.

### **Ownership and Responsibility**

2.6.9 The landowner will have the option of electing to transfer the ownership of the SuDS to the City Council (subject to appropriate terms), may retain ownership/ responsibility themselves or transfer it to a management company. The Council will encourage developers to transfer ownership and responsibility for future maintenance of SuDS on new developments to the local authority.

2.6.10 Whatever the owner elects to do in terms of retaining/ transferring the SuDS, following their completion to the agreed specification, there will be a reasonable period (minimum of 12 months) during which the landowner will be required to keep them maintained and rectify any defects to the Council's reasonable satisfaction. If the SuDS are to be transferred to the City Council, the landowner will be required on transfer to pay a commuted sum towards the future maintenance costs of the SuDS, or secure future funding of the maintenance costs.

2.6.11 Where management companies are proposed to manage SuDS it will need to be demonstrated, through the approved management plan, that arrangements are in place to secure the future maintenance over their lifetime, including in the event of the management company ceasing to operate or exist.



## **Maintenance commuted sums**

2.6.12 The commuted sums required will be based on general maintenance costs for SuDS. These include de-silting ponds, litter picking, grass cutting, screen maintenance and inspections. Due to the unique nature of SuDS for different development sites it is not possible to have a standard cost for all SuDS maintenance. Therefore, commuted sums for maintenance will be negotiated on a site by site basis.

2.6.13 The costs of the maintenance will depend on the scale and design of the measures that are appropriate to the development site. Where appropriate, the Council will encourage developers to provide details of the proposed SuDS and any flood mitigation measures as early on in the application process as possible.

## **Development sites in the River Derwent Corridor**

2.6.14 The City Council is working in partnership with the Environment Agency on the Our City Our River (OCOR) programme which is a major flood alleviation scheme that will reduce overall flood risk within the River Derwent Corridor and facilitate the regeneration of key riverside sites.

2.6.15 Within the River Derwent Corridor there will be development sites that fall within the OCOR area which will be required by the Council to provide flood defences on site. There will also be development sites on land set back from the river bank that will benefit from any uplift in land value that arises through the improved protection from flood risk provided by the OCOR scheme.

## **Policy Context**

2.6.16 The DCLP1 Policy AC8, Our City, Our River (OCOR) requires development proposals within the OCOR area to implement the OCOR programme by incorporating the required flood defence into their design and through the provision of the new defences, necessary to facilitate the development.

2.6.17 Under Policy AC8 the Council will also seek to enter into S106 agreements to secure the provision and maintenance of new defences from developers of proposals within the identified area.

## **On-site Provision of Flood Defences**

2.6.18 Within the defined OCOR area, any physical flood defence which is being incorporated within a development or within an application site will constitute the developer's contribution to mitigate the flood risk. This will be secured either through a planning condition or a S106. In most cases no additional financial contribution would be required in addition to the physical works.

2.6.19 In this circumstance, there will need to be a separate legal agreement with the Environment Agency, pursuant to Section 40 of the Severn Trent Water Authority Act 1983. Under this agreement, the developer will be required to construct and retain a flood defence at their own cost to the satisfaction of the Environment Agency. Construction will not be permitted to commence until the Section 40 agreement is signed.

### **Off-site Contributions**

2.6.20 Where an off-site flood defence measure can be identified to address a specific objection from the Environment Agency on the basis of flood risk, the Council may seek a planning obligation for a financial contribution, or provision of the measure in kind. The contribution would need to be clearly related to the development site; appropriately proportioned to the scale of the scheme; and would make the development acceptable in planning terms. These contributions will be negotiated on a site by site basis.

## **2.7 Student Accommodation**

### **Introduction**

2.7.1 The University of Derby's main campus is located in the north western part of the City. In the last decade or so, a University District of both residential and teaching properties has grown up in the corridor between Ashbourne Road and Kedleston Road. The University has expanded substantially and this has brought with it an increase in developments for student accommodation. The impact that this increase in the student population places on local infrastructure and facilities needs to be mitigated. However, the demands placed by students differ substantially to those made by general housing development. Therefore a bespoke approach to obligations for student accommodation schemes is required.

### **Definition of student accommodation**

2.7.2 The definition of student accommodation is purpose built accommodation used only for the purpose of housing people in education. There are two types of student accommodation:

1. C2 cluster flats – purpose built flats with clusters of 6-8 rooms on each floor with shared kitchens.
2. Individual flats that are specifically designed for use by students at the University

### **Mitigating the impact of Student Accommodation**

2.7.3 There are two main reasons for the different level of impact on local facilities and infrastructure from the development of student accommodation schemes compared to similar sized C3 residential apartments:

1. The University provides a wide range of community facilities at the Main Campus at Kedleston Road. These include open space, sports pitches, sports centres, communal meeting spaces, a medical centre and a faith centre. The provision of these facilities is considered to off-set, to some degree, the impact from student accommodation schemes on local facilities in the City.
2. There is a difference in the degree of occupation of student accommodation compared to C3 residential apartments. It can be reasonably assumed that students will mainly be resident in the accommodation for 40 weeks out of 52 weeks in the year. As such the contributions should be calculated at 77% of the standard rates.

## Contributions being sought

2.7.4 The following contributions will be sought from student accommodation proposals:

- **Amenity Green Space:** for developments of 10 beds and above.

The Council will expect to see Amenity Green Space on-site where possible. Where this cannot be achieved on-site, a financial contribution will be acceptable. The level sought will be reduced to take account of those elements of Amenity Green Space, i.e. play areas, that students will not use. Contributions will be reduced by 33% to reflect this.

- **Major Open Space:** for developments of 25 beds and above

Major open space contributions will be sought at a lower level than for C3 residential because the University provides some open space facilities already and students will not use all types of open space provided in the City, for example play areas and sports pitches. Contributions will be sought at a 50% reduced rate.

- **Sports Facilities:** for developments of 50 beds and above

The University does not provide any swimming facilities, so full contributions will be sought for swimming pools. No contributions will be sought for sports halls and fitness suites as the University already provides them.

- **Highways:** for developments of 10 beds and above.

If the proposal is for a car-free scheme, no highways contribution will be required. Otherwise, the usual contribution would apply.

- **Health facilities:** for developments of 75 beds and above.

Although the University has a medical centre, students are free to register with any GP practice in the City and in reality will often choose to access health facilities close to home rather than at the University. As a result the Council will seek health contributions but at a reduced rate of 50% to reflect the University provision.

2.7.5 All contributions will also be reduced by 23% to take account of occupancy rates, as explained above.

2.7.6 Please refer to the Financial Contributions Matrix in Appendix B of this document for the reduced levels of contribution. These are also published on the Council's website.

## **Restriction on use**

- 2.7.7 For schemes which involve individual flats for students, the Council must ensure that these units can only be occupied by students if the reduced contributions rates above are to be applied. Individual flats could be marketed and occupied by non-students in a way that cluster flats could not. Therefore to ensure that the correct mitigation is secured, for individual flat schemes, the Council will require a covenant in the S106 to ensure that only students can occupy those units. Without this covenant, full C3 residential contributions will be required.

## **Section Three- Site Specific Contributions**

### **Introduction**

- 3.1 In addition to the contributions outlined in Section 2, there may be occasions where we will require additional contributions on a site by site basis. This will be in situations where the development may impact upon particular characteristics of the site such as buildings of historic value or its biodiversity, or where the site is in a key visual location in the City.

### **Local Plan Policies**

- 3.2 The DCLP1 Policy MH1 states that the Council is committed to ensuring that necessary and appropriate infrastructure, facilities, amenities and other planning benefits are provided to meet the objectives of the DCLP1, mitigate the impact of development and facilitate growth.
- 3.3 In the context of this policy, where appropriate and necessary, the Council will seek S106 contributions towards public realm improvements and public art, and towards the protection or enhancement of the City's cultural heritage, including its biodiversity and towards the historic environment.

### **Public Realm and Public Art**

- 3.4 Contributions will only be sought from developments where such contributions provide a planning benefit directly related to the development proposed. The contributions will need to be fairly and reasonably related to the scale and type of the development proposed.
- 3.5 An objective of the DCLP1 Policy CP3 Placemaking Principles is to raise the overall design standard of the city particularly in the City Centre and other areas of change. To achieve this, the Council will expect high quality, well designed developments. In this respect, contributions towards public art or improvement to public realm will be only sought from developments of a scale and in locations specified below.

### **Public Realm**

- 3.6 The DCLP1 Policy AC5 City Centre Environment encourages new development in the City Centre to consider the spaces immediately outside and around new buildings and the contribution they can make to the overall quality, vitality and use of the public realm. The quality of the public realm is also important to the setting of the development.
- 3.7 Within the Central Business District, as defined by the DCLP1 Policy AC2 Delivering a City Centre Renaissance, contributions towards public realm may be sought from residential development of 50 units and over and from commercial development of 1000sqm and over, where appropriate. These

contributions will be negotiated taking into account the relative planning benefit to the development and the viability of the scheme. They will also be balanced with the other planning obligations being sought.

## **Public Art**

- 3.8 The DCLP1 Policy CP3 Placemaking encourages the incorporation of public art as part of an overall approach to the delivery of high quality streets and spaces. The Council will only seek contributions towards public art from residential developments of 100 units and over, and from commercial proposals over 2500sqm of gross floor space. In the majority of cases, public art will be sought on these major developments only in prominent locations, however there may be instances where public art will be sought in other locations where the public art will enhance the character of an area and /or provides public benefit. Examples of prominent locations include:
- Gateways into the city, such as key arrival points and intersections of the strategic cycle network, arterial routes and the outer and inner ring roads
  - Cultural and educational institutions, including schools, libraries and colleges
  - District Centres
  - Areas surrounding and overlooking major public green spaces
  - Riverside routes relating to the implementation of the “Our City Our River” programme.
- 3.9 These contributions will be negotiated taking into account the relative planning benefit to the development and the viability of the scheme. They will also be balanced with the other planning obligations being sought.
- 3.10 The Council supports the early involvement of artists in the design process. Ideally the public art should be integrated into the overall design of the proposed development, and could be within the fabric of the building(s) or in public space provided that it is developed in conjunction with an artist and is approved by the Council. The normal presumption will be that the public art feature is to be provided on site by the developer. In certain circumstances however, it may be acceptable to locate the public art feature close to the development site. Alternatively, the Council may accept a financial contribution where there is an existing public art project close by.
- 3.11 Applicants are encouraged to engage with Council’s Design Team in pre-applications discussion to agree the nature of the public art contribution and agree an estimate of the cost.

- 3.12 Where the public art is set in on-site, public open space that will be adopted by the Council, or on highways land, an additional commuted sum for its maintenance will be required. This commuted sum will need to cover 15 years maintenance of the artwork. This will be negotiated on a site by site basis.

### **Biodiversity**

- 3.13 The DCLP1 Policy CP19 Biodiversity seeks to protect, enhance, manage, restore, strengthen and create biodiversity and geodiversity assets across the City in a manner appropriate to their significance.
- 3.14 In certain circumstances the Council may seek contributions towards the conservation of the natural environment and natural habitats. These may involve costs of mitigation for damage done or enhancement, including management of schemes which are outside the application site. These contributions will be negotiated on a case by case basis.

### **Historic Environment**

- 3.15 The DCLP1 Policy CP20 Historic Environment seeks to protect Derby's historic environment through the preservation, enhancement, restoration and repair of heritage assets.
- 3.16 In the majority of cases, requirements associated with heritage assets can be dealt with by negotiation or condition. However, on rare occasions it may be necessary to include these issues within the S106 Agreement. This will be in situations where new development is allowed only or largely, to fund works to heritage assets or to fund archaeological works. In such cases a planning obligation may be negotiated to tie the development to the funding of works to heritage assets.

### **Community safety**

- 3.17 In most cases, matters associated with community safety can be dealt with in negotiations on the planning application or through conditions. In some circumstances however, requirements to ensure area safety, for example CCTV provision, may have to be provided outside the application site. In such circumstances, planning obligations will be sought to cover the capital costs of provision and future maintenance. The precise level of contribution will be applied on a case by case basis.

### **Derby and Sandiacre Canal**

- 3.18 The Council safeguards a route for the Derby and Sandiacre Canal to enable its future restoration. The restoration for the Derby and Sandiacre Canal meets the DCLP1 objectives to bring economic and environmental benefits to the City.



- 3.19 Where new development proposals are on land adjacent to the route of the Derby and Sandiacre canal, contributions may be secured if they are considered to relate directly to the development. In such circumstances, the Council will seek the provision of a contribution on-site or negotiate a financial contribution as appropriate to the scale and type of the scheme.

### **Libraries**

- 3.20 As outlined in Section 2.5, community facilities form an important part of delivering sustainable communities. Whilst existing library provision within the City is likely to be sufficient to meet needs created by new development, there may be circumstances where existing library facilities are insufficient to cope with the demand from the new population and therefore new or extended library facilities will be required. In these circumstances, the Council will negotiate a contribution towards extended library provision. The level of contribution will be negotiated on a case by case basis based on the costs of the improvements required.

## Appendix A: Contribution Thresholds

### Thresholds for Residential Development Contributions

	10 Units	15 Units	25 Units	50 Units	75 Units	100 Units
<b>Transport</b>	✓	✓	✓	✓	✓	✓
<b>Affordable Housing</b>	x	✓	✓	✓	✓	✓
<b>Amenity Green</b>	✓	✓	✓	✓	✓	✓
<b>Major Open Space</b>	x	x	✓	✓	✓	✓
<b>Education</b>	x	x	✓	✓	✓	✓
<b>Community Centres</b>	x	x	x	✓	✓	✓
<b>Sports Facilities</b>	x	x	x	✓	✓	✓
<b>Health</b>	x	x	x	x	✓	✓
<b>Drainage</b>	✓	✓	✓	✓	✓	✓

## Thresholds for Commercial Development Contributions

	1,000 sqm	2,500 sqm	5,000 sqm	10,000 sqm	25,000 sqm	50,000 sqm
<b>Transport</b>	✓	✓	✓	✓	✓	✓
<b>Drainage</b>	✓	✓	✓	✓	✓	✓

Commercial Development includes the following use classes:

A1 Food Retail/ Non Food Retail;  
 B1 including Offices;  
 B2 Industrial;  
 B8 Warehouse;

Contributions for the following commercial uses will be negotiated on a site by site basis:

Cinemas and Conference Facilities;  
 D2 including Leisure;  
 Hospitals;  
 Higher and Further Education;  
 Stadia

## Appendix B Financial Contributions Matrix

The contribution rates in the table will be updated on an annual basis.

Contribution type	2017 sum (£)
<b>TRANSPORT:</b>	
<b>Residential</b> (per unit)	
Private Houses	1,500
Private Flats	780
<b>Commercial</b> (per 100m2)	
Food Retail	7,382
Discount Food Retail	3,822
Non-Food Retail	1,399
Office B1a	1,571
Office B1c	851
Industrial B2	909
Commercial B8	181
Parcel Distribution B8	1,354
Warehouse B8	357
<b>TRAVEL PLAN</b>	
A maximum penalty of £50,000 per year will be charged for missed targets	
Monitoring Fee per Travel Plan per year	1,000
<b>PUBLIC OPEN SPACE:</b>	
<b>Amenity Green Space</b>	
Per person rate	742

<b>Maintenance of Amenity Green Space</b> (per m2 of open space)	61
<b>Major Open Space</b>	
Per person rate	1,043
Maintenance of Major Open Space (per m2 of open space)	29
<b>Maintenance of Play Areas</b>	
Annual maintenance of LEAP per m2 of play area	20
Annual Maintenance of junior area per m2 of area	23
<b>EDUCATION:</b>	
Per Primary school place generated	14,609
Per Secondary school place generated	21,988
<b>COMMUNITY CENTRES:</b>	
Per person rate for community centres	279
<b>SPORTS FACILITIES:</b>	
Per person for Health and Fitness Suites	89
Per person for Swimming Pools	168
Per person for Sports Halls	155
<b>HEALTH</b>	
Construction cost per square metre of extension or new building	1,902