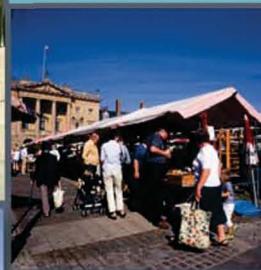
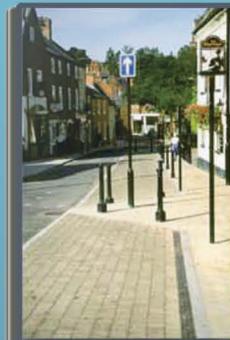


# NEWARK AND SHERWOOD LOCAL DEVELOPMENT FRAMEWORK

## DEVELOPER CONTRIBUTIONS SUPPLEMENTARY PLANNING DOCUMENT





## Document Passport

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**Title:** Newark and Sherwood Local Development Framework  
Developer Contributions Supplementary Planning Document

**Status:** Supplementary Planning Document

**Summary:** The document sets out the Council's policy in relation to the process for the negotiation and securing of developer contributions prior to and during the processing of planning applications.

**Date of Approval:** Thursday 23<sup>rd</sup> October 2008

**Route of Approval:** Cabinet, Thursday 23<sup>rd</sup> October 2008

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### Consultation Summary:

The Council undertook consultation with stakeholders, including the Government Office of the East Midlands, The East Midlands Regional Assembly, Parish Councils, neighbouring Local Authorities, local Planning Agents and other local interest groups.

The overriding theme of responses to the Draft SPD was supportive; however comments were made about the need for contributions to be in accordance with Circular 05/2005, the lack of clarity about how some of the contribution figures had been arrived at and the impacts of the document on project viability and the need for flexibility when seeking contributions.

A list of the comments received and how these have been addressed is available within the Statement of Consultation Responses and Sustainability Issues in relation to this document is available on the Council's website and at libraries within the District.

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### Document Availability:

Copies of the SPD are available at Kelham Hall Planning Reception (open between 8:30am and 5:15pm Monday to Thursday (closing at 4:45pm on Friday) and on the Council's website: [www.newark-sherwooddc.gov.uk/planningpolicy](http://www.newark-sherwooddc.gov.uk/planningpolicy).

**Please Note:** This document is available in alternative formats on request

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## **1 BACKGROUND**

- 1.1 This Supplementary Planning Document (SPD) expands upon planning contribution policy 1/3 in the Nottinghamshire and Nottingham Joint Structure Plan 2006 and saved policies H16 – H20 (affordable housing), R4 (play areas and sports fields) and R5 (amenity open space) of the Newark and Sherwood District Local Plan of which further detail is given in section 4. It also builds upon Nottinghamshire County Council’s “Planning Contributions Strategy” June 2008.
- 1.2 The SPD was prepared in the context of national planning policy and other forms of best practice guidance. The document should always be read within the current context of local, county, regional and national planning guidance. The Council will update this document, to ensure it remains in line with current planning guidance and legislation and ensure that it reflects the changing needs of the District. In addition the financial contributions referred to in sections 7-14 of the document will be updated whenever necessary to reflect the most up to date situation.
- 1.3 The SPD forms part of the Newark and Sherwood Local Development Framework and is a material consideration when assessing planning applications within the District. It will also be one of the mechanisms that will be used to implement schemes identified with the Council’s Infrastructure Delivery Plan which is currently being produced to inform the Local Development Framework.
- 1.4 The most current version of all Newark and Sherwood District Council Supplementary Planning Documents and information relating to the Local Development Framework is available at [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk)

### **The need for a Supplementary Planning Document**

- 1.5 Central Government, Nottinghamshire County Council and Newark and Sherwood District Council are committed to building sustainable communities through a planned system.
- 1.6 It is envisaged that reforms to the developer contributions process (*also referred to as planning obligations or s106 agreements in this document*) will take place in 2009 with the introduction of legislation that would enable the provision of a Community Infrastructure Levy (CIL). This will allow Councils to apply a levy on new developments in their area to support infrastructure delivery.
- 1.7 Due to the rising number of permissions being granted within the District it is considered that detailed guidance, based on the current policy framework, should be introduced ahead of any legislative changes. This will allow the Council to secure the appropriate agreements with developers to provide new community infrastructure and give as much guidance as possible to developers and landowners about the levels of contributions that will be required.

- 1.8 In addition Newark has been selected as a New Growth Point by the Government, meaning that significant levels of new housing and employment growth will be focused in the Newark area. The Council wishes to ensure that the impacts of new development that results from the Growth Point are minimised and that such growth provides economic, social and environmental benefits to the community. One way this can be achieved is through the use of planning obligations.
- 1.9 In drawing up this guidance account will be taken of the possibility of the Community Infrastructure Levy replacing some obligations.

## **2 INTRODUCTION**

- 2.1 This SPD outlines Newark and Sherwood District Council's policies and procedures for planning obligations.
- 2.2 The aim of this SPD is to ensure that adequate infrastructure is provided to support new development and to provide developers, the community, and the Council with a transparent, fair and predictable foundation for negotiating planning obligations. When a planning obligation is sought, they will be used to achieve the primary aims and strategic objectives of local and regional plans, and where appropriate, help to deliver the strategic themes of the Newark and Sherwood Local Strategic Partnership's Community Plan.
- 2.3 Government policy statements recognise that where existing infrastructure is inadequate to address the impact of new development, it is reasonable to expect the developer to contribute towards the financing of new or improved infrastructure directly relating to the development.
- 2.4 This SPD sets out the use of planning obligations, instances when they will be sought, the rationale and basis for charges. The topic areas where contributions towards infrastructure will be sought are:
- Affordable Housing;
  - Community Facilities;
  - Cultural Heritage;
  - Education;
  - Health;
  - Natural Heritage;
  - Open Space (including sport and recreation); and
  - Transport.
- 2.5 Detailed information about what will be required for each topic area is provided in sections 7 – 14.
- 2.6 It should be noted that the obligations set out in this SPD are not exhaustive, and the Local Planning Authority may wish to negotiate other obligations where they are considered necessary and relevant to a development.

### **3 WHAT IS A PLANNING OBLIGATION?**

- 3.1 Planning obligations are legal agreements negotiated, usually in the context of planning applications, between local planning authorities and persons with an interest in a piece of land or developers, and are intended to make acceptable development which would otherwise be unacceptable in planning terms.
- 3.2 ODPM Circular 05/2005 permits planning obligations to be used in the following ways:
- Prescribe the nature of a development e.g. by requiring that a given proportion of housing is affordable;
  - Secure a contribution from a developer to compensate for loss or damage created by a development e.g. loss of open space; or to
  - Mitigate a development's impact e.g. through increased public transport provision.  
(ODPM 2005)
- 3.3 There are a range of options available to Local Planning Authorities and developers:-
- In-kind and financial contributions;
  - One-off payments and phased payments;
  - Maintenance payments; and
  - Pooled contributions.
- 3.4 In addition obligations can also be secured through unilateral undertakings by developers. This is an undertaking made by the applicant to the authority to cover any planning issues before the granting of planning permission and may be offered at any point in the application process – but normally where agreement has not been reached.
- 3.5 Planning obligations may be unconditional or subject to conditions; they can impose restrictions or requirements relating to an indefinite or specified period; and they may provide for the payment of money, either in a specific amount or by way of a formula, often referred to as a commuted sum. They can be used in a positive manner, that is, to require the developer to carry out something specific, or in a negative manner, thereby imposing restrictions.
- 3.6 Agreements run with the land in the same way that a planning permission does and as such are enforceable against the developer who originally entered into the agreement and any subsequent person acquiring an interest in that land. Agreements must be registered as a land charge and will form part of the planning register, available for public inspection.
- 3.7 If the agreement requires the developer to undertake certain actions, there may be a specified time frame within which this must occur. The planning permission may also refer to the phasing of development and so the agreement may make provisions which are in line with this phasing arrangement.

- 3.8 If an agreement makes provision for a commuted sum to be paid to the Local Planning Authority (LPA), the money must be spent within a reasonable time frame. This is usually construed to be within five years but may be longer, if deemed appropriate. If the money is not spent within the agreed period, the developer would be reimbursed with the outstanding amount, together with any interest accrued.
- 3.9 The overall outcome of using planning obligations should be that the proposed development is made to accord with published local, regional or national planning policies.

## **4 LEGISLATION AND PLANNING GUIDANCE**

- 4.1 The statutory framework for planning obligations is set out in section 106 of the *Town and Country Planning Act 1990* as amended by section 12 (1) of the *Planning and Compensation Act 1991*.
- 4.2 ODPM Circular 05/2005 requires planning obligations to meet the following tests. They have to be:
- Necessary to make a proposal acceptable in planning terms;
  - Relevant to planning;
  - Directly related to the proposed development;
  - Fairly and reasonably related in size and type to the proposed development; and
  - Reasonable in all other respects.
- (ODPM 2005)
- 4.3 The circular and the related best practise guide contain important information about ensuring that planning obligation procedures encourage transparency, predictability and an efficient process.
- 4.4 Further national guidance is provided through Planning Policy Statements (PPS) and Planning Policy Guidance notes. The status of some Planning Policy Guidance (PPG) will change as each is reviewed and replaced with Planning Policy Statements. The most current PPGs and PPSs can be found at the Department of Communities and Local Government website: [www.communities.gov.uk](http://www.communities.gov.uk)

### **Regional and Local Planning Guidance**

#### **East Midlands Regional Plan, Secretary of State's Proposed Changes (2008)**

- 4.5 The Proposed Changes document was published in July 2008. The need for developer contributions through planning agreements is referred to in paragraph's 3.5.5 and 3.5.6:

*"A key potential barrier to the implementation of the Regional Plan will be financial resources. It is recognised that public money is limited and unlikely to increase substantially over the short term. However strong commitment is required from key*

*public agencies to support the infrastructure required to deliver sustainable communities. Appendix 6 indicates which bodies are responsible for funding transport schemes and measures or through which process, such as the Regional Funding Allocation, funding will be available. Appendix 6 does not include details of additional funding which may be available through the Community Infrastructure Fund, Growth Area funding or through New Growth Point agreements but these should be included, when identified, in the proposed Implementation Plan.*

*In line with Circular 05/05 developers will also be required through the planning system (primarily via 'Section 106' agreements) to fund infrastructure and associated improvements. In areas of high growth, the pooling of developer contributions will be appropriate to assist with the funding of strategic infrastructure. The Government is intending to bring in a Community Infrastructure Levy to provide a means for doing this" (EMRA 2008)*

- 4.6 Policy 56 Regional Priorities for Implementation, Monitoring and Review in the Proposed Changes document states;

*"Local Authorities should work with developers, statutory agencies and other local stakeholders to produce delivery plans outlining the infrastructure requirements needed to secure the implementation of Local Development Documents. These should include guidance on the appropriate levels of developer contributions, and the mechanisms for securing the delivery of such contributions." (EMRA 2008)*

- 4.7 The East Midlands Regional Plan will supersede the Nottinghamshire and Nottingham Joint Structure Plan 2006. Until then, the Joint Structure Plan provides the framework for Nottinghamshire local authorities to develop detailed planning obligations and site-specific policies for their Districts through Local Plans and emerging Local Development Frameworks.

- 4.8 The requirement to provide infrastructure contributions in the District is contained in the Nottingham and Nottinghamshire Joint Structure Plan. Policy 1/3 Planning Contributions states:

*"Contributions will be required from developers to meet relevant measures / costs arising from the proposed development that cannot be addressed by way of conditions to a grant of planning consent. The following types of measures may be sought:*

- a) The provision of affordable housing;*
- b) The provision of open space;*
- c) Integrated transport measures; and*
- d) Other infrastructure, sport / recreation, community facilities (including education) and resources necessitated by the development, including measures to protect and enhance natural and cultural heritage.*

*Contributions may be sought by way of the provision of land, buildings and/or finance." (Nottinghamshire County Council & Nottingham City Council 2006)*

- 4.9 In 2007 Nottinghamshire County Council produced a Planning Contributions Strategy. The strategy provides information about what planning contributions are, how they will be used and establishes the broad criteria and types and levels of contributions Nottinghamshire County Council will seek in such legal agreements.
- 4.10 At District level the requirement for contributions principally relate to the provision of affordable housing and open space facilities. These are set out in the following saved policies of the Newark and Sherwood Local Plan:-
- H16 Affordable housing on large sites;*  
*H17 Affordable housing in larger settlements outside the greenbelt;*  
*H18 Affordable housing in Laxton;*  
*H19 Affordable housing in settlements within the greenbelt;*  
*H20 Categories of affordable housing need;*  
*R4 Children's play areas and sports fields; and*  
*R5 Amenity open space.*
- 4.11 The full wording of these policies can be found on the Council's website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk)
- 4.12 Detailed guidance about the provision of affordable housing and open space is currently dealt with in the following Council documents:
- Interim Policy Note: Planning Provision for Affordable Housing (2005); and
  - Supplementary Planning Guidance: Guide to the provision of open space in connection with the housing development (2006).
- 4.13 Further information about these documents is set out in sections 7 and 12 respectively.

## **5 COMMUNITY PLAN**

- 5.1 The District's 2<sup>nd</sup> Community Plan 2006 – 2016 sets out a long-term vision and priorities for improving the quality of life for people in Newark and Sherwood.
- 5.2 The overall aim of the Community Plan is for residents in Newark and Sherwood to feel that their area offers them the best quality of life in the East Midlands. The Plan has six themes and a number of related priorities; the themes are:
- Clean and green;
  - Learning and earning;
  - Accessible;
  - Healthy;
  - Culturally connected; and
  - Safe and strong
- 5.3 Planning obligations are a tool that can be used to help implement the goals and priorities of the Community Plan. In addition the Community Plan has an important relationship with the District's emerging Local Development Framework (LDF). The LDF will deliver the physical and spatial elements of the Community Plan.

## **6 NEWARK AND SHERWOOD'S APPROACH TO PLANNING OBLIGATIONS**

### **The Role of the Council**

- 6.1 The Council's role in the planning agreement process is fundamental. The Council is responsible for implementation and regulation of developer contributions, ensuring that a balance is struck which meets the various and often competing needs of the District. Planning obligations are required to be executed by the Local Planning Authority (Newark & Sherwood District Council in this instance) in accordance with Section 106 of the Town and Country Planning Act 1990. Consequently, it is the role of the Council to lead planning agreement negotiations, ensuring any funds provided by the developer are appropriately spent and / or distributed to the relevant Local Authority or public / private body. Where the Council negotiates contributions for infrastructure, services, facilities or amenities beyond the scope of its day-to-day responsibilities, such as transport, education and health, those contributions are transferred directly to the relevant responsible Local Authority or public / private body.

### **Consultation and Negotiation**

- 6.2 The Council's development control officers will seek to carry out early negotiations and agree planning obligations prior to the planning application being formally submitted. Negotiations will include consultation with internal service areas where appropriate (e.g. where open space or affordable housing is to be provided) who will provide accurate detail about the level of contribution needed as part of the development. In some cases external bodies e.g. the County Council may be consulted regarding contributions or obligations which they propose.
- 6.3 This approach has a number of benefits. Firstly it ensures that developers are fully informed of likely contributions required for a proposed development at the earliest opportunity. It also assists in determining project viability and provides greater clarity and certainty to the process. To ensure that the process is as swift and transparent as possible the following approach will be taken to drafting and agreeing developer contributions.
- 6.4 Before the application can be validated and the Council's legal section instructed, the Council's development control section will require, in appropriate cases, the completion of a draft Heads of Terms form, a copy of which is provided at Appendix 1. This is in order to give developers an indication as to the level of detail which the Council will require in respect of planning obligations prior to validation and drafting.
- 6.5 Once this information has been agreed with the development control section, it will be submitted by that section with full instructions to the Council's legal section which will produce a draft legal agreement within 10 working days. The Council has standard wording to cover financial contributions, affordable housing, open space and transport and non-implementation of an earlier permission which will form the basis of the planning obligations in the majority of cases. Examples of the Council's standard planning obligations are set out in Appendices 2 and 3 whilst non implementation is set out in Appendix 4. In addition the County Council has a standard planning obligation to cover education and integrated transport this is attached as appendix 5.

- 6.6 They will also be required to produce satisfactory proof of title and all persons with an interest in the development site including mortgagees, tenants and option holders must be party to the agreement.
- 6.7 As part of this process developers will be expected to pay the reasonable costs of the Council's solicitor in preparing and negotiating the agreement.
- 6.8 Draft Heads of Terms for planning obligations should be submitted with the planning application. Where applications are submitted without this information they will not be registered.
- 6.9 Once the document has been agreed between the developer and the Council and properly signed and sealed, it will be given to the Council's Land Charges section, who will register it. The obligations, including triggers, set out in each agreement will then be entered on the Council's section 106 database. This is to allow the authority to monitor the implementation of agreements (see paragraph 6.18 and 6.19 on monitoring of agreements).
- 6.10 To take account of inflation all payments will be index linked by reference to an appropriate index (e.g. in the case of landscaping, the soft landscaping index issued by the Department for Business Enterprise and Regulatory Reform) from the date of the obligation to the date the actual payment is made.

#### **Contribution Triggers and Requirements**

- 6.11 The Council will generally regard developments below predetermined thresholds as *de minimis* in respect to developer contributions. Contributions will be expected from those developments which exceed the predetermined thresholds. No contribution requirement (or lack of) precludes the imposition of normal planning standards required of a development proposal.
- 6.12 Where an individual application falls below the threshold but is part of a larger site, regard will be given to the wider site, ensuring a consistent approach to contribution requirements across the whole development site.
- 6.13 Where the cumulative impact of a number of developments (each above the predetermined thresholds) results in an identified community need, it may be reasonable for the associated developers' contributions to be pooled in order to secure the relevant infrastructure, services or facilities in a fair and equitable way, ensuring the scale and type is appropriately matched to the community need. This requirement is echoed in Circular 05/2005 (paragraph B21).

#### **Phasing**

- 6.14 Financial contributions required as a component of a planning obligation are generally required to be paid prior to the commencement of development as specified within the planning obligation. In circumstances where the developer considers that the phasing or contribution requirements substantially impact project viability, alternative phasing arrangements for the financial contribution or lower contributions may be permitted by the Council. In such circumstances the applicant will be required to submit a robust viability assessment that proves why the level of

contribution or phasing would make the scheme unviable. In addition the applicant will be required to meet the cost of a review of the assessment by an independent consultant appointed by the Council.

- 6.15 At the same time, it may also be unreasonable to expect the residents of new development to wait until the development is completed before any facilities are made available. Therefore, it will be necessary to agree a phased programme of community service provision between the developer, the Council and any relevant stakeholders. Continued monitoring by the Council is essential to ensure any agreed phasing programme is adhered to.
- 6.16 In circumstances where a financial contribution from a developer is to be placed in a fund awaiting expenditure on future programmed works, the planning obligation will normally include a long stop date by when the contribution is to be spent. Should the programmed works not be implemented by the pre-determined stop-date, reimbursement of the financial sum, including accrued interest, is to be provided to the developer. This process will apply similarly to bond arrangements set up by developers with a bank or insurance company in lieu of a financial sum provided to the Council.
- 6.17 All planning obligations will be enforceable against prospective freehold or leasehold owners of that land. This would include subsequent freehold or leasehold owners of any property developed on a site. Agreements will also usually exclude the right of third parties to enforce via the Contracts (Right of Third Parties) Act 1999.

#### **Monitoring of Developer Contributions**

- 6.18 It is important that the negotiation of planning obligations and subsequent expenditure of any contributions received from developers is carefully monitored in a transparent and accountable way.
- 6.19 The Council will look to achieve this utilising the following methods:
- The S106 monitoring group will continue to meet on a quarterly basis. This group comprises officers from planning, housing, leisure, legal and finance and its purpose is to monitor the progress of all developer contributions that have been input onto the S106 database and ensure that agreements are implemented when trigger levels are reached.
  - A report will be presented on a regular basis to planning committee which will update Members on the progress of any Section 106 Agreements which are currently being pursued by the Legal Section of the Council; and
  - A copy of each S106 Agreement will be placed on the public planning register together with the planning decision notice. This information will also be made available on the Councils' website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk)

## 7 AFFORDABLE HOUSING

<p><b>Current Guidance</b></p>	<ul style="list-style-type: none"> <li>• Circular 05/05</li> <li>• Planning Policy Statement 3 “Housing”</li> <li>• Newark and Sherwood Local Plan; Policies H16, H17, H18, H19, H20</li> <li>• Interim Policy Note ‘Planning Provision for Affordable Housing’ 2005</li> <li>• Newark and Sherwood Housing Needs Survey</li> <li>• Nottinghamshire &amp; Nottingham Joint Structure Plan Policy 1/3</li> </ul>
<p><b>Types of facilities for which provision may be required</b></p>	<p>On site provision of affordable housing</p>
<p><b>Type of development that may trigger need</b></p>	<p>New housing developments within the District</p>
<p><b>Form in which contributions should be made</b></p>	<p>The District Council will negotiate with prospective developers with a view to securing 30% affordable homes where the thresholds below are met.</p> <p>Negotiations between the District Council and developers concerning the provision of affordable housing on individual sites will take account of the economics of site development, any abnormal development costs and any other planning objectives which will affect the viability of schemes.</p> <p>However, the Council takes the view that costs incurred in delivering a workable, high quality development are to be expected, should be reflected in the price paid for land, and will not normally reduce the ability of a site to contribute towards affordable housing provision. Expected costs will include site clearance, good quality design measures, landscaping, noise and other environmental attenuation measures, and appropriate infrastructure provision (which may include highway and public transport measures). Developers will be required to demonstrate any abnormal development costs at the earliest possible stage, in order that their impact on the viability of a scheme may be assessed.</p> <p>Further information about viability is set out in paragraph 6.14 of this SPD</p>

<b>Threshold for size of development for which contributions are appropriate</b>	<p>The Interim Policy Note states that affordable housing obligations will apply to residential developments at the following thresholds:</p> <ul style="list-style-type: none"> <li>• Newark – 10 or more dwellings / 0.4 hectares irrespective of the number of dwellings;</li> <li>• Southwell – 5 or more dwellings / 0.2 hectares irrespective of the number of dwellings;</li> <li>• Rainworth and Blidworth – 5 or more dwellings / 0.2 hectares irrespective of the number of dwellings;</li> <li>• Ollerton and Boughton – 5 or more dwellings / 0.2 hectares irrespective of the number of dwellings; and</li> <li>• The remainder of the District – 5 or more dwellings / 0.2 hectares irrespective of the number of dwellings.</li> </ul>
<b>Geographic areas where there is no spare capacity</b>	Evidence within the housing needs survey indicates that there is a need for affordable housing across the District due to the high house price to income ratio
<b>Contact</b>	Strategic Housing - Community Housing Manager, Newark and Sherwood District Council
<b>Last updated</b>	2003

### **Affordable Housing Contributions**

- 7.1 On 10<sup>th</sup> October 2005 Newark and Sherwood District Council’s Cabinet approved the Interim Policy Note titled ‘Planning Provision for Affordable Housing’, which sets out the Council’s approach for delivering affordable housing throughout the District.
- 7.2 The Interim Policy Note is based on national and local policy guidance and evidence from the Newark and Sherwood Housing Needs Survey and accompanying Supply/Demand Analysis, Local Housing Needs Surveys at Parish Level and other relevant needs survey documents.
- 7.3 It is considered that the Interim Policy Note adequately addresses the issue of delivering affordable housing and robustly details a developer’s contribution in this respect, alongside the other development contributions outlined in this SPD.
- 7.4 The Council will continue to seek to secure appropriate affordable housing on development sites in accordance with the contents of the Interim Policy Note, which is available on the Council’s website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk) or from the Planning Section.
- 7.5 A new Housing Needs Survey is currently being carried out and the findings of this, along with strategic issues that emerge through the Regional Spatial Strategy will be taken into account when considering the requirement for affordable housing within the District.

## 8 COMMUNITY FACILITIES

<p><b>Current Guidance</b></p>	<ul style="list-style-type: none"> <li>• Circular 05/2005</li> <li>• Nottinghamshire and Nottingham Joint Structure Plan 2006: Policy 1/3, 6/2</li> <li>• Nottinghamshire Local Area Agreement 2008 - 2011</li> <li>• Newark and Sherwood Community Plan 2006 - 2016</li> <li>• Newark and Sherwood Leisure and Cultural Services Strategy 2005 – 2010</li> <li>• Newark and Sherwood Sport and Physical Activity Plan 2008 – 2011</li> <li>• Sport England Facilities Planning Model</li> </ul>
<p><b>Types of facilities for which provision may be required</b></p>	<ul style="list-style-type: none"> <li>• A contribution to the extension and/or improvement of existing halls or facilities would be expected.</li> <li>• If a development would result in the loss of a recognised community facility / facilities, a replacement facility to a specification agreed with the Council should be provided</li> <li>• In some circumstances the size of new residential development will mean that a new community facility will need to be provided. Developers should contact the District Council’s Leisure and Cultural Services department early in the development process to ascertain whether this will required</li> <li>• A contribution can be allocated to provision of new and / or improved facilities or the purchase of equipment or the implementation of activity programmes within the area affected by the development. The area affected by the development will be determined by the District Council.</li> </ul> <p>The Local Planning Authority will consult with the Parish and Town Councils in order to assess the need for community facilities and hold a list of proposals for reference.</p>
<p><b>Type of development that may trigger need</b></p>	<p><b>Residential</b></p> <p>The threshold for contributions will be developments of 10 or more dwellings</p> <p>Where such a development generates a need for new or improved community facilities, or makes additional demands on existing community facilities, the contribution will be as in the table below.</p> <p>In the area affected by the development a contribution will be necessary from each development above the threshold. In assessing the requirement for a developer contribution, the Council will provide the required evidence of need for the contribution on a case-by-case basis using relevant data appropriate to the local area.</p>

**Form in which contributions should be made**

Capacity issues are dependent on existing community facilities and the nature of the development. Contributions can be either provision of facilities or commuted sums as determined by the District Council.

The financial contribution towards community facilities will take into consideration the following issues:

- Existing community facility provision;
- The size of the residential development;
- Current average build costs using figures aligned to the Building Cost Information Service;
- The provision of floor space per dwelling;
- The projected population of the proposed development

The current average build costs of community facilities of £1,650.00 per square metre of floor space is as specified by Spon's Architects' and Builders' Price Book 2008 (taking a mean average across a number of typical community facilities including; community centres; village halls; youth clubs; arts and drama centres; theatre studio / workshops; swimming / leisure pools; wet and dry sports facilities; squash courts and sports pavilions) The figure will be regularly reviewed in order to reflect changes in capital costs of providing such community facilities in line with the Building Costs Information Service (BICS)

The provision standard for community facilities is based on a provision of 0.75 square metres of floor space per dwelling, which is in line with recommended standards for the provision of community facilities as applied by other local authorities.

**Calculation**

The calculation for community facility contributions per dwelling is based on the following formula:

Build Cost per sq. Metre of floor space x standard community floor space per dwelling =

**£1,650.00 x 0.75 = £1,237.50**

All figures are subject to indexation.

<b>Payment of Contributions</b>	<p>Contributions will be made as follows:</p> <p>Where the development involves fewer than 30 dwellings the payment will be required in full on commencement of development.</p> <p>For larger scale developments stage payments may be accepted and in this event (subject to any site specific considerations which may dictate a different approach) the Council will normally require:</p> <ul style="list-style-type: none"> <li>• 25% of the payment on commencement of development;</li> <li>• A further 50% of the payment on occupation of 50% of the dwellings; and</li> <li>• The remaining 25% on the occupation of 80% of the dwellings.</li> </ul>
<b>Threshold for size of development for which contributions are appropriate</b>	Developments for 10 or more dwellings will be expected to make a contribution.
<b>Geographic areas where there is no spare capacity</b>	Capacity issues are dependent on the nature of the development and the facilities in the area.
<b>Contact</b>	Leisure and Cultural Services, Newark and Sherwood District Council
<b>Last updated</b>	October 2008

8.1 In implementing this document community facilities are defined as:

- Community Halls;
- Village Halls;
- Indoor areas for sport, physical activity, leisure and cultural activity;
- Halls related to places of worship.

8.2 Community infrastructure provision or use of contributions will need to take into consideration the geographical location of development proposals where the pooling of contributions may be needed to ensure that contributions in particular areas are targeted to address particular local needs.

8.3 The provision of community facilities should be based on a hierarchy of provision and where necessary the pooling of resources will enable the provision of improved infrastructure. Facilities are designated as:

- Facilities of District-wide significance - strategically important facilities which attract users from throughout the District and possibly further afield.

- Facilities of Town significance – facilities that attract a significant proportion of users from particular parts of the District. (E.g. from at least two wards or parishes)
  - Facilities of Neighbourhood significance – relatively small local facilities which attract almost all users from a particular area of the District such as a particular ward or parish.
- 8.4 In the interest of comprehensive development, the District Council will seek, where necessary, the collective provision of new infrastructure from development proposals and the phasing of development to ensure the satisfactory achievement of objectives. This will apply to the District Council’s strategic objectives in relation to the urban area and in the rural areas where it is demonstrated that the best interests of the community can be met by the provision of facilities in recognised geographical areas. Further guidance on these requirements may also be set out in specific Development Briefs or Action Plans.
- 8.5 In the absence of a Development Brief for a site, the District Council will review any development proposal and the provision of infrastructure on its merits. This would be established through District Council Scoping Meetings involving officers and members from appropriate District Council Service areas and other key community partners including Town and Parish Councils.
- 8.6 Where existing infrastructure exists or where small scale developments do not warrant new infrastructure, a contribution may be appropriate to support the existing infrastructure such as a village or community hall or other community asset. When determining priorities for contribution investment due consideration will be given to existing village appraisals and plans and through consultation with Town / Parish Councils and / or other community representative groups.
- 8.7 It is further recognised that some community facilities are not fulfilling their potential to meet the needs of residents and thus may appear to be underused. In such circumstances qualitative improvements to such facilities would increase their ability to make a positive contribution to meeting the needs of the community. Accordingly the District Council will continuously monitor usage and capacity in order to assess and address supply and demand requirements of such facilities and remedy any deficiencies, but not deficiencies in unrelated sites within the District.

### **Contributions**

- 8.8 Obligations may either comprise the provision of infrastructure in kind or in the form of a financial contribution. Where facilities are required to be provided, they are normally expected to be provided on the site of the development and it is only, where justified, that such provision can be accepted elsewhere. In the case of financial contributions, payments will normally be required in the form of a lump sum, which may have to be paid in advance, or as phased payments over a period of time or related to defined dates, events or triggers. This will enable new facilities to be planned alongside the development being built to ensure that any new facilities

are in place when new residents move in. All financial contributions shall be index-linked by reference to the upward change in such appropriate indices as shall in the view of the Council most reasonably relate to the subject matter of the obligation for the period between creation of the obligation and full payment of the resulting contribution.

- 8.9 Where on site community facilities are to be provided as part of a Development Brief the preferred approach shall be a developer contribution to the District Council. It may also be considered appropriate for a revenue contribution towards project start up costs such as a Development Worker.
- 8.10 A planning obligation can seek to offset the loss of, or damage to, a community facility or resource on a site. This can be provided through substitution, replacement or regeneration. It may not be necessary to provide a like for like substitute, but a reasonable obligation will seek to restore facilities, resources and amenities to a quality equivalent to that which existed before the development.
- 8.11 In rural areas, contributions from development in a particular village or parish can be taken to address the priorities identified in the Village Plan, by local residents or the Parish Council. In this respect, Parish Councils and other community interest groups will be requested to respond on the likely requirements for community infrastructure where development sites are known to be coming forward in rural areas. Appropriate regard will be taken of Village Design Statements (VDS's). Parish Councils' views will also be sought at the time they are consulted on planning applications for development proposals in their area.

### **Sports Facility Strategy**

- 8.12 A new Sports Facilities Strategy is being produced for the district. The purpose of the document is to provide a framework for the prioritisation, provision and development of sports facilities in Newark and Sherwood. The strategy is also needed to comply with 'Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation.
- 8.13 This document will be used when negotiating with developers for physical or financial contributions and in particular to justify what is required, where it will be required and when it will be needed. Where appropriate this SPD will be amended to take account of the contents of this strategy.

## 9 EDUCATION

<p><b>Current Guidance</b></p>	<ul style="list-style-type: none"> <li>• Circular 05/2005</li> <li>• Nottinghamshire and Nottingham Joint Structure Plan 2006: Policy 1/3</li> </ul>
<p><b>Types of facilities for which provision may be required</b></p>	<ul style="list-style-type: none"> <li>• Sites for new schools;</li> <li>• Construction costs of new schools;</li> <li>• Contributions towards additional classroom / other building provision at existing schools (including additional grass / artificial turf sports pitches);</li> <li>• Contributions to highway needs arising as a result of the development.</li> </ul>
<p><b>Type of development that may trigger need</b></p>	<p><b>Residential</b></p> <p>Where a development generates a need for additional places to be provided in existing primary and / or secondary schools, a contribution will be required. The need for a contribution will be established by comparing the number of pupils to be generated by the development with the projected capacity of the school at the time of the commencement of the development. A contribution will be required for every pupil place required in excess of the projected capacity.</p> <p>Projected capacity will be calculated on the basis of:</p> <ul style="list-style-type: none"> <li>• The schools existing net capacity.</li> <li>• Any planned changes to the school building stock affecting the schools net capacity calculation (a revised net capacity).</li> <li>• Pupil projections (revised annually on 1<sup>st</sup> November).</li> <li>• Development with planning permission which will generate a need for pupil places (and may which in itself be subject to a contribution).</li> </ul> <p>In some circumstances the size of new residential development will mean that a new school will need to be provided. Developers should contact the Local Education Authority early in the development process to ascertain whether this will required. Where provision of a new school is required as the result of a new development, the developer will be expected to provide a site and construction costs including professional fees, furniture and equipment.</p> <p>The trigger point for payment of the contribution will be the commencement of the development generating the need</p>

	<p>Where a development is to take place in phases, it may be possible to phase the payments of contributions to reflect this. This will not be appropriate, however, in the case where a new school is required.</p> <p><b>Other</b> Proposals to redevelop an existing school site by a developer would normally trigger need for a replacement school (where the existing school is not surplus to requirements).</p>
<b>Form in which contributions should be made</b>	Land where required, and either costs of construction of buildings or work in kind, to the County Council's specification, as detailed by the Strategic Director of Communities.
<b>Threshold for size of development for which contributions are appropriate</b>	<p>10 dwellings</p> <p>The threshold for the provision of a new school will depend on the location of the development and capacity of existing schools in the area. As a result developers should contact the Local Education Authority early in the process to ascertain whether such facilities will be required.</p>
<b>Geographic areas where there is no spare capacity</b>	Since school capacity varies from term to term, consultation with the Children and Young People's Services is required to establish whether or not there is spare capacity in a given school.
<b>Contact</b>	Nottinghamshire County Council Children and Young People's Services, County Hall, Nottingham.
<b>Last updated</b>	April 2008.

9.1 Provision of education infrastructure is an integral part of new residential development and is an important element in achieving sustainable communities. It will be a requirement of any development to make an appropriate contribution towards enhancing existing education facilities where there is insufficient capacity to support the development. To ensure that they are aware of what will be required in terms of contributions and new facilities developers should consult with the Local Education Authority (LEA), in this instance Nottinghamshire County Council, at an early stage of the development process.

9.2 In order to ensure that the schools have the capacity and ability to accommodate the pupils generated as a result of new development, an assessment is undertaken by the County Council of the likely number of pupils generated by the development and the level of spare capacity in the local schools. Where the number of pupils expected is greater than the spare capacity, Nottinghamshire County Council will require a contribution to provide the additional schools places necessary. This is to enable pupils to attend their local school.

## **Basis of Calculation**

- 9.3 A development of 100 dwellings is calculated to generate 21 places for primary schools and 16 places for secondary schools.
- 9.4 The cost per pupil place is based on a Department for Children, Schools and Families (DfCSF) cost per pupil formula for Nottinghamshire which results in an approximate cost per pupil of £11,276 for primary schools and £16,991 for secondary schools (at April 2008 prices). These figures are updated by DfCSF every April and are therefore subject to revision, the value of contributions will be based on prevailing DfCSF costs at the time the contribution is to be paid.

### **Cost per Dwelling**

#### **Primary - £2,368 per dwelling**

Calculation based on:

21 primary places (per 100 dwellings) multiplied by the cost per place (£11,276) = £236,796 divided by 100 = cost per dwelling (£2,368).

#### **Secondary - £2,719 per dwelling**

Calculation based on:

16 places multiplied by the cost per place (£16,991) = £271,856 divided by 100 = cost per dwelling (£2,719).

Further information about this calculation is available from Children and Young People's Services section at Nottinghamshire County Council.

- 9.5 The cost per dwelling is not a 'tariff' on all new houses, it will only be applied where additional education provision is required (in existing schools) as a result of the new housing development. The formulae will not be applied where there are sufficient places in existing schools or to calculate the cost of providing a new school.
- 9.6 The pupil places specified are calculated on the basis of a mix of housing types and are not discounted unless the development proposed is solely for 1 bed units or specialist units, such as those for the elderly. Where a development is solely for 1 and 2 bed apartments, the contribution is discounted for the 1 bed unit element of the development. The use of a mix approach is standard procedure and enables figures to be calculated with more certainty at outline application stage where the details of each housing type may not be known.

## 10 HEALTH

<b>Current Guidance</b>	<ul style="list-style-type: none"> <li>• Circular 05/05</li> <li>• Health Care Business Plans</li> <li>• Public Health Strategies</li> <li>• Nottinghamshire &amp; Nottingham Joint Structure Plan Policy 1/3</li> </ul>
<b>Types of facilities for which provision may be required</b>	<ul style="list-style-type: none"> <li>• New health facilities</li> <li>• Construction costs for additional facilities / extensions or alterations.</li> </ul>
<b>Type of development that may trigger need</b>	<p><b>Residential</b> Where a development increases the population of an area and where there is extra demand on the local health care provision</p> <p><b>Other</b> Expansion of any area that will impact on the demand for health care the same or similar formula will apply, for example expansion or contraction of major employer</p>
<b>Form in which contributions should be made</b>	Capital Monies Land or buildings
<b>Threshold for size of development for which contributions are appropriate</b>	15 dwellings (Based on the threshold for affordable housing within PPS3)
<b>Geographic areas where there is no spare capacity</b>	Capacity issues are dependent on the nature of the development and the facilities in the area.
<b>Contact</b>	Premises and Capital Planning Manager, Nottinghamshire Primary Care Trust
<b>Last updated</b>	2003

10.1 The requirement for the provision of new or improved health facilities is dependant, not only on the scale of the development, but also on the available capacity in health facilities serving the Newark and Sherwood area, so consultations with the health authority, primary care trust and hospital trust will be necessary at an early stage of the development process. The impact of development will be considered against the pattern of service use in the locality.

### **Basis of Calculation**

10.2 Provision of a new health centre to serve 1,000 people will cost approximately £400,000 (2003 prices). Assuming a typical density of development, which gives 2.3 people per household, this currently equates to a contribution of £920 per dwelling. This figure is based on the Statement of Financial Entitlements for GP services. Further information about the calculation can be obtained from the Primary Care Trust. It should be noted that this figure is currently being reviewed. The revised figure will be inserted when it becomes available.

10.3 The cost per dwelling is not a “tariff” on all new houses; it will only be applied where additional health provision is required as a result of the new housing development and it will not be used to remedy deficiencies elsewhere within the District.

## 11 NATURAL HERITAGE

<b>Current Guidance</b>	<ul style="list-style-type: none"> <li>• Natural Environment and Rural Communities Act 2006</li> <li>• Circular 05/2005 – Planning Obligations;</li> <li>• Circular 06/2005 – Biological and Geological Conservation;</li> <li>• PPS7 “Sustainable Development in Rural Areas” (2004);</li> <li>• PPS9 “Biodiversity and Geological Conservation” (2005);</li> <li>• UK Biodiversity Action Plan;</li> <li>• Nottinghamshire Local Biodiversity Action Plan;</li> <li>• Nottinghamshire Landscape Guidelines;</li> <li>• Nottinghamshire and Nottingham Joint Structure Plan 2006;</li> <li>• Policies 1/3, 2/1, 2/2, 2/3, 2/4, 2/5, 2/6, 2/7, 2/8.</li> </ul>
<b>Types of facilities for which provision may be required</b>	<ul style="list-style-type: none"> <li>• Mitigation measures;</li> <li>• Habitat restoration;</li> <li>• Habitat protection;</li> <li>• Habitat creation;</li> <li>• Landscaping;</li> <li>• Site management; and</li> <li>• Site interpretation</li> </ul>
<b>Type of development that may trigger need</b>	All development which may have an impact on ecologically, geologically or landscape sensitive features and locations will need to be assessed individually.
<b>Form in which contributions should be made</b>	All capital costs of implementation of mitigation or compensation measures and maintenance costs for a period to be agreed (for example, up to 10 years).
<b>Threshold for size of development for which contributions are appropriate</b>	No thresholds apply, if a sensitive feature or site is affected, it applies to all development proposals.
<b>Geographic areas where there is no spare capacity</b>	All ecologically / geologically sensitive features and locations.
<b>Contact</b>	Nottinghamshire County Council, Conservation Group: Senior Countryside Conservation Officer.
<b>Last updated</b>	February 2007.

### **Why is this important?**

- 11.1 Biodiversity is a key test of sustainability in both rural and urban areas. Taking opportunities to protect, and where possible enhance, natural heritage is a key objective at national, regional and local level. In particular the Natural Environment and Rural Communities Act 2006 places a duty on public authorities (including County, District and Parish Councils) to conserve biodiversity when carrying out their duties.
- 11.2 Within Nottinghamshire, certain habitats and species have declined to such critical levels that they are now rarely found outside designated sites. The District Council and Nottinghamshire County Council seek measures to halt this decline, manage the current resource and restore past losses in order to promote sustainable development.
- 11.3 Whilst a lot of matters relating to natural heritage can be subject to a planning condition, there will be circumstances when a legal agreement is required and the above table is intended to highlight and illustrate this.

## 12 OPEN SPACE

<p><b>Current Guidance</b></p>	<ul style="list-style-type: none"> <li>• Circular 05/2005;</li> <li>• PPS 17 Planning for Open Space, Sport and Recreation;</li> <li>• National Playing Fields Association Standards;</li> <li>• Sport England Facilities Planning Model;</li> <li>• Natural England Accessible Natural Green space Standards</li> <li>• Nottinghamshire and Nottingham Joint Structure Plan 2006 1/3 &amp; 6/2;</li> <li>• Newark and Sherwood Local Plan, Saved Policies R4 and R5;</li> <li>• Newark &amp; Sherwood District Green Spaces Strategy 2006 – 2011;</li> <li>• Newark &amp; Sherwood Play Strategy 2007 – 2012;</li> </ul>																	
<p><b>Types of facilities for which provision may be required</b></p>	<p>New or extended:</p> <ul style="list-style-type: none"> <li>• Local Areas for Play (LAPs);</li> <li>• Local Equipped Area for Play (LEAP);</li> <li>• Neighbourhood Equipped Area for Play (NEAP);</li> <li>• Sports Fields / Youth and Adult Areas;</li> <li>• Amenity Open Space.</li> </ul> <p>Full definitions of these types of open space are set out in the glossary.</p> <p>Alternatively commuted sums for off-site provision may be appropriate.</p>																	
<p><b>Type of development that may trigger need</b></p>	<p>New housing developments - Having consideration of the thresholds set out below</p>																	
<p><b>Form in which contributions should be made</b></p>	<table border="1"> <thead> <tr> <th data-bbox="504 1193 715 1317">Development Size (Dwellings)</th> <th data-bbox="722 1193 1407 1317">Provision of Open Space #</th> </tr> </thead> <tbody> <tr> <td data-bbox="504 1317 715 1361">1 – 9</td> <td data-bbox="722 1317 1407 1361">Nil</td> </tr> <tr> <td data-bbox="504 1361 715 1440">10 – 29</td> <td data-bbox="722 1361 1407 1440">On Site – 20m<sup>2</sup> per dwelling for LAP Off Site – Commuted sum where appropriate</td> </tr> <tr> <td data-bbox="504 1440 715 1563">30 – 59</td> <td data-bbox="722 1440 1407 1563">On Site – 20m<sup>2</sup> per dwelling for LAP / LEAP 15m<sup>2</sup> per dwelling for AOS Off Site – Commuted sum where appropriate</td> </tr> <tr> <td data-bbox="504 1563 715 1686">60 – 99</td> <td data-bbox="722 1563 1407 1686">On Site – 20m<sup>2</sup> per dwelling for LAP / LEAP 15m<sup>2</sup> per dwelling for AOS Off Site – Commuted sum where appropriate</td> </tr> <tr> <td data-bbox="504 1686 715 1843">100 – 399</td> <td data-bbox="722 1686 1407 1843">On Site – 20m<sup>2</sup> per dwelling for LAP / LEAP 15m<sup>2</sup> per dwelling for AOS 40m<sup>2</sup> for sports fields Off Site – Commuted sum where appropriate</td> </tr> <tr> <td data-bbox="504 1843 715 2033">400+</td> <td data-bbox="722 1843 1407 2033">On Site – 20m<sup>2</sup> per dwelling for NEAP / LEAP / LAP 15m<sup>2</sup> per dwelling for AOS 40m<sup>2</sup> for sports fields Off Site – Commuted sum where appropriate</td> </tr> <tr> <td data-bbox="504 2033 715 2076">#</td> <td data-bbox="722 2033 1407 2076">See reference to Green Spaces Strategy</td> </tr> </tbody> </table>	Development Size (Dwellings)	Provision of Open Space #	1 – 9	Nil	10 – 29	On Site – 20m <sup>2</sup> per dwelling for LAP Off Site – Commuted sum where appropriate	30 – 59	On Site – 20m <sup>2</sup> per dwelling for LAP / LEAP 15m <sup>2</sup> per dwelling for AOS Off Site – Commuted sum where appropriate	60 – 99	On Site – 20m <sup>2</sup> per dwelling for LAP / LEAP 15m <sup>2</sup> per dwelling for AOS Off Site – Commuted sum where appropriate	100 – 399	On Site – 20m <sup>2</sup> per dwelling for LAP / LEAP 15m <sup>2</sup> per dwelling for AOS 40m <sup>2</sup> for sports fields Off Site – Commuted sum where appropriate	400+	On Site – 20m <sup>2</sup> per dwelling for NEAP / LEAP / LAP 15m <sup>2</sup> per dwelling for AOS 40m <sup>2</sup> for sports fields Off Site – Commuted sum where appropriate	#	See reference to Green Spaces Strategy	
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<b>Form in which contributions should be made (continued)</b>	<p>Sports field contributions should be provided from developments of less than 100 dwellings where a specific need has been established or where the new housing results in an under-provision of playing fields in the settlement.</p> <p>Equipped play areas will not normally be required on developments of less than 60 houses, although where the new development will exacerbate an existing lack of provision then a LEAP may be specified. On developments of less than 60 houses where LAPs do not make up the full playing space requirement then a financial contribution towards off site provision will be required, given that an appropriate site exists.</p>
<b>Threshold for size of development for which contributions are appropriate</b>	<ul style="list-style-type: none"> <li>• Children’s Play Areas - 10 dwellings;</li> <li>• Amenity Open Space – 30 dwellings;</li> <li>• Sports Fields – 100 dwellings;</li> </ul> <ul style="list-style-type: none"> <li>• In respect of the above smaller developments may be required to make a contribution where there is a deficiency of facilities in the area;</li> <li>• Specialist institutions may generate exceptional demand (especially for children's play or recreational sport);</li> </ul> <p>The above thresholds are based on those within policies R4 and R5 of the Newark and Sherwood Local Plan.</p>
<b>Geographic areas where there is no spare capacity</b>	Capacity issues are dependent on the nature of the development and the facilities in the area.
<b>Contact</b>	Community Facilities Section, Newark and Sherwood District Council.
<b>Last updated</b>	April 2008

### **Newark and Sherwood Green Spaces Strategy**

12.1 In 2007 the Council published its Green Spaces Strategy. This was produced following a full needs assessment which was based on the requirements of PPG17. The document identifies new standards for the provision of various forms of open space and, based on these standards, revised figures for open space provision linked with new development are recommended. As this is based on an up to date needs assessment the Council will also use the contents of this document as a basis for the negotiation of contributions. It will also be used to help develop policies for open space provision within the emerging Local Development Framework

12.2 Copies of the Green Spaces Strategy and information about the audits to inform this document are available from the Community Services Section of the Council.

### Where will open space be provided?

12.3 Under normal circumstances as much as possible of the open space requirement should be provided on or adjacent to the proposed development. Where a new development is not of a size to require all categories of open space on-site it will generally be necessary for it to provide the relevant parts of the standard with a commuted sum covering the off-site elements. Such contributions, which will be spent in the locality of the development, will be determined in conjunction with the Council's Parks & Amenities Manager.

### How are commuted sums for the provision of open space to be calculated?

12.4 The financial contribution will be based on a calculated standard cost for making the necessary on-site provision of the full 3.0 ha required for 400 dwellings / 1000 people.

12.5 Elements which make up the contributions per dwelling are:

- Provision of local areas for play;
- Provision of equipped play areas, including activity and buffer zones;
- Provision of surfaced areas for informal ball games and wheeled play;
- Seating, including a teenage meeting area;
- Provision of levelled and drained grass pitches;
- Provision of artificially surfaced areas for formal sport;
- Ancillary services for sports pitches such as changing rooms and parking provision; and
- Landscaped areas of amenity open space.

12.6 The cost per dwelling and per square metre at 2008 prices will be:

	<u>Per Dwelling</u>	<u>Per Sq Metre</u>
Children's play space	£793.00	£39.67
Sports fields	£631.00	£15.78
Amenity open space	£242.00	£16.18
<b>TOTAL COST</b>	<b>£1666.00</b>	

12.7 Any payments that may be made by developers to enable their proposed development to meet the open space standards will be commensurate with the need generated by that proposed development.

12.8 These costs will be revised annually in line with the index for the soft landscaping work category published by the Property Services Agency.

## How are commuted sums for the maintenance of open space to be calculated?

- 12.9 Following the agreement of on-site provision, the District Council will need to satisfy itself that the open space has been properly laid out and completed and that suitable contractual arrangements for its long term maintenance have been put in place. Under normal circumstances this will involve the land being dedicated to the Local Authority and a commuted sum being paid to cover its future maintenance. If developers do not wish to dedicate the open space to the Local Authority then the District Council will want to be assured that the alternative arrangements will guarantee the maintenance of the land for the foreseeable future.
- 12.10 In the interests of considering all applications for development equally, commuted sums for off-site provision will be accompanied by a payment to cover long term maintenance. The current Council policy requires that the commuted sum cover maintenance for 15 years. This is considered an appropriate balance between the maintenance costs being covered by both the new development and ultimately the local authority.
- 12.11 The annual costs for maintenance of the various areas are as follows (2008 prices):

	£ Per Sq Metre
Children's play space - LEAP/NEAP activity zone	£6.30
- LAP	£1.48
Amenity open space/play space buffer zone	£0.84
Sports pitches	£0.93

- 12.12 The commuted sum is then calculated by multiplying the various open space areas by the annual cost and multiplying this figure by 15.
- 12.13 These costs will be revised annually in line with the index for the soft landscaping work category published by the Property Services Agency.

### Worked Examples - Calculating the Open Space Required

#### Example (1)

Application for a 30 dwelling housing development  
Apply standard i.e.

Children's play space	(20m <sup>2</sup> /dwelling)	= 20 x 30 = 600m <sup>2</sup>
Amenity open space	(15m <sup>2</sup> /dwelling)	= 15 x 30 = 450m <sup>2</sup>
Sports fields (if required)	(40m <sup>2</sup> /dwelling)	= 40 x 30 = 1200m <sup>2</sup>
<b>Open Space Requirement Without Sports Fields</b>		<b>= 1050m<sup>2</sup></b>
<b>Open Space Requirement With Sports Fields</b>		<b>= 2250m<sup>2</sup></b>

### Example (2)

Outline application for a residential development on 4.2 ha.  
Assume 105 dwellings are proposed based on 25 dwellings / hectare

Apply standards i.e.

Children's play space	(20m <sup>2</sup> /dwelling)	= 20 x 105 = 2100m <sup>2</sup>
Amenity open space	(15m <sup>2</sup> /dwelling)	= 15 x 105 = 1575m <sup>2</sup>
Sports fields	(40m <sup>2</sup> /dwelling)	= 40 x 105 = 4200m <sup>2</sup>
<b>Open Space Requirement</b>		<b>= 7875m<sup>2</sup></b>

### Calculating Commuted Sums for the Provision of Open Space

12.14 The cost per dwelling and per square metre at 2008 prices will be:

	<u>Per Dwelling</u>	<u>Per Sq Metre</u>
Children's play space	£793.00	£39.67
Sports fields	£631.00	£15.78
Amenity open space	£242.00	£16.18
<b>TOTAL COST</b>	<b>£1666.00</b>	

### Example (1)

Full application for 20 No. 4 bed dwellings and 30 No. 3 bed dwellings:

Assume development is located in an area of identified under-provision for sports fields.

#### Open space requirement:

Children's play space	(20m <sup>2</sup> /dwelling)	= 20 x 50 = 1000m <sup>2</sup>
Amenity open space	(15m <sup>2</sup> /dwelling)	= 15 x 50 = 750m <sup>2</sup>
Sports fields	(40m <sup>2</sup> /dwelling)	= 40 x 50 = 2000m <sup>2</sup>

On site requirement will be 750m<sup>2</sup> amenity open space and play provision in the form of 2 No. LAPs, given that the play space is considered insufficient for an equipped area.

Assuming 2 No. LAPs, each of 200m<sup>2</sup>, are provided with their buffer zones made up of some of the amenity open space then 600m<sup>2</sup> of children's play space and 2000m<sup>2</sup> of sports fields should be provided off-site. Assuming off-site locations are identified then the following payment will be required:

Children's play space	600m <sup>2</sup> x £39.67/m <sup>2</sup>	= £23,802
Sports fields	2000m <sup>2</sup> x £15.78/m <sup>2</sup>	= £31,560
<b>TOTAL</b>		<b>= £55,362</b>

### Example (2)

Full application for 90 No. 3 bed houses and 30 No. 4 bed houses:

Open space requirements:

Children's play space	(20m <sup>2</sup> /dwelling)	= 20 x 120 = 2400m <sup>2</sup>
Amenity open space	(15m <sup>2</sup> /dwelling)	= 15 x 120 = 1800m <sup>2</sup>
Sports fields	(40m <sup>2</sup> /dwelling)	= 40 x 120 = 4800m <sup>2</sup>

- 12.15 Normal on-site requirement will be 1800m<sup>2</sup> amenity open space and play provision in the form of 1 No. LEAP and 2 No. LAPs. Alternatively developers may submit for consideration a scheme showing less than the required amount of children's playing space. If a suitable site is identified nearby, either for upgrading or new provision, then the District Council may be prepared to accept less than the required on-site provision with a commuted sum being paid to cover the shortfall.
- 12.16 For example, should a developer submit a scheme showing a total of 3000m<sup>2</sup> of open space of which 1200m<sup>2</sup> is identified as play space then the shortfall of 1200m<sup>2</sup> play space will be covered by the payment of a commuted sum of £47,604 (£39.67/m<sup>2</sup> x 1200).
- 12.17 Given that the development site is not suitable for the provision of sports fields then a commuted sum of £75,744 (£15.78/m<sup>2</sup> x 4800) will be required to cover this element of open space provision.

## 13 TRANSPORT

<b>Current Guidance</b>	Circular 05/2005 – Planning Obligations PPG13 "Transport" (2001) Nottinghamshire and Nottingham Joint Structure Plan: Policies 1/3, 5/1, 5/2, 5/3, 5/4
<b>Types of facilities for which provision may be required</b>	See table below
<b>Type of development that may trigger need</b>	
<b>Form in which contributions should be made</b>	
<b>Threshold for size of development for which contributions are appropriate</b>	
<b>Geographic areas where there is no spare capacity</b>	
<b>Contact</b>	Nottinghamshire County Council, Transportation Team
<b>Last updated</b>	February 2007

<b>Development Factor</b>	<b>Suggested Minimum Size</b>	<b>Within and edge of Central Areas such as Town / District and Local Centres</b>	<b>Within Village Envelopers &amp; named settlements, within and adjoining the main urban areas</b>	<b>Elsewhere</b>
<b>Food Retail</b> Per 1,000m <sup>2</sup> gfa	1,000m <sup>2</sup> gfa	£30,000	£60,000	£90,000
<b>Non Food Retail</b> Per 1,000m <sup>2</sup> gfa	1,000m <sup>2</sup> gfa	£15,000	£30,000	£45,000
<b>Residential</b> Per Net Developable Hectare (or per 125 bedrooms for developments greater than 125 bedrooms per hectare e.g. apartments)	50 bedrooms or 0.4 Net Developable Hectares – whichever is smaller	£7,500	£15,000	£22,500
<b>B1 (a) Office Employment</b> Per 1,000m <sup>2</sup> gfa	2,500m <sup>2</sup> gfa	£5,000	£10,000	£15,000
<b>Other “B” Use Employment</b> Per 1,000m <sup>2</sup> gfa	5,000m <sup>2</sup> gfa	£2,000	£4,000	£6,000
<b>Commercial, Leisure, Tourism, Health and Education</b>	Determine on a site by site basis	Determine on a site by site basis	Determine on a site by site basis	Determine on a site by site basis

### Table Notes

- gfa = Gross Floor Area
- The boundaries of these development locations will be specified in Development Plans. Edge of Centre refers to the PPS6 definition of 300m walking distance
- It should be noted that these figures are currently being reviewed and the amended figure will be inserted once this has been completed.

13.1 The above tables are to be used as a starting point for negotiations with developers and for larger developments they will form an integral part of the Transport Assessment Procedure. Developers will be expected to provide an acceptable internal layout and good access to the site for all modes of transport together with a

financial contribution that the District Council can pool towards integrated transport improvements in the vicinity of the development. The contributions will be allocated against identified schemes within the general area within which the development lies.

13.2 Examples of such schemes include:

- Bus Quality Partnership elements, bus priority measures and bus stop facilities;
- Public Transport Revenue support;
- Extension and improvement of the cycle network and pedestrian facilities;
- New heavy rail infrastructure;
- Park and Ride;
- Traffic Management;
- Pedestrian schemes; and
- Other transport measures and highway improvements to support public transport modes

13.3 Developers can opt to directly provide transport measures to benefit both the users of the development and the existing public transport users and if they do so, the cost of any such appropriate scheme would be deducted from the financial contribution.

#### **Calculation of Contributions**

13.4 The guidance figures in the tables above are based on a number of factors. The overall levels are based on the total package of integrated transport measures defined in the Local Transport Plan (LTP). The specific figure for any given development is also influenced by its trip generation potential, since additional trip generation as a result of new development provides the justification for securing contributions from developers towards public transport, cycling and walking measures that will help achieve modal shift. Standard trip generation models for different types of development have been employed.

13.5 The contributions are those that will be sought across the North Nottinghamshire LTP area and reflect the likely costs of public transport, cycling and walking measures required to serve a development as a result of its location. In general, urban centre development will reduce the need to travel, and generate shorter journey distances, and therefore, the contribution should be lower than for out of town development.

## 14 Cultural Heritage

<b>Current Guidance</b>	Circular 05/05 – Planning Obligations PPG15 “Planning and the Historic Environment” (1994) PPG16 “Archaeology and Planning” (1990) Nottingham and Nottinghamshire Joint Structure Plan Policies: 1/3, 2/11, 2/12
<b>Types of facilities for which provision may be required</b>	<ul style="list-style-type: none"> <li>• Mitigation measures;</li> <li>• Landscaping;</li> <li>• Restoration and enhancement of specific historic assets</li> <li>• Site management;</li> <li>• Site interpretation</li> <li>• Archaeological / building conservation consultants and contractors for investigation, recording, analysing, archiving and reporting on archaeological structures or remains.</li> <li>• Provision of open space, to protect archaeological remains that are of sufficient importance to warrant preservation in situ, and the maintenance of the open space to prevent any form of ground disturbance</li> <li>• Improvement of green infrastructure related to cultural heritage</li> </ul>
<b>Type of development that may trigger need</b>	<ul style="list-style-type: none"> <li>• All development which may have an impact on culturally sensitive structures or locations;</li> <li>• The extent of the interest must be located and defined through field evaluation;</li> <li>• Costs will need to be individually assessed for each project / development</li> </ul>
<b>Form in which contributions should be made</b>	<ul style="list-style-type: none"> <li>• Commissioning of relevant programme of work.</li> <li>• Safeguarding of archaeological interest or provision for excavation, recording and archiving; and</li> <li>• All capital costs of implementation of mitigation or compensation measures and maintenance costs for a period to be agreed (for example, up to 10 years)</li> </ul>
<b>Threshold for size of development for which contributions are appropriate</b>	No threshold. It applies to all development proposals where a sensitive site or building is affected
<b>Geographic areas where there is no spare capacity</b>	All culturally sensitive structures or locations.
<b>Contact</b>	Senior Archaeological Officer, Nottinghamshire County Council, Trent Bridge House: 0115 9772129 Conservation officer, Newark and Sherwood District Council
<b>Last updated</b>	October 2008

- 14.1 Newark and Sherwood's historic and cultural environment is a key element in its character and identity. The District contains a variety of archaeological remains, historic buildings, landscapes, settlements, listed buildings, and scheduled monuments in addition to having the county's only registered historic battlefield and three entries at the 'At Risk Register'. The SPD is an opportunity for appropriate contributions to be sought to preserve, maintain and enhance the Districts historic features that help strengthen local places and communities. All contributions that are sought will be in compliance with the requirements of Circular 05/2005.
- 14.2 Whilst a lot of matters relating to the Districts cultural heritage can be subject to a planning condition, there will be circumstances when a legal agreement is required and the above is intended to highlight and illustrate this.

## **15 MONITORING AND REVIEW OF THE SPD**

- 15.1 This Supplementary Planning Document forms part of the Newark and Sherwood Local Development Framework. As such, monitoring and review requirements will be met under Council's Annual Monitoring Report process. In accordance with this process, the SPD will be monitored, reviewed and updated to ensure that it remains relevant in accordance with emerging guidance at all levels, while assessing the implementation of the policies set out herein.
- 15.2 The Council recognises that emerging Government policy will impact the implementation of various developer contribution elements addressed throughout this Supplementary Planning Document. In this regard, future monitoring and review as a part of the Annual Monitoring Report process will encompass any amendments to the framework of policies, plans, statements, strategies or other guidance relative to this Supplementary Planning Document.

## **16 CONTACT DETAILS**

- 16.1 For any queries about this document please contact:

Planning Policy  
Newark and Sherwood District Council  
Kelham Hall  
Newark  
Nottinghamshire  
NG23 5QX

E-mail: [planningpolicy@nsdc.info](mailto:planningpolicy@nsdc.info)

Telephone: 01636 655855 / 655852

## GLOSSARY

**Amenity Open Space** - Amenity open space may take the form of formal or informal parks and gardens or other landscaped or wildlife areas which will provide areas for passive recreation for all ages, as well as creating attractive green areas within residential estates. Amenity open spaces are intended to be attractive spaces for people to enjoy being in or looking at.

**Community Infrastructure Levy (CIL)** – Part of a wider package of funding to support housing and economic growth. It will be a standard charge decided by designating authorities and levied by them on new development

**Development Plan Documents (DPD's)** - Set out the land use planning policies at the District level (and county level in relation to minerals and waste) and together with the Regional Spatial Strategy make up the statutory development plan, which is the basis upon which all planning decisions are made.

**Local Area for Play (LAP)** - LAPs are small landscaped areas of open space specifically designated for young children (under 6 years old) and their parents or carers for play activities and socialisation close to where they live.

**Local Development Framework (LDF)** – The Local Development Framework is made up of a series of development plan documents and supplementary planning documents and sets out the land use planning policies at the District level (and county level in relation to minerals and waste). It replaces the previous system of county level Structure Plans, District level Local Plans and Unitary Development Plans for Unitary authorities.

**Local Equipped Area for Play (LEAP)** - A LEAP is an unsupervised play area mainly for children of early school age (4-12 years) but with consideration for other ages. Unlike a LAP a LEAP is equipped with formal play equipment and it should provide a focal point for children when they are responsible enough to move away from the immediate control of parents

**Neighbourhood Equipped Area for Play (NEAP)** - A NEAP will serve a substantial residential area or estate and as such should cater for a wide range of children including those with special needs.

**Nottinghamshire & Nottingham Joint Structure Plan** - Sets out strategic planning policies for Nottinghamshire and which forms the basis for detailed policies in Local Plans / Local Development Frameworks. Will be superseded by the East Midlands Regional Plan when it is adopted in 2009

**Planning Policy Guidance Notes / Statements (PPG / PPS)** - Statements that set out the Government's national policy and principles towards certain aspects of the town planning framework.

**Sports Fields / Youth and Adult Areas** - These can be defined as grassed or artificially surfaced areas providing opportunities for sport together with ancillary facilities such as changing rooms, floodlighting and parking. Included within sports fields will be pitches, courts, greens, athletic tracks and miscellaneous sites such as croquet lawns and training areas.

**Statement of Community Involvement (SCI)** - Document setting out the District Council's methods for consulting the public on Local Development Documents and Planning Applications

**Supplementary Planning Document (SPD)** - Non-statutory guidance which supplements development plan policies. Replaced Supplementary Planning Guidance under the provision of the Planning and Compulsory Purchase Act 2004

**Unilateral Undertaking** - This is an undertaking made by the applicant to the authority to cover any planning issues before the granting of planning permission and may be offered at any point in the application process – but normally where agreement has not been reached.

## REFERENCES

Department of Communities and Local Government (2006) – Planning Obligations: Practice Guide

Government Office for the East Midlands (2008) – East Midlands Regional Plan (Regional Spatial Strategy), Secretary of State's Proposed Changes

Newark & Sherwood District Council (1999) – Newark and Sherwood Local Plan

Newark and Sherwood District Council (2007) – Green Spaces Strategy 2007 - 2012

Newark & Sherwood Local Strategic Partnership (2006) – The 2<sup>nd</sup> Community Plan for Newark and Sherwood

Nottinghamshire County Council & Nottingham City Council (2006) – Nottinghamshire and Nottingham Joint Structure Plan Adopted February 2006

ODPM (2005) – Circular 05/2005, Planning Obligations



# **Appendix 1**

## **Draft Heads of Terms**

<b>TO BE COMPLETED BY LEGAL</b>	
Legal Officer Instructed	
Date Received	

**INSTRUCTIONS TO LEGAL SECTION**  
**SECTION 106 AGREEMENTS**

Please complete and forward this form whenever instructing legal to commence preparing a Section 106 agreement.

Planning Officer:		Extension:
Development:		Planning ref:
Target date		
Applicant		
Agent		

**Children’s Play Space and Amenity Open Space**

For more information contact Phil Beard (ext 5714)

**On-site Children’s Play Areas (trigger = 10+ dwellings)**

Please tick to confirm that you have attached a plan showing position of children’s play area and buffer zone

Using the space below specify...

1. what works, play equipment and landscaping have to be provided and at what point in the development
2. the amount of the commuted sum for maintenance and confirm that indexation shall be by reference to soft landscaping index.
3. if the open space is to be transferred to NSDC state the length of any maintenance period required before transfer occurs.
4. If land not to be transferred to NSDC annex a maintenance schedule setting out frequency of mowing etc.

**Off-site Children’s Play Space (trigger = 10+ dwellings)**

Using the space below...

1. specify the amount of commuted sum in lieu of provision, the amount in respect of maintenance and confirm that indexation shall be by reference to the soft landscaping index.
2. specify trigger point for payment

**On-site Amenity Space (trigger = 30+ dwellings)**

Please tick to confirm that you have attached a plan showing the position of the Amenity Open Space

Using the space below specify...

1. what the landscaping to be provided and at what point in the development
2. the amount of the commuted sum for maintenance and confirm that indexation shall be by reference to soft landscaping index.
3. if the open space is to be transferred to NSDC state the length of any maintenance period required before transfer occurs.
4. If land not to be transferred to NSDC annex a maintenance schedule setting out frequency of mowing etc.

**Off-site Amenity Open Space (trigger = 30+ dwellings)**

Using the space below...

1. specify the amount of commuted sum in lieu of provision, the amount in respect of maintenance and confirm that indexation shall be by reference to the soft landscaping index.
2. specify trigger point for payment

**Community Facilities (trigger = 10+ dwellings)**

For more information please contact Andy Hardy (ext 5708)

Using the space below please specify the commuted sum required as a contribution towards community facilities. Please specify what the monies will be used for.

## **Affordable Housing**

For more information please contact Rob Main (ext 5930)

Using the table below specify...

1. the type of dwellings required i.e. number of bedrooms and in the case of flats whether ground floor flats are required.
2. the mode of occupation for each type of dwelling ie social rented, shared ownership
3. the location of affordable housing. In the case of outline permission we will have to say that the location is to be in a position to be agreed with the Council but in the case of full applications, specify the relevant plot numbers.

<b>Type</b>	<b>Tenure and plot number</b>	
	<b>Social Rented</b>	<b>Shared Ownership</b>
1 bed flat		
2 bed flat		
1 bed house		
2 bed house		
3 bed house		
1 bed bungalow		
2 bed bungalow		
<b>TOTAL:</b>		

**The trigger point for provision is on the occupation of 60% market dwellings**

**The order of occupation under nomination rights eg connection with Clipstone or in default someone living within the Rural west of Newark and Sherwood District, being the wards of Edwinstowe, Bilsthorpe and Farnsfield**

- 1.
- 2.
- 3.
- 4.
- 5.

**Non-standard Matters**

Using the Space below please specify any non-standard matters to be included in the section 106 agreement.

For example, nature conservation, flood mitigation, integrated transport, CCTV provision, not to implement an earlier permission.

Please also state whether there is to be any 'discount' for contaminated land (ie less onerous obligations than would otherwise be the case).

## **Appendix 2**

### **Section 106 Agreement: Money in Lieu of Open Space**

**NOTES**

- 1. This form is intended for use where the only obligation is a lump sum payment**
- 2. The form is a specimen only and will be subject to amendment to address the circumstances of each individual application**
- 3. The form may also be amended over the life of this SPD and readers of a hard copy of this document are requested to check the Council's website for the latest version of this form**

**SECTION 106 AGREEMENT – MONEY IN LIEU OF OPEN SPACE**

**PARTICULARS**

**DATE**

In this Agreement the following expressions shall have the following meanings respectively:-

**“ The Owner(s)”**

**“the Developer”**

**“The Land”**

Description

Title number(s)

**“the Plan”** the plan attached hereto [and numbered ]

**“the Commuted Sum”**

**“The Mortgagee”**

**“The Mortgage”** (date)

**“The Planning Application”**

Date Validated

Reference No.

Description

THIS DEED is made on the date set out in the Particulars

BETWEEN

1. **NEWARK AND SHERWOOD DISTRICT COUNCIL** of Kelham Hall Newark Nottinghamshire NG23 5QX (“The Council”)
2. The Owner
3. The Developer
4. The Mortgagee

RECITALS

1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
2. The Owner is the owner in fee simple in possession of the Land.
3. The Developer
4. The Mortgagee is mortgagee of the Land by virtue of the Mortgage
5. The Owner has made the Planning Application to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application (“the Development”).
6. The Council would ordinarily require the provision of on-site [open space/children’s play space] on such a development
7. The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Agreement

without which planning permission for the Development would not have been granted.

NOW THIS DEED is made in pursuance of section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. The Owner and the Developer jointly and severally covenant with the Council to observe the restrictions and obligations specified in the Schedule hereto
2. The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided the land shall be bound by the restrictions and obligations contained in the Schedule hereto.
3. It is agreed and declared as follows:
  - 3.1 The expressions “the Council”, “the Owner”/ “the Developer” and “the Mortgagee”\* shall include successors in title and assigns.
  - 3.2 Words importing one gender shall be construed as importing any other gender
  - 3.3 Words importing the singular shall be construed as importing the plural and vice versa
  - 3.4 Words importing persons shall be construed as importing a corporate body and /or a partnership and vice versa
  - 3.5 Where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons
  - 3.6 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such

breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest

- 3.7 The covenants contained in this Agreement shall take effect [upon the date hereof/only upon the date specified by the Owner in a written notice served upon the Council as the date upon which the Development is to be commenced or if no such notice is served the actual date on which the Development was begun within the meaning of section 56 of the Town and Country Planning Act 1990 (“the 1990 Act”)]
- 3.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.
- 3.9 This Agreement is a local land charge and shall be registered as such.
- 3.10 The Owner will pay the reasonable legal costs of the Council incurred in the negotiation preparation and completion of this Agreement
- 3.11 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it
- 3.12 All and any payments which are required by this Agreement to be made to the Council shall if made by cheque be accompanied by a covering letter marked for the attention of the Council’s Chief Accountant and quoting the date of and parties to this Agreement together with the relevant clause or paragraph number of this Agreement under which the payment is made and if any such payment is sent by telegraphic transfer the payer shall within 24 hours send a letter to the Council marked for the attention of the Council’s Chief Accountant quoting the said information and identifying the amount sent the date it was sent and the payer’s bank.

4. The Owner and the Developer warrant that as at the date of this Deed no person body or company other than the [Owner/parties hereto] has any interest in the [Obligation Land] for the purposes of section 106 of the Act

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written.

#### SCHEDULE

**1. Not to [commence the Development / occupy or permit to be occupied more than -----  
----- dwellings upon the Land] unless there has been paid to the Council the Commuted  
Sum in lieu of the provision of on-site [open space/children's' play space]**

2. The sum specified in paragraph 1 above shall be increased by the same proportion as the Index for the month preceding the date on which such sum is paid bears to the Base Figure where:

- (i) "Index" means the index for soft landscaping works as issued by the Department for Business Enterprise and Regulatory Reform or any substitute for it and
- (ii) "Base Figure" is the Index figure for the month preceding the date of this Deed

PROVIDED ALWAYS that if the basis of the computation of the Index is changed or if publication of the Index is permanently discontinued an alternative method of fixing the said sum shall be agreed between the Council and the Owner to ensure as nearly as possible that such sum shall fluctuate (but in an upwards direction only) in accordance with the general cost of maintaining open space and any dispute as to such method shall be referred to a single arbitrator appointed by the then President of the Royal Institution of Chartered Surveyors on the application of either party and the costs of such arbitration shall be borne equally between them

3. Not to permit or suffer the occupation of any more than ----- of the said ----- unless and until the payment referred to in paragraph 1 increased in accordance with paragraph 2 above has been paid to the Council

THE COMMON SEAL OF ]  
NEWARK AND SHERWOOD ]  
DISTRICT COUNCIL-was affixed ]  
to this Deed in ]  
the presence of ]

Strategic Director (Corporate Services)

SIGNED AS A DEED BY the said ]  
----- in the presence of ]

THE COMMON SEAL OF ]  
 C  was affixed to this Deed ]  
in the presence of ]

or SIGNED AS A DEED BY  B  ]  
acting by: ]



## **Appendix 3**

### **Section 106 Agreement: Open Space / Affordable Housing**



any works carried out in connection with any archaeological investigation of the Site or trial holes or other operations to establish ground conditions on the Site).

“the Decision Notice”

a decision notice substantially in the form of the draft notice annexed in the First Schedule to this Agreement.

“the Development”

the development of the Site pursuant to the Planning Application.

“Housing Association”

a registered social Landlord or Landlord registered with the Housing Corporation under the provisions of the Housing Act 1996.

“the Index”

the Index for soft landscaping works as issued by the Department for Business Enterprise and Regulatory Reform or any substitute for it

“Individual Completed Properties”

a dwelling or dwellings occupied or ready for immediate occupation with the exception of the Affordable Housing.

“the Local Area for Play/Amenity”

the land shown edged [green] on [the Plan] landscaped and equipped with children’s play equipment in accordance with the “Guide to the Provision of Open Space in Connection with New Housing Development” produced by the Council and dated July 1999 the exact specification of all landscaping and equipment to be agreed in writing by the Council

“the Off-Site Amenity Open Space Contribution”

the sum of ##### [awaiting confirmation] multiplied by the Variable Factor per dwelling erected on the Site pursuant to the Planning Permission being a contribution towards the provision and maintenance of amenity open space in ##### as the Council in its absolute discretion shall decide.

“the Off-Site Play Space Contribution”

the sum of ##### [awaiting confirmation] multiplied by the Variable Factor per dwelling erected on the Site pursuant to the Planning Permission being a contribution towards the provision and maintenance of children’s playing space in ##### as the Council in its absolute discretion shall decide.

“the On-Site Amenity Open Space [Local Areas for Play etc] Commuted Sum”

the sum of £##### multiplied by the Variable Factor per dwelling

“the Plan”

the plan attached to this Agreement.

“the Planning Act”

the Town and Country Planning Act 1990 (as amended at the date of this Agreement).

“the Planning Application”

the application made by the Owner to the Council for planning permission for the use of the Site for residential development under application reference ##### [validated on #####]

“the Planning Obligations”

the obligations on the part of The Owner arising pursuant to Clause 6 of this Agreement.

“the Planning Permission”

the grant of planning permission pursuant to the Planning Application

“Shared Ownership Housing”

dwellings to be constructed in accordance with a specification approved by the Council in writing comprising plots ##### in which the occupier will initially own a percentage ranging between twenty five percent (25%) and fifty percent (50%) and the remainder is owned by the Housing Association in respect of which the occupier pays rent with the option for the occupier to increase the percentage of their ownership through a process of staircasing up to outright ownership [*example wording for outline applications only* Such dwellings must be constructed in a specification approved by the Council in writing and in a location agreed by the Council in writing (bearing in mind the Council’s desire to avoid a concentration of Affordable Housing in an isolated part of the Development) they may be either in the form of houses, bungalows or apartments provided that no less than 30% of the dwellings on the Site shall be on the ground floor. As near as possible to one half of such dwellings shall have three bedrooms and the remainder shall have two bedrooms]

“the Site”

the land and premises at ##### shown edged red on the Plan.

“Social Rented Housing”

Dwellings to be constructed in accordance with a specification approved by the Council in writing comprising plots ##### all to be made available for rent by a Housing Association [*example wording for outline applications only* Such dwellings must be constructed in a specification agreed by the Council in writing and in a location agreed by the Council in writing (bearing in mind the Council’s desire to avoid a concentration of Affordable Housing in an isolated part of the Development) they may be either in the form of houses, bungalows or apartments provided that no less than 30% of the dwellings on the Site shall be on the ground floor. As near as possible to one half of such dwellings shall have three bedrooms and the remainder shall have two bedrooms]

“the Variable Factor”

the numerical fraction which shall have as its denominator the published figure recorded in the Index for the calendar month in or nearest to which this Agreement is dated and as its numerator the published figure recorded in the Index for the calendar month in or nearest to which the On-Site Amenity Open Space Commuted Sum or as the case may be the Off-Site Play Space Contribution is payable.

## **2. RECITALS**

- 2.1 The Council is the Local Planning Authority for the purposes of the Planning Act for the area within which the Site is situated.
- 2.2 The Owner owns the Site subject to a charge dated ##### in favour of the Mortgagee
- 2.3 The Owner has made the Planning Application to the Council and the Council is concerned to ensure that appropriate provision will be made for on-site amenity open space and off-site children's play space and Affordable Housing.
- 2.4 The Council has determined that (subject to the completion of this Agreement) [outline] planning permission for the carrying out of the Development should be granted in the form of the Decision Notice.
- 2.5 The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner or any person or persons deriving title from it.

## **3. STATUTORY POWERS**

This Agreement is made pursuant to Section 106 of the Planning Act (and is a planning obligation for the purposes of Sub-section 106(1) of that Section) and the Council is the Local Planning Authority by which the provisions of this Agreement are intended to be enforceable.

## **4. EFFECTIVE DATE**

- 4.1 The obligations imposed upon the Owner pursuant to this Agreement shall not become binding until the Commencement of Development.

4.2 If the Planning Permission is quashed or is revoked or otherwise withdrawn or (without the consent of the Owner) is modified by any statutory procedure or expires before the Commencement of Development this Agreement shall cease to have effect (except as regards any part of the Development which has by then been implemented).

## **5. MORTGAGEES' POSITION**

The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided the land shall be bound by the restrictions and obligations contained herein

## **6. PLANNING OBLIGATIONS**

The Council and the Owner hereby covenant with each other as set out in the Second Schedule to this Agreement.

## **7. EXTENT OF LIABILITY**

The Planning Obligations shall cease to be binding upon the Owner and its respective successors in title to the extent that the Owner or such successors (as the case may be) cease to have any interest in the Site or in that part of the Site to which any such obligation relates PROVIDED ALWAYS the Owner and his respective successors in title shall remain liable for any breach of the Planning Obligations subsisting prior to ceasing to have such interest

## **8. CONFIRMATION OF PERFORMANCE OR DISCHARGE**

The Council will upon written request of the Owner at any time after the Planning Obligations have been performed or otherwise discharged issue written confirmation of such performance or discharge and thereafter forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.

## **9. ISSUE OF THE DECISION NOTICE**

The Council undertakes with the Owner to issue the Decision Notice within five working days of this Agreement.

## **10. REGISTRATION AS LOCAL LAND CHARGE**

This Agreement is a Local Land Charge and shall be registered as such by the Council.

## **11. TRANSFERS OF LAND**

11.1 When in this Agreement the Owner is required to transfer land to the Council or Parish Council then the Owner shall pay the [Council/Parish Council]'s reasonable legal costs and disbursements in respect of those transfers such sum not to exceed [##]

11.2 Any transfer of the freehold of land pursuant to this Agreement to the Council [or the Parish Council] shall be free from financial charges and subject to the provisions of clauses 11.3 otherwise free from incumbrances other than those existing at the date of this Agreement

11.3 The parties hereby agree that any transfer of land by the Owner under the provisions of Part D of the Second Schedule to this Agreement shall contain a covenant by the transferee with the transferor for the benefit of land retained and specified by the Owner preventing the use of the land for any purpose other than that of [children's playing space and amenity open space (as the case maybe)]

## **12. COSTS**

The Owner will pay the reasonable legal costs of the Council in the negotiation preparation and completion of this Agreement

### **13. DISPUTES OR DIFFERENCES**

Any dispute or difference arising between the parties with regard to their respective rights and obligations as to any matter or thing arising out of or connected with this Agreement shall be referred to the decision of a single arbitrator to be agreed by the parties or failing agreement between them to be nominated by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors and any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

### **14. PAYMENTS**

It is hereby agreed and declared that all and any payments which are required by this Agreement to be made to the Council shall if made by cheque be accompanied by a covering letter marked for the attention of the Council's Chief Accountant and quoting the date of and parties to this Agreement together with the relevant clause or paragraph number of this Agreement under which the payment is made and if any such payment is sent by telegraphic transfer the payer shall within 24 hours send a letter to the Council marked for the attention of the Council's Chief Accountant quoting the said information and identifying the amount sent the date it was sent and the payer's bank.

### **15. INDEXATION**

The sums referred to in [the Second Schedule paragraph -----] shall be increased or reduced by an amount equivalent to the increase or reduction in the Index from the date of this Agreement to the date of payment

### **16. THIRD PARTIES**

It is hereby agreed and declared that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

## **17. SEVERABILITY**

Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

**IN WITNESS** whereof this Agreement has been duly executed as a Deed by the parties hereto the day and year first above written.

**THE FIRST SCHEDULE**

**The Draft Decision Notice**

(See Recommendation Sheet attached)

## THE SECOND SCHEDULE

### Planning obligations

#### Part A – payment in lieu of on-site children’s play space

1. The Owner hereby covenants with the Council to pay to the Council on Commencement of Development the Off-Site Play Space Contribution (such sum to be applied by the Council or at the Council’s discretion the ##### Town / Parish Council for the provision and maintenance of children’s playing space as the Council in its absolute discretion shall decide)
2. For the avoidance of doubt no dwelling on the Site other than Affordable Housing shall be occupied unless there shall have been paid to the Council the Off-Site Play Space Contribution in respect of that dwelling

#### Part B – payment in lieu of on-site amenity open space

1. The Owner hereby covenants with the Council to pay to the Council on Commencement of Development the Off-Site Amenity Open Space Contribution (such sum to be applied by the Council or at the Council’s discretion the ##### Town / Parish Council for the provision and maintenance of amenity open space as the Council in its absolute discretion shall decide)
2. For the avoidance of doubt no dwelling on the Site other than Affordable Housing shall be occupied unless there shall have been paid to the Council the Off-Site Amenity Open Space Contribution in respect of that dwelling

#### Part C - Provision of Affordable Housing

The Owner hereby covenants with the Council:-

1. To construct and provide on the Site [*on full permissions* the Affordable Housing] [*on outline permissions* sufficient units of Affordable Housing so that as near as possible to 30% of the dwellings at any time constructed on the Site are Affordable Housing]

2. (a) The Owner will not permit the occupation of more than 60% of the Individual Completed Properties constructed on the Site unless the Affordable Housing required by the immediately preceding paragraph has been completed and transferred to a Housing Association and made available for occupation through that Housing Association
  - (b) The Owner will give notice to the Council when 60% of the Individual Completed Properties have been occupied.
3. The transfer or the disposal of the Affordable Housing to the Housing Association shall (subject as herein after provided) include a grant of such rights of way drainage and use repair and renewal of services as the Housing Association shall reasonably require
4. The Affordable Housing shall not be used otherwise than for the purpose of providing Affordable Housing to persons in need in accordance with Policy H16 of the Newark and Sherwood Local Plan as adopted at the date of this Agreement and the Council's Interim Policy Note of Planning Provision for Affordable Housing published in October 2005 or in accordance with such other criteria as may be agreed between the Housing Association and the Council from time to time
5. The basis of occupation of Social Rented Housing and Shared Ownership Housing shall be in accordance with the respective definitions contained in this Agreement
6. If the Housing Association wishes to dispose of an interest in the land or part of it (other than in accordance with paragraph [9] of this Schedule or a mortgage or charge) then, subject to it not being contrary to law, the Association will not dispose of the interest except to a Housing Association (as defined) or other person approved by the Council as being willing and able to comply with the terms of this Agreement

7. The Housing Association will give the Council six weeks written notification of future availability on the first occasion any dwellings forming part of the Affordable Housing becomes available for occupation and 3 weeks written notification of future availability on the second and subsequent occasions that the dwelling becomes available (but limited to three in every four dwellings after the first occasion) and during the said period of six or three weeks as appropriate the Council may nominate to the Housing Association a prospective tenant from the Council's housing waiting list or register or who is in identified housing need and who is a person who:-

- (i) was born in ##### and/or
- (ii) lives in ##### and/or
- (iii) has lived in ##### but has been forced to move away because of lack of Affordable Housing and/or
- (iv) whose work provides important services and who needs to work closer to the local community
- (v) who meets the Housing Association's letting criteria as notified from time to time to the Council

The Housing Association shall either offer to sell or offer a tenancy of the Affordable Housing in question to the nominee and if the Council fail to make any such nomination or the nominee does not accept the offer to purchase the affordable dwelling or accept the tenancy within 5 working days of being offered a tenancy by the Association then to a person whom the Housing Association believes is in need of accommodation and who:-

- (i) was born in ##### and/or
- (ii) lives in ##### and/or
- (iii) has lived in ##### but has been forced to move away because of lack of Affordable Housing and/or
- (iv) whose work provides important services and who needs to work closer to the local community
- (v) who meets the Housing Association's letting criteria as notified from time to time to the Council

or if no person qualifies under the above requirements then to a person living within the District of Newark and Sherwood whom the Housing Association believes is in need of accommodation.

8. In the event that legislation relating to Housing Associations shall at any time hereinafter prohibit the Association from letting any dwellings constructed on the land and/or impose upon it an obligation to sell the freehold or a leasehold estate in any dwelling other than provided for in the Schedule then the obligations in this Schedule shall cease to have effect save that the Association will submit suitable alternative proposals to and use all reasonable endeavours to agree suitable alternative proposals with the Council and in any event all capital receipts received by the Housing Association in respect of such sale shall be spent within a reasonable period for the provision of Affordable Housing within the District of Newark and Sherwood

9.1 Any chargee or mortgagee of the Affordable Housing shall give not less than three months written notice to the Council of any intention to exercise its power of sale and will use its best endeavours throughout that time to secure the transfer of the Affordable Housing to another Housing Association

- 9.2 If (but only if) the provisions of paragraph 9.1 of this Schedule have been complied with then the provisions of paragraphs [4, 5, 6, 7 and 8] of this Schedule shall not be binding upon any mortgagee of a Housing Association disposing of the Affordable Housing (or any part of it) in exercise of its powers of sale nor shall they bind any purchaser from or successor in title to such mortgagee
10. To deliver notice in writing to the Council as soon as reasonably practicable after completion of the transfer of the freehold interest in any Affordable Housing unit giving the name of the purchaser and the price at which the property was disposed of

#### **Part D- On-Site Open Space**

1. Not to occupy any more than 70% of the Individual Completed Properties for which there shall at that time be an extant planning permission on the Site unless there shall have been provided upon the Site the [Local Area for Play/Amenity]
2. Following completion of the laying out landscaping and equipping of the [Local Area for Play/Amenity; Children's Playing Space; Amenity Open Space] in accordance with this Agreement and any relevant condition attached to the Planning Permission the Owner shall serve written notice of such completion on the Council
3. The Owner shall maintain the [Local Area for Play/Amenity; Children's Playing Space; Amenity Open Space] for a period of one year from the date of the notice referred to in the immediately preceding paragraph (such maintenance to include without limitation cutting the grass every 2 weeks or as appropriate to ensure the grass does not at any time exceed 75mm ensuring that the relevant areas are free of litter at all time that the shrub beds are weed free at all times and inspecting the play facilities on a weekly basis in line with European standards) and shall replace any tree shrub or plant which is removed uprooted destroyed or dies with another tree shrub or plant of the same species and size as that originally planted in the same place and shall replace any equipment which is removed vandalised or otherwise damaged by equipment of similar specification

4. On the expiry of the year referred to in the immediately preceding paragraph serve a further notice on the Council of readiness to transfer the [Local Area for Play/Amenity; Children’s Playing Space; Amenity Open Space] to the Council
  
5. Within twenty eight days of receiving such notice the Council shall inspect the [Local Areas for Play/Amenity; Children’s Playing Space; Amenity Open Space] and notify the Owner of any works reasonably required to cause the same to be made fit for adoption.
  
6. On completion of the works in respect of the [Local Areas for Play/Amenity; Children’s Playing Space; Amenity Open Space] to the reasonable satisfaction of the Council the Owner shall transfer the [Local Areas for Play/Amenity; Children’s Playing Space; Amenity Open Space] to the Council or if the Council shall so direct to the ##### Parish Council for the consideration of £1.00 and shall at that stage pay to the Council or as appropriate the ##### Parish Council the On-Site Amenity Open Space [Local Area for Play etc] Commuted Sum

**THE COMMON SEAL** of ]  
**NEWARK AND SHERWOOD** ]  
**DISTRICT COUNCIL** was ]  
 hereunto affixed in the presence of: ]

Strategic Director (Corporate Services)

**SIGNED AS A DEED** by ### ]  
 in the presence of: ]

## **Appendix 4**

# **Section 106 Agreement Non Implementation of Earlier Permission**

## **NOTES**

- 1. This form is intended for use where the Council considers that permission should only be granted if an earlier permission is not implemented**
- 2. The form is a specimen only and will be subject to amendment to address the circumstances of each individual application**
- 3. The form may also be amended over the life of this SPD and readers of a hard copy of this document are requested to check the Council's website for the latest version of this form**

## **SECTION 106 AGREEMENT – NON-IMPLEMENTATION OF EARLIER PERMISSION**

### **PARTICULARS**

In this Agreement the following expressions shall have the following meanings respectively:-

#### **DATE**

**“ The Owner(s)”**

**“The Land”**

Description

Title number(s)

**“The Mortgagee”**

**“The Mortgage” (date)**

**“The First Planning Permission”**

Date

Reference No.

Description

**“The New Planning Application”**

Date Validated

Reference No.

Description

THIS DEED is made on the date set out in the Particulars

BETWEEN

1. **NEWARK AND SHERWOOD DISTRICT COUNCIL** of Kelham Hall Newark Nottinghamshire NG23 5QX (“The Council”)
2. The Owner
3. The Mortgagee

RECITALS

1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the Land is situated and by whom the obligations contained in this Deed are enforceable.
2. The Owner is the owner in fee simple in possession of the Land.
3. The Mortgagee is mortgagee of the Land by virtue of the Mortgage
4. The Council has granted the First Planning Permission
5. The Owner has made the New Planning Application to the Council for permission to develop the Land in the manner and for the uses set out in the New Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the New Planning Application (“the Development”).
6. The Council has decided to grant planning permission for the Development in accordance with the New Planning Application subject to the making of this Agreement without which planning permission for the Development would not have been granted.

NOW THIS DEED is made in pursuance of section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. The Owner covenants with the Council to observe the restrictions and obligations specified in the Schedule hereto
2. The Mortgagee hereby consents to the execution of this Deed and acknowledges that subject as herein provided the land shall be bound by the restrictions and obligations contained in the Schedule hereto.
3. It is agreed and declared as follows:

- 3.1 The expressions “the Council”, “the Owner”/ “the Developer” and “the Mortgagee”\* shall include their successors in title and assigns.
- 3.2 Words importing one gender shall be construed as importing any other gender
- 3.3 Words importing the singular shall be construed as importing the plural and vice versa
- 3.4 Words importing persons shall be construed as importing a corporate body and /or a partnership and vice versa
- 3.5 Where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons
- 3.6 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest
- 3.7 The covenants contained in this Agreement shall take effect upon the date hereof
- 3.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.
- 3.9 This Agreement is a local land charge and shall be registered as such.
- 3.10 The Owner will pay the reasonable legal costs of the Council incurred in the negotiation preparation and completion of this Agreement
- 3.11 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it
- 3.12 In this Agreement a covenant requirement or agreement not to do an act or refrain from an act includes an obligation not to suffer or permit that act
4. The Owner warrants that as at the date of this Deed no person body or company other than the [Owner/parties hereto] has any interest in the [Land] for the purposes of section 106 of the Act

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written.

SCHEDULE

1. Not to implement the First Planning Permission or cause or suffer to be implemented the First Planning Permission

2. Forthwith to remove from the Land any building erection or structure placed upon the Land pursuant to the First Planning Permission

THE COMMON SEAL OF ]  
NEWARK AND SHERWOOD ]  
DISTRICT COUNCIL-was affixed ]  
to this Deed in the presence of: ]

Strategic Director of Corporate Services/Head of legal and Democratic Services

SIGNED AS A DEED BY the said ## ]  
in the presence of ]

THE COMMON SEAL OF ## ]  
was affixed to this Deed ] **or** SIGNED AS A DEED BY ## ]  
in the presence of ] acting by: ]



## **Appendix 5**

# **S106 Agreement – Education and Integrated Transport**

DATED

2008

---

and

**NOTTINGHAMSHIRE COUNTY COUNCIL (2)**

---

**SECTION 106 AGREEMENT  
PLANNING OBLIGATION BY  
AGREEMENT  
ITC and Education Contributions**

Pursuant to Section 106 of the Town and  
Country Planning Act 1990 relating to the  
residential development of land at

Jayne Francis  
Head of Law and Democracy  
Notts County Council  
County Hall  
West Bridgford  
Nottingham  
NG2 7QP

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**THIS AGREEMENT** is made the                      day of                      2008

**BETWEEN:**

- (1)    (Company No.    ) ("**the Developer**") of
- (2) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall West Bridgford Nottingham NG2 7QP ("**the County Council**").

**WHEREAS:**

- (1) The Developer is the freehold registered proprietor of the Site under title numbers NT                      and NT                      at Nottingham District Land Registry
- (2) For the purposes of the 1990 Act the County Council is a local planning authority and the Highways Authority for the area in which the Site is situated
- (3) An outline Application has been submitted to the                      District Council for permission to develop the Site for the purposes and in the manner described in the Application
- (4) At a meeting of the Borough Council's Planning Committee held on                      2008 it was resolved that subject to the completion (inter alia) of this Agreement the Permission should be granted

**IT IS AGREED AS FOLLOWS:**

1. **Interpretation**

1.1 In this Agreement unless the context otherwise required:

"**Application**"                      means the outline application for planning permission bearing reference number                      for the erection of dwellings, public open space and ancillary highway improvements

**"Council"** means Council;

**"Development"** means the development permitted by the Permission being the residential development as described in the Application;

**"Education Contribution"** means the sum of \_\_\_\_\_ pounds (£ \_\_\_\_\_ ) as a contribution to the County Council towards educational expenditure for a presently agreed figure of residential dwellings plus in addition to such figure the percentage of that amount (if any) by which the Index (as hereinafter defined) may increase during the period from April 2008 and ending with the forecast for the year and period when the contribution is paid being the date of implementation of such Permission for the Development by the carrying out of a Material Operation as herein defined and such figure having been subject to regional adjustment as determined by the DfES and to be the subject of further review of such Contribution figure for the period from April 2008 to the month of April preceding any actual payment.

**"Integrated Transport Contribution"** means the sum of £ \_\_\_\_\_ subject to review on 30 April each succeeding year following this Agreement should development not have commenced and payment have been triggered by such review date AND if the Developer shall (to the satisfaction of the Director of Strategic Communities) procure the provision of a raised crossing on \_\_\_\_\_ within the vicinity of the junction of \_\_\_\_\_ then such contribution figure shall be reduced to a figure of £ \_\_\_\_\_ .

<b>"The Index"</b>	in respect of the Education Contribution means the index for the BCIS all-in tender price published by the Royal Institute of Chartered Surveyors or in the event that the Royal Institute of Chartered Surveyors shall cease to compile or publish the said BCIS all-in tender price such other index as the parties hereto shall agree or in default of agreement such Index shall be determined for the purposes of this Agreement as being an Index which gives an accurate indication of the rate of inflation of such items as are comprised in the BCIS all-in tender price Index.
<b>"Material Operation"</b>	means any operation as defined in Section 56(4) of the 1990 Act but not including such operations as demolition site survey investigation or remediation diversion and laying out of services the erection of fences and hoardings and construction of access or service roads;
<b>"Permission"</b>	means the planning permission to be granted pursuant to the Application;
<b>"Site"</b>	means the land shown edged red on the attached Site Plan;
<b>"Site Plan"</b>	means the plan annexed to this Agreement;
<b>"1990 Act"</b>	means the Town and Country Planning Act 1990 as amended

1.2 Where the context so requires:

- (a) the singular includes the plural;
- (b) references to any party will include the successors in title of that party;
- (c) where a party includes more than one person any obligations of that party will be joint and several, and
- (d) references to clauses and Schedules are references to clauses in and Schedules to this Agreement

2. **Legal Effect**

- 2.1 This planning obligation by agreement is made pursuant to Section 106 of the 1990 Act to the intent that it will bind the Developer and its successors in title to each and every part of the Site and its assigns as provided in those sections
- 2.2 The obligations contained in the Schedule to this Agreement shall be enforceable by the parties hereto
- 2.3 No person will be liable for any breach of this Agreement unless they hold an interest in the part of the Site in respect of which such breach occurs or held such an interest at the date of the breach
- 2.4 This Agreement will not take effect until the Permission has been granted and issued
- 2.5 If such Permission expires within the meaning of Ss 91, 92, 93 of the 1990 Act or is revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Developer or its successors in title this Agreement will cease to have effect
- 2.6 Nothing in this Agreement will be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission granted by the local Planning Authority or by the Secretary of State on appeal or by reference to him after the date of this Agreement
- 2.7 The Developer will pay the County Council's reasonable and proper legal costs for the preparation and completion of this Agreement

3. **Obligations**

3.1 The Developer covenants with the County Council to observe and perform the obligations respectively contained in Part I of Schedule One and Part I of Schedule Two

3.2 The County Council covenants with the Developer to observe and perform the obligations contained in Part II of each such Schedule

4. **Reasonableness**

Save as otherwise provided in this Agreement any approval in writing certificate or consent or expression of satisfaction to be given by the County Council under this Agreement will not be unreasonably withheld or delayed

5. **Third Party Rights**

All third party rights arising under the Contracts (Rights of Third Parties) Act 1999 are excluded and no one other than the County Council and the Developer shall have any right to enforce this Agreement

**IN WITNESS** of which the parties have executed this planning obligation by agreement as a Deed on the date first written above

**SCHEDULE ONE**

**Education Contribution**

**Part I**

1. To pay the County Council the Education Contribution on or before commencement of the development the subject of the Permission and as determined by the carrying out of a Material Operation as defined herein.

## **Part II**

1. Upon receipt of the Education Contribution to credit the same to a ledger account to be known as the " Education Contribution Account". Interest will be credited in arrears to such Education Account based on the County Council's average external interest rate applicable (being the base rate of the Co-operative Bank Plc less 0.5% as calculated by the County Treasurer using 7 day averages) and such interest shall be credited upon closure of such Education Account and upon repayment of any monies from such Education Account
2. To apply the principal and interest in such Education Account towards primary /secondary education measures in the vicinity of the site PROVIDED THAT if the whole or any part of such funds has not been expended by the County Council for such purposes at the expiration of the period of seven years from receipt in full of such Education Contribution the County Council will forthwith pay the unexpended balance together with duly apportioned interest thereon in such Education Account to the person who paid the Education Contribution (whether or not that person remains the Developer at such time)
3. At the end of the seventh year of the period referred to in paragraph 2 of this Part of this Schedule to provide to the payer a certificate from the Chief Financial Officer of the County Council's Education Department showing all payments made during the previous seven years from such Education Account and the purposes to which they have been applied

## **SCHEDULE TWO**

### **Integrated Transport Contribution**

#### **Part I**

1. To pay the County Council the Integrated Transport Contribution prior to the occupation of the first dwelling on the development to be built pursuant to the Permission

## Part II

1. Upon receipt of the Integrated Transport Contribution to credit the same to a ledger account to be known as the “ Integrated Transport Corridor Account”. Interest will be credited in arrears to such Integrated Transport Corridor Account based on the County Council’s average external interest rate applicable (being the base rate of the Co-operative Bank Plc less 0.5% as calculated by the County Treasurer using 7 day averages) and such interest shall be credited upon closure of such Transport Account and upon repayment of any monies from such Transport Account
  
2. To apply the principal and interest in such Integrated Transport Account towards integrated transport measures in the vicinity of the site PROVIDED THAT if the whole or any part of such funds has not been expended by the County Council for such purposes at the expiration of the period of seven years from receipt in full of such Integrated Transport Contribution the County Council will forthwith pay the unexpended balance together with duly apportioned interest thereon in such Integrated Transport Account to the person who paid the Integrated Transport Contribution (whether or not that person remains the Developer at such time)
  
3. At the end of the seventh year of the period referred to in paragraph 2 of this Part of this Schedule to provide to the payer a certificate from the Chief Financial Officer of the County Council’s Environment Department showing all payments made during the previous seven years from such Integrated Transport Account and the purposes to which they have been applied.

**EXECUTED AS A DEED** by )

)

acting by:-

)

Director

Director/Secretary

**THE COMMON SEAL** of )

**NOTTINGHAMSHIRE COUNTY** )

**COUNCIL** was hereunto affixed )

in the presence of:- )

Authorised Signatory

