

**APPENDIX 2**



**Draft**  
**Supplementary**  
**Planning**  
**Document**

**Planning Obligations**

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## 1. Introduction

### Background

- 1.1 The main aim of this document, is to explain and provide non-statutory guidance on the Council's general approach to planning obligations, and where possible the requirements, and mechanisms for infrastructure contributions. This is in accordance with Bromley Unitary Development Plan (UDP) July 2006, and the London Plan (2008). This guidance supplements the policies of the Bromley UDP, which were extended on Direction of the Secretary of State in July 2009. Until such time as policies are replaced through the Local Development Framework (LDF), the UDP will remain the statutory planning document for development management purposes.
- 1.2 A Formal public consultation took place in February and March 2010 ~~will be carried out on the document~~, in accordance with Planning Policy Statement 12 (PPS12) and the Statement of Community Involvement (SCI). During this time comments from a range of interested parties and key stakeholders were ~~will be~~ sought. All comments received were ~~will be~~ reported to the Council's Development Control and Executive Committees and changes to the document ~~may be~~ were made in light of response received and ~~Following consultation,~~ comments made. ~~The~~ The guidance will be adopted for development management purposes, forming part of the Council's Local Development Framework (LDF) and will be a material planning consideration in the determination of planning applications. The document has been prepared in line with the requirements of the Planning and Compulsory Purchase Act 2004, associated regulations and guidance.
- 1.3 Planning obligations are private agreements negotiated, usually in the context of planning applications, between the Council and persons with an interest in a piece of land. They are intended to make acceptable development that would otherwise be considered unacceptable in planning terms. They can be used to prescribe the nature of a development, for example requiring that a given proportion of housing is affordable. A planning obligation can mitigate the impacts of proposed new development, or secure a contribution from a developer to compensate for the loss or damage created by the development. There may be significant financial implications and developers, applicants and their agents will therefore need to take this guidance into account when seeking planning permission and landowners will need to consider its implications when contemplating the disposal of their land. Planning obligations relate to a planning permission but are also attached to the land and registered as a local land charge. This means that contributions cannot only be enforced against those who entered into it but against anybody who gains title to the land. This ensures that if land is sold with a planning permission and related planning contributions, those contributions can be enforced against the new owner(s) of the land i.e. successors in title.

- 1.4 The Barker report on Housing Supply in March 2004 recommended the introduction of an explicit tax on development gains, instead of extending the powers of s106 agreements. The tax was known as the Planning-gain supplement (PGS) – to be levied nationally on the increase in land value resulting from the grant of planning permission. The scheme was to be administered through the HM Revenue and Customs (HMRC). Consultation followed but the proposal did not gain support. In the Pre-budget Report of October 2007, the Government announced the replacement of PGS by a planning charge and increased spending on infrastructure. The Planning Act 2008 (Dec) then enabled the planning charge which is called the Community Infrastructure Levy (CIL) and unlike PGS will be collected locally. ~~A Commencement Order came into effect on 6 April 2009; Local Planning Authorities can start preparatory work for developing a 'charging schedule'.~~
- 1.5 ~~The Government consulted in October (2009) on detailed proposals and draft regulations for the introduction of the CIL as a general charge Local Planning Authorities (from April 2010) can choose to set CIL on most types of new development. CIL is designed to help fund infrastructure identified through a local Community Infrastructure Delivery Plan (CIDP). Until such time as an CIDP is available and a Charging Schedule is produced through the Core Strategy programme, this Council we will continue to apply the current national, regional and local policy regarding planning obligations. Therefore it is envisaged that this guidance will be reviewed as appropriate in the light of any future changes in legislation, experience of the process and local circumstances.~~

## Legislation and National, Regional, and Local policy guidance.

- 1.6 The facility to enter into a negotiated planning obligation using section 106 of the 1990 Town and Country Planning Act ~~will and remains when now that~~ CIL regulation ~~is~~ has been introduced. The facility is restricted to the terms of the Circular 05/2005 on Planning Obligations which clarifies existing policy, and aims to streamline the system of negotiated agreements aligning the planning obligations with the system of spatial planning established by the Planning & Compulsory Purchase Act 2004. ~~The circular will be become statute when the final CIL regulations are published in April 2010.~~ The Government intends that from ~~2012~~ 2014 onwards there will be a scaling back of s106 to restrict its use and to this ~~chiefly~~ affects tariff or standard charges, where monies are pooled. Whilst this Council uses formulae for specific obligation areas it does not use tariff or standard charges in areas where there is pooling this would remain until April 2014 or such time as a Community Infrastructure Levy Schedule is adopted.
- 1.7 Circular 05/2005 requires that planning obligations are *`intended to make acceptable development which would otherwise be unacceptable in planning terms'*. They should be used to ensure the development complies as far as practical with local, regional and national planning

policies. Where there is a choice to make a development acceptable through a planning condition or a planning obligation, the imposition of a condition is preferable.

1.8 The Secretary of State's policy requires, amongst other factors, that planning obligations are only sought where they meet all the following tests (Circular sets out (at paragraph B5) five policy tests):

- Relevant to planning;
- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development; and
- Reasonable in all other respects.

In addition, Regulation 122 of the Community Infrastructure Levy (CIL) Regulations, which came into force on 6 April 2010, makes it unlawful for a planning obligation to be taken into account in determining a planning application for a development, or any part of a development, that is capable of being charged CIL, whether there is a local CIL in operation or not, if it does not meet the three tests set out in Regulation 122. These statutory tests are based upon three of the five policy tests in Circular 5/2005 at paragraph B5.

- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development
- 

At such time as a CIL Schedule is adopted, Regulation 123 will ensure that the use of Planning Obligations and CIL do not overlap. This regulation has affect that from 6 April 2014 and locally on the date a first schedule takes effect that the authority will no longer be able to seek more than five individual planning obligation contributions towards infrastructure that is capable of being funded by CIL.

1.9 Planning is required to be more spatially aware, ensuring sustainable development as set out in Planning Policy Statement (PPS) 1: Delivering Sustainable Development and PPS 12; Local Spatial Planning. The approach is intended to enable the necessary social, physical and green infrastructure to ensure sustainable communities are delivered.

1.10 PPS1 encourages sustainable development to be treated in an integrated way during the creation of development plans. It encourages planners to take full account of the need for transparency, information and participation. It recognises the potential adverse impact that proposed development may have on people who do not directly benefit

from development. It recognises this is an area where planning obligations can be used to ameliorate such impacts.

- 1.11 PPS12 requires planning to go beyond the traditional land use planning role and take into consideration other plans and projects not previously considered.

### **London Plan Consolidated with Alterations since 2004 (February 2008) and Draft London Plan (DLP) Oct 2009**

- 1.12 The London Plan (February 2008) Spatial Development Strategy for Greater London, is the statutory development plan for the region. The guidance in this SPD is prepared in accordance with policies 6 A.4 *Priorities in Planning Obligations*, and 6 A.5 *Planning Obligations* of the this current London Plan.

- 1.13 In the London Plan (2008) the Mayor's priorities for planning obligations are that "...affordable housing and public transport improvements, should generally be given the highest importance with priority also given to tackling climate change, learning and skills, health facilities and services, and childcare provisions". In the draft London Plan October 2009 it is stated that in addition to these priorities will be "small shops" (DLP Policy 8.2). The Mayor, when considering planning applications of potential strategic importance will always consider the content and existence of any planning contributions.

## **Local Plans**

### **Sustainable Community Strategy**

- 1.14 "Building a Better Bromley"- 2020 Vision (March 2009), is the Boroughs Sustainable Community Strategy setting out Bromley's long-term comprehensive strategy to preserve and enhance an environment in which people can improve their well-being. The 'Building a Better Bromley 2020 Vision' centres on eight key themes:

- A safe place in which to live
- A quality environment
- Helping Bromley's children and young people achieve their potential
- Promoting independence and health
- Future housing
- A prosperous and thriving borough
- Involving communities and citizens; and

- Public service partnership

1.15 Planning obligations may be required to ensure development proposals are aiding the Council's efforts in achieving some of the priorities and targets outlined in this strategy. The table below sets out the linkages between seven of the “2020 Vision” themes and planning obligation topic areas.

Sustainable Community Strategy	SPD on Planning Obligation topic areas
Children and Young People	Education, Outdoor recreation and leisure, Public realm improvements
Safer Communities	Public realm improvements
Independence and health	Health and Community facilities
Involving communities and citizens	Health and Community facilities, Natural open space, Outdoor recreation and leisure
Quality Environment	Natural open space, Outdoor recreation and leisure, Mitigation of impacts on air, soil and water, Public realm improvements, and Public Art, World Heritage Site, and Archaeology
Future Housing	Affordable housing
Prosperous and thriving borough	Bromley Town Centre, Major and District Centres, and Employment

### Unitary Development Plan (UDP)

1.16 The Council’s overarching policy on planning obligations is set out in **Policy IMP1 Planning Obligations** of the UDP 2006. When considering planning applications ***‘the Council will, where appropriate, seek the attainment of planning obligations in accordance with Government guidance’***. The Council’s objective is to deliver sustainable development and ensure that social and environmental benefits are achieved through the proper use of planning obligations in regeneration and new development proposals. The Council will not accept that the provision of a planning obligation is a reason for granting permission nor will the absence of a planning obligation, in itself, constitute a reason for refusal.

1.17 In developing policies in the UDP 2006 earlier drafts were subject to a rudimentary Sustainability Appraisal during the deposit stages. Therefore, in addition to IMP1, other relevant policies are indicated in this document purely as a guide and are listed beneath each topic heading in Section 3.

### Objectives of this guidance

- 1.18 Following guidance in Circular 05/2005 the overall objective of this local guidance is to:
- Clarify the topic areas for which planning obligations may be sought and any methodology for calculating the amount of these obligations, and to explain associated procedures.**
- 1.19 This guidance provides the development industry, the community, land owners and the Council with a vehicle to identify the likely planning obligations that a proposal will generate, attributed to its impact, at an early stage in the proposal formulation process. Acknowledgement and preparation for the required planning obligations should be integral to negotiation of land transactions and the formulation of development proposals. Planning obligations will be sought on developments when they reach the various thresholds detailed in Appendix 1. Each topic area is explained in more detail in Section 3 of this document.
- 1.20 This guidance provides the basis for the negotiation of contributions by setting out the following:
- the broad range of likely contributions that may be sought, why these may be required;
  - the types of developments that would be subject to planning obligations, in terms of their scale, nature, uses proposed and their location;
  - the calculation of any financial contributions and use of formulae and
  - general principles relating to the consideration of such matters as on-going maintenance, legal costs, the pooling of contributions and the possible alternative use of conditions attached to planning consents.
- 1.21 The Council will expect developers to enter into discussions on potential planning obligations ~~requirements~~ with Council officers as soon as possible, prior and during the pre-application stage. The Heads of Terms of any planning agreement will need to be finalised before applications are reported to elected members. These early discussions and decisions are crucial to avoid lengthy finalisation of any legal agreements and to ensure the application remains within statutory timeframes.
- 1.22 In addition to this document any development briefs or area action plans produced by the Council should also be considered as these may refer to specific requirements.
- 1.23 The potential obligations ~~requirements~~ included in the guidance and explained in the document are not exhaustive; other requirements may arise in specific circumstances, which are not mentioned, but are referred to in the policies in the UDP. Importantly the guidance thresholds and calculations in Appendix 1 ~~are not rigid and~~ are intended to be used as a starting point in the negotiation process.



- 1.24 Developers should note that **not all** of these policy ~~requirements~~ obligations may be required for every scheme and a level of priority will be applied. Current Council priorities for planning obligations are Affordable Housing, Education, Health, and Highways. Policy obligations should be reflected in land values from the outset and thus should not threaten scheme viability however, the market situation will be taken into account and the impact of contributions on scheme viability will be considered, particularly in respect of the provision of affordable housing. Where a planning obligation is identified as being ~~relevant~~ necessary, the Council will expect the developer to acknowledge the policy, and offer some rationale for their proposal.
- 1.25 This guidance will be reviewed and regularly updated to reflect changes in Government policy and guidance, costs, including changes to the Council priorities or as service area obligation needs are met. It will be important for users of this document to ensure that they have the most up-to-date version of the Appendix 1.

## 2. General Principles

### Thresholds

- 2.1 New developments create varying impacts on the provision of services and facilities. As a general rule the greater the scale and complexity of a development, the greater its scale and range of impacts. All stakeholders should be aware of the Council's likely planning obligations' requirements prior to the application stage of the development.
- 2.2 The table in Appendix 1 lists the range of commonly required planning obligations and their relationship to the scale and impact of the development. The most used threshold in the table is that of 'Major Development'. This is defined in the General Development Procedure Order 1995 as development involving one or more of the following:
- (a) the mining or working of minerals or the use of the land for mineral working deposits;
  - (b) waste development;
  - (c) (i) the number of dwellings to be provided is 10 or more; or  
(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within paragraph (c) (i);
  - (d) The provision of a building or buildings where the floor space to be created by the development is 1000sqm or more; or
  - (e) Development carried out on site having an area of 1 hectare or more.
- 2.3 If it is identified that a proposed development is not maximising the use of a site to avoid an obligation threshold, the Council will seek obligations from the development, which reflect the appropriate or full use of the land. Likewise, where it is identified that a potentially large development proposal or site has been split into smaller applications in order to be under obligation thresholds, the Council will require that, for the purposes of planning obligations, all the individual proposals are treated as single or whole.

### Conditions

- 2.4 Most planning applications will not require an obligation. There are many developments where planning conditions can adequately deal with on-site works and even the provision of works or facilities outside the application site. This may be achieved through the imposition of a condition preventing the occupation or commencement of a development until the works or facilities in question have been provided (such conditions are known as Grampian Conditions). When considering applications, the Council will consider whether planning conditions can adequately control all direct and indirect impacts of the development and

secure the desired benefits before it decides that a planning obligation is necessary. The circumstances where an obligation will be required will be determined by the precise merits of the case, taking into account the location, scale and nature of the proposal. Pre-application discussion will be particularly useful in giving consideration as to whether an obligation is likely to be required.

- 2.5 Negotiations for all planning obligations will be undertaken by a Council planning officer and where appropriate assisted by officers representing various other service areas.

### **Unilateral Undertakings**

- 2.6 Planning obligations made under s.106 of the Town and Country Planning Act may be entered into by agreement with the Borough Council (commonly known as 's.106 agreements') or unilaterally.
- 2.7 Unilateral undertakings are legal agreements which bind only one party, usually the developer, to undertake planning obligations that do not have to be negotiated and can be volunteered. Unilateral undertakings are suitable for simple contributions. Unilateral undertakings are also appropriate in the case of appeals to the Secretary of State for schemes which the Council considers unacceptable or where agreement cannot be reached. In addition, where it is possible for a developer to determine the likely requirements in advance, developers will be encouraged to submit a unilateral agreement with their application.

### **Formulae**

- 2.8 The Circular 05/2005 on Planning Obligations encourages local authorities to employ formulae where appropriate. The Circular advises these are to be consistent in their application and must still meet the Secretary of State's necessity tests (para 1.8). Formulae will be used for Education, and Health planning obligations, details for which is clarified in Section 3.

### **Maintenance Payments**

- 2.9 The Circular 05/2005 advises that where contributions are secured through planning obligations towards the provision of facilities which are predominantly for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance (i.e. physical upkeep). Such provision may be required in perpetuity. However, if the facility is to be used by the wider public, the costs of maintenance and recurrent expenditure would be borne by the Council. Ongoing maintenance costs should only be for the time between completion and inclusion in the public sector funding streams, not for

perpetuity. The Council will seek agreement on the type of payments to be made on for example a capitalised sum, with a clear audit trail.

### **Pooled Contributions**

- 2.10 Circular 05/2005 advises that pooling of contributions can take place both *between developments and between local authorities where there is a cross-authority impact*. The Council has already set up a capital fund known as the Town Centre Improvement Fund to hold relevant s.106 contributions which directly refer to town centre environments or local economy matters. This practice will continue until April 2014 or such time as a Community Infrastructure Levy Schedule is adopted that could, subject to Member agreement, be re-invested as appropriate in the Borough's larger town centres towards identified projects once any improvement plans have been approved. The Council will demonstrate a direct relationship between a proposed development and the infrastructure provided in the light of CIL regulations.
- 2.11 When any such contributions are requested, the Council would set out in advance any need for joint supporting infrastructure (for specific requirements of the Bromley Town Centre developers should refer to the Bromley Town Centre Area Action Plan). There would be a clear audit trail between the contribution made and the infrastructure provided and the Council would account to the developer for the initiatives on which the contributions are spent. Any unspent ~~balance~~ monies, together with interest, would be returned to the developer.
- 2.12 Pooled contributions can also be sought from developments which are permitted after the infrastructure has been provided where the policy tests are met and the need for the infrastructure and proportionate contributions to be sought is set out in advance (Circular 05/2005 Para 23 refers).

### **Timing of Obligations**

- 2.13 Infrastructure works and highway improvements directly associated with the development are normally required to have been carried out prior to occupation. Unless phasing has been negotiated at an early stage, financial contributions for off-site works and longer term projects will be required to be received by the Council prior to commencement of the development.

### **Administration and Monitoring**

- 2.14 The Council has an established process for recording and monitoring Section 106 agreements, including a database with the details of all agreements. The monitoring costs for this service are provided in Appendix 1 and are based on the extent of the obligations and the officer time involved in monitoring the agreements. Please contact the

Council's s.106 Monitoring Officer for information on any particular agreement; telephone number 020 8313 4345.

- 2.15 Appendix 6 outlines a flow chart showing the various stages of the procedure pre and post legal agreement. Following either Development Control or Plans-Sub Committee's decision, the drafting of the agreements is undertaken by the Council's Legal Services Division. A sample of a s106 precedent is attached at Appendix 7, this does not preclude other parties from using their own document when preparing their s106 agreement with the Council. Developers will be required to pay the legal costs expended in the preparation of the agreement (see Appendix 1) and any associated costs for the monitoring of planning obligations. In addition to assist with accurate monitoring of s.106 agreements developers/applicants are asked to complete a 'Notification Form' (see Appendix 8) and return this to the Council. ~~with the necessary information on.~~
- 2.16 If issues of viability of a scheme arise during negotiations and a developer provides robust information regarding the viability, the Council may review the range and nature of obligations and if it is found that ~~and~~ independent third party advice is required for that scheme, the costs for this are to be met by the developer.

### **3. Topic areas for which obligations should be sought where they are directly related to the proposed development.**

#### **Affordable Housing**

SPD on Affordable Housing

H2 Affordable Housing

H3 Affordable Housing – payment in lieu

- 3.1 In support of the Community Plan, in line with the Supplementary Planning Document (SPD) on Affordable Housing (March 2008) <http://www.bromley.gov.uk/NR/rdonlyres/59865160-EC74-4451-AF27-1B03346BDBAB/0/AffordableHousingSPDMarch2008.pdf> and Policy H2 of the UDP (2006) affordable housing will be sought on all housing sites capable of providing 10 units or more or on sites of 0.4ha or more. On all sites at or above this threshold the Council will seek to negotiate 35% of habitable rooms for affordable housing purposes unless material considerations indicate otherwise; with 70% of that provision for social-rented purposes and 30% for intermediate housing (that can consist of, shared ownership, low cost home ownership or sub market rented housing) unless it can be demonstrated that a lower level should be sought or that the 70:30 split would not create mixed and balanced communities. For further detail refer to Para 6.24 of the Affordable Housing SPD.
- 3.2 Policy H3 specifies that where a site meets the size threshold and is suitable for affordable housing, payment in-lieu of affordable housing on site or provision in another location will be acceptable only in exceptional circumstances, and where the applicants can provide robust evidence to demonstrate that it would be impractical to transfer the affordable housing to a Registered Social Landlord (RSL) Provider; on-site provision of affordable units would reduce the viability of the development to such a degree that it would not proceed; on-site provision of affordable units would not create mixed and balanced communities; and there would be benefit in providing such units at another location. The applicant will be required to submit a full Financial Viability Appraisal that will be independently assessed by a RICS accredited organisation, appointed by the LA and paid for by the applicant. The FVA will be assessed to consider the extent to which abnormal development costs, in addition to the affordable housing contribution, would impact unduly on scheme viability. Para 6.24 of the Adopted Affordable Housing SPD states that particular development costs will usually be reflected in land values. See Appendix 9 for the Affordable Housing Definitions and Interpretations and the Affordable Housing Schedule.

#### **Transport Demand, Highway Works, Public Rights of Way and Travel Plans.**

T1 Transport Demand

T2 Assessment of Transport Effects

T6 Pedestrians  
T7 Cyclists  
T9 Public Transport  
T10 Public Transport  
T15 Traffic Management  
L2 Public Rights of Way and other Recreational Routes  
Bromley Town Centre Area Action Plan

- 3.4 Policies within the Transport section of the UDP set out the Council's requirements regarding transport provision. These policies generally seek to reduce the need to travel, to ensure that there is access to a choice of travel mode and to integrate transport and land use. They also seek to ensure safe and convenient access for pedestrians, cyclists and public transport users who, in policy terms, have priority over access by the private car. Transport Policies in the UDP and Bromley Town Centre Area Action Plan BTC31, Developer Contributions <http://www.bromley.gov.uk/environment/planning/town+centre+action+plan/> (~~submitted for inspection November 09~~ adopted November 2010) allow for obligations for appropriate works to be undertaken, as an example these could be seeking improvements to public transport interchanges, up-grading cycle routes, cycle parking stands, provision for electric vehicle charging, variable messaging signs, travel plans (non-residential and residential), or if the proposal was in the town centre the obligation could be for contributions to the Town Centre Improvement Initiative Fund to help achieve these types of objective.
- 3.5 When mitigating the impact of a development, Circular 05/2005, cites as an example that, if a proposed development is not acceptable in planning terms *due to inadequate access or public transport provision, planning obligations might be used to secure contributions towards a new access road or provision of a bus service, perhaps co-ordinated through a Travel Plan*. Travel Plan guidance can be found in the TfL (Transport for London) Travel Plan Best Practice Guidance. Travel planning is not exclusively for non-residential developments. The Public Transport Accessibility Map for Bromley reproduced at Appendix 2.
- 3.6 All new development may have transport implications. For schemes with significant transport implications a Transport Assessment will be necessary to help assess the impact of the development on its surroundings and what works may need to be undertaken to help overcome any detrimental impact the development will have. Any applications referred to the Mayor must adhere to the current Transport Assessment Best Practice Guide issued by TfL.
- 3.7 Where it is identified that off-site highway works are necessary to facilitate the development, these will be secured through an obligation (or through uses of conditions if more appropriate). The developer will be required to either carry out these works directly or meet the Council's costs in doing so. For any major development the impact of development may go further than the highway network and require mitigating the impact on the public transport network either individually or through pooled obligations (until 6<sup>th</sup> April 2014 under CIL regulation).

- 3.8 Where development is likely to have an impact on the strategic road network, it may be appropriate for the developer to contribute towards major highway schemes identified in the Local Implementation Plan. In such circumstances, appropriate proportional contributions will be sought. Where a development impacts on the TfL Road network, the applicants will be required to carry out any works directly or meet Transport for London's costs in doing so. This may be in addition to any highways schemes identified through the Local Implementation Plan.
- 3.9 Where appropriate, and demonstrated through the Transport Assessment, developers may be required to contribute to additional public car parking, traffic calming or traffic management measures. Construction management, and Service and Delivery Plans may also be secured through obligations.
- 3.10 It should be noted that an obligation involving highway works may also need to refer to the provisions of Section 278 of the Highways Act 1980 that enables landowners to make financial contributions towards carrying out highway works.
- 3.11 Development affecting a Public Right of Way will be dealt with on a case by case basis. Planning permission will not be granted for development affecting a Public Right of Way, unless the proposals include either the retention or diversion of the Right of Way. Contributions will depend on the scale and impact of the development.

**Community Infrastructure:**

- C1 Community Facilities and objectives  
C2 Community Facilities and Development

- 3.12 The White Paper "Planning for a Sustainable Future" (2007), highlights that the provision of local infrastructure, including schools, health and social care facilities, and other community facilities are essential to the creation of thriving, healthy sustainable communities" (para 1.11) The White Paper suggests that, without the right infrastructure in place, at every level, our quality of life – individually and collectively – will diminish, and that improving infrastructure provision is vital for unlocking housing growth (para 1.14). The Housing Green Paper (2007) also stresses the importance of access to good schools, healthcare, transport and other community facilities, adding that "Local authorities can often agree how such facilities are provided as part of the planning process, ensuring a fair contribution by developers to the local infrastructure." (Chapter 5 para 1)
- 3.13 The London Plan <http://www.london.gov.uk/thelondonplan> Mayoral Best Practice Guidance "Health Issues in Planning" (June 2007) <http://www.london.gov.uk/mayor/strategies/sds/bpg-health.jsp> looks at the wider determinants of health and indicates how positive health improvements can be achieved through the use of s.106 agreements to



address shortfalls in community infrastructure. Community infrastructure topic areas below support the priorities of the Bromley Community Plan.

### **Education**

C1 Community Facilities, and objectives

C7 Educational & pre-School Facilities

- 3.14 Planning contributions will be expended on capital investment for providing additional educational capacity across the borough in line with the Councils education investment strategies.
- 3.15 ~~The Government's "Every Child Matters: Change for Children" agenda sets out the new approach to the well-being of children, based on~~ The legislative framework is set out in the Education Act 2002, the Children Act 2004, and the Child Care Act 2006. ~~This whole-system reform of childrens' services,~~ includes the entitlement to 15-hours a week free nursery education for all 3 and 4 year olds, and places on local authorities the requirement to produce "Childcare Sufficiency Assessments" and develop "Childrens Centres". These assessments will be used to identify areas where contributions to nursery infrastructure development is required by this SPD,
- 3.16 Childcare & early education provision is met in a variety of settings, including through private day nurseries, nurseries linked to schools and through the programme of "Childrens Centre" development.
- 3.17 In support of the Community Plan the authority's policy with regard to primary school provision is that parents should be able to access a place for their child in a nearby local school and maintain a 5% spare capacity. This policy is designed to meet parental demand and to be the most sustainable pattern of school provision. The numbers of births have been steadily increasing since 2001 placing significant pressure for places at primary schools in the Borough. Additionally new housing developments will further increase the pressure in some areas, particularly around central Bromley.
- 3.18 The pattern of primary school provision is considered through reviews of the Primary Schools Development Plan. These reviews (or subsequent primary provision strategy documents) will be used to identify areas where contributions to education infrastructure development are required by this SPD. Some proposals to address shortfalls and ongoing enhancements to the primary infrastructure may be identified in the Primary Capital Programme. Contributions will be sought in areas identified as having expansion need within the Primary School Development Plan review, even if specific schemes have yet to be set out in the Primary Capital Programme.
- 3.19 There is continued pressure on secondary school places across the Borough as Bromley's secondary schools adapt to meet the demands of the National Curriculum, including the 14-19 reforms. Bromley's

Strategy for Capital Investment in Secondary Schools Sept 2008 (“Secondary Strategy for Change”) included an “Assessment of Capacity, suitability, condition and identification of improvements”. Section 106 contributions will be sought to meet the pressures identified in the Strategy document which new development will exacerbate. Ongoing update reports to the Investment Strategy set out the prioritised schemes.

- 3.20 Catchment areas for secondary schools are broad with pupils travelling across the Borough to access school places, additionally children cross borough boundaries: Bromley is a net ‘importer’ of pupils who are resident in adjoining Boroughs. New housing developments will add to existing pressures. Primary and secondary schools are also experiencing increased pressure as a result of a recession related shift away from private sector education.
- 3.21 The Council will seek contributions for educational provision from all major residential developments;
- (a) Where the development is located in an area where the Childcare Sufficiency Plan identifies a shortage of pre-school provision, and or the impact of the development would lead to a shortfall such that a 5% spare capacity cannot be maintained.
  - (b) Where the development is located in an area where there is an identified shortage of primary school places, and
  - (c) Where the development will place pressure on places in secondary education, such that the 5% spare capacity across the education sector, necessary to provide choice, cannot be maintained within a 3mile radius (as the crow flies), and
  - ~~(d) Where the size of the development creates a significant impact on the pattern of educational demand.~~
- 3.22 Education contributions will be calculated by multiplying the likely child-occupation generated by a particular development (see child yield information below) by the cost per pupil place (with locational factor). The current cost per place data for primary, secondary and 16 – 17 yrs is set out in Appendix 1, but note this information is subject to change over time and the up to date Department for Children, Schools & Families (DCSF) annual data on the cost-multiplier per pupil place in schools (and locational factor) is found at :  
<http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/schoolbuildings/schooldesign/costinformation/>  
<http://www.teachernet.gov.uk/docbank/index.cfm?id=10463>  
Cost relating to capital investment in early years education will be has been determined on the advice of the Councils Children & Young People department. The figure of £8,141 has been derived on the basis of 5 recent schemes including new builds, extensions and refurbishments.

- 3.23 Developments of purely one bedroom flats, and also specialist accommodation e.g. for elderly persons will normally be excluded from calculations.
- 3.24 There is no single reliable child yield figure estimating the number of children who will live in new housing developments, which can be applied across the board to all housing types & tenures. This document uses three child yield datasets put forward in two recent DMAG (Data Management and Analysis Group) publications.
- Oxfordshire New Housing Survey (2004) -(DMAG “Child Yield” Briefing 2005/25)
  - London Housing Survey 2002 (DMAG “Child Yield” Briefing 2005/25)
  - “Child Occupancy of New Social Housing” (DMAG Update 2006/11)
- 3.25 Neither the Oxfordshire nor the London Housing Survey datasets provide a yield for 16– 17 yrs, or 3- 4 yrs. This has been remedied as follows
- The 1991 Census indicates that 40.6 % of children aged 0 - 4 yrs are aged 3 & 4 yrs hence a child yield figure can be extrapolated.
  - Using the known progression between the 11-15 and 16-17 age groups in “Child Occupancy of New Social Housing” it is possible to extrapolate a reasoned 16-17 child yield progression for the Oxfordshire and London Housing Survey datasets.
- DMAG Briefing Child Yield 2005/25 suggests that the child yield by age in Oxfordshire taken from a large survey with a good response rate may be appropriate for developments of houses rather than flats in Outer London Boroughs.

#### Child Yield (Private Houses)

Age	Number of Bedrooms			
	1	2	3	4+
0-4	0.03	0.17	0.31	0.41
3-4 (extrapolated)	0.01	0.07	0.12	0.16
5-10	0.01	0.08	0.21	0.41
11-15	0.01	0.13	0.13	0.15
16-17 (extrapolated)	0.00	0.08	0.05	0.04

(Oxfordshire New Housing Survey)

- There are the significant numbers of flatted developments within particular parts of Bromley, notably Bromley Town Centre. For flats it is therefore considered more appropriate to rely on the London Housing Survey 2002 which reflects a more urban form of development. This data indicates the same or reduced child yield as the Oxfordshire Survey in all circumstances other than 1 bed flats.

#### Child Yield (Private flats)

Age	Number of Bedrooms			
	1	2	3	4+
0-4	0.04	0.08	0.15	0.23
3-4 (extrapolated)	0.02	0.03	0.06	0.09
5-10	0.01	0.08	0.21	0.35
11-15	0.00	0.06	0.14	0.28
16-17 (extrapolated)	0.00	0.04	0.05	0.08

(London Housing Survey 2002 Inner London Owner Occupied)

- DMAG Update “Child Occupancy of New Social Housing” 2006/11 provides recent data in respect of the social housing element of affordable housing.

### Child Yield (Social Housing)

Age	Number of Bedrooms			
	1	2	3	4+
0-4	0.20	0.64	0.62	0.41
3-4 (extrapolated)	0.08	0.03	0.25	0.16
5-10	0.00	0.23	0.74	1.22
11-15	0.00	0.08	0.47	1.29
16-17 (extrapolated)	0.00	0.05	0.17	0.37

(DMAG Update “Child Occupancy of New Social Housing” 2006/11)

- 3.26 Schools in Bromley are extremely popular, however, some children will be educated privately or across the boundary in neighbouring boroughs. Currently 94% of children born in the Borough subsequently enter Bromley schools at reception. In respect of secondary education the figure is 85%. It is therefore appropriate to attach a factor of 0.94 to nursery and primary child yield and 0.85 to Secondary and Post 16 child yield at the current time. Advice will be taken from the Council’s Children and Young People department about changes to these figures overtime.

### Health

- C1 Community Facilities and objectives
- C2 Community Facilities and Development
- C4 Health facilities

- 3.27 Policy IMP1 identifies the provision of community, health, and leisure resources as examples of appropriate planning obligations.

- 3.28 The London Plan (Policy 2A.1) advises that, in considering planning applications referred to him, the Mayor will ensure that development takes account of existing or planned infrastructure including community infrastructure such as schools and hospitals. The London Plan also advises that the spatial needs of London’s diverse population should be addressed, existing facilities that meet the needs of particular groups should be protected and, where shortfalls have been identified, policies should seek measures to address them proactively.

3.29 The NHS London Healthy Urban Development Unit (HUDU) has devised a process for identifying the impact that residential and mixed se developments have on the capacity of health services, and the associated cost of ameliorating this impact. The Council, in coordination with the Bromley Primary Care Trust (PCT), will identify if a residential or mixed use development is likely to create a demand for ~~new~~ additional facilities or services. The Council's preferred way to gauge this demand is to use the NHS HUDU s106 Model for 'planning contributions and health' at <http://www.healthyurbandevelopment.nhs.uk>. This model calculates Revenue and Capital financial contributions which may be required after assessment of the likely impact from the development. The Council, on behalf of the PCT, would seek the Capital element only in a s106, monies to enhance health services to provide the necessary financial support. provide/enhance the physical space in Primary Care, Acute and Mental Health facilities to accommodate the additional activity until mainstream funding kicks in demand. Any agreed on-site contributions should be offered to the PCT at zero or reduced rent. Any premises offered to the PCT at a commercial rent would not be considered contributions.

### **Community Facilities**

C1 Community Facilities and objectives

C2 Community Facilities and Development

3.30 UDP Community Services Objectives seek partnership with providers to secure the provision of essential facilities (including health, educational, faith, social ~~service~~ facilities) and enhance the availability of the wide range of community facilities which contribute to the quality of life of the Borough's population. Provision of community facilities will be based on a case by case basis. UDP Policy C1 seeks the re-provision of facilities lost through redevelopment proposals.

3.31 The London Plan (Policy 3A.25) advises that for Major developments (as defined by the London Plan) local neighbourhood needs, identified by local community organisations and other local partners, should be used as a basis for negotiating local community benefit from development, including s106 agreements. The "identified needs" in Bromley will be set out in advance (in accordance with Circular 05/2005 para B21) in plans or strategies of the Council or Local Strategic Partners. The likelihood of a contribution towards particular infrastructure being required in particular areas will be set out in other LDF documents, including for example the Core Strategy, Area Action Plans and Planning Briefs.

### **Employment and Training**

Business and Regeneration Objectives

3.32 The Council is committed to reducing unemployment, promoting the development of e-commerce, improving skills and creating competitive town centres. The largest rise in employment levels recently has been

within the construction sector. Conditions or planning obligations will may be sought on a case by case basis in all major development proposals borough wide, and especially in areas where unemployment levels are above the Borough average. However, Areas have been identified where employment and training opportunities could be accessed by those not working or with low skill levels (i.e. not just where they live and not be limited to high unemployment but also where there are low paid and poor quality jobs to increase access to other opportunities). As a guide see map at Appendix 3 showing 'Ward level Claimant Count Rates' above the Borough average. A priority is making training available to all, promoting and ensuring access opportunities for example childcare provision or access for people with disabilities. Opportunities would be sought both during the construction phase and post development stage. However, where a commercial enterprise provides its own training schemes and thereby provides opportunities 'in-house' there would be no obligation to make further provision, similarly for the childcare provision element.

### **Natural Open Space**

Green Belt and Open Space Objectives

NE1 Development and SSSIs

NE2 Development and Nature Conservation Sites

NE3 Nature Conservation and Development

NE4 Additional Nature Conservation Sites

NE5 Protected Species

L2 Public Rights of Way and recreational routes

Bromley Bio-diversity Plan 2006-2009.

- 3.33 In determining planning applications, the Council will ensure that the effects of biodiversity, wildlife habitats, geological features and nature conservation are fully taken into account. PPS 9 requires that new development protects and enhances biodiversity. Paragraph 14 states that 'development proposals provide many opportunities for building-in beneficial bio-diversity or geological features as part of good design'. Where development proposals are otherwise acceptable but cannot avoid damage to and /or loss of wildlife features, the Council will require, through planning obligations or conditions, the inclusion of suitable mitigation measures and the protection, creation, enhancement and management of wildlife habitats and landscape features. Planning obligations may be used where financial payments or on-going management are required to address biodiversity or geological conservation concerns. For further detail refer to the Bromley Bio-diversity Action Plan <http://www.bromleybiodiversity.co.uk/>.
- 3.34 The Ravensbourne River in the north west of the borough and the River Cray in the north east form parts of the Blue Ribbon Network across London and London Plan Policy 4C.3 advises protection and enhancement of the Blue Ribbon Network including 'taking opportunities to open culverts and naturalise river channels'.

3.35 Where planning obligations are required to manage specific impacts they will need to be negotiated on a case by case basis. Where the combined impact of a number of developments creates a green infrastructure need, developers contributions may be pooled between those developments and where applicable between the Council and potentially other local authorities, until April 2014 or such time as a Community Infrastructure Levy Schedule is adopted

**Outdoor recreation and leisure**

L2 Public Rights of Way and other Recreational Routes

L6 Playing Fields

L8 Public Open Space Deficiency

3.36 PPG17 “Planning for open space, sport and recreation” promotes the need for sustainable patterns of leisure activity. The protection of existing sport, open space and recreation facilities, identified by assessment of needs and audit, is given clear priority. Most open spaces and recreational facilities have a potential and should be designed to perform multiple functions, in addition to amenity (including provision of habitat) and have a role to play in improving air quality, and promoting health and well-being.

3.37 PPG17 advises that planning obligations should be used as a means to remedy local deficiencies in the quantity or quality of open space, sports and recreational provision, and those local authorities will be justified in seeking planning obligations where the quantity or quality of provision is inadequate or under threat, or where new development increases local needs (para 33).

3.38 The Council will resist loss of sports grounds or playing fields. Planning obligations will be designed to secure conversion of part of the major residential proposal site to reduce or eliminate any deficiency. Sport England has developed an online ‘Planning Contributions Kitbag’ which the Council may use to secure new and improved sports and recreation facilities;  
[http://www.sportengland.org/facilities\\_planning/planning\\_contributions.aspx](http://www.sportengland.org/facilities_planning/planning_contributions.aspx) ).

3.39 In all major residential developments in areas of open space deficiency, planning obligations should ensure the provision of open space and/or access to open space. See map at Appendix 4 showing Areas of Open Space Deficiency.

<b>Table: Hierarchy of Public Open Space UDP 2006</b>	
<b>Open Space categorisation</b>	<b>Size guideline and distance from home</b>
Regional Parks	400 hectares 3.2-8km
Metropolitan Parks	60 hectares 3.2km
District Parks	20 hectares

	1.2km
Local Parks and Open Spaces	2 hectares 0.4km
Small Open Spaces	Under 2 hectares 0.4km or less

## **Play**

- 3.40 The PPG17 definition of “Open Space” includes provision for children and teenagers - including play areas, skateboard parks, outdoor basketball hoops, and other more informal areas (e.g. teenage shelters).
- 3.41 PPS3 Housing advises that “Particularly where family housing is proposed, it will be important to ensure that the needs of children are taken into account and that there is good provision of recreational areas, including private gardens, play areas and informal play space” (Para 17). With specific reference to “Play”, the London Plan (February 2008) Policy 3D.13 seeks to ensure that all children have safe access to good quality play and informal recreation provision. The Mayor has set out benchmark standards for play provision in new developments in the Supplementary Planning Guidance “Providing for Children and Young People’s Play and Informal Recreation” (March 2008). Policy 3D.13 advises that provision should normally be made on-site, in accordance with the Play Strategy for the area. Off site provision, enhancements to existing facilities and financial contributions may be secured by legal agreement, provided that the provision fully satisfies the needs of the development. Appendix 5 of this SPD illustrates areas of Children’s play space deficiency, which it is appropriate to address. In areas not illustrated as deficient in respect of access to play space advice will be sought from the Council’s play advisors, in respect of the appropriateness of facilities to meet needs (e.g. quality and variety of provision). Bromley’s Play Strategy can be found at:  
[http://www.bromley.gov.uk/education/childcare/bromley\\_play\\_strategy\\_2007\\_2012.htm](http://www.bromley.gov.uk/education/childcare/bromley_play_strategy_2007_2012.htm)

## **Bromley Town Centre**

- 3.42 The Bromley Town Centre Area Action Plan (BTCAAP) was ~~submitted to GOL in November 2009. It will then go forward to a hearing in March 2010 prior to being formally adopted by the Council later in November 2010. It will~~ The BTCAAP contains development opportunities within the town as well as site specific and other policies designed to ensure the town’s competitiveness whilst retaining its character and heritage. In compliance with the Action Plan the Council is committed to securing developer contributions towards the improvement ~~in~~ of the vitality and viability of the town centre; particularly to the public realm, as well as transportation and highway enhancements in order that the town can accommodate the demand that will be generated by new development. Planning obligations identified in policy BTC31 of the AAP, will be part of



negotiations on any development proposal to ensure the town centre as a whole benefits, as appropriate, from new development. Obligations would be dependant on the type and scale of development proposed. Small scale development proposals coming forward within the town centre on sites not identified within the AAP would contribute to the Town Centre Improvement Initiative fund. Pooled contributions will be requested until April 2014 or such time as a Community Infrastructure Levy Schedule is adopted, and the Council would set out in advance the need for joint supporting infrastructure. Until such time, for the specific requirements of the Bromley Town Centre, developers should refer to the Bromley Town Centre Area Action Plan available at:- <http://www.bromley.gov.uk/environment/planning/town+centre+action+plan/>.

### **Major and District Town Centres**

- 3.43 In support of the Community Plan and in order to ensure the Borough's other town centres remain economically viable and attractive, appropriate planning obligations are may be part of negotiations on any development proposal strictly within the terms of Circular 05/2005 and CIL regulation 122. Obligations may include improvements to the Public Realm, safety and security measures, car clubs, transport improvements, traffic schemes, outdoor recreation and open space, this list is not exhaustive and obligations will be sought on a case by case basis; excludes contributions already sought by virtue of the Bromley Town Centre AAP. Specifically for Orpington Town Centre there is a Masterplan and it is intended that this will be adopted in due course as a Supplementary Planning Document (SPD); this document was published for consultation in June 08 and again amplifies Council policy on developer contributions (Policy IMP 1).

### **Public Realm and Historic Buildings Improvements**

BE4 Public Realm  
London Plan policy 4B.3  
BE8 Statutory Listed Buildings  
BE10 Locally Listed Buildings

- 3.44 All—In line with Circular 05/2005 and CIL regulation 122 Major developments may require contributions or works to control movement through streets, for example, CCTV, lighting, including elements such as areas for children to play, or planting street trees, cycle parking, seating or surface treatments, public spaces can also have soft landscaping improvements not only hard landscaping to control movement. This supports the Community Plan in facilitating a quality environment. The appropriate planning obligations including “enabling development” will be part of negotiations on any development proposals on a case by case basis. Where necessary improvements can be delivered on site no off-site contribution would be sought by the Council. Financial contributions

sought for public realm improvements in Bromley Town Centre will be consistent with priorities identified in policy BTC18 of the AAP

- 3.45 Specifically for historic buildings, types of contribution could include; repair, restoration or maintenance of historic asset (s) and their setting; increased public access and improved signage to and from heritage assets; interpretation panels/ historic information and public open days; production and implementation of up-to-date Conservation Area management plans and appraisals; measures for preservation, investigation and recovery of archaeological remains; display of archaeological sites; dissemination of information for public/school education and research; maintenance and management to the Borough' Scheduled Monuments and Registered Parks and Gardens, and, sustainability improvements (such as loft insulation) for historical buildings. This list is by no means exhaustive but provides an indication of the type of planning obligations that may be expected. Web resources found to be of use to developers are:-

**Design for Biodiversity**

<http://www.d4b.org.uk/>

**Biodiversity by Design**

<http://naturalengland.communities.com/naturalenglandshop/docs/TCP1.pdf>

**Right Trees for a Changing Climate**

<http://www.right-trees.org.uk/>

**Adapting to Climate Change: A Checklist for Development**

<http://www.london.gov.uk/lccp/publications/development.jsp>

**Public Art**

BE5 Public Art

- 3.46 Public Art is beneficial in helping to establish a sense of place and local distinctiveness and can also provide a link to local history. Economic benefits can also be gained through their ability to attract visitors and the use of local businesses and individuals in the design. In all major developments in Town, Major and District centres the Council will on a case by case basis encourage proposals for Public Art to enhance buildings and open spaces where appropriate. Public Art can take a number of forms including fine art, sculpture, murals, street furniture, paving and lighting (obligations for the Bromley Town Centre refer specifically to the Area Action Plan). ~~If it is mutually agreed that public art cannot be provided a financial contribution may be acceptable.~~

**Mitigation of environmental impacts (including air, soil and water)**

ER2 Waste management facilities

London Plan 4A.7 Renewable Energy

London Plan 4A.9 Adaptation to Climate Change

London Plan 4A.11 – Living roofs and walls

4A.14 Sustainable drainage

4A.17 – Water Quality

London Plan 4A.19

ER7 Contaminated Land  
London Plan 4A.20 and the Mayors Ambient Noise Strategy  
London Plan 4A.14 & 4A.18  
G14 Mineral Workings and Associated Development  
G15 Associated Development

- 3.47 With pressure on natural resources and the uncertainty of climate change it is important that new homes are built in ways that provide benefits for both residents and the environment. The Council may seek an obligation on a site by site basis to cover mitigation measures for the additional environmental impact arising from of new development where this cannot be avoided and where development is otherwise acceptable and not for mitigation measures to alleviate an existing problem. Protection of groundwater quality is of importance in Bromley, the Borough has 4 groundwater Source Protection Zones and chalk formation is exposed from the northeast to the south part of the Borough-approximately 50% of the total area.
- 3.48 Attenuation measures may be for immediate impacts for example, noise or access arrangements, reinstatement of a site and surrounding roads or include proposed hours of operation. The measures in the medium or long term may include impact on air quality, ensuring the energy efficiency of a building, or to secure long-term operation and maintenance for example, maintenance for a suitable site sustainable drainage systems and related water management (for example open spaces within development may be designed to accommodate flood waters).
- 3.49 Where planning obligations are required to manage specific impacts they will need to be negotiated on a case by case basis. Where the combined impact of a number of developments creates an infrastructure need, developers contributions (commensurate with impact of each proposal) may be pooled between those developments and where applicable between the Council and potentially other local authorities, until April 2014 or such time as a Community Infrastructure Schedule is adopted.

**Summary of Planning Obligations and Costs**

**APPENDIX 1**

<b>Subject</b>	<b>Threshold</b>	<b>Criteria</b>	<b>Requirement</b> <u><b>Types of obligation sought where they are directly related to the proposed development.</b></u>	<b>Formula</b>	<b>Detail</b>
<b>Affordable Housing</b>	Sites capable of providing 10 units or more or 0.4ha or more in size.	Borough wide	<p>On-site provision or contribution towards housing on an alternative site in exceptional circumstances.</p> <p>On site provision of affordable housing as follows:</p> <p>35% of total number of habitable rooms for affordable purposes split between 70% of the affordable element for social-rented housing and 30% for intermediate housing.</p> <p>Payment-in-lieu may be considered in exceptional circumstances if on-site provision is demonstrated to be practically difficult by the applicant (as set out in Policy H3 of the UDP .2006).</p>	<p>Formula for calculating financial contributions in lieu of on-site affordable housing provision is as follows:</p> <p>Difference between market value of units and financial contribution (from a Housing Association to Developer) set out in Appendix 2 to Affordable Housing SPD March 2008 - x number of affordable units.</p>	Please refer to the Adopted Affordable Housing SPD (2008) for further guidance on affordable housing provision.

Subject	Threshold	Criteria	<b>Requirement</b> <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
<b>Transport Demand</b>	Development falling under the Major Development classification	Borough wide	Contribution	Based on a case by case basis depending on the scale and impact of development	Costs can be amended or updated as required depending on the success of implementation and the costs of the resulting projects Pooling of resources may be appropriate in certain circumstances
<b>Highway works</b>	Any development proposals – see criteria	Any proposal creating an additional impact on the road and transport network	Examples: <ul style="list-style-type: none"> <li>• Provision and maintenance of highway improvements</li> <li>• Acquisition/dedication of land for highways improvements</li> <li>• Highway/transport infrastructure</li> <li>• Improvement of highway to ensure it is an adoptable standard</li> <li>• Contribution to increase capacity at public transport nodes</li> <li>• Traffic management</li> <li>• Provision of new or replacement bus stops and facilities</li> <li>• Minor works including contribution for the loss of parking bays, approval of plans and inspection of</li> </ul>	No formula.  If a financial contribution is required estimates for the costs will be provided by the Council's Transportation Planning Division	In the majority of proposals the works will be required to be carried out by the developer.  The actual cost for Council inspection and supervision will be recovered from the developer.  A developer should undertake a survey of an unmade road prior to commencement of development and reinstate the road to a satisfactory state afterwards.

Subject	Threshold	Criteria	Requirement <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
			highway works etc		
<b>Public Rights of Way</b>	On a case by case basis <del>All</del> developments	A diversion of an existing right of way or a new right of way is required for the development to proceed	Maintenance contribution	No formula. Any contribution will be calculated on a case by case basis depending on scale and impact of the development	The Consultation Transport engineers will provide an estimate of the costs.
<b>Travel Plans</b>	Non residential developments that are likely to generate significant amount of vehicle based movement	Examples: <ul style="list-style-type: none"> <li>• Business uses</li> <li>• Schools &amp; nurseries</li> <li>• Medical establishments</li> <li>• Large retail and leisure developments</li> </ul>	Submit a Travel Plan for approval by the Council.  An outline of the Plan should be submitted with the planning application and should be suitable for attachment to the S.106 agreement	Measures could include: <ul style="list-style-type: none"> <li>• Corporate/management commitment and promotion of initiatives to reduce the number of trips made by employees by car</li> <li>• Employing a dedicated Travel Plan advisor</li> <li>• Travel surveys</li> <li>• Challenging targets based on the survey to reduce car usage over a given period together with monitoring procedures</li> </ul>	
<b>Education</b>	All Major	Borough wide	Contribution	Formula to be based	<b><u>Child Yield= (X)</u></b>

Subject	Threshold	Criteria	<b>Requirement</b> <b><u>Types of obligation sought where they are directly related to the proposed development.</u></b>	Formula	Detail
	residential developments of 10 units or more			on X times Y where X equals the expected child yield and Y equals the total cost per child of the expansion scheme	<p><b><u>Child yield=(X)</u></b> As set out by dwelling size &amp; tenure in para 3.25 and new para 3.26.</p> <p><b><u>Cost Per School Place DCS&amp;F multiplied by the Bromley location factor = (Y)</u></b> (Costs subject to change – see <a href="http://www.teachernet.gov.uk">www.teachernet.gov.uk</a>. Figures for Jan 09 as below)</p> <p><b><u>Nursery place £8,141.</u></b> <b>Primary — £12 257</b> <b>Secondary — £18 469</b> <b>Post-16 — £20 030</b> <b>Multiplied by the Bromley locational factor of 1.12</b></p>
<b>Employment and Training</b>	Major developments	Borough wide especially in areas where unemployment levels above the Borough average have been identified also where employment and training	<u>Unless such a scheme is provided already ‘in-house’,</u> contribution to or implementation of a Local Employment Training Scheme in partnership with local colleges or be based on the direct provision of employment and training initiatives by the developer or the provision of premises to undertake training, during the construction phase	No formula. Any contribution will be calculated on a case by case basis depending on scale of the development	To make training available to all and promote and ensure access to opportunities e.g. childcare provision may be required for those attending training and access issues for individuals with physical disabilities.  Childcare contributions would apply to both training

Subject	Threshold	Criteria	Requirement <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
		opportunities could be accessed by those not working or with low skill levels	and post development.		and employment <u>phases</u> .
<b>Health</b>	Major residential developments	Borough wide	Either on-site provision or contribution towards providing or enhancing local health facilities. <u>Any on-site contributions must be progressed following detailed consultation and agreement from the PCT, and be in line with the approach to facilities management being progressed by the NHS, and most up to date PCT documentation setting out the estates strategy. Any agreed on-site contributions should be offered to the PCT at zero or reduced rent. Any premises offered to the PCT at a commercial rent should not be considered contributions.</u>	Health demand produced by a development will be calculated using the NHS Health Urban Development Unit (HUDU) toolkit	Refer to: <a href="http://www.healthyurbandevelopment.nhs.uk">http://www.healthyurbandevelopment.nhs.uk</a> for more information
<b>Community Facilities</b>	Large residential developments which by their nature generate	Borough wide	Community and ancillary services to mitigate additional pressures on existing provision and, where applicable the loss of existing facilities.	Based on a case by case basis depending on the scale and impact of development.	



Subject	Threshold	Criteria	Requirement <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
	a demand for additional community space <b>OR</b> where an existing community facility is lost as a result of development				
<b>Natural Open Space</b>	All Major residential proposals	<p>In areas of deficiency and/or providing access to open space to help improve the provision of such.</p> <p>To mitigate effect of damage to and or loss of wildlife features, habitats and landscape features. Obligations can include new additions/creati</p>	<p>Provided on site or adjacent sites (e.g. a local Council-owned SINC where habitats can be enhanced as a result of a reduction in habitat on a development site), or projects which benefit unspecified biodiversity in the Borough as a whole on the ground or that assist survey work or monitoring on or off site, or provide information on biodiversity to the public or targeted groups (e.g. education packs). <u>Management and impact surveys.</u></p>	<p>No formula obligations will be based on a case by case basis.</p>	<p>Based on a case by case basis however, the following documents can act as guidance:-</p> <p>The Rights of Way Improvement Plan.</p> <p>Biodiversity Action Plan,</p> <p>World Heritage Site Management Plan.</p>

Subject	Threshold	Criteria	<b>Requirement</b> <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
		on of habitat/opportunities for biodiversity.			
<b>Sports and Recreation</b>	All Major residential proposals	In areas of deficiency	Provided on site or contribution towards providing necessary facilities on an appropriate site	No formula but should be in line with National Playing Field Standards.	Sport England produce a 'Planning Contributions Kitbag' which can be viewed via <a href="http://www.sportengland.org/facilities_planning/planning_contributions.asp">http://www.sportengland.org/facilities_planning/planning_contributions.asp</a>
<b>Play Provision</b>	All Major residential proposals	Borough wide	Provided on site or contribution towards providing necessary facilities on an appropriate site	No formula but should be in line with Mayoral Benchmark Standards for play provision	Mayor's Supplementary Planning Guidance "Providing for Children and Young People's Play and Informal Recreation" (March 08) benchmark standards for play provision set out in Table 4.6
<b>Bromley Town Centre (Area Action Plan DPD contains detail).</b>	All development located within the Bromley Town Centre boundary	Development within the area identified in the BTC AAP	<u>For specific obligation details refer to policy BTC31.</u> Examples: <ul style="list-style-type: none"> <li>• Town Centre management</li> <li>• Variable message signing</li> <li>• Car clubs</li> <li>• Travel plans</li> <li>• CCTV</li> <li>• Public Art (see below)</li> </ul>	The level of contribution will vary depending on the scale of development.	Adopted 2010

Subject	Threshold	Criteria	Requirement <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
			<ul style="list-style-type: none"> <li>• Public realm improvements</li> <li>• Highways and transport improvements</li> <li>• <u>SUDS</u></li> <li>• <u>Warnings systems and signage</u></li> <li>• <u>Recreational facilities, including access, signage and landscaping</u></li> </ul>		
<b>Major &amp; District Town Centres</b>	All development proposals <u>in such areas</u>	Proposals within the defined shopping frontages; <u>excluding Bromley Town Centre (see above.</u>	Contribution towards town centre management, CCTV and public realm improvements for example Townscaping or lighting.	No formula. Any contribution will be calculated on a case by case basis depending on scale and impact of the development	Draft Orpington SPD published for consultation June 08.
<b>Public realm and built heritage improvements</b>	All Major developments	Borough wide	<p>Contribution to planting and maintenance of trees including street trees.</p> <p>Contribution towards the provision of townscaping of areas within the public realm.</p> <p>Contribution for the restoration /maintenance of the historic fabric.</p>	No formula. Any contribution will be calculated on a case by case basis depending on scale and impact of the development	<p>Costs calculated by the Council as an estimate of the costs of the particular works.</p> <p>In the majority of proposals the works will be required to be carried out by the developer.</p> <p>The actual cost for Council inspection and supervision</p>

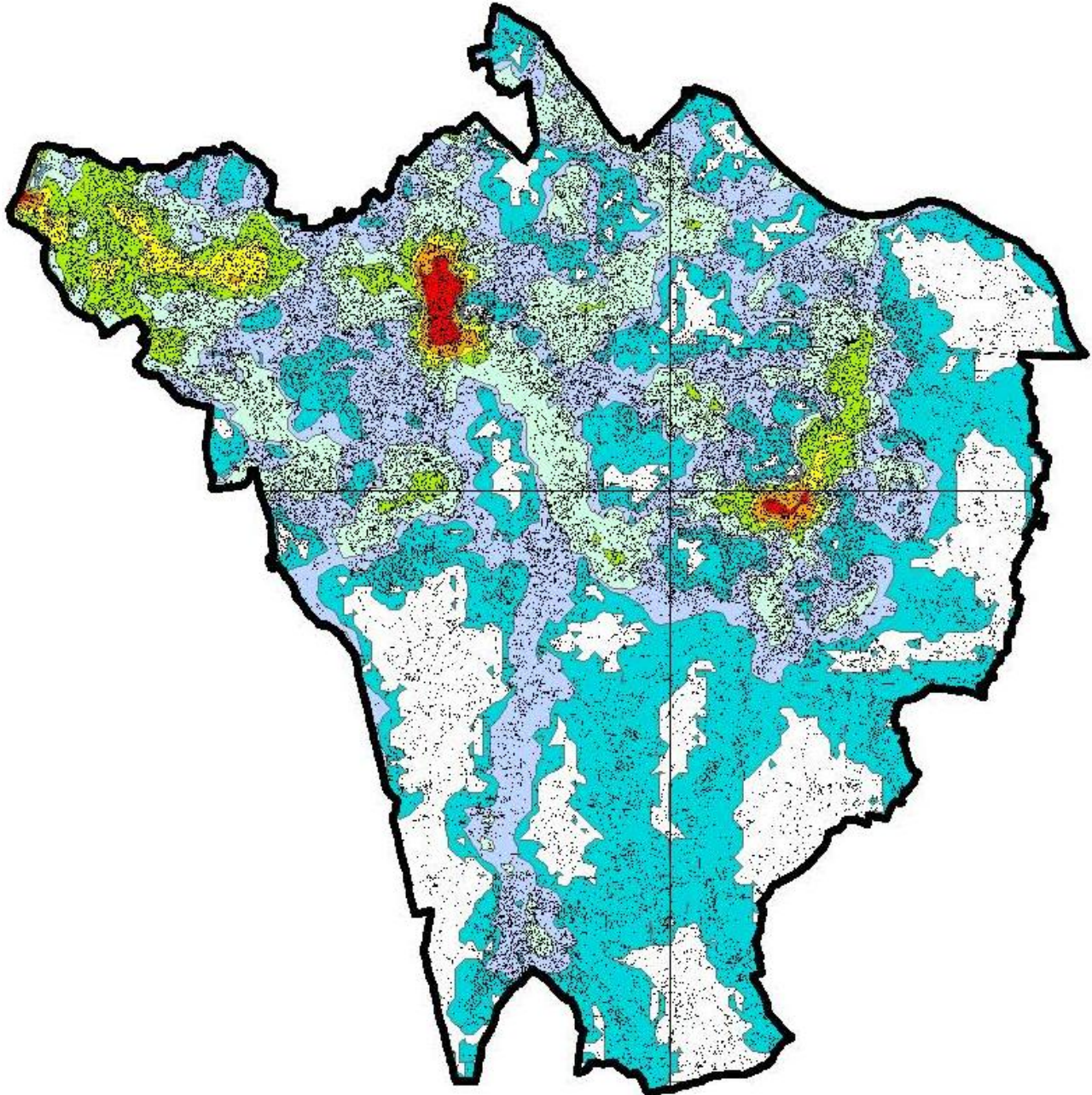
Subject	Threshold	Criteria	Requirement <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
			Investigation and recovery of archaeological remains. Management plans. Measures for preservation.		will be recovered from the developer
<b>Public Art</b>	All Major developments	Development in town and District centres. & Business areas where appropriate	A piece of work to be incorporated into the design of the building or associated public space around the building.  If it is mutually agreed that public art cannot be provided a financial contribution may be acceptable.	No formula.  Any contribution will be calculated on a case by case basis depending on scale and impact of the development	
<b>Mitigation of environmental impacts on air, soil and water.</b>	Allny development may have an impact	Borough wide - especially those <u>new</u> developments that place a burden on existing facilities	Examples where contributions or site mitigation measures may be required: <ul style="list-style-type: none"> <li>• Energy efficiency of buildings</li> <li>• Development that may have an adverse impact on public areas, landscape, or biodiversity.</li> <li>• Reducing impact of development on air quality and monitoring to ensure acceptable levels</li> <li>• Site investigations and remedial works on contaminated land</li> </ul>	No formula. Any contribution will be calculated on a case by case basis depending on scale and impact of the development depending on impact and cost of implementing schemes or required maintenance payments, to mitigate effects of development.	Hours of operation of non-residential development will be considered.  Waste reduction and recycling initiatives.  Community energy efficiency and renewable energy projects  Monitoring arrangements.  An agreement may be required between the

Subject	Threshold	Criteria	Requirement <u>Types of obligation sought where they are directly related to the proposed development.</u>	Formula	Detail
			<ul style="list-style-type: none"> <li>• Sustainable drainage systems</li> <li>• Mitigate noise pollution</li> <li>• Mitigate light pollution</li> <li>• <u>Protection of groundwater quality.</u></li> </ul>		developer and the Council to ensure measures are maintained for the life of the building
<b>Planning Obligation Monitoring Service</b>	All developments with Planning Obligations.	All agreements.	Contribution	The Council may charge up to a maximum of £1,000 depending on complexity and phasing.	Dependant on the estimated time involved in monitoring each obligation.
<b>Legal Services</b>	All developments with Planning obligations	All agreements	Contribution	The normal charge is normally between £850- £2,000.	Dependant on the complexity of the case



## Public Transport Accessibility Levels (PTALs)

(Source: Transport for London - September 2010)



### Key

-  High (level 6a)
-  High (level 5)
-  Moderate (level 4)
-  Moderate (level 3)
-  Low (level 2)
-  Low (level 1b)
-  Low (level 1a)

### NOTE:

The map is designed to show indicative borough-wide PTAL levels. It is not suitable for assessing individual sites.

Data Sources: -

National Rail – 2008 base + London Overground + Recent revisions  
London Buses – April 2010 data

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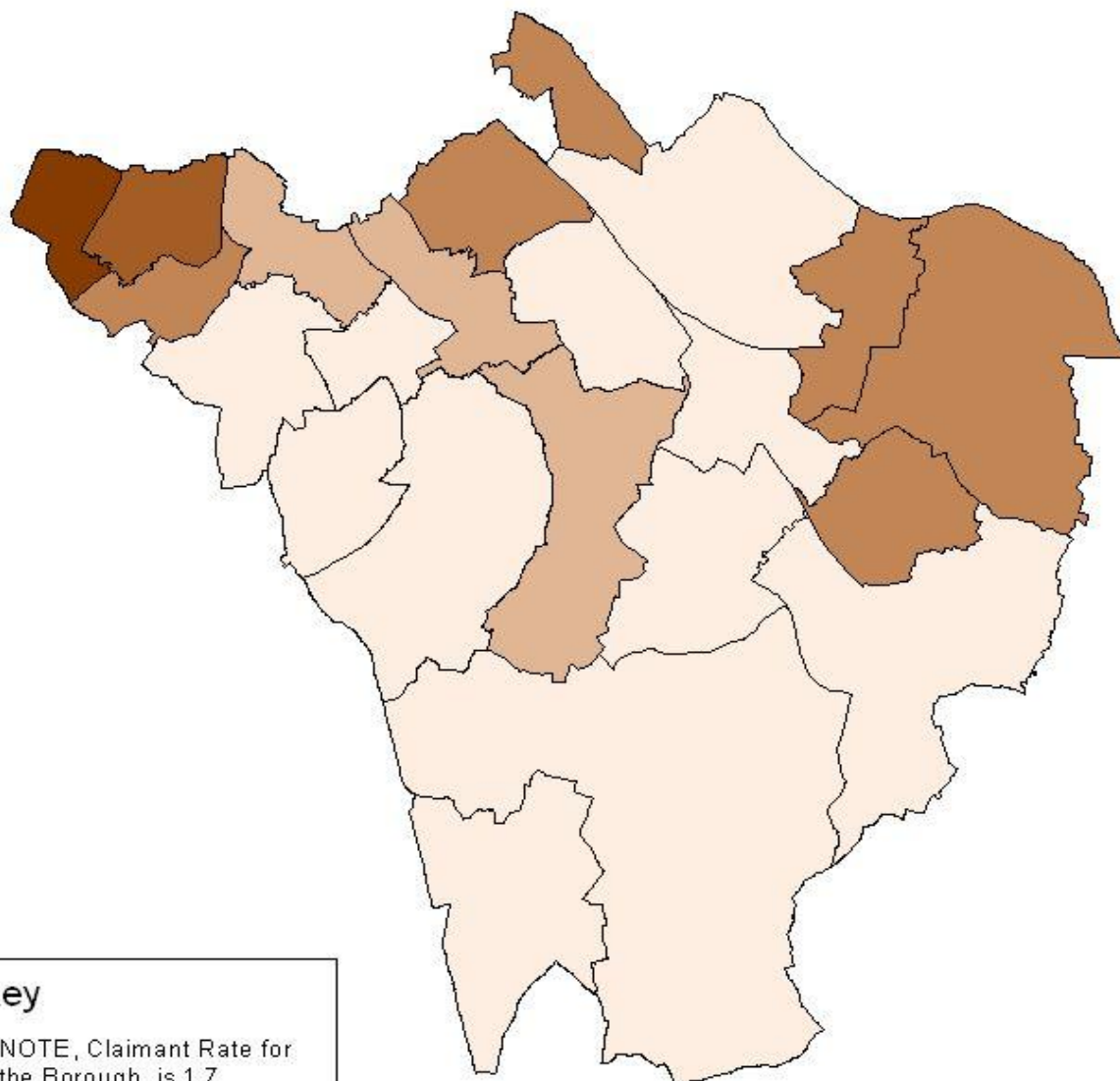
1:100,000





## Ward Level Claimant Count Rates

*(Proportion of resident working population estimates)*



### Key

NOTE, Claimant Rate for the Borough is 1.7

0.6 - 1.34
1.34 - 2.08
2.08 - 2.82
2.82 - 3.56
3.56 - 4.3

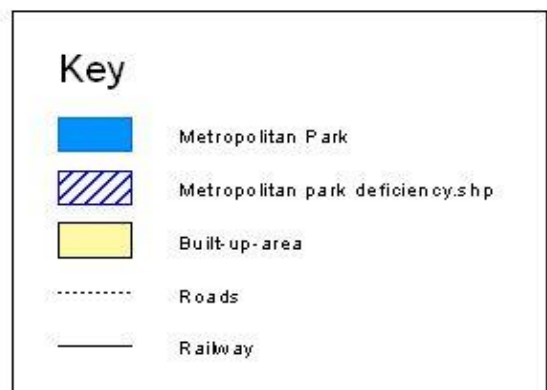
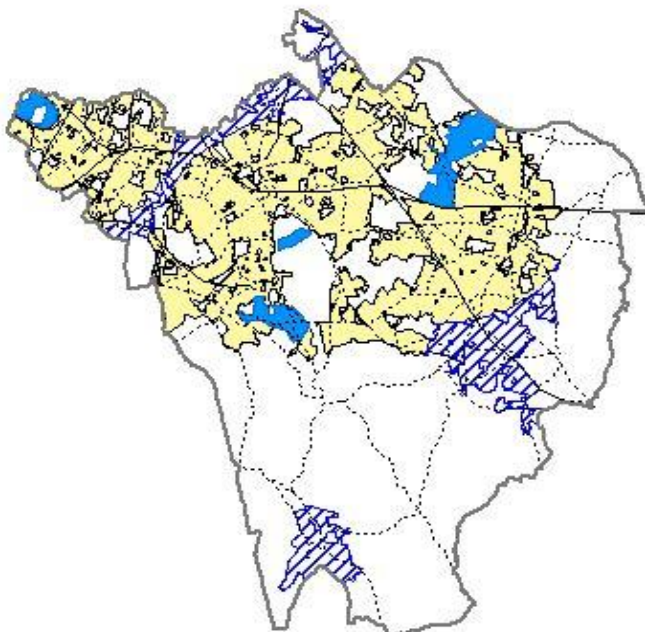
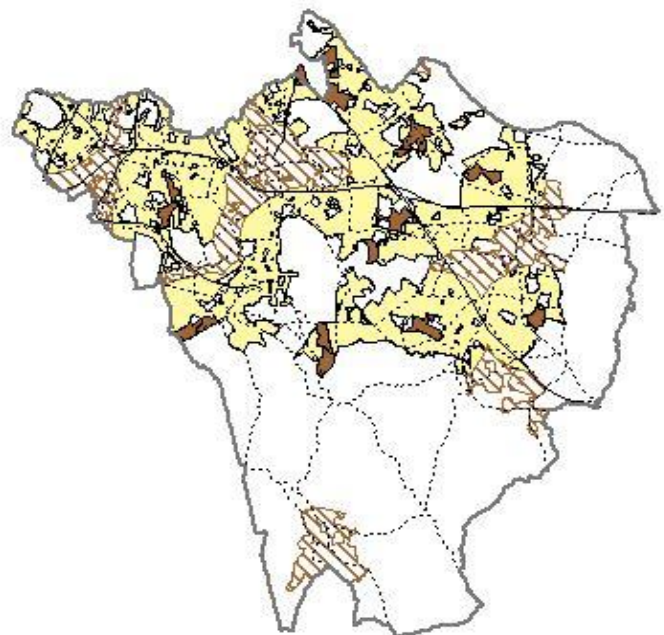
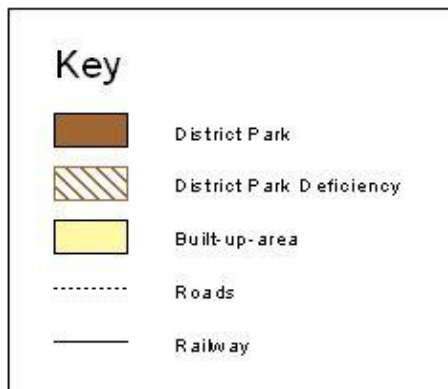
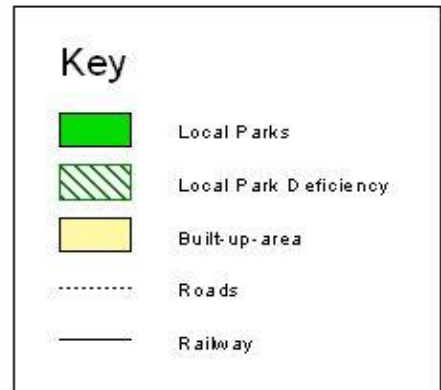
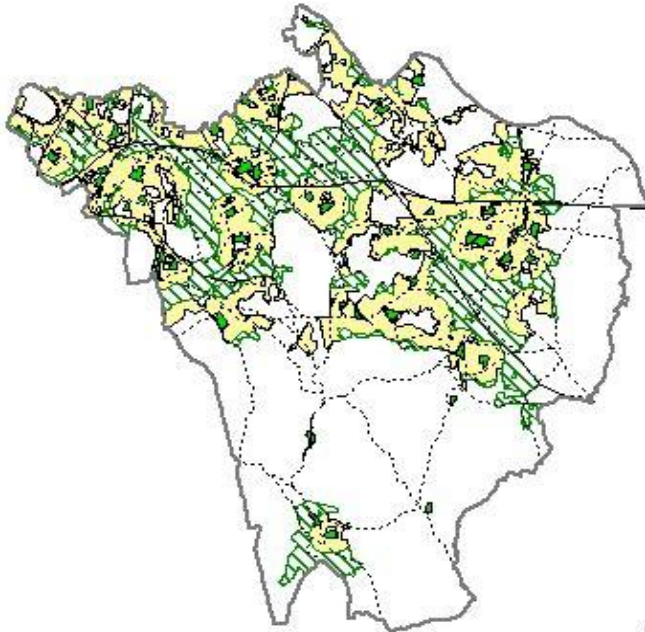
*The claimant count records the number of people claiming Jobseekers Allowance (JSA) and National Insurance credits at Jobcentre Plus local offices. This is not an official measure of unemployment, but is the only indicative statistic available for areas smaller than Boroughs.*

Source: ONS © Crown Copyright Reserved August 2007



# Open Space Deficiency

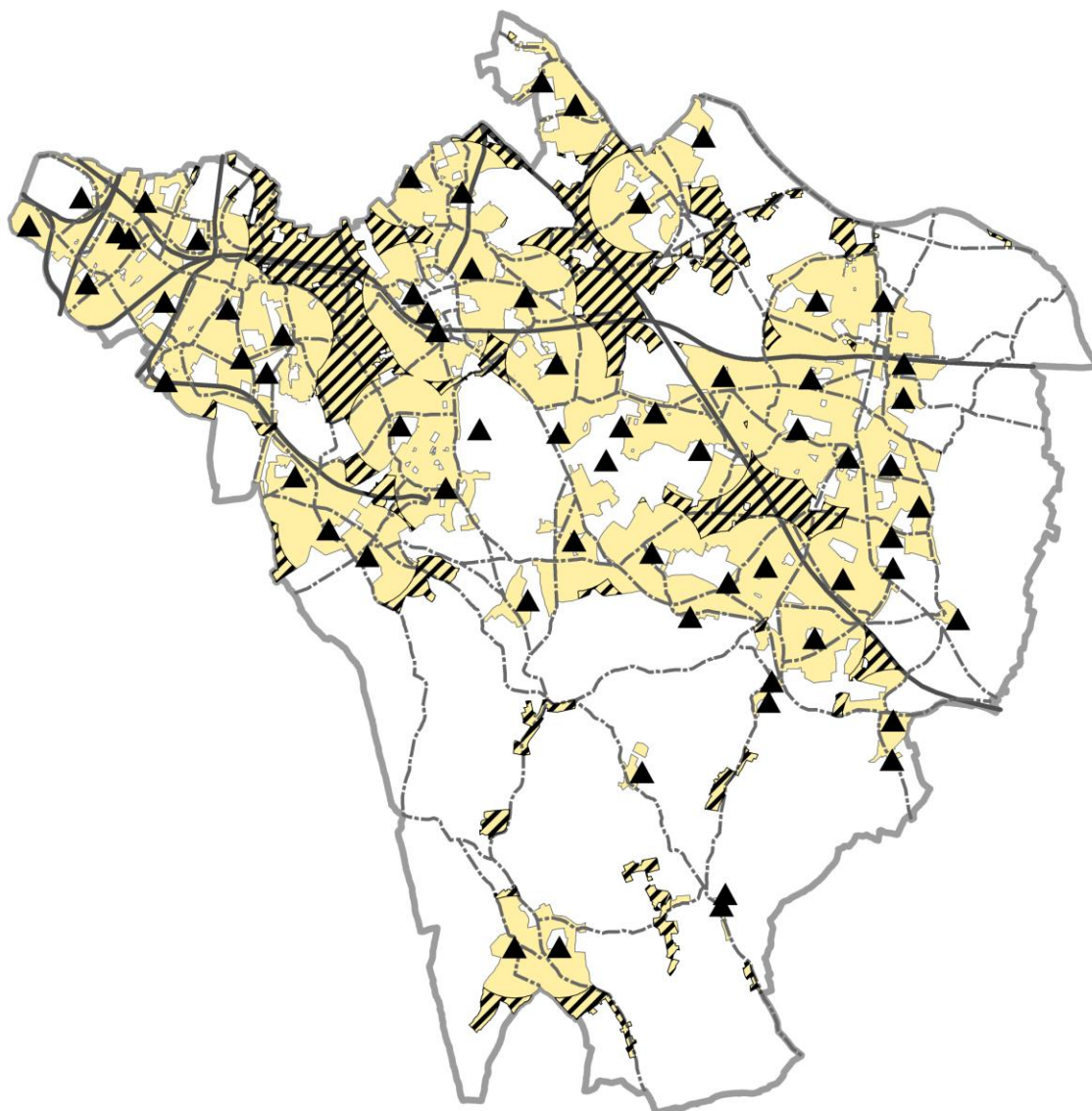
(Based on the London Plan Hierarchy of Public Open Space)





# Childrens' Play Facility Deficiency

*(More than 800 metres from Childrens Play Facility)*



Key	
▲	Childrens' play facilities
▨	Area deficient in childrens' play facilities
■	Built-up-area
---	Roads
—	Railways

**Procedure for Negotiating and Completing a Planning Obligation APPENDIX 6**

Stage	Actions	Responsibility
Pre application Agree Heads of Terms prior to submission	1. Applicant to consider relevant SPD and Planning policies prior to submitting application along with proposals for planning obligations. Formal advice can be provided by attendance of all parties at Pre-application meeting to agree Head of Terms to submission	Applicant/Case Officer/Policy/Highways/Other Service Departments /Legal
Formal Consideration of Planning Application  and  Preparing the Legal Agreement	2. Need for planning obligations confirmed with applicant and legal instructed to prepare S106 Draft	Case Officer/ Legal
	3. Standard letter sent to applicant e.g. requesting proof of title information, and completion of an undertaking by applicant to pay Council's legal costs to be returned	Legal/ Applicant
	4. 1 <sup>st</sup> Draft obligations sent to applicant's Solicitor for consideration	Legal
	5. Further negotiation meetings held if necessary. Legal begin drafting S106 on a 'without prejudice' basis	Applicant/Case Officer/Legal
	6. Agreed heads of terms and triggers included in committee report	Applicant/Case Officer/Legal
	Committee Consideration Resolution to grant	7. Consider application – if proposal accepted grant permission subject to completion of legal agreements. Resolution to grant planning permission subject to completion of legal agreement. Monitoring Officer to liaise and send Draft Decision Notice and copy of Draft Decision Notice to Legal
Legal Agreement Completion	8. Before agreement is completed, Council to ensure all title matters are in order and the Council's legal costs have been paid	Legal
	9. Copy of final legal agreement, decision notice and any other consents sent to applicant's Solicitor	Legal
	10. Copy sent to S106 Monitoring Officer for circulation to other officers as necessary	Legal/S106 Monitoring Officer
Recording	11. Statutory Register updated to show that permission has been granted. Copy of the legal agreement placed on register and made available on the Council's Planning website	S106 Monitoring Officer

Supplementary Planning Document: Planning Obligations. November 2010

Recording	12. Agreement and consents registered as local land charges	Land Charges	
	13. Agreement registered as a charge against the title at HM Land Registry	Legal/Land Registry	
Monitoring	14. Details of agreement recorded on a shared database and copies of a S106 passed to the relevant partners (see 10 above)	S106 Monitoring Officer	
	15. Implementation of planning permission and compliance of obligations including receipt of the Notification Form, monitored by Planning via joint working with Finance, Address Management, and Land Charges departments. Non-compliance enforced as necessary. Service area officer alerted to receipt of funds, and makes a formal bid for the relevant fund. Committee approval authorises funds for Service area. Database updated.	S106 Monitoring Officer, Finance Officer, Address Management, Land Charges, Relevant Service Area Officer and Enforcement	
	16. S106 Monitoring Officer to check (no less than quarterly End March/June/Sept/Jan) all agreement for compliance with obligation trigger dates (e.g. date of implementation) and notify Finance Officer of findings (even if no action is required) to ensure that all agreements are adhered to	S106 Monitoring Officer Finance Officer	
	17. Where necessary Finance Officer to raise and render sundry debtor invoice using unique ledger code for recording purposes in Council's financial system	Finance Officer	
	18. Finance Officer to monitor debtors invoice and record the date the payment is received	Finance Officer	
	19. Budget monitoring team to generate quarterly budget monitoring statement to Executive	Finance	
	20. Report present bi-annually to PDS Committee	Planning/Finance	





**AGREEMENT PURSUANT TO SECTION 106 OF  
THE TOWN AND COUNTRY PLANNING ACT 1990  
AND OTHER POWERS IN RELATION TO:**

**[Insert site address]**

Dated: 201...

---

**THE MAYOR AND BURGESSES OF  
THE LONDON BOROUGH OF BROMLEY**

(1)

and-

**[Owner ]**

(2)

-and-

**[ List any other interested persons]**

(3)

**Ref: [Insert file reference no.]**

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## TABLE OF CONTENTS

### INTRODUCTION

#### Clause:

1. INTERPRETATION
2. LEGAL EFFECT OF AGREEMENT
3. COMMENCEMENT
4. OWNER'S COVENANTS
5. COUNCIL'S COVENANTS
6. GENERAL PROVISIONS
- [ ] **[MORTGAGEE'S CONSENT]**
7. WAIVER
8. INTEREST
9. SEVERABILITY
10. VERIFICATION AND ENFORCEMENT
11. MODIFICATIONS TO AGREEMENT
12. RESOLUTION OF DISPUTES
13. NOTICES
14. REVOCATION
15. THIRD PARTIES
16. JURISDICTION
17. DELIVERY

### SCHEDULE

Schedule 1: **Draft Planning Permission**

Schedule 2: **Planning Obligation(s)**

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**THIS AGREEMENT** is made the        day of                                    201...  
**BETWEEN:-**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY** of Civic Centre, Stockwell Close, Bromley, Kent BR1 3UH (“**the Council**”);
- (2) **[INSERT NAME OF FREEHOLDER]** of **[INSERT FULL ADDRESS]** (“**Owner**”) **[IF MORE THAN ONE OWNER LIST NAMES AND ADDRESSES AND REFER TO AS (“First Owner”) (“Second Owner” etc. ]**
- (3) **[OTHER INTERESTED PERSON E.G. DEVELOPER]** of **[INSERT FULL ADDRESS]** (“**Developer**”)
- (4) **[OTHER INTERESTED PERSON E.G. MORTGAGEE]** of **[INSERT FULL ADDRESS]** (“**Mortgagee**”)

## **INTRODUCTION**

- 1 The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated and is entitled to enforce the obligations in this Agreement.
- 2 The **Owner** is the freehold owner of the Site registered under title no:  
**[                                    ]** which is **[subject to a -(Insert name of bank) mortgage]** but otherwise free from encumbrances that would prevent the **Owner** from entering into this Agreement.
- 3 **[The Developer is ...].**
- 4 Insofar as any of the covenants in this Agreement are not planning obligations within the meaning of section 106 of the Act, they are entered into in pursuance Section 111 of the Local Government Act 1972 and any other enabling provisions in connection with the performance of the Council’s functions.

- 
- 5 The Parties are satisfied that:
- (a) the restrictions and provisions in this Agreement are relevant to planning considerations concerning the Site;
  - (b) fairly and reasonably relate to the Development;
  - (c) fairly and reasonably relate in scale and kind to the Development; and
  - (d) are reasonable in all respects.
- 6 Having regard to the unitary development plan and the planning considerations affecting the Site, the Council considers that the Development ought only to be permitted subject to the terms of this Agreement and resolved to grant the Permission subject to those terms at its Planning Applications Sub-Committee held on **[insert date]**.

MATTERS AGREED:

**1 INTERPRETATION**

- 1.1 In this Agreement the following expressions must have the meanings set out below:

**“Act”** the Town and Country Planning Act 1990  
(as amended)

**“Agreement”** the Planning Obligations made pursuant to  
Section 106 of the Act

**“Application”** the application for planning permission  
dated [ ] submitted to the Council for the  
Development and allocated under reference  
number [ ]

**“Chief Planner”** the Council’s Chief Planner or any other  
officer or person properly exercising the  
authority of the Chief Planner for the time  
being.

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**“Commencement Date”** means the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in Section 56(2) and (4) (a) to (d) of the Act and **“Commence”** and **“Commenced”** and cognate expressions will be interpreted in accordance with this definition but material operation for these purposes shall exclude operations consisting of site clearance, demolition work, archaeological investigations, ground investigations, diversion of services, erection of any temporary means of enclosure for the purposes of Development Site security and or the temporary display of site notices or advertisements.

**“Council”** the party of the first part hereto which shall include its successors and assigns from time to time.

**“Development”** **[insert description of the development as set out in the in the Application]**

**“Interest”** interest at 4 per cent above the base lending rate of Barclays Bank plc from time to time.

**“Notification Form”** the form attached to this Agreement notifying the Council of implementation and completion of obligations.

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**“Parties”** means the Mayor and Burgesses of the London Borough of Bromley (**“the Council”**) [ **insert name of the Owner (“the Owner”)** and/ or the Developer (**“the Developer”**) **insert name of the Mortgagee (“the Mortgagee”)**]] which shall include its successors and assigns from time to time

**“Permission”** planning permission in the form of the draft attached to this Agreement

**“Plan”** the plan attached to this Agreement

**“Site”** **[insert site address]** as shown edged red on the plan attached to this Agreement

- 1.2 Any covenant by the **Owner** or the Council not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 1.3 Any references to any particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.
- 1.4 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.5 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.6 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can

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be enforced against all of them jointly and against each individually, unless there is an express provision otherwise.

- 1.7 Where under this Agreement any notice, approval, consent, certificate, direction, authority, agreement, action, expression of satisfaction is required to be given or reached or taken by any party or any response is requested any such notice, approval, consent, certificate, direction, authority, agreement action, expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed.
- 1.8 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 1.9 Where reference is made to a Clause, Part, Plan, Paragraph, Recital or Schedule such reference (unless the context requires otherwise) is a reference to a clause, part, plan, paragraph, recital or schedule of or to (or in the case of Plan attached to) this Agreement.
- 1.10 References to any Party to this Agreement must include:
- (a) the Party's successors in title and to any deriving title through or under that party; and
  - (b) in the case of the Council, the successors to their respective statutory functions.

## **2 LEGAL EFFECT OF AGREEMENT**

- 2.1 This Agreement is made under the Act and the obligations and are:
- (a) covenants to which the relevant statutory provisions apply; and
  - (b) relate to the Site; and
  - (c) are enforceable by the Council as the local planning authority.
- 2.2 The obligations shall be enforceable without limit of time not only against the **Owner** but also against its agents servants successors in title and assigns and those deriving title under it, Provided That neither the **Owner** nor its agents servants successor in title and assigns shall be liable for any breach of any covenant contained in this Agreement after it has parted with all its interest in

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the Site except in relation to any antecedent breach prior to parting with such interest.

### **3 COMMENCEMENT**

3.1 This Agreement is conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development,

except for the provisions of [ **clauses 4(c); 16 and 17** ] which shall come into effect immediately upon completion of this Agreement

### **4 OWNER'S COVENANTS**

The **Owner** hereby covenants with the Council:

- (a) To observe and perform and cause to be observed and performed the covenants contained in [**Schedule 2**] of this Agreement; and
- (b) at its own cost to do all things necessary:
  - (i) to enable an entry relating to this Agreement to be made in the Charges Register of the Title Number of the Property, or if the Title is not registered in the Land Charges Register and immediately after execution of this Agreement, to apply to the Chief Land Registrar to make such entry; and
  - (ii) following the making of such an entry to furnish the Council's Solicitor with an official copy of the register entries relating to the Title
- (c) to pay, on completion of the Agreement, the Council's reasonable legal costs and disbursements in connection with the preparation of this Agreement
- (d) to pay any legal and other professional costs incurred by the Council in monitoring or enforcing the performance of the Owner's obligations under this agreement
- (e) to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice to give details



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of the transferee's full name and registered office (if a company or usual address if not) together with a plan showing the area of the Site purchased

- (f) to complete and submit a copy of the Notification Form attached to this Agreement to the Chief Planner C/o Central Income Section, London Borough of Bromley, BR1 3UH on implementation and completion of each obligation

## 5. COUNCIL'S COVENANTS

- 5.1 The Council hereby covenants with the **Owner** to observe and perform the relevant covenants contained in this Agreement.

## 6. GENERAL PROVISIONS

IT IS HEREBY AGREED AND DECLARED that:

- 6.1 The covenants on behalf of the parties to be observed and performed under this Agreement shall be treated as Local Land Charges and registered at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975; and
- 6.2 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise by it of its statutory functions and the rights powers duties and obligations of the Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if it were not a party to this Agreement.
- 6.3 The Council will on written request from the **Owner** and on payment of its reasonable costs and expenses certify whether or not an obligation under this Agreement has been satisfied
- Following the performance and satisfaction of all the obligations contained in this Agreement the Council shall cancel all entries made in the Register of Local Land Charges in respect of this Agreement.

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**[INSERT ADDITIONAL CLAUSE IF NECESSARY]**

**[MORTGAGEE'S CONSENT]**

[The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall otherwise have no liability under this Agreement unless it takes possession of the Site (or part thereof) in which case it too will be bound by the obligations as if it were a person deriving title from the Owner]

**7 WAIVER**

No waiver (whether express or implied) by the Council of any breach or default by the **Owner** in performing or observing any of the covenants undertakings obligations or restrictions contained in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said covenants undertakings obligations or restrictions or from acting upon any subsequent breach or default by the **Owner**.

**8 INTEREST**

Without prejudice to any right remedy or power available to the Council, if any payment of any sum referred to shall have become due but shall remain unpaid for a period exceeding twenty one days, the Owner shall pay on demand to the Council interest thereon at the interest rate of four per centum per annum above the base lending rate of Barclays Bank plc, from the date when it becomes due until payment.

**9 SEVERABILITY**

Each Clause Sub-clause Schedule or paragraph shall be separate distinct and severable from each other, to the extent only that if any of these becomes or is invalid or shall be held by the Courts to be void but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished, then any modifications necessary to ensure such Clause Sub-clause Schedule or paragraph be valid shall apply without

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prejudice to any other Clause Sub-clause Schedule or paragraph contained in this Agreement.

## **10 VERIFICATION AND ENFORCEMENT**

- 10.1 The **Owner** shall permit the Council and its authorised employees and agents upon reasonable notice to enter the Site at all reasonable times after receipt of a request in writing for the purpose of verifying whether any obligation arising under this Agreement has been performed or observed.
- 10.2 Without prejudice to the terms of any other provision in this Agreement the **Owner** shall pay the reasonable legal charges and expenses (including without prejudice to the reasonable legal costs and reasonable Surveyor's fees) incurred by the Council for the purpose of or incidental to the enforcement of any right or power of the Council or of any obligation of the **Owner** arising under this Agreement.
- 10.3 Without prejudice to any other right remedy or power contained in this Agreement or otherwise available to the Council, if there is a breach of a requirement in a planning obligation herein to carry out any operations in on under or over the Site the Council may:-
- (a) Enter the Site and carry out the operations; and
  - (b) Recover from the **Owner** any expenses reasonably incurred by the Council in doing so as a debt due and owing
- 10.4 Before the Council exercises its power under clause 10.3 above it shall give not less than 21 days notice of its intention to do so to the **Owner**.

## **11 MODIFICATIONS TO AGREEMENT**

In the event of the planning obligations contained in this Agreement being modified, a note or memorandum shall be endorsed on this Agreement.

## **12 RESOLUTION OF DISPUTES**

- 12.1 Wherever in this Agreement the consent agreement or approval of any Party is required, it shall not be unreasonably withheld or delayed.

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12.2 In the event of any dispute between the Parties including any dispute as to reasonableness, any Party may invite any other Party to resolve the dispute by mediation in such manner as the Parties may agree.

12.3 In the event of a dispute between the Parties (other than a dispute relating to a matter of law or in relation to the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts) the Parties agree that the matter in dispute will on the application of either of them be referred to a Surveyor acting as an expert (hereinafter referred to as the “Expert”) (being a member of the Planning Division of the RICS with not less than ten years recent experience in the field of town and country planning and development) whose identity will be agreed between the Parties or in default of agreement appointed by or on behalf of the President for the time being of the RICS on the application of any Party and it is further agreed that:-

12.3.1 the determination of the Expert will be final and binding on the Parties save in the case of manifest error; and

12.3.2 the Parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct; and

12.3.3 the Expert’s costs will be borne in such proportions as he may direct failing which each Party will bear its own costs of the reference and determination and one-half each of the Expert’s costs.

## 13 NOTICES

13.1 The **Owner** shall give written notice to the Council at least 14 days prior to the Commencement of the Development.

13.2 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Agreement and any such notice to the:

(a) Council shall be in writing and addressed to the Chief Planner at Civic Centre, Stockwell Close, Bromley BR1 3UH and shall quote the reference number referred to in the definition of “Application” in clause 1.1 of this

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Agreement and shall state that the notice is served pursuant to this Agreement.

(b) **Owner** shall be in writing and addressed to **[Insert name]** at **[Insert address]**.

(c) **[Include other names and addresses if necessary]**

13.3 For avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with such proceedings.

#### **14 REVOCATION**

In the event that the Planning Permission is quashed lapses or is revoked or otherwise withdrawn this deed will cease to have any further force or effect unless otherwise agreed in writing with the Council

#### **15 CONTRACTS (RIGHTS OF THIRD PARTIES ACT) 1999**

It is hereby agreed between the Parties that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no one other than the Parties to this Agreement (and any of its servants successors in title assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Agreement.

#### **16 JURISDICTION**

This Agreement is governed by and interpreted in accordance with the law of England and Wales.

#### **17 DELIVERY**

The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

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**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed on the day and year first before written.

**EXECUTED AS A DEED** when the common seal of )  
**THE COUNCIL** was affixed in )  
The presence of: )

**SIGNED AS A DEED** by ..... )  
**[INSERT NAME]** )  
..... )



## NOTIFICATION FORM

Notification/cheques and letters to be sent for the attention of: **Chief Planner, C/o Central Income Section. London Borough of Bromley, Civic Centre, Stockwell Close, Bromley BR1 3UH**

**Section 106 Legal Agreement**

Site address: \_\_\_\_\_

Date of Legal Agreement: \_\_\_\_\_

Planning Reference: \_\_\_\_\_

Date of implementation of development and or Date of relevant trigger (s): \_\_\_\_\_

Obligation(s) quote Schedule(s) and Clause No(s)

*Please continue on separate sheet if necessary*

**Section 106 Obligation**

Documentation submitted to the Council with this form:

*NB: please continue on separate sheet(s) if necessary.*

**CONTACT DETAILS**

YOUR REFERENCE:

DATE SUBMITTED:

SUBMITTED BY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE/FAX NUMBER: \_\_\_\_\_

**FOR COUNCIL USE**

COST CODES: \_\_\_\_\_

**Note:** This form is of a summary nature only and is not intended to be a binding legal document. The London Borough of Bromley uses this form to assist in the monitoring and implementation of the covenants and obligations in the s106 Agreement. No statement or declaration in this form shall override, vary, or modify the wording of the s106 Agreement. If a contradiction does exist between the Form and the s106 Agreement, then the s106 Agreement is to take precedence.  
**All cheques should be made payable to "London Borough of Bromley"**





## APPENDIX 9

### AFFORDABLE HOUSING DEFINITIONS AND INTERPRETATIONS

**Affordable Dwelling(s):** means a Dwelling which shall not be occupied other than as Affordable Housing

**Affordable Housing:** Means 'social rented' and 'intermediate' housing provided by a Registered ~~Social Landlord~~ **Provider** that is affordable for households that are unable to rent or buy on the open market including the relevant level of parking provision for the units

**(i) Social rented housing:** Is housing where rents are within the Homes and Communities Agency's target rent levels.

**(ii) Intermediate housing:** Is housing that is affordable to households with income levels of less than £35,000 per annum, based on a household spending no more than 33% of its gross income on housing costs. Housing costs include rents, mortgages and service charges.

**Tenure** 70% of the Affordable Dwellings shall be Social Rented Dwellings and 30% of the Affordable Dwellings shall be Intermediate Dwellings unless otherwise agreed in writing by the Council's Assistant Director (Housing and Residential Services).

**Registered Provider previously known as the Registered Social Landlord (prior to April 2010):** Means a registered provider ~~social landlord~~ as defined in ~~Part 4 of the Housing Act 1996~~ **Housing and Regeneration Act 2008**, registered with the Homes and Communities Agency and a partner on the Council's approved list that has been agreed in writing by the Council's Assistant Director (Housing and Residential Services).

**Affordable Housing Scheme** that part of the Development comprising [...] no habitable rooms and [...] no residential dwellings [...*describe mix of affordable dwellings setting out no of habitable rooms and dwelling size in metres squared e.g.: 2 x 2 bedroom flats, 55 metres squared.*] and in number comprising 35% of the total number of Habitable Rooms including market housing units within the application) together with [.....] car parking spaces shown on drawing numbers [*drawing references*]; or any one or more of them

**\*\*NB the detail in italics in this definition needs to be filled in by the applicant**

**South East London Housing Partnership: Wheelchair Homes Design Guidance** design guidance which has been adopted as the design brief for all wheelchair homes in SE London.

**Habitable Room** means any habitable room as defined in the RICS Code of Measurement 5<sup>th</sup> Edition, within a Dwelling, the primary purpose of which is for living, sleeping or dining including kitchens where the total area (including fittings) is more than 13 square metres and for the avoidance of doubt in blocks of flats rooms exceeding 20 square metres which are readily capable of division shall be counted as two

**Chargee/ mortgagee:** any mortgagee or chargee of the Registered ~~Social Landlord~~ **Provider** or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

**Chargee's/ mortgagee's duty:** The tasks and duties set out in paragraph [...] Schedule [...] (*detailed in this document under Covenants: In-Perpetuity/Chargee's/mortgagee's duty*)

**Protected tenant: any tenant who**

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling

(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling

(c) has been granted a shared ownership lease by a Registered ~~Social Landlord~~ Provider (or similar arrangement where a share of the Affordable Dwelling is owned by the tenant and a share is owned by the Registered ~~Social Landlord~~ Provider) by the Registered ~~Social Landlord~~ Provider in respect of a particular Affordable Dwelling and the tenant has subsequently purchased from the Registered ~~Social Landlord~~ Provider all the remaining shares so that the tenant owns the entire Affordable Dwelling

**COVENANTS**

**In perpetuity/ Chargee's/ mortgagee's duty :** From the date of Practical Completion of the Affordable Dwellings shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

(a) any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

(b) any Chargee provided that the Chargee shall have first complied with the Chargee's Duty

(c) any purchaser from a mortgagee of an individual Affordable Dwelling pursuant to any default by the individual mortgagor.

**OR**

**In perpetuity/ Chargee's/ mortgagee's duty :** Subject to the provisions hereinafter appearing the Owner covenants with the Council not to allow the occupation of the units to be constructed pursuant to the Permission except for the provision of Affordable Housing

The Owner covenants with the Council:

(1) not to use the Affordable Dwellings otherwise than for the purposes of Affordable Housing; and

(2) not to dispose of any of the Affordable Dwellings otherwise than by way of rental or by way of shared ownership

The provisions contained in Clauses 1 to 2 inclusive shall not bind nor be enforceable against:-

(a) any mortgagee or chargee of the Owner which mortgagee or chargee is exercising its powers of sale in respect of the Site against the Owner

(b) an occupant of an Affordable Dwelling who has a shared ownership leave of an Affordable Housing Unit or who has exercised a statutory right to acquire under the Housing Act 1996 or otherwise ("Occupant") or any person other than a Registered ~~Social Landlord~~ Provider deriving title under any such Occupant

a mortgagee of an Occupant in the event that the mortgagee of an Occupant seeks to dispose of an Affordable Dwelling pursuant to its power of sale exercised pursuant to default of the terms of the mortgage

### **AFFORDABLE HOUSING SCHEDULE**

35% of the total number of Habitable Rooms of all Dwellings to be constructed as affordable housing

70% of the Affordable Dwellings (rounded to the nearest whole number) shall be Social Rented Dwellings

30% of the Affordable Dwellings shall be of intermediate tenure

10% of Dwellings shall be designed in accordance with the standards set out in the South East London Housing Partnership: Wheelchair Homes Design Guidance

35% of the social rented units shall be 3 bed 5 person units or larger

All Affordable Dwellings shall be designed in accordance with Homes and Communities Agency's Design and Quality Standards April 2007

All Affordable Dwellings shall be designed to achieve level ~~3~~ 4 in the Homes and Communities Agency's "Code for Sustainable Homes"

All Affordable Dwellings shall be designed in accordance with the principles contained in the document "Lifetime Home Standards" published by the Joseph Rowntree Foundation and dated 1999

All Affordable Dwellings shall be designed in accordance with the principles contained in the document "Secured by Design"

The Affordable Dwellings will at all times be managed by a Registered ~~Social Landlord~~ Provider

All Affordable Dwellings shall be purchased by the Registered ~~Social Landlord~~ Provider without direct public subsidy unless otherwise approved in writing by the Council's Assistant Director (Housing and Residential Services). It is the responsibility of the applicant, through discussions with the Council and an ~~RSL~~ RP, to enquire as to the availability of subsidy. Any decision taken in relation to the use of public subsidy shall include the assessment of an affordable housing development appraisal to be presented to the Council by the applicant, in partnership with the ~~RSL~~ RP, at the earliest stage.

The Council requires that affordable housing be transferred to an approved ~~RSL~~ RP on a freehold basis.

No more than 50% of the Market Housing shall be Occupied until the Affordable Housing Dwellings have been transferred to the Registered ~~Social Landlord~~ Provider on terms that accord with relevant Homes and Communities Agency funding requirements current at the date of construction of the Affordable Housing Units.

## GLOSSARY

## APPENDIX 10

Term	Definition
<b>The Act</b>	The Planning and Compulsory Purchase Act 2004.
<b>Affordable Housing</b>	<p><b>Social-rented housing:</b> housing provided by a landlord where access is on the basis of housing need, and rents are no higher than target rents set by the Government for housing association and local authority rents.</p> <p><b>Intermediate housing:</b> sub-market housing available to people on moderate incomes who cannot afford to buy or rent housing generally available on the open market. This is presently defined as households on an income of less than £35,000 per annum (as at 2008) <u>however this figure will be reviewed annually</u> to reflect changes in income: house price ratios. Intermediate housing may take the form of shared ownership, low cost home ownership or sub market rented housing, as defined in the UDP 2006.</p>
<b>Area Action Plan (AAP)</b>	LDD setting out the planning framework for areas with a concentration of proposals for change and areas of conservation, AAP's have DPD status.
<b>Community Infrastructure Levy (CIL)</b>	CIL is a general charge that local Planning Authorities can (from April 2010) choose to set on most types of new development following the development and publication of a Development Charge Schedule DPD..
<b>Core Strategy</b>	Sets out the long-term spatial vision for the local planning authority area, strategic objectives, and strategic policies to deliver that vision. The Core Strategy will have the status of a Development Plan Document.
<b>Development Plan Documents (DPD)</b>	Spatial planning documents that are subject to independent examination.
<b>Grossment</b>	Final version of a deed prepared for signature by all parties to the legal agreement.
<b>Greater London Authority (GLA)</b>	The strategic authority for London, which assumed its main responsibilities in July 2000. The Mayor for London has a duty to prepare a number of city-wide strategies, including a <i>Spatial Development Strategy (The London Plan)</i> .
<b>Habitable Room</b>	A room within a dwelling the primary purpose of which is for living, sleeping or dining - including kitchens where the total area (including fittings) is more than 13 sq.m. In proposals for blocks of flats, rooms exceeding 20 sq.m. readily capable of division will be counted as two.
<b>Heads of Terms</b>	Proposed terms or clauses to be included in a s.106 legal agreement.
<b>Household</b>	One person living alone or a group of people (who may or may not be related) living or staying temporarily at the same address, with common housekeeping (1991 Census definition).

<b>Legal Agreement</b>	In accordance with Section 106 of the Town and Country Planning Act 1990, advantages may be offered or sought as part of a development proposal (planning obligations) in order to limit the effects of that proposal, or which are necessary for it to be implemented e.g. highways improvements or contributions to education provision.
<b>Local Development Documents (LDDs)</b>	The collective term in the Act for Development Plan Documents, Supplementary Planning Documents, and the Statement of Community Involvement (SCI).
<b>Local Development Framework (LDF)</b>	The name of the portfolio of LDDs. Consisting of: <ul style="list-style-type: none"> <li>• Development Plan Documents</li> <li>• Supplementary Documents</li> <li>• Statement of Community Involvement</li> <li>• Local Development Scheme</li> <li>• Annual Monitoring Report</li> </ul> Together these documents provide the framework for delivering spatial planning strategy for a local authority area.
<b>Local Development Scheme (LDS)</b>	Sets out the programme for the preparation of LDDs. This must be submitted to the Secretary of State for approval within six months of the commencement of the Act.
<b>Planning Policy Statements (PPSs)</b>	Government advice on various planning policy matters issued from time to time to guide Local Planning Authorities in their operation of the planning system.
<b>Registered Social Landlord (RSL) Provider</b>	A non profit-making organisation registered with the Housing Corporation whose purpose is the provision, construction, improvement or management of houses for sale or rent (see Policy H2).
<b>Sealed</b>	Sealed or stamped with the Borough Crest and signed by the Mayor/ or Councillor, or Director of Legal and Democratic Services/Senior Solicitor.
<b>Statement of Community Involvement (SCI)</b>	LDD which sets out the methods and standards which the planning authority intend to achieve in relation to involving the community in the preparation, alteration and review of all LDDs and in development control decisions. The SCI is not a DPD but is subject to independent examination.
<b>Spatial Development Strategy</b>	A statutory plan prepared by the Mayor for London. This aims to provide an integrated approach to strategic planning and land use issues in London.
<b>Supplementary Planning Document (SPD)</b>	Introduced under the Town and Country Planning Regulations (2004) previously referred to as SPG (see above). Provides additional guidance on certain planning topics.

**Section 106 List of Contacts**

**APPENDIX 11**

	<b>Contact</b>	<b>Telephone</b>
Monitoring s.106 agreements	Karen Bradshaw Rebecca Black	020 8313 4550 020 8313 4345
General s106 Policy	Terri Holding	020 8313 4344
Affordable Housing	Stephanie Turner Martin Poole	020 8313 4477 020 8313 4676
Highways	Duncan Gray	020 8313 4556
Landscape/Public Realm Improvements. Public Art.	Matthew Etherington	020 8313 4573
Biodiversity Action Plan	Alistair Hayes	0208 461 7808
Community Infrastructure. Education and Health	Gill Slater	020 8313 4492
Open Space/Sports and Recreation	Doug Ogilvie	020 8313 4454
Bromley Area Action Plan	Kevin Munelly	020 8313 4582
Sustainable Development	Katie Ryde	020 8313 4520
Major Developments Team Manager	Chris Evans	020 8313 4554

## BACKGROUND DOCUMENTS

## APPENDIX 12

### National

Planning Act 2008  
Planning and Compulsory Purchase Act 2004  
Highways Act Section 278 (1980)  
Education Act (2002)  
Children Act (2004)  
Child Care Act (2005)  
Circular 05/2005 on Planning Obligations (2005)  
Office of National Statistics (2007)  
Census 2001, National Report for England and Wales (2003)  
Planning Policy Statement 1: Delivering Sustainable Development (2005)  
Planning Policy Statement: Planning and Climate Change, Supplement to Planning Policy Statement 1 (Dec 2007).  
Planning Policy Statement 12 Local Development Frameworks (2008)  
Planning Policy Guidance 13: Transport (2001)  
Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation (2002)  
Sustainable Communities: Building the Future (2003)  
Barker Review of Housing Supply (2004)  
Every Child Matters: Change for Children (2003)  
London Research Centre Labour Land Use Survey (1991)  
Housing Green Paper: Homes for the future (Aug 2007)  
CLG - Community Infrastructure Levy consultation July-Oct 2009

### Regional

The London Plan: Spatial Development Strategy (2008)  
The London Plan: Consultation draft replacement plan (2009)  
Transport for London (TfL) Travel Plan Best Practice Guidance (2006)  
Mayor's Supplementary Planning Guidance: 'Providing for Children and Young People's Play and Informal Recreation (2008)

### Local

Unitary Development Plan (2006)  
Building A Better Bromley, Sustainable Community Strategy (March 2009)  
Local Development Scheme (2007)  
Draft SPD – Affordable Housing (2007)  
Statement of Community Involvement (2006)  
The Future of Darwin's Wildlife in Bromley: The Bromley Biodiversity Plan (2006-9)  
Rights of Way Improvement Plan (2007)  
Bromley Town Centre Area Action Plan Submission 2009

### Websites

[http://www.sportengland.org/facilities\\_planning/planning\\_contributions.asp](http://www.sportengland.org/facilities_planning/planning_contributions.asp)  
<http://www.healthyrurbandevelopment.nhs.uk>  
<http://www.statistics.gov.uk>  
<http://www.london.gov.uk/thelondonplan> <http://www.london.gov.uk/mayor/strategies/sds/bpg-health.jsp>  
<http://www.teachernet.gov.uk/management/resources/financeandbuilding/schoolbuildings/schooldesign/costinformation/>  
<http://www.teachernet.gov.uk/docbank/index.cfm?id=10463>  
[http://www.bromley.gov.uk/education/childcare/bromley\\_play\\_strategy\\_2007\\_2012.htm](http://www.bromley.gov.uk/education/childcare/bromley_play_strategy_2007_2012.htm)