



**Sandwell**  
Metropolitan Borough Council

**PLANNING OBLIGATIONS SUPPLEMENTARY  
PLANNING DOCUMENT**

**SANDWELL M.B.C.**

**August 2015**

## **UPDATE**

Please note that following the removal of paragraphs 012 – 023 of the Planning Practice Guidance on 31<sup>st</sup> July 2015 by Department for Communities and Local Government, the following paragraphs in this Sandwell MBC Planning Obligations SPD will no longer be applicable:

- paragraph 4.5;
- paragraphs 7.4 – 7.6;
- and paragraph 7.12.

# **Planning Obligations Supplementary Planning Document**

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## **1. Introduction**

### 1.1 National Planning Practice Guidance states that:

“Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements and section 278 highway agreements. Developers will also have to comply with any conditions attached to their planning permission. Local authorities should ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan.”

### 1.2 The use of planning obligations in Sandwell is currently set out in a Supplementary Planning Document “Planning Obligations”, which was adopted in 2009, and updated in 2011 in order that it was consistent with policies in the Black Country Core Strategy 2011.

### 1.3 Major changes are now required to the SPD in the light of two related matters: firstly, the changes to the “Section 106” regime being introduced by central Government from April 2015, and secondly, the introduction of Community Infrastructure Levy in Sandwell, on 1<sup>st</sup> April 2015.

### 1.4 In the first instance, from April 2015, Community Infrastructure Levy (CIL) regulations restrict the use of Section 106 planning obligations to fund items of infrastructure. In future, contributions may only be pooled together from up to five separate planning obligations (backdated to April 2010) for a specific item of infrastructure that is not included on the authority’s infrastructure list – and these must be site-specific contributions which can be justified with reference to evidence on infrastructure planning.

### 1.5 With regard to the second matter, Sandwell introduced CIL in April 2015 and is not negotiable. The CIL will generate funding for infrastructure projects evidenced in its Infrastructure Delivery Programme (IDP), and defined in its Regulation 123 List. The Regulation 123 List does enable site-specific planning obligations to be used, as it specifically excludes on-site provision, improvement, operation or maintenance of open space and play provision, and of transport or traffic schemes which are required on-site to make development acceptable in planning terms.

### 1.6 This Supplementary Planning Document therefore sets out how Sandwell will deal with planning obligations from 1<sup>st</sup> April 2015 in the light of these changes. In doing so, it closely follows the National Planning Policy Framework (NPPF) and the associated Planning Practice Guidance (PPG).

## **2. Policy Background**

- 2.1 Planning obligations will be sought by Sandwell MBC where they are necessary to make a development acceptable in planning terms. The Council is guided by national policy and statutory tests in this respect.

### **National Planning Guidance**

- 2.2 The policy tests are set out in the National Planning Policy Framework (NPPF):

*“Planning obligations should only be sought where they meet all of the following tests:*

- *necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*
- *fairly and reasonably related in scale and kind to the development.”*

*(NPPF Planning Policy Guidance, Paragraph 204)*

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- 2.3 This policy is set out as a statutory test in the Community Infrastructure Levy Regulations 2010, as amended, as Regulation 122.

### **Local Planning Guidance**

- 2.4 The Local Plan for Sandwell comprises a number of documents:

- Black Country Core Strategy 2011,
- Sandwell Site Allocations & Delivery Development Plan Document 2012,
- Tipton Area Action Plan 2008,
- Smethwick Area Action Plan 2008,
- West Bromwich Area Action Plan 2012.

<http://blackcountrycorestrategy.dudley.gov.uk/>

[http://www.sandwell.gov.uk/info/200275/planning\\_and\\_buildings/676/site\\_allocations\\_and\\_delivery\\_development\\_plan\\_document](http://www.sandwell.gov.uk/info/200275/planning_and_buildings/676/site_allocations_and_delivery_development_plan_document)

[http://www.sandwell.gov.uk/downloads/file/1339/adopted\\_tipton\\_area\\_action\\_plan](http://www.sandwell.gov.uk/downloads/file/1339/adopted_tipton_area_action_plan)

[http://www.sandwell.gov.uk/downloads/download/1100/smethwick\\_area\\_action\\_plan](http://www.sandwell.gov.uk/downloads/download/1100/smethwick_area_action_plan)

[http://www.sandwell.gov.uk/info/200275/planning\\_and\\_buildings/709/west\\_bromwich\\_area\\_action\\_plan](http://www.sandwell.gov.uk/info/200275/planning_and_buildings/709/west_bromwich_area_action_plan)

## ***Black Country Core Strategy***

- 2.5 The Black Country Core Strategy was developed by the four Black Country Boroughs of Dudley, Sandwell, Walsall and Wolverhampton and sets out the vision and spatial objectives for future development in the Black Country up to 2026. The document delivers the strategic policies to aid the urban renaissance within the four authorities. It is the key statutory plan for each authority and considers not only land use but also environmental, economic and social issues.
- 2.6 The Core Strategy has been developed using three main policy areas to produce Directions of Change which are to deliver economic wealth and prosperity within the Black Country, deliver and enhance cohesive and sustainable communities within the Black Country and set a powerful agenda for its environmental transformation.
- 2.7 The Black Country Core Strategy was adopted in February 2011. The key policy for planning obligations in the BCCS is DEL1 Infrastructure Provision (table 1):

**Table 1: Policy DEL 1**

**DEL1 Infrastructure Provision**

**Strategic Objectives**

The provision of appropriate infrastructure in a timely manner underpins the whole transformational and regeneration strategy and this policy is intended to ensure the delivery of Spatial Objectives 6, 7, 8 and 9.

**Policy**

**All new developments should be supported by the necessary on and off-site infrastructure to serve the development, mitigate its impacts on the environment, and ensure that the development is sustainable and contributes to the proper planning of the wider area.**

**Unless material circumstances or considerations indicate otherwise, development proposals will only be permitted if all necessary infrastructure improvements, mitigation measures and sustainable design requirements and proposals are provided. These will be secured through planning obligations, the Community Infrastructure Levy, planning conditions or other relevant means or mechanisms, to an appropriate timetable that is prioritised, resourced, managed, delivered and co-ordinated across the sub region as a whole where appropriate.**

**To deliver and monitor the implementation of the development across the Black Country in Local Development Documents, the relevant Black Country Authorities will jointly set out:**

- The range of infrastructure to be provided or supported;**
- The prioritisation of and resource for infrastructure provision;**
- The scale and form of obligation or levy to be applied to each type of infrastructure,**
- Guidance for integration with adjoining Local Authority areas;**
- Including maintenance payments and charges for preparing**

## **Policy Justification**

- 2.67 The scale of growth proposed in the Core Strategy will have significant impacts on the local environment and the capacity of a range of infrastructure and facilities. Without appropriate investment, future development will be neither sustainable nor acceptable. The definition of infrastructure in this context is wide, including affordable housing, renewable energy, publicly accessible open space, sustainable drainage, sport and recreational facilities, air quality mitigation measures and residential services, for which overall targets and standards are set in the Core Strategy, but also locally specified requirements, such as crime prevention measures and public art, and cross boundary requirements, such as waste water management. Impacts on the environment can include loss of open space or wildlife habitat which must be mitigated.
- 2.68 Each development proposal, therefore, must address its own impacts through on-site and off-site provision or enhancements, secured through planning obligations or other relevant means. Where the combined impact of a number of developments creates the need for infrastructure, it may be necessary for developer contributions to be pooled to allow the infrastructure to be secured in a fair and equitable way. Pooling may take place both between developments and between local authorities where there is a cross-authority impact.

## **Primary Evidence**

Black Country Infrastructure Study (2009)  
Black Country Viability Study (2009)

## **Delivery**

Through DPDs and SPDs for various types of infrastructure and planning obligations.

Investment will be sought through negotiations as part of the Development Management process.

<b>Indicator</b>	<b>Target</b>
LOI DEL1 - Adoption of Local Development Documents setting out details of the full range of infrastructure to be provided or supported.	100% by 2016

## ***Sandwell Local Plan***

- 2.8 The adopted Local Plan comprises, in addition to the Black Country Core Strategy 2011, the Sandwell Site Allocations & Delivery Development Plan Document 2012, the Tipton Area Action Plan 2008, the Smethwick Area Action Plan 2008, and the West Bromwich Area Action Plan 2012.
- 2.9 The Site Allocations & Delivery DPD notes BCC Policy DEL1, and recognises that a broad range of funding mechanisms are needed to facilitate any necessary on-site and off-site infrastructure, including planning obligations, Community Infrastructure Levy, and planning conditions.
- 2.10 Three policies make specific reference to planning obligations:
- SAD EMP2 Training and Recruitment: to provide targeted recruitment or training associated with new development.
  - SAD EOS4 Community Open Space: to provide new or improved open space for new developments where appropriate.
  - SAD DM7 Residential Moorings: in certain locations, it may be appropriate to use a planning obligation to ensure the satisfactory development and/or management of the site).

## **3. Community Infrastructure Levy**

- 3.1 The Community Infrastructure Levy (CIL) has been introduced by the Government as the preferred way for local authorities to improve infrastructure and deal with planning obligations. CIL Regulations 2010 (as amended) provide local authorities with the opportunity to generate revenue from new developments, to be spent on wide range of infrastructure projects which are needed as a result of, or to enable, development. Such projects include (but are not limited to) roads, public transport, open space or health centres in their areas. CIL charges must be based on a viability assessment of development in the Borough and CIL income must be spent on identified infrastructure needs.
- 3.2 This Community Infrastructure Levy (CIL) Charging Schedule, (Table 2), was implemented on 1 April 2015. A CIL charge will be calculated for all developments that are liable for CIL (see Table 2) based upon the proposed scheme. The Charge is not negotiable.
- 3.3 In order to prepare the Draft Charging Schedule (DCS), the Council commissioned an Infrastructure Delivery Programme in 2012 to establish what infrastructure is required to cope with projected growth in the Borough, and what funding is available. As a result, the Council has

identified an Infrastructure Funding Gap of £157 million, and that a Community Infrastructure Levy is necessary to address some of the funding deficiency.

- 3.4 This CIL Draft Charging Schedule has been informed by a Viability Study prepared by Aspinall Verdi in 2014. The Study showed that viability of residential development, and for most types of retail development, in Sandwell is sufficient to bear a CIL charge. The charge is considered to be an appropriate balance between the need to fund infrastructure for growth and the need to enable development to take place. It is anticipated that CIL receipts for the period 2014 to 2026 will be approximately £7M.
- 3.5 The Council will monitor viability annually and consider a review of CIL as and when market conditions and viability information warrant it.
- 3.6 All appropriate planning applications should be submitted with a CIL Information Form:  
(<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>).

**Table 2: Charging Schedule**

**CHARGING SCHEDULE for Sandwell MBC (the Charging Authority)**

This charging schedule was implemented on 1<sup>st</sup> April 2015. It has been issued, approved and published in accordance with CIL Regulations 2010 (as amended), and Part 11 of PA 2008.

Development Typology	CIL Rate - £ per sq. m
Retail <sup>1,4</sup> Units (West Bromwich Strategic Centre only)	£50
Supermarkets/superstores <sup>2</sup> and retail warehouses <sup>3</sup> - over 280 sq. m Borough wide	£60
Residential <sup>5</sup> (1-14 units)	£30
Residential <sup>5</sup> (15 or more units)	£15
All other uses	Nil

<sup>1</sup> Retail units include all those uses within Use Classes A1-A5 as summarised below in Footnote 4 except for supermarkets/superstores and retail warehouses as defined below in Footnotes 2 and 3.

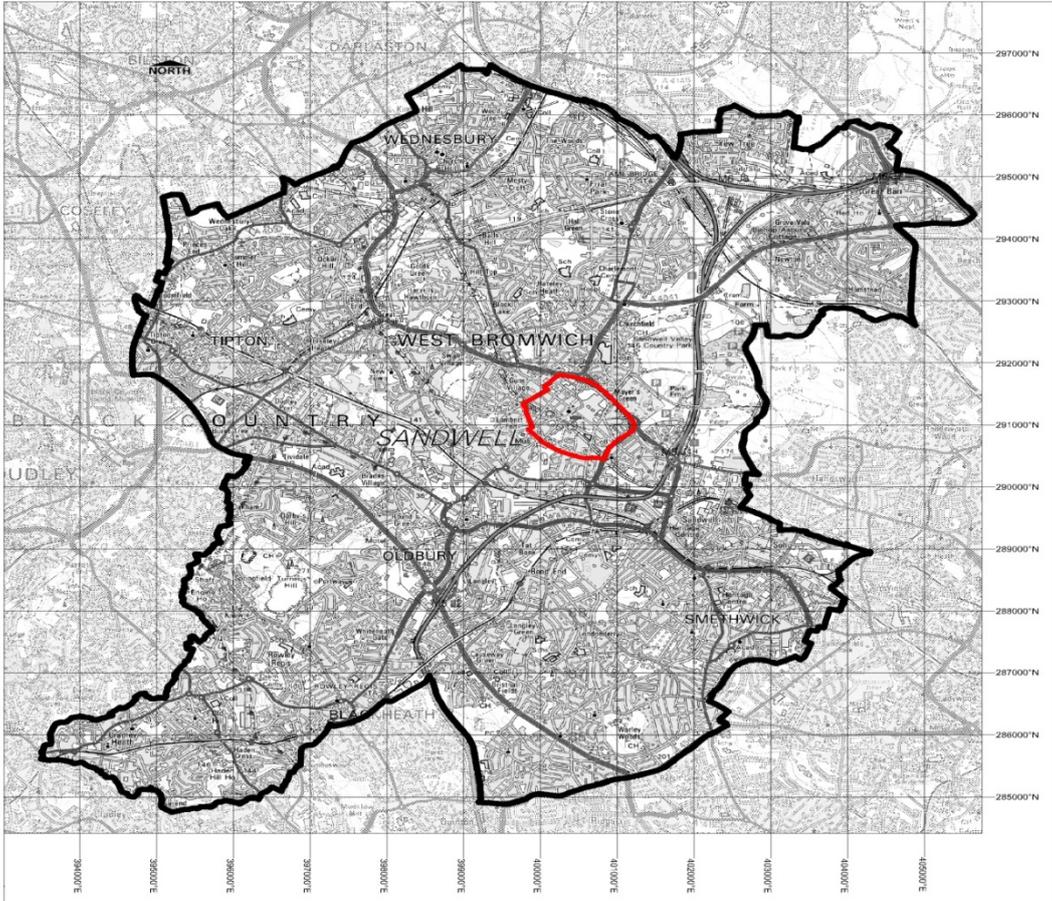
<sup>2</sup> Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.

<sup>3</sup> Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

<sup>4</sup> Use Classes A1-A5 are summarised as A1 Shops, A2 Financial and Professional Services, A3 restaurants and cafes, A4 drinking establishments, and A5 hot food takeaways.

<sup>5</sup> Residential development excludes Use Class C2 Residential Institutions – which is use for the provision of residential accommodation and care to people in need of care, hospital, nursing home, residential school, college or training centre.

The chargeable rate per square metre has been set with regard to viability, to ensure that the levy does not put at risk overall development in Sandwell. The 'Chargeable Amount' will be calculated by the Council in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010, (as amended). In outline, the chargeable rate per square metre is multiplied by the chargeable net area of development, and adjusted in accordance with the RICS Tender Price Index (to allow for changes in prices between the date the rate is set, and the date the charge is applied to a particular development).



**Sandwell Community Infrastructure Levy Residential and Retail Charging Areas**

- Borough Boundary
- West Bromwich Strategic Centre Boundary



**Not to Scale**

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## **Regulation 123 List 2015**

- 3.7 Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) restricts the use of planning obligations for infrastructure that will be funded in whole or in part by the Community Infrastructure Levy. Infrastructure types or projects that are listed below cannot also be secured through planning obligations. This is to ensure there is no duplication between CIL and planning obligations secured through s106 agreements in funding the same infrastructure projects.
- 3.8 The list below sets out the infrastructure projects or types that Sandwell MBC intends to be wholly or partly funded by CIL. The list is derived from the Sandwell Infrastructure Delivery Programme (IDP) 2013.
1. Provision, improvement, replacement, operation or maintenance of primary and secondary education facilities, with the exception of initial provision at Land at Friar Park Road Wednesbury (SAD DPD HOC8/Ref16).
  2. Provision, improvement, replacement, operation or maintenance of health care facilities, with the exception of initial provision at Land at Friar Park Road Wednesbury (SAD DPD HOC8/Ref16).
  3. Provision, improvement, replacement, operation or maintenance of open space and recreation facilities, (additional outdoor gym and complementary youth facilities, additional outdoor all weather facilities, recreational infrastructure (e.g. drainage, signage, lighting), arboriculture of tree stock, management of ecological spaces, additional recreational buildings), and library facilities. This specifically excludes on-site provision, improvement, operation or maintenance of open space and play provision required on-site to make development acceptable in planning terms.
  4. Provision, improvement, replacement, operation or maintenance of Local Transport Network schemes and Public Transport schemes (listed below). This specifically excludes on-site provision, improvement, operation or maintenance of schemes required on-site to make development acceptable in planning terms.
  5. Provision, improvement, replacement, operation or maintenance of specified flood defences (culverted channel Cradley Heath, raised defence Holloway Bank, Titford culvert upsizing).

- 3.9 Planning obligations will still be required in accordance with Regulation 122 and 123 (Community Infrastructure Levy Regulations 2010 (as amended)) for obligations relating to infrastructure not listed above.
- 3.10 Inclusion in this list does not signify a commitment from the council to fund all of the projects listed, or the entirety of any one project through CIL. The order in the table does not imply any order of preference for spend.

### **3.11 Local Transport Network schemes**

#### **Major Schemes related to growth as outlined in the West Bromwich AAP**

- A41 Carters Green Junction Improvement
- West Bromwich South West Bypass
- M5, Junction 1 Improvement

#### **Other schemes related to growth in West Bromwich AAP**

- Ringway Modifications (High Street/Bull Street)
- Ringway Modifications (Spon Lane/Ringway Junction)
- Trinity Way/High Street Junction
- Kelvin Way/Spon Lane Junction
- A4182 Junction Improvements

#### **Schemes related to Smethwick AAP**

- Lewisham Rd/Bridge St Junction
- Rolfe St/Bridge St and Rolfe St/New St. Junctions
- Soho Way/Soho St Junction

#### **Other schemes related to growth across Sandwell (RC9, RC12, RC13)**

- B4166 Oldbury Road /Albion Road Junction
- Charles St/Phoenix St Junction and Greets Green Rd/Ryders Green Rd Junction
- Lower Church Lane Improvement
- Cornwall Rd/Foundry Lane Junction
- Highgate St/Garratts Lane Improvements
- Lower High St/Forge Lane Junction
- Tollhouse Way/Grove Lane Junction, Smethwick

### **3.12 Public Transport schemes**

#### ***Short term***

- Londonderry Interchange (Smethwick)
- Walking and cycling routes improvements to complement wider growth measures
- Park and ride extension at Rowley Regis
- Public realm measures at West Bromwich /Metro Plaza Complementary Works
- CCTV improvement measures across Sandwell
- Passenger Information Improvements across Sandwell

#### ***Medium term***

- Tipton Public Transport Interchange
- 2 Bus corridor routes 126 and 87
- Strategic bus corridors across Sandwell
- Blackheath Public Transport Interchange

### 3.13 Long term Cross Boundary/Sub-regional Measures

The following schemes fulfil a sub-regional role so not all the cost of the projects can be attributable to CIL in Sandwell. Assumptions are made on the element of demand generated by future development in Sandwell.

- Black Country Gateway – Bescot Yard Intermodal Rail Freight Interchange
- Rowley Regis turnback (part of wider Snow Hill Line enhancements)
- Wednesbury to Brierley Hill Rapid Transit Route
- Walsall – Stourbridge Freight line

[http://www.sandwell.gov.uk/info/200275/planning\\_and\\_buildings/950/planning\\_policy/5](http://www.sandwell.gov.uk/info/200275/planning_and_buildings/950/planning_policy/5)

3.14 Following the introduction of CIL in April 2015, planning obligations made under Section 106 of the Town and Country Planning Act 1990 will be limited to those matters that are directly related to a specific site, and which are in accord with Regulation 122, i.e. the obligation is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. This may include requirements which are not capable of being funded through CIL, such as affordable housing.

3.15 Examples of the type of infrastructure it is intended to fund through CIL, or through S106:

Table 3: Examples of infrastructure funded by CIL or S106

<b>Intended to fund via CIL</b>	<b>Intended to fund via S106</b>
Provision, improvement, replacement, operation or maintenance of Local Transport Network schemes and Public Transport schemes listed in the SMBC Infrastructure Development Programme.	Local site-related transport improvements, such as junction improvements, new accesses, travel plans.
Provision, improvement, replacement, operation or maintenance of flood defences.	Local site-related flood risk remedies.
Provision, improvement, replacement, operation or maintenance of open space.	Provision of on-site open space or play space especially on larger sites.

3.16 Following the introduction of CIL in April 2015 Sandwell will continue to pool Section 106 contributions to provide appropriate items of

infrastructure not contained in the Reg. 123 List. No more than five planning obligations (entered into after 6 April 2010) will be pooled in respect of one of these items of infrastructure.

- 3.17 A large scale development, (such as Land at Friar Park Road), is likely to have greater impact on the local community and the infrastructure network, and is more likely to require on-site provision of certain facilities such as green space or education. It is anticipated that there is likely to be a limited number of instances in the plan period to 2021; where this does occur, the authority will assess the extent of the need for infrastructure and negotiate the appropriate planning obligations.

#### **4. Section 106 Agreements & Section 278 Agreements**

- 4.1 Development proposals will be assessed for CIL and for on-site planning obligations as outlined above.
- 4.2 However, for specific development sites certain planning obligations in the form of Section 106 Agreements and/or Section 278 Agreements may still be required.

#### **On-site requirements**

- 4.3 Planning obligations for on-site infrastructure may still be required in accordance with Regulation 122 and 123 (Community Infrastructure Levy Regulations 2010 (as amended)) for obligations relating to infrastructure not listed in the Regulation 123 List. Where this is the case, advice will be given at pre-application stage.

#### **Affordable Housing**

- 4.4 In Sandwell, there is a policy requirement for the provision of affordable housing on developments of 15 dwellings or more. The amount and nature of that provision is informed by the affordable housing policy (see Appendix 1 for details), the latest Housing Needs Survey and other more specific and current information available from the Council's Housing Management System. Only in exceptional circumstances would a commuted sum be acceptable instead of on-site provision.
- 4.5 The Council will apply Vacant Building Credit, see paragraph 7.4 for further information.
- 4.6 Affordable housing requirements are specifically excluded from the CIL regime, they will be dealt with through Section 106 agreements. However it should be noted that within the CIL regime, affordable housing can attract relief if the relevant criteria is met.

#### **Transport**

- 4.7 Obligations are sometimes required to mitigate traffic impacts as part of the development scheme and these are generally dealt with through consultation with the Highways England. Where required, a Section 278 Agreement will be prepared.
- 4.8 Section 278 Agreements (under the Highways Act 1980) are made between a highway authority and a person who agrees to pay all or part of the cost of highways works.
- 4.9 Sandwell's Infrastructure Delivery Programme specifies those local highway schemes which it is intended to fund through the community Infrastructure Levy, and Section 278 Agreements will not apply to those schemes.

4.10 The Regulation 123 List also specifies that CIL will be used to fund:

Provision, improvement, replacement, operation or maintenance of Local Transport Network schemes and Public Transport Schemes listed in the SMBC Infrastructure Development Programme, but specifically excludes on-site provision, improvement, operation or maintenance of schemes required to make development acceptable in planning terms.

4.11 There are different rules and regulations for Highways agreements drawn up by the Highways England, which is responsible for the strategic road network, and these are not part of Sandwell's CIL and Section 278 arrangements.

4.12 Where Section 278 Agreements are used, there is no restriction on the number of contributions that can be pooled.

4.13 Further information on the application of section 278 Agreements in relation to specific planning proposals is available from [highwaysgeneral@sandwell.gov.uk](mailto:highwaysgeneral@sandwell.gov.uk).

4.14 Section 106 agreements will continue to be sought for Travel Plans where applicable.

### **Community Benefit**

4.15 Some potential planning obligations do not fall within the scope of Community Infrastructure Levy requirements. Sandwell Council promotes a community benefit approach to maximise social and economic impacts and contribute toward the creation of sustainable communities and local businesses. Accordingly, the Council may seek Planning Obligations to assist in delivering skills, employment and training contributions for development.

4.16 The purpose of the Think Sandwell Employment and Training Initiative is to ensure that planning obligations related to employment and training are identified as part of the council's community benefit clause for targeted recruitment and training. Planning obligations aimed at providing employment and training for local unemployed residents will be sought from appropriate development sites which meet one or both of the following thresholds:

1. Developments containing 11 residential units or more, hotels, student/ residential accommodations with 20 or more rooms, or an uplift in business/employment floor-space of 1000 square metres Gross External Area (GEA) or more. These developments are required to provide on-site construction training and

apprentice opportunities during the construction phase where applicable.

2. Developments with a business/employment floor-space of 1000 square metres or more GEA. These developments are required to provide employment and training opportunities, including apprenticeships, enabling local unemployed people to gain employment in the construction of the development and once development built the end-user opportunities where applicable.

4.17 The Community Benefits Coordinator is the initial main point of contact for advice and guidance to all developers and contractors to meet the requirements contained within the formal planning requirements for employment and training.

4.18 The role of the Community Benefits Coordinator is to act as the interface and therefore provide a structured approach between the developer/contractor and the training provider, helping to facilitate the delivery of agreed employment and skills targets within an Employment and Skills Plan (ESP).

4.19 Further information: Karen Richards - Community Benefit Coordinator:  
0121 569 2104/ 07929 353 338 or email:  
[Karen\\_richards@sandwell.gov.uk](mailto:Karen_richards@sandwell.gov.uk)

## **Others**

4.20 Certain other planning obligations which do not relate to infrastructure provision, and which do not appear on the Regulation 123 List may be required or negotiated on some developments, for example, developments that would generate additional requirements for safety and security measures; effects on historic environment and travel plans ([transport@sandwell.gov.uk](mailto:transport@sandwell.gov.uk)).

## **5. Assessing Viability**

5.1 In the event that a developer considers that the proposed development is not sufficiently viable to be able to meet some or all planning obligations, it is the responsibility of the applicant to demonstrate this to the Council's satisfaction. This is only applicable to planning obligations and S106 agreements and not Community Infrastructure Levy (CIL), which is not negotiable.

5.2 For the Council to consider a viability case, it will be essential that the developer shares information substantiating this on an open book basis. It must be in the form of a Viability Appraisal to the standard of DAT HCA.

<https://www.gov.uk/government/collections/development-appraisal-tool>

5.3 The Council will in most cases, refer the Appraisal to a third party such as the District Valuer for examination and verification, with the cost of this to be paid by the applicant in advance.

5.4 If the applicant considers that the proposed development incurs abnormal development costs, full details must be provided to the Council. The costings should take account of extra-over costs only, and provide a comparison breakdown of costs for the same development with normally anticipated "brownfield" specification to compare with the costings for the "abnormal" specification that is proposed. A site investigation report, remediation statement, detailed foundation drawings and calculations of how the abnormal costs have been derived must be submitted with the application.

5.5 Further detail of the Council's view on abnormal costs is contained in Appendix 2.

5.6 If the Council considers that a development site is marginal in terms of viability, the Council may reduce the cost of the Planning Obligation(s). In general terms, a pro rata reduction would be made to reduce the obligations as a whole, but the particular obligations effected will be determined by the Council in line with its policy requirements at the time. This does not apply to Community Infrastructure Levy (CIL) which is not negotiable.

5.7 However, some planning obligations are required in order to make the application acceptable in planning terms, and are therefore necessary for good planning. A development which is insufficient in terms of the necessary planning obligations cannot be considered to meet policy requirements. For example, certain road junction improvements may be required in order to make the development of a housing site safe.

## **6. Pre-application, monitoring and charges**

### **Pre-application**

- 6.1 The Council encourages pre-application discussions as a matter of course. Initial requirements, planning obligations where appropriate, and any CIL liability will be advised at an early stage in the process. These can be based on a developer's early layout or on a set of assumptions.

### **Monitoring**

- 6.2 Monitoring of Section.106 Agreements is required in order to ensure that planning obligations entered into are complied with in the agreed timescales, that any monies due under the Agreement are received at the correct stage, that they are spent on the appropriate projects or programmes, and that they are spent within the agreed period.
- 6.3 The monitoring is carried out by the Council's Section106 Monitoring Officer. However, other Council officers will become involved from time to time, depending on the complexity of the Agreement.

### **Charges**

- 6.4 All Planning Obligations will incur charges as follows:

### **Legal and Administrative Costs**

- 6.5 The Council will charge a fee to cover the reasonable legal and administrative costs of preparing, negotiating and completing the Section 106 Agreement. This amount is determined by, and payable to, Legal Services. Currently, the minimum fee is £750 per agreement. Additional costs may arise due to the complexity of a particular agreement.

### **Monitoring**

- 6.6 Each S.106 Agreement will include a standard charge to cover the costs to the Planning Service of monitoring the obligations. Currently, the charge is £500 per obligation in the same Agreement.

## **Appendix 1: Affordable Housing**

### *7.1 Policy Background*

“To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

- plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);
- identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and
- where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.”

(NPPF Paragraph 50).

7.2 Black Country Core Strategy Policy HOU3 Delivering Affordable Housing sets out the Council’s approach to the provision of affordable housing in new residential developments. The policy requires up to 25% affordable housing on all developments of 15 or more dwellings where this is financially viable.

The Council has also produced a Statement of Abnormal Costs (Appendix 2 of this document) to allow for an element of flexibility in the provision of affordable housing should the developer be able to demonstrate that there are abnormal costs associated with the site that would prejudice the viability of the development if an element of affordable housing is included. The statement provides guidance on what will and will not be considered as abnormal development costs.

7.3 The Black Country Core Strategy seeks to provide sufficient affordable housing to meet local housing needs. The tenure and type of units sought will be determined on a site-by-site basis, based on the best available information regarding housing need. Policy HOU3 provides an opportunity for the Black Country Local Authorities to establish an agreed definition for affordable housing, a common target, and sets out how affordable housing will be delivered – a consistent approach across the Black Country.

## **Vacant Building Credit**

- 7.4 In November 2014 the Government announced the policy that for vacant buildings (or those which have been demolished as part of the scheme), an affordable housing contribution can only be sought on any uplift in floorspace as a result of the development.
- 7.5 The Council will apply Vacant Building Credit in line with the National Planning Policy Framework (NPPF) and Planning Practice Guidance (NPPG).
- 7.6 The vacant building credit applies where the building has not been abandoned.

## **Definition of Affordable Housing**

- 7.7 Affordable housing includes social rented, affordable rented and intermediate housing provided to specified eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.
- Social rented housing is rented housing owned and managed by local authorities and housing associations (known as Registered Providers, or RPs) for which guideline target rents are determined through the national rent regime.
  - Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable)
  - Intermediate affordable housing is housing at prices and rents above those of social rent but below market price or rents. These can include shared equity (e.g. Homebuy), shared ownership, discounted sale homes and intermediate rent, but not affordable rent.
  - Homes of these types will only be considered as intermediate affordable housing if they meet the criteria in the definition. If they do not, even if they are offered at less than market price, they will be considered “low cost market housing”.
- 7.8 Low cost market housing is not part of the Government’s definition of affordable housing and therefore will not be considered as such by Sandwell Council.

## **Policy Development**

7.9 The application of the policy is particular to each planning application. The Council's preferred approach is for the affordable housing provision to be provided on-site by the developer and then transferred to a RP for management and maintenance. The preference is for the units to be evenly distributed throughout the development to avoid the affordable units being isolated in one part of the site. Commuted sums will be acceptable only in exceptional circumstances.

7.10 Sandwell's adopted Residential Design Guidance states:

"Where affordable housing is included within housing layouts it should not be grouped together or segregated from the wider development, and ideally pepper-potted across sites where possible. Neither should affordable housing be isolated or obvious because of its design. Dwellings must be tenure blind and consistent with wider development in terms of architectural coding and the quality and variety of materials proposed."

## **Calculating the Level of Provision of Affordable Housing**

7.11 In line with Black Country Core Strategy Policy HOU3 Delivering Affordable Housing, the Council negotiate up to 25% of the total units to be provided on all sites over 15 units in size. However, if the developer can demonstrate to the Council's satisfaction that:

- The site does not have access to local centres and public transport, or
- There is no demonstrable need for affordable housing in the locality, or
- There are abnormal development costs that will prejudice the viability of the development if an element of affordable housing is included,

Then the Council will not require affordable houses to be provided.

7.12 Regard will also have to be had to the Vacant Building Credit, see paragraph 7.4.

7.13 The Black Country Core Strategy contains a target of 11,000 affordable dwellings in the period 2006-2026 – this equates to approximately 550 dwellings per year in the Black Country. Sandwell will seek an appropriate amount of affordable housing each year to contribute to this target. However, it is also important to note that affordable housing is not only delivered through Section 106 Agreements but also through other funding programmes.

## **Tenure Mix**

7.14 The overall provision of affordable housing also has to consider tenure mix. The evidence within the Council's Housing Needs and Demands Survey 2010 suggests that a balance of 50% social rented and 50% intermediate housing will meet the needs of low income households, key workers and those on average who are unable to purchase. Therefore, the Council will expect the affordable housing provision to be apportioned in this way.

### **Mix of House Types**

7.15 In addition to a mix of social rented and intermediate provision, the Council will expect the size, type and tenure of affordable housing to be in accordance with the information provided by the latest Housing Needs and Demand Study and any other information that the Council may collect with regard to housing need.

### **On-Site Provision of Affordable Housing**

- 7.16 There are two ways of providing affordable housing on-site:
- The site is developed and a proportion of the units are transferred by the developer to an RP to manage (with or without a transfer of ownership of land), or the transfer of a site, with full access rights, to an RP.
  - The Council's preferred approach is for the developer to construct all the houses and then transfer ownership of the required affordable properties to a Registered Provider. This is to ensure that affordable homes are regulated appropriately and remain affordable in perpetuity (subject to the right to acquire).
- 7.17 In larger residential developments where the site is to be developed in phases, developers will be expected to prepare a master plan that sets out the number and type of affordable houses to be provided in each phase. The number of affordable dwellings in each phase should be proportionate to the overall level of affordable housing on site.
- 7.18 In these circumstances, the following condition will be attached to planning permissions containing affordable housing:
- 25% of the general market housing on the site cannot be occupied until the affordable housing element defined in the planning application has been transferred to an appropriate Registered Provider.

### **Commuted Sums**

7.19 Council policy is that commuted sums in lieu of on-site provision will only be accepted in exceptional circumstances where all other avenues have been explored and found to be unsuitable. In practice, commuted sums are generally accepted in lieu of on-site bungalow provision and occasionally for other types of dwelling, if an adequate number is not

being provided on-site, by the developer, to meet the affordable housing requirement.

7.20 Commuted sums will be calculated using the following method:

The amount payable per dwelling will be a sum equal to the difference between the appropriate RP purchase price and the market valuation of an equivalent dwelling in the locality (with a distinction between rented units and shared ownership units).

Typically, a RSL would pay 50% of the market value for a rented unit, 55% for an affordable rented unit and 70% for a shared ownership property.

Example:

**Market Valuation = £150, 000**

For social rented unit this would be:

Purchase Price (social rented unit) at 50% of market value = £75,000

Commuted sum = £150,000 - £75,000 = **£75,000**

For Affordable rented unit this would be:

Purchase Price (Affordable rented units) at 55% of market value

Commuted sum = £150,000 - £82,500 = **£67,500**

For shared ownership unit this would be:

Purchase Price (shared ownership) at 70% of market value = £105,000

Commuted sum = £150,000 – £105,000 = **£45,000**

7.21 Any costs associated with negotiating a commuted sum, including the cost of site/property valuations, will be met by the developer directly.

7.22 The timing of the payment of commuted sum will be in accordance with a payment schedule agreed with the Council.

7.23 All cash payments will be held in a ring-fenced account and used to fund affordable housing in line with the Council's Housing Strategy. Contributions will mainly be used to fund affordable housing opportunities across the Borough, although there maybe occasions where the funding will be used to improve the condition of existing affordable dwellings.

## **Further Information**

- 7.24 The current threshold for requiring the provision of affordable housing is 15 dwellings. Where sites are developed in phases, a pro rata contribution will be required.
- 7.25 Details of the agreed provision of affordable housing (on or off site) are set out in a Section 106 Agreement. This includes details of plot numbers, bedroom sizes, tenure and any commuted sum payments. Planning conditions may also be used to secure this objective in appropriate circumstances.
- 7.26 The Section 106 Agreement will allow up to 10 years for the sum to be spent; in the unlikely event that the commuted sum is not spent in that period, there is provision for it to be paid back.
- 7.27 Where there is potential for a number of different schemes to provide a commuted sum for one target site, it may be appropriate to pool the contributions, e.g. for a development of bungalows for the elderly.
- 7.28 Should the developer consider that the Council's approach to the provision of affordable housing would threaten the economic viability of a scheme, they must submit full details, including costings and valuations, as required in the section on assessing viability. The Council will not reduce the requirements without being able to consider this information.

## **Appendix 2: Abnormal Costs**

8.1 The overwhelming majority of development sites in Sandwell must be considered as “brownfield sites” and this should be reflected in the valuation and purchase price of the site.

8.2 However, the Council recognises that there are some circumstances in which abnormal costs are a threat to the viability of the development of a site. Therefore, the Council has prepared guidance notes on what will, and will not be considered as “abnormal development costs”. These were initially developed for use in connection with affordable housing, but the viability implications apply to all contributions.

8.3 The following guidance is based upon the assumption that a developer has carried out “due diligence” in the acquisition of the proposed development site and has satisfied himself of matters associated with the site history and previous uses. This is usually done by means of an “environmental audit” and limited site investigation to identify any liabilities and development constraints before purchase of the site.

### **8.4 The following development costs will not normally be considered as “abnormal”:-**

- Demolition of existing buildings and clearance of the site.
- Removal or treatment of underground obstructions, cellars, basements and storage tanks.
- The location and treatment of abandoned mineshafts identified on Coal Authority search enquiries.
- Diversion of existing services, sewers, culverted watercourses and overhead power lines.
- Extinguishment of highway rights and grubbing out of any existing highway infrastructure that may affect the development.
- Re-profiling of a sloping site.
- Provision of retaining walls and retaining structures on a sloping site.
- The provision of land drainage unless associated with leachate control measures from a former landfill or encapsulation location.
- Additional foundation and drain protection measures to safeguard buildings from the presence of trees.
- The eradication /treatment of Japanese Knotweed or other invasive plant species.
- Any anticipated costs for area improvements by “planning gain”, Section 106 agreements.

### **8.5 The following may be considered as “abnormal” development costs:-**

- Probe drilling and pressure grouting of cavities and voids associated with former mine workings and geological faulting beneath the footprints of buildings within 50 metres of the ground surface.

- The removal of, or on-site treatment of, combustible/carbonaceous fills from beneath the footprints of proposed buildings.
- The on-site treatment of highly contaminated materials by specialist techniques such as, encapsulation/entombment, bio-remediation or thermal desorbition.
- The provision of a capillary break layer to prevent recontamination of near surface soils as a result of re-charging of potentially contaminated ground water.
- The provision of an engineered cap layer to protect end users/ building fabric from contaminants.
- Protection measures to foundations/drainage systems to safeguard against very aggressive ground conditions, e.g. sacrificial materials, protective coatings and treatments.
- Provision of active gas protection measures and certain aspects of passive gas protection measures to safeguard occupants of proposed buildings from elevated levels of ground gas, e.g. gas proof membranes, sub-floor ventilation blankets and ventilation provisions.

8.6 It should be noted that the above is not meant to be an exhaustive list and the developer should recognise and accept that each site will have its own constraints and the Council will have to look at the merits of each site carefully.