

Planning obligations guidance - toolkit for Hertfordshire

Hertfordshire County Council's requirements

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1. Introduction

- 1.1 This document incorporates the 5 key planning themes of the Government's planning agenda; Transparency, Clarity, Certainty, Speed and Practicability, and seeks to achieve the following aims:-
- To provide information on Hertfordshire County Council's ("the County Council") planning obligation requirements in a single document.
 - To provide evidence of and promote good practice.
 - To provide guidance to Hertfordshire's Local Planning Authorities (LPAs) in the formulation of policy, particularly Supplementary Planning Documents (SPDs).
 - To inform and guide planning applicants.
 - To act as a material consideration in the planning applications decision making process, following on from the Structure Plan and in advance of Local Development Framework policy.
- 1.2. It is also aimed at all persons involved in town planning processes such as the making of planning applications and particularly professionals such as town planners, surveyors, lawyers and highway engineers working within the County Council, the District/Borough councils and the development industry.

2. Background

- 2.1. The Government's Sustainable Communities Agenda seeks to deliver a step change in the quality of life in our communities, involving better quality public services such as education and community facilities, good public transport and transportation infrastructure, as well as decent homes and a safe and healthy environment.
- 2.2. The planning obligation system is key to assisting in the delivery of the above objectives. Recently, planning obligations have been the subject of extensive public and media interest. In addition, the County Council is increasingly seeking contributions on more proposals and for wider purposes, therefore seeks that robust and transparent procedures are in place to manage the process of securing such obligations.
- 2.3. The Government and planning applicants who submit planning applications are also increasingly seeking a more efficient and cost effective turnaround on planning permissions from LPAs. The processing of planning obligations, whether in the form of a s106 agreement or unilateral undertaking, is an integral part of the planning application process and accordingly there is increasing pressure on those involved in the planning process to respond to that need.
- 2.4. For these reasons, planning obligations were identified as one of a number of areas where the common development of guidance / provision of expertise could usefully form part of the bid made by the local authorities of Hertfordshire to become a pathfinder area for

enhanced two-tier working, (in response to the Invitation to Councils published with *Strong and Prosperous Communities – The Local Government White Paper* on October 26, 2006). The bid will act as a 'memorandum of understanding' between the local authorities and a basis for future joint working with a range of partners. Hertfordshire has achieved Pathfinder status and this was confirmed in a ministerial statement in July 2007.

- 2.5. This guidance has been drawn up to clearly set out the way in which the County Council will deal with the negotiation, preparation and completion of all planning obligation agreements in the future. There will be a need to develop, amend and review it in the future in the light of experience and any future government advice and guidance.

3. Structure

- 3.1. The guide provides information on the need and justification for seeking planning contributions. It advises on thresholds above which contributions/provision will be sought, standard charges, guidance as to when and where standard charges are not appropriate (for instance on large developments), situations where further consideration will be required to determine appropriate provision and when or where contributions may not be required. It also advises on how contributions will be spent.
- 3.2. The appendices provide information on the formulation of legal documents, including: -
 - providing model templates for agreements and unilateral undertakings;
 - the County Council's approach on detailed matters relating to S106 contributions/obligations;
 - fee structures;
 - indexation and;
 - the County Council's approach to the drafting of S106 documents.

4. Coverage

- 4.1. Both the County Council and the District/Borough LPAs seek planning obligations either through the implementation of 'saved' local plan policies or more recently through local development documents. There are 11 LPAs within Hertfordshire comprising the Borough Councils (BC's), the District Councils (DC's), and the County Council, all of which are the determining authorities on planning applications in the county.
- 4.2. The LPAs fulfil a statutory function and in so doing are required to consult other statutory bodies such as the highway authority, fire authority, education authority and other interested parties. This guide relates to the County Council's statutory functions in Hertfordshire and provides information in relation to county requirements in so far as they relate to

services provided by the County Council. Discussions on development proposals should always take place with the relevant local planning authority first, before contact is made with the County Council on its requirements. A list of LPA contact details can be found at appendix 6

- 4.3. The DC's and BC's may also seek planning obligations in relation to development proposals but as they may be specific to each Borough/District area, such requirements fall outside the scope of this document. This guide covers those obligations required to meet needs in respect of the provision of highways and transportation, education, libraries, youth and childcare facilities, fire and rescue provision, key-worker housing, and special needs facilities. It also covers the approach currently being taken on other matters such as waste and minerals, economic development etc.
- 4.4. It should be noted that the approach adopted in North Hertfordshire district is slightly different to that elsewhere in Hertfordshire at the present time. This is because work was undertaken in 2006 to justify standard contributions in respect of sustainable transport, education, youth, childcare and library requirements, in preparation for their Supplementary Planning Document. It is intended that the SPD will be reviewed in due course in order to bring the requirements within this district in line with the County council's up to date information in the future. Reference should be made to the website, <http://www.north-herts.gov.uk/council/default.asp?step=4&pid=1148> for more information on specific requirements in this district.
- 4.5. It should also be noted that other LPA's may develop SPD after this document has been approved and where this occurs such documents will take precedence over this document.

5. Status and Consultation

- 5.1. This guide has been developed by County Council officers in consultation with members and has been approved by County Council's Cabinet on 21 January 2008. The views of district planning authorities and development industry stakeholders were sought through a consultation process undertaken during August –October 2007. The Toolkit is produced for guidance purposes and is not a statutory planning document. The LPAs have the responsibility of weighing up the importance of this document and requirements for obligations against competing requirements/issues when considering planning applications. The LPAs of Hertfordshire are also encouraged to refer to this document in the preparation of their Local Development Documents.
- 5.2. This document is available to view on the County Council's website at www.hertsdirect.org/planningobligationstoolkit It may also be viewable on district/borough websites.

6. Review

- 6.1. This document will be reviewed regularly and updated/amended as considered necessary (likely to be on an annual basis). Such review will also ensure that the information used in calculating contributions (i.e. building costs, census information), is up to date and base figures accurately reflect costs.
- 6.2. At a national level, the town planning system has recently been, and remains, the subject of review and change. The County Council has noted the Government's desire to change the planning obligations system via consultations on the Planning Gain Supplement and may need to reconsider its approach at an appropriate time in the future. It is important that the County Council responds positively to the challenges that this may bring. Consideration may be given to the development of the new standard planning charge and/or tariffs where necessary and appropriate, to fit particular local circumstances.

7. National Policy Context

- 7.1 The statutory provisions for planning obligations are set out in Section 106 of the Town and Country Planning Act 1990. Circular 5/05 Planning Obligations provides guidance on the use of planning obligations. They may: -
 - restrict development or use of the land;
 - require operations or activities to be carried out in, on over or under the land;
 - require the land to be used in any specified way or;
 - require payments to be made to a local authority, either in a single sum or periodically ("S106 Contributions").
- 7.2 Planning obligations (or S106 agreements) are private agreements negotiated between local planning authorities and persons with an interest in land. They are intended to make acceptable development which would otherwise be unacceptable in planning terms. An obligation, must only be sought where they meet all of the following 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 aspects.

- 7.3 Where necessary, planning obligations make otherwise unacceptable development acceptable in planning terms. They may be used to prescribe the nature of a development, to compensate for loss or damage created or to mitigate against the impact of the development and can take one of two forms: -
- a private, mutual agreement between local authorities and those with an interest in land or;
 - a unilateral undertaking proposed by those with an interest in the land.
- 7.4. In line with the broad aims of the Government Circular 5/05, the County Council will ensure that obligations are handled in a fair, open and reasonable way and that they enhance and enable development to go ahead which would otherwise be refused. Planning obligations can relate to matters other than those covered by the planning permission, but only provided there is a relationship between the planning obligation and the planning permission. Planning obligations cannot be sought or accepted where this connection does not exist or is considered to be too remote. Unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by Planning Applicants.
- 7.5. Audit Commission and Government advice encourages the use of standard charges and formulae where appropriate and recognises that these may give greater certainty to developers and speed up negotiations. Where appropriate, the County Council may explore pooling of S106 contributions from a number of different developments in order to fairly and efficiently mitigate their combined or cumulative effects.
- 7.6. Planning Policy Statement 12 (PPS12) sets out the Government's advice to Local Planning Authorities on the preparation of local development frameworks. The Hertfordshire authorities may prepare supplementary planning documents on the subject of planning obligations. The information contained in this document is written with the aim of assisting in the preparation of such documentation.
- 7.7. PPS12 also indicates that the capacity of existing infrastructure and the need for additional facilities should be taken into account in the preparation of local development documents. Plans exist to undertake an infrastructure study across Hertfordshire in 2008.

8. Local Policy Context

There are various tiers of local government which produce policy relevant to planning obligations.

8.1. Regional Spatial Strategy

Policy IMP1 of the East of England plan aims to increase investment in infrastructure and Policy IMP2 is concerned with establishing consistent approaches to the negotiation of planning agreements through partnership arrangements.

8.2. Local Plans and Local Development Frameworks

The Hertfordshire District Local Planning Authorities and County Planning Authority produce local planning policies which address the need for planning obligations. The Planning and Compensation Act 2004 requires that local planning authorities produce new style Local Development Frameworks to replace local plans and it anticipated that these will also include policies relevant to planning obligations. Authorities may also produce more detailed information in Supplementary Planning Documents or Area Action Plans.

9. Planning Obligations Sought

9.1 The County Council is responsible for ensuring the provision of a range of services and seeks contributions and/or facilities from development which would have an additional impact on service provision, including:

- Sustainable transport measures such as highways and rights of way improvements (including payments for the provision of roads, byways, footpaths, bridleways, cycle ways, bridges, bus infrastructure and/or traffic signals as may be required)
- Passenger Transport
- Education
- Libraries
- Youth & childcare
- Fire and rescue services
- Adult care services – special needs accommodation and other services
- Other matters such as economic development, archaeology, waste facilities, green infrastructure, key worker housing.

9.2 Please note that the LPAs may seek planning obligations themselves for other matters, such as open space, sports and recreation facilities, affordable housing etc.

10. Application and Thresholds

10.1. The threshold for seeking contributions/obligations for residential developments is one dwelling. It should be noted, however, that Hertfordshire's LPAs may set their own thresholds or deem contributions inapplicable in certain instances and this should be checked with the local authority responsible. The threshold has been set to ensure fair treatment of all developments and to reflect the fact that small projects

may not in themselves have an impact on infrastructure, services and facilities within an area, but collectively they do create additional demands.

- 10.2. The use of formulae and standard charges is a means of addressing the likely cumulative impact of development in a fair and equitable way. Developers will be required to make financial contributions to fund both on and off-site provision as appropriate.
- 10.3 In relation to sustainable transport charges, planning obligations are sought from all types of development. For non residential development a contribution will be required where one or more vehicle parking spaces are needed. Where other services are concerned, planning obligations are in general only sought from residential development. They are not usually sought from commercial development, except in some instances by the Fire and Rescue Service.
- 10.4 In the case of education, the County Council will assess demand generated by development. It will also assess whether the capacity and quality of the existing services, facilities or infrastructure can cope with that additional demand. Applicants are encouraged to contact the County Council to determine whether contributions are required in each case.
- 10.5 A review of other services will be undertaken on a regular basis to check whether contributions are necessary.
- 10.6 The Toolkit is designed for use in relation to small and medium sized developments. Contributions from developments of less than 300 dwellings can be calculated using the table calculators shown below. These tables illustrate the effect of threshold requirements for dwellings and the charges that could apply. Developments larger than 300 units will be considered individually and specific on-site or off-site provision may be sought for land or built facilities such as schools and other community facilities. Note however that for highway matters this figure will, depend on local circumstances and should be checked with the relevant highway engineer. As mentioned at paragraph 6.2 large scale growth may be handled in a different manner, perhaps through a tariff approach. Each case is likely to be different with needs which must be assessed individually.
- 10.7 The County Council and 10 districts/boroughs have produced a joint bid to the Government to fund an Infrastructure Study /Strategy for Hertfordshire, to determine the impact of the growth agenda. On 3rd October, 2007 the Hertfordshire Leaders Group considered the proposal, and agreed, subject to expressing continued opposition to the scale of growth proposed for the County, that the eleven authorities should support this initiative. The agreement to support the preparation of the Strategy was made conditional on the eventual funding arrangements.

- 10.8 Where land is required, the cost of provision of the land and all services will normally be borne by the developer.
- 10.9 The charge will apply to the net number of dwellings or floor space gained where an application involves demolition. For example, if it is proposed to build 20 dwellings in total, involving the demolition of 3, the standard charge would apply to 17 dwellings. For highway matters a change of use could lead to a different type of generated trip, therefore the level of net gain should be checked with the relevant highway engineer, e.g. a previous business use would have different trip characteristics to new residential.
- 10.10 The size of an application is likely to have a bearing on whether the obligations are contained within a S106 agreement or a unilateral undertaking. It is suggested that discussions take place with the appropriate local planning authority to determine which document type is considered suitable. Generally however, at the application stage (not in the case of appeals) unilateral undertakings tend to be suitable for small or minor developments, where affordable housing is not required.

11. Sustainable Transport

- 11.1 Planning obligations in relation to highway matters are sought by officers working within the Transportation Planning and Policy Unit of the County Council. Contact details can be found at Appendix 5.

Policy background

- 11.2 PPG 13 promotes accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling and seeks to reduce the need to travel, especially by car. New development should be located so as to help achieve this objective. The County Council's Local Transport Plan has developed strategies and plans for the County and the towns and areas within it which identifies the sustainable transport and accessibility measures for which contributions would be sought.
- 11.3 Planning obligations can be used to ensure developments have safe access and egress, minimise development-related impacts such as traffic congestion, and maximise accessibility by non-car modes. In addition, well designed and located sustainable transport facilities such as cycle ways, footpaths and greenways can provide links between habitats and provide opportunities for biodiversity.
- 11.4 The Government is committed to sustainable development and will promote greater use of passenger transport. Measures to assist passenger transport are therefore an integral part of good land use and transport planning. In addition, the Government has in recent years increased the emphasis on accessibility planning, which has become a

prerequisite of the Local Transport Plan 2 requirements for 2006-2011. To comply with this policy the County Council will actively seek planning obligations which will improve facilities and services for passenger transport users who are using the development and generally for those users in the surrounding area. The following items are likely to be considered as appropriate for developer contributions towards the cost of providing passenger transport:-

- subsidy for the bus service for a set period;
- a commuted payment to provide a subsidy for the bus service;
- purchase of vehicles;
- payment and purchase of infrastructure including bus stations, rail stations, bus/rail interchanges, real time information and bus stops/shelters;
- provision of new and/or amended highway networks, including highways/footways which will not be adopted, which are built to a specification determined by the County Council for local bus operation and may include bus priority measures within or adjacent to the development.
- payment towards information, publicity and marketing campaign material to increase awareness and the use of bus and rail services;
- Payment towards community transport services. Further guidance is contained in the 'Passenger Transport in New Developments – A Guide for Hertfordshire' document. This is available from the Passenger Transport Unit.

A two strand approach

- 11.5 Measures to ensure safe access and egress to a development and measures to minimise development related impacts are typically met by road and other infrastructure improvements in the area around the development where safety issues and traffic impacts are most concentrated and significant using s106 agreements (or s278 agreements under highways legislation). These requirements are usually identified through Transport Assessments ("TAs") or via site specific negotiations. All developments above the threshold of 100 residential units, or 2500sqm B1 office development or equivalent peak hour trip generation are considered as large developments and the planning applications must be accompanied and supported by a Transport Assessment.
- 11.6 Smaller developments do not always require TAs but the cumulative impacts of smaller developments are very significant and may well exceed those of larger developments in total. There is a need, therefore, for all developments to contribute towards maximising accessibility by non-car modes in line with the Hertfordshire Local Transport Plan objectives. Often for the smaller developments a Transport Statement or simplified Transport Assessment will be required to identify the issues and impacts associated with a development and the required measures

and appropriate transport contribution. Transport assessment details are set out in the DfT guidance and available on their website.

- 11.7 The Council will, therefore, use a two strand approach to planning obligations in order to address the immediate impacts of new development (the first strand) as well as the cumulative impacts of all development, large and small, on non-car networks (the second strand). The 'second strand' approach will provide pooled funding aimed at making an impact towards achieving a modal shift away from the private motor vehicle. The need for second strand contributions will be balanced against the level of first strand contributions and any other relevant planning matters. For smaller developments the provision of passenger transport requirements outlined in section 11.4 will generally be included as part of the second strand charge.
- 11.8 This funding is intended to help enhance non-car accessibility within the catchments of new development. Funds will be spent on local schemes, as identified in the Local Transport Plan (LTP) and in the urban transport plans. Schemes in addition to these plans will be considered where they are identified in other recognised strategies and a need has been identified as a result of new development. These may or may not be designed in detail at the time the contribution is paid, nevertheless, such funding should relate reasonably to new development and remain necessary to ensure its acceptability, thus conforming with current obligation criteria and PPG 13 requirements. This approach:
- rewards developers who locate new development in accessible locations where on-site parking provision is reduced below unfettered demand levels without threatening viability;
 - penalises developers who locate new development in sub-optimal locations; and
 - Makes town centre development cheaper than that in out-of-town locations.

The Standard Charge: Residential Development

- 11.9 A means of reflecting the accessibility of different locations is required to ensure reasonableness. This should ensure that obligations relate to development impacts, which should be reduced in those locations that are more accessible by non-car modes i.e. the better the existing accessibility by non-car modes, the lower the charge should be. It is proposed to base this variation on the number of on-site car parking spaces required, as this is a good proxy for traffic impact: the better the accessibility, the fewer the spaces needed; the fewer the spaces, the lower the traffic impact. A reasonable benchmark charge for a single parking space for residential development (including garages) should also be of the order of £500.¹

¹ The standard charge rate is derived from an assessment of the quantum of housing/likely number of parking spaces to be provided in North Hertfordshire and the level of private

11.10 North Hertfordshire District Council have now produced and formally adopted an SPD for Planning Obligations which may be followed by the remaining planning authorities in the County. It should be noted that the charges shown in table 1 originate in the North Hertfordshire SPD but will apply across Hertfordshire, unless alternative arrangements are set out in emergent SPD for individual authorities. Where this occurs, links to new SPD will be published on the County Councils website.

11.11 The parking provision required for residential development will vary according to the accessibility of the site by means of travel other than private car. Accessibility will be defined by a zoning process detailed in guidance (SPD) produced by the Local Planning Authorities, which is generally available on the LPA's websites.

11.12 Using the relationships between parking standards, charges will vary as follows:

Table 1: Sustainable Transport Second Strand Approach: Standard Charges for Residential Developments:

Location	second strand charge per dwelling (£)			
	number of bedrooms			
	1	2	3	4+
Town centre zones 1&2	£375	£500	£750	£1000
Elsewhere zones 3&4	£625	£750	£1125	£1500

The contributions to be Index linked by SPONS from July 2006 (the point in time at which the above figures were calculated)

For an explanation of the figures see footnote¹.

The Standard Charge: Non-Residential Development

11.13 The residential charge provides a benchmark against which non-residential charges can be set. The appropriate basis for comparison is some measure of traffic impact; the greater that impact, the greater the need for accessibility measures. As with residential development the parking provision required for non-residential development will vary according to the accessibility of the site by means of travel other than private car. Accessibility will be defined by a zoning process detailed in guidance (SPD) produced by the Local Planning Authorities, which is generally available on the LPA's websites.

investment in infrastructure as a percentage of LTP capital investment. In addition benchmarking against other local authorities has been used as a check to determine reasonableness. There is a background paper associated with the North Hertfordshire SPD which provides more detail and is available on request.

11.14. Non-residential charges will be calculated at a rate per on-site car parking space required, mirroring the residential charge where a charge of £500 equates to one space. Thus, for small commercial developments an accessibility charge of £500 per parking space required or £1000 per one, peak hour two-way trip is used². This approach means that more accessible sites will incur lower charges in accordance with the zone-based parking provision.

Practicalities and exceptions

11.15 In all cases, contributions will be passed directly by the developer to either the planning authority or the highway authority as appropriate. Expenditure assessed in this way will include not only capital scheme costs but also administration costs, fees and any contingencies incurred in connection with a scheme.

11.16 It is intended to impose the second strand charge for one or more dwellings and for all non-residential developments in order to fully mitigate cumulative impacts.

11.17 The charge for non-residential developments will be calculated on the basis of the parking provision actually required on-site in line with the LPA's adopted guidance on vehicle parking.

11.18 Non-payment of the second strand charges will be considered only in very exceptional circumstances. These circumstances may include development where all aspects of accessibility are fully addressed.

Off-site car parking improvements

11.19 In accordance with the LPA's own guidance on vehicle parking provision, the County Council may require developers to fund new car parking off-site where a shortfall in provision is identified. Developers may also be required to provide funding for Controlled Parking Zones ("CPZs") to ensure that developments do not have adverse consequences on-street. Contributions such as these will be secured within a conventional s106 agreement (i.e. second strand charges are not for this purpose).

Travel Plans

11.20 Where Travel Plans are secured as part of the planning permission, the County Council will seek contributions towards Travel Plan measures and the cost of on-going monitoring within a conventional s106

² During the am peak hour a typical 2 bed house (with average accessibility by passenger transport) will generate 0.5 two-way trip or will have 1 car parking space. 1 space is equivalent to £500, it is therefore reasonable to assume 1.0 peak hour two-way trip = £1000.

agreement, as in the case above. Some of the measures may be “target triggered” but are unlikely to be second strand related. Travel Plans are normally required when an application is supported by a TA for developments that have significant transport implications. Further guidance on travel plans is available on the county council’s website at <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/greentravelplans/>

12. Education, Youth, Childcare, Adult Care, Fire and Library Obligations

- 12.1. This section outlines the role of the County Council in seeking planning obligations in relation to education, youth, childcare, libraries and fire services.
- 12.2. Planning obligations for these areas are sought by officers working within Hertfordshire Property acting on behalf of the Children Schools and Families, the Adult Care and the Fire and Rescue Services. Further advice can be obtained from Hertfordshire Property and contact details can be found at Appendix 5.
- 12.3. The planning obligation charges are based on a formulaic approach and are summarised in a contribution table below. More detailed information in relation to the methodologies used may be seen in the background paper (Justification for Education, Youth, Childcare and Library Charges) at Appendix 1.
- 12.4. Hertfordshire Property has developed a model to estimate the population arising from new residential development which is tailored to the proposed size, type and tenure of dwellings. This enables an assessment to be made of the provision of services which will be required to meet the needs of the development (such as the number of school places). Where dwelling details are not certain the effect of different dwelling mixes can be tested using the indicative contributions table. Where applications are being made in outline and the final mix/number of units is unknown, the table can be included in the S106 document. However, it should be noted that the indicative contributions table is not appropriate for larger developments, for instance, those giving rise to need for a new school. Individual negotiations are appropriate in these circumstances. As a rule of thumb, 1000 dwellings give rise to the need for one form of entry at primary school level.
- 12.5. Information on the age profile of residents in households was obtained in the 2001 Census and this has been tabulated by dwelling type and tenure. Households moving in the year prior to Census Day are shown to have an atypical age structure compared to households in general. In these “migrant” households there is a bias towards younger children and younger adults and smaller proportions in older age groups.

- 12.6. The migrant population and age profile information from the Census is incorporated into the model which allows for the child population resident in the development to change with time, as children grow older and population in the development starts to conform to an age structure in line with the wider community. The result is a forecast of population that changes over time and often includes a peak in demand, in the short to medium term – for example, as the larger numbers of pre-school children in migrant households move into a primary school.
- 12.7. The number of residents in a development will determine the scale of demand on services provided by the County Council. Contributions towards each service are therefore based on relevant costs (such as the cost per school place) and the expected population in appropriate age groups. For school places it is assumed that any peak in demand may be able to be met in temporary accommodation and a lower cost per place is incorporated into the contribution calculation. At present, the library facilities contribution is the only one which is based on total development population - this contribution being based on the average of the migrant and longer term figure. Discounts are applied to all contributions required from housing for social rent, on the basis that a number of families moving into such housing are more likely to be moving locally. Intermediate housing (e.g. shared equity or key worker) is classified as market housing, since the number of occupants tend similar.
- 12.8. It should be noted that the Census data is related to the number of habitable rooms (including kitchens) that a dwelling has. For simplicity, the indicative contributions table is expressed in terms of the number of bedrooms rather than habitable rooms. As an example, a 5 habitable room dwelling is assumed to have 3 bedrooms, based on information from the Survey of English Housing (2003/04). Hertfordshire Property will provide a more precise calculation of contributions if required by referring to floor plans.
- 12.9. The 2001 Census indicates that considerable numbers of children are found in small properties. This fact has been taken into account in the indicative contributions table but has been discounted to cater for the possibility that this phenomenon might be short term or an anomaly. In the recent past, contributions have not been sought for one bedroom dwellings as it was thought unlikely that children would be resident. Further information on the calculations which sit behind the figures produced in the table below can be provided on request.

Table 2: Hertfordshire County Council other services planning obligations contributions table (excluding North Hertfordshire)

Bedrooms*	1	2	3	4	5+	1	2	3
	HOUSES Market & other					FLATS Market & other		
Primary education	£231	£1,036	£2,469	£3,721	£4,692	£93	£816	£1,392
Secondary education	£263	£802	£2,561	£4,423	£5,662	£47	£444	£1,677
nursery education	£35	£175	£340	£459	£545	£32	£195	£270
Childcare	£14	£64	£138	£199	£244	£8	£57	£89
Youth facilities	£6	£16	£50	£82	£105	£3	£13	£41
Library facilities	£98	£147	£198	£241	£265	£77	£129	£164
Total	£647	£2,240	£5,756	£9,125	£11,513	£260	£1,654	£3,633
	HOUSES Social Rent					FLATS Social Rent		
Primary education	£247	£2,391	£3,860	£5,048	£5,673	£44	£1,167	£2,524
Secondary education	£62	£450	£1,676	£2,669	£2,405	£14	£261	£1,084
nursery education	£39	£453	£475	£503	£955	£9	£216	£313
Childcare	£12	£121	£188	£226	£277	£4	£65	£113
Youth facilities	£2	£8	£31	£51	£55	£1	£6	£21
Library facilities	£48	£91	£130	£156	£155	£38	£82	£107
Total	£410	£3,514	£6,360	£8,653	£9,520	£110	£1,797	£4,162

*uses an assumed relationship between bedrooms and habitable rooms

All figures are subject to indexation and will be indexed using the PUBSEC Index from the base of 175. (175 is the index for 4th Quarter 2006 (September 2007 publication))

Education

12.10. The County Council is the Local Education Authority and has statutory responsibility for the provision of education services. It has a duty to ensure that there are sufficient school places to meet the needs of the population. This provision includes nursery, primary, secondary and sixth-form education and special needs services and facilities.

12.11 Hertfordshire Property will advise on whether contributions are required for education facilities, having taken into account the local capacities at primary and secondary level.

12.12 In some instances, where there is short term pressure only and where permanent facilities are unlikely to be built, contributions may be sought for temporary classrooms or other alterations required. In other cases, where new residential developments will put existing school facilities and

the curriculum under pressure, contributions may be sought to improve buildings, for instance by modifying internal layouts.

Libraries

12.13 Library services contribute to the educational, economic, social, cultural and recreational well being of the community. The County Council has a duty to provide a comprehensive and efficient library service for everyone who lives, works or studies in the County. Facilities can range from large central libraries within towns, to community libraries and mobile facilities.

12.14 New residential development will add pressure on the library service through increased demand. The likely impacts have been looked at in the context of the Government's Public Library Service Standards ("PLSSs"). These are assessed on a countywide basis. Of the ten standards Hertfordshire fully meets six. The remaining four standards are areas where improvement is required and additional demand by proposed development will impact on the County Council's ability to achieve these. These standards are as follows:

- The total number of electronic workstations with access to internet and library catalogue per 10,000 populations (PLSS4).
- Library visits per 1,000 population (PLSS6).
- Percentage of library users 16 and over who view their library service as good or very good (PLSS7).
- Percentage of users under 16 who view their library service as good (PLSS8).

12.15 Hertfordshire has recently launched its 'Libraries for the 21st Century' Change for Excellence 2005-2015 initiative. This takes account of national and local policy and sets out proposals for the improvement of Hertfordshire's library service. www.hertsdirect.org/libsleisure/libraries/services/L421C/ contains further details. The aim is to improve all libraries to be fit for the 21st Century.

12.16 The County Council believes that its libraries need to be updated to continue to improve the service offered and cope with additional demand brought about by new development. This will be set against the Government's PLSSs and the 'Libraries for the 21st Century' initiative. The transformation needs to include exteriors/interiors of buildings, opening hours, stock, IT, promotion and customer care. The current library network is being reformed to provide fewer but better static libraries that are able to meet: PLSS4 (an increase to the total number of electronic workstations).

12.17 Library facilities provided in attractive buildings with retail standards of décor, furniture and fittings will reduce the general cost of provision and increase usage.

12.18 Areas of stress on the libraries service in Hertfordshire can be considered. Although PLSSs are assessed on a county-wide basis, they can be tested at a district level. PLSS4 and PLSS6 may be taken as indicative of pressure on floor space and general satisfaction with the service.

12.19 The County Council provides a mobile service. This has recently been entirely overhauled with new routes and a new fleet of vehicles. However, as new housing developments arise the number and location of stops has to be reviewed and large developments may require the addition of new vehicles as appropriate.

Youth

12.20 As required by the Education Act, 1944, the County Council provides youth services for 13-19 year olds such as social/meeting places plus support, information, advice and informal education opportunities. These responsibilities are distinct from and complementary to provision that may be sought from the district councils from a leisure perspective. The youth service also supports and works in partnership with the district/borough councils and local voluntary/community organisations to enhance local provision.

12.21 The County Council works within current national and local requirements and developments, in particular the Government strategies, 'Every Child Matters', 'Youth Matters' and 'Transforming Youth Work - Resourcing Excellent Youth Services'.

12.22 'Resourcing Excellent Youth Services', published in 2002, sets out standards for youth work provision. It has a target that 25% of the total population aged 13-19 should be actively reached. Objective 2 states that authorities must secure convenient and suitable access for young people to high quality youth work in safe, warm, well-equipped locations. Objective 3 states that provision should be attractive and relevant to promote participation by the target population.

12.23 The objectives above underlie that where such facilities are not available, young people often feel they are not valued as part of their community. As a result there may be increased incidents of youth nuisance and vandalism. In order to overcome this, the youth service supports young people's transition to adulthood by providing alternative opportunities that enable them to reach their full potential. This is of benefit not only to young people but also the wider community.

12.24 The DFES Youth Matters - Next Steps identifies a need to modernise centres for young people, to increase a range of activity spaces and educational resources plus and where appropriate extend the range of activities for young people with disabilities. In some cases there is a

need to relocate services in terms of the existing and future population. The provision of youth facilities and activity programmes makes an important contribution to reducing crime and disorder and encourages social inclusion for young people. New residential development may generate a proportion of young people, resulting in an increased demand for youth provision. This will require additional resources to enable equal access to activities in the area.

- 12.25 A review of youth provision across Hertfordshire has been undertaken during 2007 and plans for each district are to be finalised and published during 2008. Generally, however, there is a need for improvements to modernise centres, increase storage, equipment and activity spaces and extend the range of activities for the disabled. In addition the relocation of some services to meet existing and future needs may be necessary. Contributions are therefore sought towards the cost of providing the above facilities.

Childcare

- 12.27 The County Council seeks childcare contributions from development. Contributions will be used to assist in the provision of a variety of facilities, in which Children's Centres and Extended Schools are currently a priority. These form an integral part of the National Childcare Strategy and impose a statutory duty on the County Council in partnership with private and voluntary sectors.

Children's Centres

- 12.28 Children's Centres are part of a government initiative providing universal entitlement for all children up to the age of 5. They are crucial to the delivery of the Government's 10 year Childcare Strategy which now forms part of the Childcare Act 2006. They also contribute to improving child outcomes set out in 'Every Child Matters'.
- 12.29 Hertfordshire County Council will provide 82 Children's Centres in phases by 2010, across the county. Each will cater for approximately 800 children providing integrated 'one-stop' facilities of childcare, health and parenting services. These are intended to help tackle child poverty, improve children's achievements at school and enable parents to work that may not have otherwise been able to. Although both central and local funding is available, it is often insufficient. Assistance with start up costs, and provision of accommodation are often required. Therefore, a proportion of the costs will need to be funded from new development, which generates young children.
- 12.30 Several Children's Centres have now been provided and although they are likely to vary in the services they provide, a real example offers a day nursery, pre-school, toy library and community learning room, toddler

group and speech therapy service. Others may simply provide a local administration base from which service provision is organised.

Extended Schools

12.31 Extended Schools will offer children, young people, families and the community access to a range of services through their local school. This would include childcare for school age children before and after school and within the summer holidays, which is becoming increasingly important for working parents. By 2008 one half of all primary schools and one third of secondary schools and by 2010 all schools will have access to these facilities.

12.32 Contributions are therefore sought towards the cost of providing the above facilities.

Fire and Rescue Services

12.33 The County Council, in its capacity as the Fire and Rescue Authority, has a statutory duty to ensure that all development is provided with adequate water supplies for fire fighting. Therefore, the developer is required to provide fire hydrants for all new developments above the threshold.

Paragraph 6.1(c), of BS 5588-5 2004 states that every building needs to have a suitable hydrant:

- not more than 60m from an entry to any building on the site;
- not more than 120m apart;
- preferably immediately adjacent to roadways or hard-standing facilities provided for fire service appliances; and
- not less than 6m from the building or risk so that they remain usable during a fire (generally a water supply capable of providing a minimum of 1500 litres per minute at all times should be provided).

In addition, buildings fitted with fire mains must have a suitable hydrant provided and sited within 18m of the hard-standing facility provided for the fire service pumping appliance.

Fire hydrant provision will be sought through standard wording in planning obligations. In practice, the need for hydrants is determined at the time the water services for the development are planned in detail, which is usually after planning consent is granted. If adequate hydrants are available when the water mains are planned then no extra hydrants will be needed. Additional work is being undertaken to consider whether there are other ways of dealing with fire hydrants, for example, conditions attached to planning decisions and this work will inform the final document.

12.34 The ability of large-scale and commercial developments to be adequately served by fire and rescue services will be assessed on an individual

basis. Any impacts may need to be addressed through planning obligations. This may be through the provision of a new fire station or an extension to an existing facility or alternatively, the provision of sprinklers in commercial and/or domestic properties.

Special Needs Housing and Services and Key Worker Housing

12.35 The County Council provides or enables the provision of services for persons with learning, physical and mental disabilities, as well as the elderly in the form of appropriate accommodation which can be provided in a variety of ways, day and resource centres. A standard charge does not at present operate for special needs services however; the need to provide facilities may become apparent on larger developments. Typically, modern housing provision for persons with mental, learning or physical disabilities takes the form of units of 8-12 flats with an office for staff. The County Council is also developing policy on the provision of housing for the frail elderly and 'extra-care' housing, in conjunction with the district housing authorities. The County Council will actively look for proposals which may be able to assist in the provision of this type of housing. Such provision may be part of the affordable housing element of a development proposal or, depending on local need may be sought over and above the affordable requirement.

12.36 The County Council has an agreed strategy (December 2002) with the districts and boroughs in Hertfordshire to provide key worker housing. Such provision may be provided as part of the affordable housing element of a development proposal.

Circumstances whereby Contributions will not be required

12.37 Sheltered housing, retirement homes, nursing homes, hostels, student accommodation, will be exempt from payment of the contributions for education, youth and childcare, but not library charges. Requirements for other specialist housing will be considered on its merits.

13. Other Services Where Planning Obligations May Be Required

Archaeology, Biodiversity and other Environmental Issues

13.1 There are a number of issues where it is not appropriate to have a standard charge, as it is difficult to predict and quantify likely impacts. Many issues such as the conservation and enhancement of public rights of way (PROW), archaeology, wildlife, geology, habitats and the landscape (as well as creating opportunities for new environmental features including biodiversity) are where the County Council often advises the District as the Local Planning Authority. These issues are often equally as important as those which attract standard charges but are likely to vary considerably depending on specific site circumstances.

- 13.2. Where development has the potential to have a significant impact on the environment the County Council will support the Local Planning Authority in seeking contributions from the developer to contribute to the compensation and mitigation of these effects.

Minerals and Waste

- 13.3 The County Council is the mineral and waste planning authority for the county. The need for a Planning Obligation in relation to this type of development will be considered on a case-by-case basis. Where appropriate, the areas generally covered can include highway improvements; highway maintenance contributions; Codes of Practice for lorry routing; rights of way improvements/requirements; ecological and archaeological requirements; and land management and aftercare matters.

Waste Management

- 13.4 The County Council is the waste disposal authority and would like to look at the feasibility of introducing a general requirement for developers' contributions towards both the construction and improvement of new waste management sites, equipment and facilities and also the development and improvement of local household waste recycling centres. Such contributions would need to be justified by a robust technical assessment of need.

14. The Legal Agreement

- 14.1. Once planning obligations have been agreed in principle between the parties, a draft S106 document may be drawn up. This can be produced by the County Council, the district/borough council or the planning applicants. In the case of the County Council and the district/borough councils, planning agreements are usually handled by solicitors taking instructions from professional clients (.e.g. planning and highway officers). Model template documents are shown at Appendices 2 and 3. However, some LPA's may have their own templates/standard clauses and this should be established before using the County Council's models. The templates attached to this document provide clauses which the County Council regularly use.
- 14.2. These model templates, depending on the nature and complexity of the proposal, may need amendment and supplementary clauses added. Advice will be given on a case by case basis where necessary; however, advice on the County Council's approach to issues common on more complex cases is set out at Appendix 4.
- 14.3. Planning Applicants are required to give an undertaking to pay the County Council's costs for the preparation of legal agreements (the fee

rates are set out at Appendix 4). Further advice on the legal agreement process may be obtained from the list of contacts at Appendix 5 of this document.

15. Appeals

- 15.1 If an appeal is made by a Planning Applicant, for instance where planning permission has been refused and planning obligations are a material consideration or reason for refusal, the County Council will be involved in the process. The County Council will assist in the production of S106 documents and/or the case being made to the Planning Inspectorate, and will communicate with the appellant, district/borough council and the Planning Inspectorate as appropriate. The County Council may also prepare statements or appear as witnesses at appeal hearings and inquiries as necessary.

16. Indexation, Receipt and Spending of S106 Monies

- 16.1. S106 contributions are required to be paid in accordance with the terms of the agreement or undertaking. A form is attached to the model templates which set out this process and how/where funds should be paid.
- 16.2. The County Council requires that contributions are subject to indexation to account for inflation. The following indices are/or have been used by the County Council;
- BCIS (education, youth, childcare, library, special needs charges, mainly up to September 2006)
 - PUBSEC (education, youth, childcare, library, special needs charges, from September 2006)
 - SPONS (Highways and transportation)
 - CPT (Passenger Transport – bus services)
 - RPI -occasionally, some agreements are based on RPI (for instance the provision of a school minibus).
- 16.3. Further information on calculating indexation is attached at Appendix 4, section 7.
- 16.4. Once received, S106 contributions are held in separate earmarked interest bearing accounts and spent in accordance with the planning obligation documents to which they relate. The funds are monitored and tracked to expenditure on particular projects to ensure that expenditure occurs within relevant timeframes as set out in the legal documents. Contributions are often held for a period of time as specified in the relevant legal agreements and may be pooled toward specific projects.
- 16.5. Information on expenditure can be made available on request. Regular reports are made to members on both contributions held and planned expenditure and will also be available to the Hertfordshire LPAs. Where

contributions are not spent within the timeframes set out in the documents they will be refunded to the relevant party as prescribed by the S106 document.

- 16.6. The County Council maintains a register of all planning obligations. The County Council's planning obligation processes are regularly audited internally. Following audits, recommendations are made to senior officers so that action can be taken where necessary.

End.

Planning obligations guidance - toolkit for Hertfordshire

(Hertfordshire County Council Requirements)

January 2008

Appendices

www.hertsdirect.org



Appendices

1. Background Paper (Justification for education, youth, childcare and library charges)
2. S106 agreement model precedent
3. S106 unilateral undertaking model precedent
4. The County Council's approach on detailed matters relating to S106 contributions/obligations
5. The County Council Contact list
6. List of Hertfordshire Local Planning Authorities

APPENDIX 1

Background Paper (Justification for Education, Youth, Childcare and Library Charges.

Introduction

This section provides further information on provisions sought by the County Council following on from section 12 of the Planning Obligations Guidance-Toolkit for Hertfordshire, in respect of education, libraries, youth and childcare.

The County Council intends to keep its methodology under regular review. It is therefore likely that details of provisions and the amount of contributions sought will vary from time to time. The current contributions summary tables appear in Sections 11 and 12 the Hertfordshire Planning Obligations Toolkit document. Updated versions of these tables will be published in any revisions of this document, or can be obtained from the contacts above.

Education

The methodology for assessing the number of school places (and other provisions) required to meet the needs of residential development is based on understanding how many children are likely to be resident in the development.

The information used to calculate population in dwellings is taken from Census data. Households moving in the year prior to Census Day are shown to have an atypical age structure compared to households in general, typified by a bias towards younger children and younger adults and smaller proportions in older age groups. The age profile information is incorporated into the calculations, which are also tailored to the particular size of dwelling by taking into account the number of bedrooms/habitable rooms. For simplicity, the contributions table is expressed in terms of the number of bedrooms rather than habitable rooms, as an example, a 5 habitable room dwelling is assumed to have 3 bedrooms.

The calculations also allow for the population to change with time, as children grow older and the development settles down to conform to an age structure in line with other older settlements. The result is a forecast of demand for primary and secondary school places (and other requirements) that varies with time and often includes a peak in demand in the short term. The cost of meeting these demands is based on the County Council's experience of providing additional places and is set out in the table below. Temporary accommodation costs relate to the provision of mobile classrooms and these are appropriate only to cater for the peak demand.

Per pupil place	Cost
Primary permanent	£9,155
Secondary permanent	£14,413
Nursery education	£9,155
Temporary provision	£3,260

On larger developments the County Council may undertake a detailed assessment in order to verify the outcome of using the summary contributions table. As stated in the Toolkit, developments of over 300 dwellings will be considered individually and on site provision may be required for education (and other matters).

Libraries

The County Council believes that libraries need to continue to improve the service offered and cope with additional demand brought about by new development. The Toolkit outlines this in the context of the Government's Public Library Service Standards (PLSSs) and the 'Libraries for the 21st Century' initiative. The transformation needs to include exteriors/interiors of buildings, opening hours, stock, IT, promotion and customer care. The current library network is being reformed to provide fewer but better static libraries that:

- meet PLSS 4 for the total number of electronic workstations
- are attractive buildings with retail standards of décor, furniture and fittings
- will enable the service to be delivered within budget
- will increase usage

The Mobile service provides access to services for people for whom access to a fixed library is likely to be difficult. The mobile service has recently been fully reviewed and entirely overhauled with new routes and a new fleet of vehicles. It is therefore unlikely that further changes will be needed in the near future. However, as new housing developments arise the number and location of stops will need to be reviewed and large developments may require the addition of new vehicles and stops.

Fixed libraries in urban areas also serve surrounding rural areas and villages. Therefore, the need for contributions (and the expenditure of any library contributions received) from development in these locations will be based on the nearest library and/or the relevant mobile services.

Methodology for Calculating the Charge

Provision for library services will be required from developments within the catchment area of libraries that require improvement or are considered unsatisfactory in service delivery terms. The situation will be reviewed from time to time when the Toolkit is updated as areas of stress may change. The amount of financial contribution required from housing developments has been

calculated to reflect the number of residents expected and the costs of providing facilities. Contributions are not usually sought from commercial development but may be in the future.

The contribution is based on population and on two elements:

- A contribution towards books
- A contribution towards buildings

It is not suggested that a contribution would necessarily be used to purchase the books and building works it is based on. It will be appreciated that the holding facilities element of the contribution is based on building works on a significant scale. The costs would be disproportionate on a smaller scale. However, a contribution would be used as a capital sum to enhance provision for library services and facilities and might include, for example, IT facilities. Proposals will normally be developed once contributions have been received. Contributions are likely to be pooled to enable more effective use to be made of them but will only be spent on facilities relevant to the developments providing the contributions.

Building costs are based on new buildings. Using 30 sq m per 1,000 population, and a buildings cost of approximately £2,292 per sq m produces a buildings cost per 1,000 population of £68,760. Stock costs are based on an average cost per item of £5.73, and two books per head of population - adopted by the County Council in 1998. The cost of stock is therefore £11,460 per 1,000 population. The total contribution per person is £80, at PUBSEC 175 prices (based on $(£68,760+£11,460)/1000 = £80.22$). This figure is converted into a cost per size and type of dwelling in the Toolkit.

Youth

Hertfordshire Youth Service provides a varied planned education programme across the district. The programme covers youth councils, work with minority groups, work with schools, peer education and volunteering, arts, extreme sports, holiday activities, food & health, sporting activities, outdoor education, IT and information and is supported by street work in various locations.

Any additional users resulting from new development will increase the pressure on facilities within the county, thereby limiting service provision and affecting their usability and attractiveness to young people.

Methodology for Calculating the Charge

Hertfordshire's Youth Service offers a range of specialist and generic activities that enable young people to gain recognised accreditation for their learning. Growth in the number of young people aged 13 to 19 years (the target age group) in a community will require increased resources to enable equal access to those activities. This could take the form of new equipment and/or learning materials and/or improvements to the property to accommodate more young people or offer a wider range of activities. Additional staff will be required to manage these activities and to maintain a safe and proportionate staff-to-

young-people ratio. Start up funding for the first two years allows the County Council the opportunity to develop working relationships with local partners and to develop strategies to sustain and ensure the future life of projects.

Examples of the resource requirements for increases in demand are currently:

- Increase of 10 to 15 young people - £3,333 per project pa for start up costs - based on 1 additional member of staff to support current activities for 1 session per week, all year
- Increase of 15+ young people - £13,021 per project pa for start up costs - based on 4 additional staff offering 1 new session per week, all year.

Taking the lower figure, this means that the funding required to cover staffing costs per user per annum equates to £222 (based on £3,333/15) and accordingly staffing costs to cover the 2 year set up period would be £444. (£222 x 2) per additional user.

The Pioneer Youth Centre proposal in St Albans is used as a model of future youth provision in Hertfordshire. The intention is to provide a substantial centre of 1480 sq m, offering a range of activities and serving 2760 users (25% of 13-19 year olds in the area). The centre may be supplemented with detached or mobile provision at a later date. For this, new build costs are expected to be £2,156 per sq m. This equates to spending £1156 per person. Thus:

A new build with start up staffing costs:

$£1156 + £444 = £1600$ per user.

New development will not always justify the construction of new buildings. Spending might equally be used for equipment, improvements/modifications to the property and/or an increase in the number of sessions. In consideration of this, the range of figures (for staff set up and build costs as set out above) has been averaged as follows:-`

$((£1600 + £444)/2)*25\% = £256$ per potential user at PUBSEC 175 prices. This figure is converted into a cost per size and type of dwelling in the Toolkit.

Childcare

Setting up Children's Centres and Extended Schools is considered to be a priority for the County Council. They form an integral part of the national childcare strategy.

Methodology for Calculating the Charge

The charge outlined in the Toolkit has combined the costs per child for Children's Centres and Extended Schools and converted the total figure into a cost per size and type of dwelling. The breakdown of this cost is outlined below. Contributions towards childcare facilities will normally be based on the unit costs related to the number and age category of children expected to live within the proposed development.

The County Council will have a duty under the Childcare Act to provide a childcare place to every child seeking one from spring 2008. It has found that circa 10% of the children in 0-5 age group take up childcare places in Children's

Centres. In fact the number of children accessing places is greater than that but many only seek care on a part-time basis, which can lead to the 10% figure being misunderstood. The same applies for extended schools but it is expected that demand will expand more rapidly for this service, hence the target of 20%.

The assumptions made will be subject to review on a regular basis and as a result the figures may change.

Children's Centres

For 2006 to 2008 the County Council has a target to reach 38,674 children aged up to 5. The associated Capital Funding allocation is £9,371,350 for the build programme to construct 49 Children's Centres. The average allocation equates to £242 per child. An allocation of Revenue Funding of £7,761,791 has also been made over two years.

Start-up revenue funding for Childcare for the under 5's also makes available a maximum of £750 per place. The likely take up of childcare places for this age group is 10%. Therefore for every 100 children aged 0-4+, 10 childcare places will be required. This equates to £75 per child.

Total of £315 per child (0 to 4+).

Extended Schools

There are five main functions of Extended Schools (ES):

- Access to affordable, high quality childcare
- Activities, including study support, sports, arts activities, volunteering, special interest clubs, mentoring etc
- Swift and easy referral to specialist services e.g. speech and language therapy, behaviour support services etc
- Community access, including adult learning
- Parental support, including family learning

The County Council has run a pilot of 15 ES consortia, involving 136 schools and 5 Children's Centres, operating since September 2005. Finance has been made available to each consortium to fund an Extended Schools Consortium Coordinator (ESCO) whose brief has been to work across a consortium to develop access to the ES core offer, working with schools and other partners.

For 2006/08, the County Council has been allocated £3,000,000 Capital Funding for childcare in ES for 5-14 year olds to reach the 2008 target. By 2008 one half of primary schools (207, including first middle and primary schools) and one third of secondary schools (25) should be delivering extended services. Assuming a target population of 150,615 pupils, this equates to £20 per pupil. A real example of a new scheme to provide childcare 8am - 6pm all year round is due to open at Windhill Primary School in Bishop's Stortford in 2006. The revenue start up costs for this are grant funded in the first year to a maximum of £750 per childcare place, providing three schools with before and after school care and holiday care. Childcare such as this usually serves approximately 10% of the children within a school. Thus an after-school club in a 400 place

school would provide 40 places. However, with the local authority's duty to secure sufficient childcare this proportion must increase to approximately 20% in the near future. Therefore the same 400 place school would need to plan for 80 places. This equates to £150 per child.

Total of £170 per child (5 to 14 years).

Example calculation (for illustrative purposes):

A new housing development of 10 x 3 bedroom houses produces an approximate yield of 3 children aged 0-4+ years and 5 children aged 5-14 years.

0-4+'s

Children's Centre Capital. $3 \times £242 = £726$

Start up revenue. $3 \times 10\% \times £750 = £225$

5-14's

Extended Schools Capital. $5 \times £20 = £100$

Start up revenue. $5 \times 20\% \times £750 = £750$

Total = £1,801 at PUBSEC 175 prices

End.

APPENDIX 2

HERTFORDSHIRE COUNTY COUNCIL

DRAFT SECTION 106 DEED OF AGREEMENT – DU []

PLEASE NOTE:-

- (A) THAT THE DISTRICT/BOROUGH COUNCIL MAY HAVE ITS OWN TEMPLATE AND THIS SHOULD BE ESTABLISHED BEFORE USING THIS MODEL DOCUMENT**
- (B) ALSO THE PROVISIONS OF THIS DOCUMENT MAY NEED TO BE AMENDED TO TAKE ACCOUNT OF MATTERS REQUIRED BY THE COUNTY COUNCIL/DISTRICT BOROUGH COUNCIL IN RELATION TO ANY SPECIFIC APPLICATION**

Date: 20[]

PARTIES:

1. HERTFORDSHIRE COUNTY COUNCIL of County Hall Hertford Hertfordshire SG13 8DE (“the County Council”)
2. BOROUGH/DISTRICT COUNCIL of
..... Hertfordshire (“the Council”)
3. (Co. Regn. No) whose
registered office is situate at (“the Owner”)
4. (Co. Regn. No) whose registered office is
situate at (“the Mortgagee”)
5. (Co. Regn. No) whose registered office is situate
at (“the Developer”)

NB. i) Owners of all interests in all affected parts of the Site will need to be parties as well as the Developer (if a different person)

- ii) **All mortgagees/lessees option holders etc. will also need to be parties**

- ii) **Title must be shown to all land within the Site and also over any land on which any highway works are to be carried out if not already part of the publicly maintained highway.**

WHEREAS

- (1) The County Council and the Council are local planning authorities for the purposes of the 1990 Act for the area in which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited

- (2) The County Council is the Highway Authority the Education Authority the Library Authority the Social Services Authority and the Fire and Rescue Authority for Hertfordshire

- (3) The Owner is the freehold owner of the whole of the Site [subject to the Charge]

- (4) The Mortgagee has the benefit of the charge referred to in Recital (3)

- (5) The [Owner/Developer] has submitted the Planning Application to the Council

- (6) On [DATE] the Council resolved to grant the Planning Permission subject, among other things, to the prior completion of this Deed

- (7) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED WITNESSETH as follows:

OPERATIVE PART

1. DEFINITIONS

1.1 In this Deed the following expressions shall have the following meanings:-

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

“Charge” means the mortgage/charge dated [] made between the Owner (1) and the Mortgagee (2)

“Childcare Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (indexed linked as hereinafter provided) to provide childcare facilities serving the locality of the Development

“Commencement Date” means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions “Commence”, “Commences”, “Commencement” and “Commenced” shall be construed accordingly;

“Development” means the development of the Site with [*insert description of the development*] as set out in the Planning Application;

“Director of Environment” means the County Council’s Director of Environment for the time being and his agents;

“Education Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of educational facilities serving the locality of the Development;

“Fire and Rescue Service” means that part of the County Council known as the Hertfordshire Fire and Rescue Service

“GTP Guidance” means the County Council’s document entitled ‘Developing a Green Travel Plan – A Guidance Note’ which can be found at <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/greentravelplans/>

“Interest” means the rate from time to time prescribed [under the Land Compensation Act 1961];

“Library Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of additional library facilities serving the locality of the Development;

“Nursery Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of nursery facilities serving the Development

“Occupy” “Occupation” and “Occupied” means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

“Plan” means the plan annexed to this Deed;

“Planning Application” means the application for [outline/full] planning permission dated [] bearing the Council’s reference number [];

"Planning Permission" means the permission to be granted by way of approval of the Planning Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement PROVIDED THAT if any form of development within the Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the

Planning Application that development shall be subject to additional planning obligations;

PUBSEC Index” means the Department of Trade and Industry Tender Price Index of Public Sector Non Housing Smoothed All-In Index;

“Section 278 Agreement” means a valid agreement executed as a deed and to be entered into with the County Council pursuant, inter alia, to Section 278 of the Highways Act 1980

“Site” means the freehold property situate at [] Hertfordshire registered at the Land Registry with Title Absolute under the Title Number [] all of which land is shown for identification purposes only edged red on the Plan

“SPONS Index” means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty’s Stationary Office as collaged into a single index known as the SPONS Construction Civil Engineering Cost Index;

“Sustainable Transport Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3B] (indexed linked as hereinafter provided) as a contribution towards [*specify reasons for contribution e.g. the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport or such other measures as will encourage users of the Development to travel to and from the Development by means of transport other than the private car which the Director in his absolute discretion determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development*];

“Water Scheme” means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension

to or diversion of existing services or apparatus OR where existing water services are to be used it shall mean the details of the residential dwellings and the water supply to them which shall be provided by the Owner for the written approval of the Fire and Rescue Service prior to commencement of the construction of any residential dwelling to be constructed as part of the Development

“Works” shall mean the works to the highway shown in principle only on drawing numbered [] annexed to this Deed (subject as mentioned in clause 11 hereof) which works shall for the avoidance of doubt include [] together with such ancillary works as may be required by the Director of Environment to facilitate the Development which ancillary works may without prejudice to the generality of the foregoing include the provision of street lighting traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers’ equipment

“Working Day” means any day other than a Saturday or a Sunday or a Public Holiday;

“Youth Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of [additional] facilities for young people within the locality of the Development;

1.2 In this Deed:-

1.2.1 the clause headings do not affect its interpretation;

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;

1.2.3 the reference to any statute or section of a statute includes any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions

for the time being made issued or given under that Act or deriving validity from it;

1.2.4 any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;

1.2.5 references to the Site include any part of it;

1.2.6 where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually;

1.2.7 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective functions;

1.2.8 any covenant by the Owner not to do any act of thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done;

[1.2.9 references in this Deed to "development" shall have the meaning given by Section 55 of the 1990 Act]

EFFECT OF THIS DEED

2.1. This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council;

- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Section 2 Local Government Act 2000 and all other enabling powers;
- 2.3 The Owner enters into the obligations for itself and its successors in title with the Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof

CONDITIONALITY

3. This Deed is conditional upon:-

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of Clauses [*[i.e. payment of costs, delivery and jurisdiction interpretation clauses and anything else that is relevant]*] which shall come into effect immediately upon completion of this Deed

OWNER'S COVENANTS

4.1 The Owner covenants with the County Council:-

- (i) to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto
- (ii) to give the County Council and the Council no less than five (5) Working Days notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the proforma set out in Schedule 2 hereto

- (iii) to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of the Development/
Completion of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto
- (iv) upon completion of this Deed pay to the Council and the County Council their costs in connection with the preparation negotiation and completion of this Deed

COUNTY COUNCIL'S COVENANTS

- 5.1 The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purpose(s) specified in this Deed for which they are paid
- 5.2 The County Council further covenants with the Owner that it will pay to the Owner a sum, equal to the amount of any payment made by the Owner to the County Council under this Deed which has not been expended in accordance with the provisions of this Deed within ten (10) years of the date of receipt by the Council of such payment together with Interest on such unexpended sum from the date of receipt to the date of payment

EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS

- 6. If prior to the receipt of any of [the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] the County Council incurs any expenditure in providing additional [education libraries youth nursery and childcare facilities as the case may be] the need for which arises from or in anticipation of the Development then the County Council may immediately following receipt of [the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution as the case may be deduct from the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] as appropriate such expenditure incurred

INDEXATION

- 7.1 [The Library Contribution, the Childcare Contribution the Youth Contribution the Nursery Contribution and the Education Contribution] shall [each] be index linked by reference to the PUBSEC Index figure of [x] to the figure applicable to the quarter in which the contribution is paid
- 7.2 Where any sum is required to be index linked by reference to the PUBSEC Index that sum payable shall be increased or decreased in accordance with any change in the Department of Trade and Industry Tender Price Index of Public Sector Non-Housing (PUBSEC) Smoothed All-in Index by the application of the formula $A = B \times (C \div D)$ where:-
- A is the total amount to be paid;
 - B is the principal sum stated in this deed;
 - C is the PUBSEC Smoothed All-in Index for the date upon which the interim payment described below is actually paid and;
 - D is the figure of [x – is figure specified in clause 7.1]
- 7.3 The Sustainable Transport Contribution shall be index-linked to movements in the SPONS Index from to the date on which the Sustainable Transport Contribution is paid
- 7.4 Where any sum to be paid to the County Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised

MISCELLANEOUS

- 8.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party has an interest in the Site save as disclosed in writing to the County Secretary of the County Council prior to completion of this Deed
- 8.2. This Deed shall be registered as a local land charge by the Council
- 8.3. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto
- 8.4. Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the
Owner :

In respect of the
Council:

In respect of the
County Council:

The County
Secretary,
Hertfordshire
County Council,
County Hall,
Pegs Lane,
Hertford,
Herts
SG13 8DE

(ref : DU [])

Save that notices pursuant to paragraph 4 of Schedule 1 (Fire Hydrants) shall be sent to the person mentioned in paragraph 4.5 of Schedule 1

- 8.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 8.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the

Council or the County Council of any powers exercisable by them respectively under the 1990 Act or under any other Act or authority

- 8.7 No waiver whether express or implied by the County Council or Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council or the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 8.8 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission
- 8.9 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the Council or County Council or any officer of the Council or County Council is required for any purpose under or in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed
- 8.10 Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants to the Council and/or the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed.

VALUE ADDED TAX

9. All consideration given in accordance with the terms of this Deed shall be exclusive of any valued added tax properly payable

JURISDICTION

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

WORKS

11. If the Department for Transport Technical Design Standards or Advice is amended after the date of this Deed the Director of Environment shall be at liberty to review the Works and require any amendments he deems necessary to ensure that the Works comply with the revised standards and advice SAVE THAT in circumstances where detailed contract drawings have been approved in writing by the Director of Environment and the Works are commenced within three months of the date of the written approval then the Director of Environment shall not seek any amendments to the Works

MORTGAGEE'S CONSENT

12. The Mortgagee hereby consents to the Owner entering into this Deed and agrees that the security of the Charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

IN WITNESS whereof the parties hereto have executed this Deed but the same remains undelivered until the day and year first before written

SCHEDULE 1

The Owners Covenants stipulations and Obligations

Sustainable Transport Contribution

- 1.1 To pay the Sustainable Transport Contribution to the County Council prior to the Commencement Date
- 1.2 Not to Commence the Development until the Sustainable Transport Contribution has been paid in accordance with paragraph 1.1 of this Schedule

Green Travel Plan

- 2.1 Not to occupy or permit the Site or any part of the Site to be occupied for purposes pursuant to the Planning Permission until it has prepared and secured the written approval (which shall not be unreasonably withheld) of the County Council to a Green Travel Plan (GTP) in respect of the part or parts to be occupied and each such GTP shall contain as many of the provisions detailed in the GTP Guidance as are appropriate to the Site or the relevant part of the Site and further shall include provisions as to how the progress of the GTP shall be monitored
- 2.2 That if it or its successors in title occupy the Site or any part of the Site pursuant to the Development it or they will implement the approved GTP relating to the Site or that part of the Site and shall use all reasonable endeavours to achieve the targets set therein
- 2.3 That it will in relation to the Site include in any tenant's lease or occupier's licence of any part or parts of the Site a covenant that the tenant or occupier will implement the GTP for such part or parts of the Site once it has been approved by the County Council and further that it will use all reasonable endeavours to enforce such obligation against any such tenant or occupier
- 2.4 Within twenty (20) Working Days of the letting of the Site or any part or parts thereof it will procure the delivery to the County Council of a notice giving the following details

- (i) the name and address of the tenant;
- (ii) a description of the premises demised;
- (iii) the length of the term; and
- (iv) a sufficient extract of the lease setting out the terms of the covenant expressed in favour of the County Council in relation to the GTP

Libraries Contribution Youth Contribution Childcare Contribution Nursery Contribution and Education Contribution

- 3.1 To pay the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] to the County Council prior to the Commencement Date
- 3.2 Not to Commence the Development until the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] have been paid in accordance with paragraph 3.1 of this Schedule

Fire Hydrants

- 4.1 To ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (1984) as reasonably and properly required by the Hertfordshire Fire and Rescue Service
- 4.2 To construct and provide at no cost to the Fire and Rescue Service or the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Service in writing of the date upon which each and every fire hydrant becomes operational
- 4.3 Once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take place upon the issue of a Certificate of Satisfaction by the Chief Fire Officer the issue of which shall not be unreasonably delayed PROVIDED THAT such Certificate shall not be issued prior to the issue by the Director of Environment of any Certificate of Maintenance for the highways in which the fire hydrants are located
- 4.4 Not to Occupy nor cause nor permit Occupation of any building forming part of the Development until such time as it is served by an operational fire hydrant
- 4.5 To address any notice to be given to the Fire and Rescue Service to the Water Services Officer, Fire and Rescue Service, Old London Road Hertford SG13 7LD Telephone 01992 507521

Highway Works

5. Not to Occupy nor cause nor permit Occupation of any part of the Development (or not to Commence the Development) until such time as the Works have been completed by the Owner to the satisfaction of the County Council as evidenced by issue of a certificate of completion by the Director of Environment in respect of the Works in accordance with the Section 278 Agreement

SCHEDULE 2

PROFORMA

EVENT NOTIFICATION AND PAYMENT

PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE

SITE ADDRESS

.....
.....
.....

SITE OWNER DETAILS

Name

Contact name

Address

.....
.....

Telephone nos.

Main

Mobile

Email

EVENTS BEING NOTIFIED

Commencement Date – date :.....

Occupation of Development (Number if relevant) – date:.....

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule **Paragraph**

Details of obligation and compliance

PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X+Y £	Herts County Council

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

- a) The County Secretary
Hertfordshire County Council
County Hall,
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

(Ref : DU)

- b) To X District /Borough Council
Check address in deed.

ONLY USE THIS SCHEDULE IF OUTLINE PLANNING APPLICATION AND DWELLING DETAILS UNKNOWN

SCHEDULE 3

SCHEDULE 3A

Calculation of Libraries Contribution Youth Contribution Childcare Contribution Nursery Contribution and Education Contribution

This table is indicative only and would need to be reviewed in relation to specific applications

Hertfordshire County Council Services - Contributions Table and Calculator

Bedrooms*	1	2	3	4	5+	1	2	3
	HOUSES Market & other					FLATS Market & other		
Primary education	£231	£1,036	£2,469	£3,721	£4,692	£93	£816	£1,392
Secondary education	£263	£802	£2,561	£4,423	£5,662	£47	£444	£1,677
nursery education	£35	£175	£340	£459	£545	£32	£195	£270
Childcare	£14	£64	£138	£199	£244	£8	£57	£89
Youth facilities	£6	£16	£50	£82	£105	£3	£13	£41
Library facilities	£98	£147	£198	£241	£265	£77	£129	£164
Total	£647	£2,240	£5,756	£9,125	£11,513	£260	£1,654	£3,633
	HOUSES Social Rent					FLATS Social Rent		
Primary education	£247	£2,391	£3,860	£5,048	£5,673	£44	£1,167	£2,524
Secondary education	£62	£450	£1,676	£2,669	£2,405	£14	£261	£1,084
nursery education	£39	£453	£475	£503	£955	£9	£216	£313
Childcare	£12	£121	£188	£226	£277	£4	£65	£113
Youth facilities	£2	£8	£31	£51	£55	£1	£6	£21
Library facilities	£48	£91	£130	£156	£155	£38	£82	£107
Total	£410	£3,514	£6,360	£8,653	£9,520	£110	£1,797	£4,162

*uses an assumed relationship between bedrooms and habitable rooms

All figures are subject to indexation and will be indexed using the PUBSEC Index from the base of 175. (175 is the index for 4th Quarter 2006 (September 2007 publication))

Note: The above base costs and dates are regularly reviewed and will change/be updated over time.

SCHEDULE 3B

ONLY USE THIS SCHEDULE IF OUTLINE PLANNING APPLICATION AND DWELLING DETAILS UNKNOWN

Calculation of Sustainable Transport Contribution

Location	second strand charge per dwelling (£)			
	number of bedrooms			
	1	2	3	4+
Town centre zones 1&2	£375	£500	£750	£1000
Elsewhere zones 3&4	£625	£750	£1125	£1500

PLEASE REFER TO SECTION 11 OF PLANNING OBLIGATIONS GUIDANCE – TOOLKIT FOR HERTFORDSHIRE

The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

[The COMMON SEAL of)
was hereunto affixed to this)
Deed in the presence of:-)

The COMMON SEAL of)
was hereunto affixed to this)
Deed in the presence of:-)

The COMMON SEAL of)
was hereunto affixed to this)
Deed in the presence of:-)]

[Other forms of attestation]

Date _____ 20[]

HERTFORDSHIRE COUNTY COUNCIL

- and -

BOROUGH/DISTRICT COUNCIL

- and -

.....

-and-

.....

Deed of Agreement pursuant to S.106
Town and Country Planning Act 1990
(as amended) in relation to the
development of Site at
[.....]

ANDREW L LAYCOCK
County Secretary
County Hall
Hertford
SG13 8DE

REF: DU

end

APPENDIX 3

Unilateral Undertaking Model Precedent

PLEASE NOTE:-

- (A) THAT THE DISTRICT/BOROUGH COUNCIL MAY HAVE ITS OWN TEMPLATE AND THIS SHOULD BE ESTABLISHED BEFORE USING THIS MODEL DOCUMENT
- (B) THE PROVISIONS OF THIS DOCUMENT MAY NEED TO BE AMENDED TO TAKE ACCOUNT OF MATTERS REQUIRED BY THE COUNTY COUNCIL/DISTRICT/BOROUGH COUNCIL IN RELATION TO A SPECIFIC APPLICATION

THIS UNILATERAL UNDERTAKING is made by deed on the [] day of [] 20[]

PARTIES

1. (Co. Regn. No. []) whose registered office is situate at address is ("the Owner" (which expression shall include the Owner's successors in title)) and
2. (Co. Regn. No. []) whose registered office is situate at("the Mortgagee")

In favour of

3.District/ Borough Council of ("the Council"); and
4. Hertfordshire County Council of County Hall, Pegs Lane, Hertford, SG13 8DE ("the County Council")

hereinafter collectively referred to as "the Councils"

- NB.**
- i) Owners of all interests in all affected parts of the Site will need to be parties as well as the Developer (if a different person)
 - ii) All mortgagees/lessees option holders etc. will also need to be parties

- ii) Title must be shown to all land within the Site and also over any land on which any highway works are to be carried out if not already part of the publicly maintained highway.**

WHEREAS

- (1) The Council and the County Council are the local planning authorities for the purposes of the 1990 Act for the area within which the Site is situate and as such are the local planning authorities entitled to enforce the planning obligations hereinafter recited
- (2) The County Council is also the Highway Authority the Education Authority the Library Authority the Social Services Authority and the Fire and Rescue Authority for Hertfordshire
- (3) The Owner is the freehold owner of the whole of the Site [subject to the Charge]
- (4) The Mortgagee has the benefit of the charge referred to in Recital (3)
- (5) The Owner has submitted the Planning Application to the Council
- (6) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to go ahead

NOW THIS DEED WITNESSES AS FOLLOWS

OPERATIVE PART

1. DEFINITIONS

1.1 In this Deed the following expressions shall have the following meanings:-

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

“Charge” means the mortgage/charge dated [] made between the Owner (1) and the Mortgagee (2)

“Childcare Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (indexed linked as hereinafter provided) to provide childcare facilities serving the locality of the Development

“Commencement Date” means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the expressions “Commence”, “Commences”, “Commencement” and “Commenced” shall be construed accordingly;

“Development” means the development of the Site with [*insert description of the development*] as set out in the Planning Application;

“Director of Environment” means the County Council’s Director of Environment for the time being and his agents;

“Education Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of educational facilities serving the locality of the Development;

“Fire and Rescue Service” means that part of the County Council known as the Hertfordshire Fire and Rescue Service

“GTP Guidance” means the County Council’s document entitled ‘Developing a Green Travel Plan – A Guidance Note’ which can be found at <http://www.hertsdirect.org/envroads/roadstrans/transplan/hdc/greentravelplans/>

“Interest” means the rate from time to time prescribed [under the Land Compensation Act 1961];

“Library Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of additional library facilities serving the locality of the Development;

“Nursery Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of nursery facilities serving the Development

“Occupy” “Occupation” and “Occupied” means occupation for the purposes of the Planning Permission but not including occupation by personnel engaged in the construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

“Plan” means the plan annexed to this Deed;

“Planning Application” means the application for [outline] [full] planning permission dated [] bearing the Council’s reference number [];

“Planning Permission” means the permission to be granted by way of approval of the Planning Application or from any reserved matters submissions or resulting from any other planning application covering all or part of the Site for any of the uses comprised in the Planning Application whether granted by variation alteration substitution addition or replacement PROVIDED THAT if any form of development within the Site which individually or in combination with any other permission for development would lead to levels of development exceeding those set out in the Planning Application that development shall be subject to additional planning obligations;

“PUBSEC Index” means the Department of Trade and Industry Tender Price Index of Public Sector Non Housing Smoothed All-In Index;

“Section 278 Agreement” means a valid agreement executed as a deed and to be entered into with the County Council pursuant, inter alia, to Section 278 of the Highways Act 1980

“Site” means the freehold property situate at [] Hertfordshire registered at the Land Registry with Title Absolute under the Title Number [] all of which land is shown for identification purposes only edged red on the Plan

“SPONS Index” means the index linked by reference to the price adjustment formula for construction contracts in the monthly bulletin of indices published by Her Majesty’s Stationary Office

as collaged into a single index known as the SPONS Construction Civil Engineering Cost Index;

“Sustainable Transport Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3B] (indexed linked as hereinafter provided) as a contribution towards [*specify reasons for contribution e.g. the design and construction of highway improvement works traffic management schemes traffic studies improvements to public transport or such other measures as will encourage users of the Development to travel to and from the Development by means of transport other than the private car which the Director in his absolute discretion determines will contribute to the improvement of highway conditions on parts of the network affected by traffic associated with the Development*];

“Water Scheme” means either the proposal prepared by or approved by the water undertaker for the area pursuant to the Water Industry Act 1991 to provide mains water services for the Development whether by means of new mains or extension to or diversion of existing services or apparatus OR where existing water services are to be used it shall mean the details of the residential dwellings and the water supply to them which shall be provided by the Owner for the written approval of the Fire and Rescue Service prior to commencement of the construction of any residential dwelling to be constructed as part of the Development

“Works” shall mean the works to the highway shown in principle only on drawing numbered [] annexed to this Deed (subject as mentioned in clause 11 hereof) which works shall for the avoidance of doubt include [] together with such ancillary works as may be required by the Director of Environment to facilitate the Development which ancillary works

may without prejudice to the generality of the foregoing include the provision of street lighting traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers' equipment

“Working Day” means any day other than a Saturday or a Sunday or a Public Holiday;

“Youth Contribution” means the sum [of [] pounds (£[])] [calculated in accordance with Schedule 3A] (index linked as hereinafter provided) towards the cost of [additional] facilities for young people within the locality of the Development;

1.2 In this Deed:-

1.2.1 the clause headings do not affect its interpretation;

1.2.2 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa;

1.2.3 the reference to any statute or section of a statute includes any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it;

1.2.4 any reference to a clause, a paragraph or a schedule is unless the context otherwise requires a reference to a clause, a paragraph or a schedule of this Deed and any

reference to a sub clause is a reference to a sub clause of the clause in which the reference appears;

1.2.5 references to the Site include any part of it;

1.2.6 where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually;

1.2.7 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective functions;

1.2.8 any covenant by the Owner not to do any act of thing includes a covenant not to permit or allow the doing of that act or thing and words denoting an obligation on the Owner to do any act matter or thing include an obligation to procure that it be done;

[1.2.9 references in this Deed to "development" shall have the meaning given by Section 55 of the 1990 Act]

EFFECT OF THIS DEED

2.1. This Deed is entered into pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act the obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council;

- 2.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Section 2 Local Government Act 2000 and all other enabling powers;
- 2.3 The Owner enters into the obligations for itself and its successors in title with the Council and the County Council to the intent that the obligations hereunder shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof
3. The covenants in this Unilateral Undertaking shall come into effect on the date of this Unilateral Undertaking

OWNER'S COVENANTS

- 4.1 The Owner covenants with the County Council:-
- (i) to observe and perform the covenants restrictions stipulations and obligations contained in Schedule 1 hereto
 - (ii) to give the County Council and the Council no less than five (5) Working Days notice of the Commencement Date such notice to be given prior to the Commencement Date in writing using the proforma set out in Schedule 2 hereto
 - (iii) to give the County Council and the Council no less than five (5) Working Days notice of the Occupation of the Development/ Completion of the Development such notice to be in writing using the proforma set out in Schedule 2 hereto

- (iv) upon completion of this Deed pay to the Council and the County Council their costs in connection with the preparation negotiation and completion of this Deed

4.2 The Owner further covenants that:-

- (i) it is the freehold owner of the Site
- (ii) the Site is free from all encumbrances material to this Unilateral Undertaking
- (iii) save the Mortgagee no other party has an interest in the Site

EXPENDITURE IN ADVANCE OF RECEIPT OF CONTRIBUTIONS

5. If prior to the receipt of any of [the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] the County Council incurs any expenditure in providing additional [education libraries youth nursery and childcare facilities as the case may be] the need for which arises from or in anticipation of the Development then the County Council may immediately following receipt of [the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution as the case may be deduct from the Education Contribution the Libraries Contribution the Youth Contribution the Nursery Contribution or the Childcare Contribution] as appropriate such expenditure incurred

INDEXATION

- 6.1 [The Library Contribution, the Childcare Contribution the Youth Contribution the Nursery Contribution and the Education Contribution] shall

[each] be index linked by reference to the PUBSEC Index figure of [x] to the figure applicable to the quarter in which the contribution is paid

6.2 Where any sum is required to be index linked by reference to the PUBSEC Index that sum payable shall be increased or decreased in accordance with any change in the Department of Trade and Industry Tender Price Index of Public Sector Non-Housing (PUBSEC) Smoothed All-in Index by the application of the formula $A = B \times (C \div D)$ where:-

A is the total amount to be paid;

B is the principal sum stated in this deed;

C is the PUBSEC Smoothed All-in Index for the date upon which the interim payment described below is actually paid and;

D is the figure of [x – is figure specified in clause 6.1]

6.3 The Sustainable Transport Contribution shall be index-linked to movements in the SPONS Index from to the date on which the Sustainable Transport Contribution is paid

6.4 Where any sum to be paid to the County Council under the terms of this Deed is required to be indexed then an interim payment shall initially be made based on the latest available forecast figure (or figures as the case may be) at the date of payment and any payment or payments by way of adjustment shall be made within ten (10) Working Days of written demand by the County Council or the payer of the interim payment (as the case may be) once the relevant indices have been finalised

MISCELLANEOUS

7.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party has an interest in the Site save as disclosed in writing to the County Secretary of the County Council prior to completion of this Deed

- 7.2. This Deed shall be registered as a local land charge by the Council
- 7.3. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title or a statutory successor to a party hereto
- 7.4. Any notice to the parties hereto under this Deed shall be deemed to be sufficiently served if delivered personally or sent by recorded delivery service to the following officials/persons at the respective addresses hereinafter specified:

In respect of the
Owner :

In respect of the
Council:

In respect of the
County Council:
The County
Secretary,
Hertfordshire
County Council,
County Hall,
Pegs Lane,
Hertford,
Herts
SG13 8DE
(ref : DU [])

Save that notices pursuant to paragraph 4 of Schedule 1 (Fire Hydrants) shall be sent to the person mentioned in paragraph 4.5 of Schedule 1

- 7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provision of this Deed.
- 7.6 Nothing in this Deed shall be construed as imposing a contractual obligation upon the Council as to the issue of the Planning Permission or as restricting the exercise by the Council or the County Council of any

powers exercisable by them respectively under the 1990 Act or under any other Act or authority

- 7.7 No waiver whether express or implied by the County Council or Council of any breach or default by the Owner in performing or observing any of the obligations contained herein shall constitute a continuing waiver and no such waiver shall prevent the County Council or the Council from enforcing the relevant obligations or from acting upon any subsequent breach or default
- 7.8 This Deed shall cease to have any effect (insofar only as it has not been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or if the Commencement Date has not been initiated in accordance with section 56 of the 1990 Act before the expiration of the period specified in the Planning Permission
- 7.9 Where the approval, consent, expression of satisfaction, agreement, confirmation or certification of the Council or County Council or any officer of the Council or County Council is required for any purpose under or in connection with the terms of this Deed such approval, consent, expression of satisfaction, agreement, confirmation, or certification shall not be unreasonably withheld or delayed
- 7.10 Without prejudice to the Council's and the County Council's statutory rights the Owner hereby grants to the Council and/or the County Council or any person duly authorised or instructed by it an irrevocable licence at all reasonable times to enter the such parts of the Site to inspect any of the works to be carried out for the purposes of the Development and any materials to be used in carrying out those works for any purpose directly or indirectly connected with or contemplated by this Deed.

VALUE ADDED TAX

8. All consideration given in accordance with the terms of this Deed shall be exclusive of any valued added tax properly payable

JURISDICTION

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

WORKS

10. If the Department for Transport Technical Design Standards or Advice is amended after the date of this Deed the Director of Environment shall be at liberty to review the Works and require any amendments he deems necessary to ensure that the Works comply with the revised standards and advice SAVE THAT in circumstances where detailed contract drawings have been approved in writing by the Director of Environment and the Works are commenced within three months of the date of the written approval then the Director of Environment shall not seek any amendments to the Works

MORTGAGAGEES CONSENT

11. The Mortgagee hereby consents to the Owner entering into this Deed and agrees that the security of the Charge over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

IN WITNESS whereof the Owner and the Mortgagee have executed this Deed
but the same remains undelivered until the day and year first before written.

SCHEDULE 1

The Owner's Covenants Restrictions Stipulations and Obligations

Sustainable Transport Contribution

- 1.1 To pay the Sustainable Transport Contribution to the County Council prior to the Commencement Date
- 1.2 Not to Commence the Development until such time as the Sustainable Transport Contribution shall have been paid to the County Council in accordance with paragraph 1.1 of this Schedule

Green Travel Plan

- 2.1 Not to occupy or permit the Site or any part of the Site to be occupied for purposes pursuant to the Planning Permission until it has prepared and secured the written approval (which shall not be unreasonably withheld) of the County Council to a Green Travel Plan (GTP) in respect of the part or parts to be occupied and each such GTP shall contain as many of the provisions detailed in the GTP Guidance as are appropriate to the Site or the relevant part of the Site and further shall include provisions as to how the progress of the GTP shall be monitored
- 2.2 That if it or its successors in title occupy the Site or any part of the Site pursuant to the Development it or they will implement the approved GTP relating to the Site or that part of the Site and shall use all reasonable endeavours to achieve the targets set therein
- 2.3 That it will in relation to the Site include in any tenant's lease or occupier's licence of any part or parts of the Site a covenant that the tenant or occupier will implement the GTP for such part or parts of the Site once it has been approved by the County Council and further that it will use all reasonable endeavours to enforce such obligation against any such tenant or occupier

2.4 Within twenty (20) Working Days of the letting of the Site or any part or parts thereof it will procure the delivery to the County Council of a notice giving the following details

- (i) the name and address of the tenant;
- (ii) a description of the premises demised;
- (iii) the length of the term; and
- (iv) a sufficient extract of the lease setting out the terms of the covenant expressed in favour of the County Council in relation to the GTP

**Libraries Contribution Youth Contribution Childcare Contribution
Nursery Contribution and Education Contribution**

3.1 To pay the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] to the County Council prior to the Commencement Date

3.2 Not to Commence the Development until the [Libraries Contribution the Youth Contribution the Childcare Contribution the Nursery Contribution and the Education Contribution] have been paid in accordance with paragraph 3.1 of this Schedule

Fire Hydrants

4.1 To ensure that the Water Scheme incorporates fire hydrants in accordance with BS 750 (1984) as reasonably and properly required by the Hertfordshire Fire and Rescue Service

- 4.2 To construct and provide at no cost to the Fire and Rescue Service or the County Council the fire hydrants reasonably and properly indicated in the Water Scheme and to advise the Service in writing of the date upon which each and every fire hydrant becomes operational
- 4.3 Once operational to maintain the fire hydrants in good condition and repair such that they are suitable at all times for use by the Fire and Rescue Service until they are adopted by the Fire and Rescue Service which adoption shall take place upon the issue of a certificate of satisfaction by the Chief Fire Officer of the Service the issue of which shall not be unreasonably delayed PROVIDED THAT such certificate of satisfaction shall not be issued prior to the issue by the Director of the certificate of maintenance for the highways in which the fire hydrants are located
- 4.4 Not to occupy nor cause nor permit occupation of any building forming part of the Development until such time as it is served by an operational fire hydrant

Highway Works

- 5 Not to Occupy nor cause nor permit Occupation of any part of the Development until such time as the Works have been completed by the Owner to the satisfaction of the County Council as evidenced by issue of a certificate of completion by the Director of Environment in respect of the Works in accordance with the Section 278 Agreement

SCHEDULE 2

PROFORMA

EVENT NOTIFICATION AND PAYMENT

PURSUANT TO SECTION 106 AGREEMENT/UNILATERAL UNDERTAKING

DATED

MADE BETWEEN

PLANNING PERMISSION REFERENCE.....

HCC DU REFERENCE

SITE ADDRESS

SITE OWNER DETAILS

Name

Contact name

Address

Telephone nos.

Main

Mobile

Email

EVENTS BEING NOTIFIED

Commencement Date – date :.....

Occupation of Development (Number if relevant) – date:.....

Completion of Development – date:

COMPLIANCE WITH OBLIGATION(S)

Schedule **Paragraph**

Details of obligation and compliance

PAYMENT OF S106 CONTRIBUTIONS

Payment Type	Amount	Interim Indexation	Final Indexation	Total	Payable to
Example Education (primary)	X £	Y £	Z £	X+Y £	Herts County Council

Payment of S106 contributions can be made by BACS, CHAPS or cheque. In any event the form should be completed to ensure the payment is identified correctly and forward to:

a) The County Secretary
 Hertfordshire County Council
 County Hall,
 Pegs Lane
 Hertford
 Hertfordshire
 SG13 8DE

(Ref : DU [])

b) To District /Borough Council
 Check address in deed.

ONLY USE THIS SCHEDULE IF OUTLINE PLANNING APPLICATION AND DWELLING DETAILS UNKNOWN

SCHEDULE 3

SCHEDULE 3A

Calculation of Libraries Contribution Youth Contribution Childcare Contribution Nursery Contribution and Education Contribution

This table is indicative only and would need to be reviewed in relation to specific applications

Hertfordshire County Council Services - Contributions Table and Calculator

Bedrooms*	1	2	3	4	5+	1	2	3
	HOUSES Market & other					FLATS Market & other		
Primary education	£231	£1,036	£2,469	£3,721	£4,692	£93	£816	£1,392
Secondary education	£263	£802	£2,561	£4,423	£5,662	£47	£444	£1,677
nursery education	£35	£175	£340	£459	£545	£32	£195	£270
Childcare	£14	£64	£138	£199	£244	£8	£57	£89
Youth facilities	£6	£16	£50	£82	£105	£3	£13	£41
Library facilities	£98	£147	£198	£241	£265	£77	£129	£164
Total	£647	£2,240	£5,756	£9,125	£11,513	£260	£1,654	£3,633
	HOUSES Social Rent					FLATS Social Rent		
Primary education	£247	£2,391	£3,860	£5,048	£5,673	£44	£1,167	£2,524
Secondary education	£62	£450	£1,676	£2,669	£2,405	£14	£261	£1,084
nursery education	£39	£453	£475	£503	£955	£9	£216	£313
Childcare	£12	£121	£188	£226	£277	£4	£65	£113
Youth facilities	£2	£8	£31	£51	£55	£1	£6	£21
Library facilities	£48	£91	£130	£156	£155	£38	£82	£107
Total	£410	£3,514	£6,360	£8,653	£9,520	£110	£1,797	£4,162

*uses an assumed relationship between bedrooms and habitable rooms

All figures are subject to indexation and will be indexed using the PUBSEC Index from the base of 175. (175 is the index for 4th Quarter 2006 (September 2007 publication))

Note: The above base costs and dates are regularly reviewed and will change/be updated over time.

SCHEDULE 3B

ONLY USE THIS SCHEDULE IF OUTLINE PLANNING APPLICATION AND DWELLING DETAILS UNKNOWN

Calculation of Sustainable Transport Contribution

Location	second strand charge per dwelling (£)			
	number of bedrooms			
	1	2	3	4+
Town centre zones 1&2	£375	£500	£750	£1000
Elsewhere zones 3&4	£625	£750	£1125	£1500

PLEASE REFER TO SECTION 11 OF PLANNING OBLIGATIONS GUIDANCE – TOOLKIT FOR HERTFORDSHIRE

EXECUTED as a Deed)
XXXXXXXXXXXX)
LIMITED acting by two of its directors)
or by one its directors and)
its company secretary)

Director:

Name:-

Signature:-

Director:

Name:-

Signature:-

Company Secretary:-

Name:-

Signature:-

Executed as Deed by)
XXXXX Bank PLC)
acting by)
)

DATED

20[]

XXXXXXXXXXXXXXXXXXXXX LIMITED
(the Owner)

XXXXXXXXXXXXX PLC
(The Mortgagee)

IN FAVOUR OF [.....]
BOROUGH/DISTRICT COUNCIL
(the Council)

and

HERTFORDSHIRE COUNTY COUNCIL
(the County Council)

UNILATERAL UNDERTAKING

Pursuant to Section 106 Town and Country
Planning Act 1990
(as amended)
relating to
Land at xxxxxxxxxxxxxxxxxxxxxxxxx,
Hertfordshire

HCC Ref : DU []

end

APPENDIX 4

The County Council's approach on detailed matters relating to S106 Contributions/Obligations

1) Solicitor's undertaking for the County Council's costs

Where a S106 legal agreement/unilateral undertaking is deemed necessary, the County Council will require a solicitor's undertaking to be provided on behalf of the Planning Applicant to the effect that they will pay "the County Council's costs in the preparation and completion of the legal agreement, whether or not the matter proceeds to completion" before the legal officer commences any work on the agreement/undertaking. The agreement/undertaking will also include a clause to provide for the payment of the County Council's costs in its preparation. In all cases, an estimate of the final costs will be provided once a draft agreement/undertaking is circulated or received.

The costs include legal and officer costs which as at January 2008 are charged at the following hourly rates:-

- Legal Officer - £140 per hour
- All other officers - £75 per hour

These costs will be reviewed on an annual basis.

2) Proof of ownership of the development site

From the outset of any discussions regarding a proposed agreement/undertaking the Planning Applicant (or his/her solicitor) will need to provide the County Council's legal officer with up to date copies of the title for the development site. This is because planning obligations bind the land and the law requires all persons with an interest in the land to be a party to the agreement/undertaking.

In addition, prior to completion of an agreement/undertaking, the County Council's legal officer will carry out a final search with H.M. Land Registry to ensure that there have been no changes to the interests in the development site during the course of any negotiations.

3) "Walk away" provisions

In certain circumstances, the owner or Owner entering into a S106 agreement/undertaking will want to include a clause within the agreement/undertaking which allows the person with the burden of the obligation to "walk away" at a point in future when they dispose of (i.e. sell on or transfer) their interest in the site. The County Council has carried out an extensive risk assessment into the potential impacts of such a provision, for example, it may exclude and limit the persons against which the County Council could enforce any breach, and in some cases, exclude any person/s from enforcement action. In order to limit such risk, the County Council will allow these types of clauses in the following, limited circumstances: -

- They will not be accepted in respect of any disposal "in part" for example where a development site is sold/transferred in specific pieces;
- They will not be accepted where any financial contributions payable are to be by way of phased payment (unless in certain circumstances a bond is provided on completion of the agreement/undertaking to cover the full amount of any contribution payable and any such bond will need to include any successors in title)
- Mortgagees will only be included within any walkaway provision provided they are not a mortgagee in possession

- They will generally be accepted where financial contributions or obligations are required prior to any commencement of the development permitted by the planning permission.

The example clauses set out below are aimed to provide a general guide to the wording of such of clauses and their acceptability.

Acceptable “walkaway clauses”: -

- “No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed occurring after it has parted with all of its interest in the Land save that it shall remain liable for any such breach occurring before it parted with possession of such interest in the Land”
- “The Owner shall be liable for ensuring that the obligations hereunder are fulfilled and all restrictions are complied with until it has disposed of all of its interest in the Land”
- “No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with all its interests in the Land but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest”

Unacceptable “walkaway” clauses: -

- “No person shall be liable for any breach of the terms of this Deed occurring after parting with their interest in the site in respect of which such breach occurs but they will remain liable for any breaches of this Undertaking occurring before that date”
- No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with all interests in the Land or in the

part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest”

- “The Owner shall not be liable in respect of any of its obligations under this Deed after it shall have disposed of all its interest or interests in the Property or as the case may be the part of which a breach occurs but without prejudice to any antecedent breach of the said obligations on the part of the Owner”
- “The Owner and its successors in title shall not be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Application Site provided that liability will still remain for any breach occurring prior to the parting of any party’s interest in the Application Site”

4) Mediation/Arbitration Clauses

Generally, such provisions will only be necessary where there is a S106 obligation which requires further agreement at a later date. For example, the design and implementation of a green travel plan. In such circumstances, it may be appropriate to include a mediation clause such as: -

“The parties to this Deed and their successors in title will attempt in good faith to negotiate a settlement to any claim or dispute between them arising out of or in connection with this Deed and if the matter is not resolved by negotiation the parties shall refer the dispute to mediation in accordance with the Centre for Dispute Resolution procedures

Notwithstanding the provisions of clause [xx] above the parties to this Deed and their successors in title shall reserve all their respective rights

in the event that no agreed resolution shall be reached in the mediation referred to in clause [xx] above and no party shall be deemed to be precluded from taking such interim formal steps as may be considered necessary to protect such party's position while the mediation or other procedure is pending or continuing."

As the County Council has certain statutory functions to fulfil there may be a risk if, in the unlikely event, it was bound by an arbitration clause and subsequent arbitrator's decision, there is a risk of potential conflict between such a decision and its statutory duties. Therefore, in all cases where such provisions are necessary, the County Council will take the approach that a mediation clause is acceptable but an arbitration clause is not.

Such consideration are unlikely to be relevant where an agreement/undertaking only requires payments of financial contributions as the sums and terms for payment and expenditure will have been agreed in advance of the legal agreement being completed, therefore, no further agreement will be necessary at a later date.

5) Bonds & Guarantors

A Bond may sometimes be required. For example, where any S106 contributions are to be paid by way of phased payment. Or alternatively, for very large developments, when the date for payment of any contributions is at a later point in future such as on/prior to occupation. The form and size of the bond will be dependant on the contribution/s required for the development. Parent guarantors will not be accepted in lieu of a Bond in any circumstances because in the event of a breach, the County Council must be sure that any financial contributions are available immediately and this cannot be guaranteed by a parent guarantor.

6) Triggers for payments

Wherever possible, the County Council will seek the payment on any S106 contributions at the earliest possible trigger date i.e. prior to commencement of any development. Trigger dates later than commencement of any development carry additional risks for the County Council and these will be assessed and addressed by appropriate means in the legal agreement. Such means are already set out in sections 3 and 5 above. Later trigger dates will be considered on a case by case basis or in special circumstances and will tend to be more appropriate to larger developments .

7) Repayments of financial contributions

The inclusion of a repayment provision for any S106 contributions paid to the County Council will be limited to S106 agreements. A unilateral undertaking is a unilateral promise on the part of one party in favour of another, therefore, by its nature it cannot require reciprocal acts by a third party. The County Council will generally require a repayment period of ten years. This period will only be reduced in exceptional circumstances.

8) Indexation

Further to the information provided earlier on in this document, the following aims to assist in understanding the concept of indexation and how it is used by Hertfordshire County Council.

Indexation is a method of ensuring that monies negotiated maintain a real value from the date of calculation to the time when they are paid, by being protected against cost inflation. It is also a method used to measure changes of construction costs and prices. Currently, financial contributions are based upon either a base date or figure (a figure is used if the index is prone to fluctuation as this gives certainty to all

involved), which is reviewed from time to time. The base date/figure will be subject to indexation.

Indexation calculations are worked out in the following manner:-

$A = B \times C/D$ where

A is the total amount to be paid

B is the principal sum stated in the deed

C is the forecasted Index figure for the date upon which the payment is to be made *. (See note below regarding interim payment)

D is the base Index figure (or date) stated in the deed

Indices provide information on actual and forecasted figures. The forecasted figures are not finalised for approximately one year after publication, so the most recent actual figures are only available for the previous year. In view of the above, Hertfordshire Property prefer to calculate an interim sum * at the time of payment of the principal figure, followed by a final payment, one year later. This ensures that the Owner does not overpay (i.e. if the index drops), which would require the County Council to make payment back to the planning applicant. Officers will assist in the calculation of the indexation payments on request.

SPONS Indices

The SPONS Constructed Civil Engineering Cost Index has been the common method adopted by HCC to measure increased costs of Highways works over a period of time and forms an integral part of all section 106 agreements that require contributions from the Owners.

There are 10 current indices for general civil engineering work, including Labour and supervision in civil engineering, the provision and maintenance of plant and road vehicles and materials..

The indices are published in a monthly bulletin of indices by HMSO for the Department Of Trade and Industry, entitled "Price Adjustment Formulae for Construction Contracts". Although the above indices are prepared and published in order to provide a common basis for calculating increased costs during the course of a contract, they also present a time series of cost indices for the main components of civil engineering work. They can therefore be used as the basis of an index for civil engineering work.

PUBSEC Indices

The PUBSEC indices are now used in relation to education, nursery, library, youth and childcare contributions, since this index is related to public sector construction. The Department for Business Enterprise and Regulatory Reform (BERR) (formerly DTI) Tender Price Index of Public Sector Non-Housing (PUBSEC) Smoothed All-in Index is available from the dedicated BERR portal on the BCIS online website (www.rics.org) from 1 January 2008.

9) Expenditure in advance of payments

Where S106 Contributions are payable towards education, libraries and/or youth and childcare facilities, the County Council will require that any expenditure for such matters arising from or in anticipation of the proposed development incurred before the relevant S106 Contribution has been paid, are deducted from such contributions when they are finally received.

Examples of standard clauses are set out in the model documents at Appendices 2 and 3. end

APPENDIX 5

Contact List

The Environment and Property Law Group

The Environment and Property Law Group will be responsible for S106 legal agreements. As at 1 January 2008 the Group is headed up by Kathryn Pettitt, Assistant County Secretary, supported by Tessa Lewis, Acting Senior Solicitor.

Legal agreements are generally allocated on a “quad” system to the following lawyers: -

Quad 1	Watford Hertsmere Three Rivers	Phillipa Tate and Brona Bell
Quad 2	St Albans Welwyn Hatfield Dacorum	Damian Ogbonnaya and Stephanie Stammers
Quad 3	North Herts Stevenage	Tessa Lewis Shirley Oragui
Quad 4	East Herts Broxborne	Shirley Oragui Daljit Kaur

Address:-

The County Secretary's,
Corporate Services Department
Hertfordshire County Council
County Hall, Pegs Lane, SG13 8DE

DX : 145781 HERTFORD 4

The Development Services Team

The Development Services Team within Hertfordshire Property is responsible for S106 agreements in relation to Education (including youth and childcare), Libraries, the Fire and Rescue Service and Adult Care Services. The team is lead by Jacqueline Nixon, Principal Planning Officer - tel 01992 588104. Contact may also be made with following team members :-

Denise Headland – Planning Obligations Support Officer - tel 01992 588137

Alexandra Stevens – Planning Obligations Officer - tel 01992 588132

Matthew Wood – Senior Planning Officer - tel 01992 588118

Andrea Gilmour - Senior Planning Officer -tel 01992 556477

Address :

Development Services,
Hertfordshire Property,
Hertfordshire County Council,
County Hall, Pegs Lane, SG13 8DE

Transportation Planning and Policy Unit

The Transportation Planning and Policy Unit is responsible for advice in relation to planning applications and highways matters. The team is lead by Dave Humby (Head) and assisted by Vetti Vettivelu, the Highways Development Control Service Manager. Contact with the following officers should be made on proposals:-

	District	Highways Development Control Contact
Quad 1	Watford Hertsmere Three Rivers	Nick Gough (01992 588431) Peter Oliver
Quad 2	St Albans Welwyn Hatfield Dacorum	James Dale (01992 556120) Rob Davies
Quad 3	North Herts Stevenage	Manjinder Sehmi (01992 556128) Roger Taylor
Quad 4	East Herts Broxbourne	Rob Jepson (01992 556167) Mark Cornell

Address –

Highways Development Control,
Transportation Planning and Policy Unit,
Hertfordshire county Council,
County Hall, Pegs Lane, Hertford, SG13 8DN

Others:

Minerals and Waste

Brian Owen - Tel 01992 556255

Waste Management

Ray Greenall – Tel 01992 556160

Archaeology

Andrew Instone – tel 01992 555241

On other issues, contact may be made through the County Council's general telephone numbers :

From area codes 01923 and 020 8

01923 471555

From all other areas in Hertfordshire

01438 737555

APPENDIX 6

List of Hertfordshire Local Planning Authorities

Local Authority	Website address	Telephone number
<u>Broxbourne Borough Council</u>	(Website address: www.broxbourne.gov.uk)	01992 785555
<u>Dacorum Borough Council</u>	(Website address: www.dacorum.gov.uk)	01442 228000
<u>East Herts District Council</u>	(Website address: www.eastherts.gov.uk)	01279 655261
<u>Hertsmere Borough Council</u>	(Website address: www.hertsmere.gov.uk)	020 8207 2277
<u>North Hertfordshire District Council</u>	(Website address: www.north-herts.gov.uk/)	01462 474000
<u>St Albans City and District Council</u>	(Website address: www.stalbans.gov.uk)	01727 866100

<u>Stevenage Borough Council</u>	(Website address: www.stevenage.gov.uk)	01438 242242
<u>Three Rivers District Council</u>	(Website address: www.threerivers.gov.uk)	01923 776611
<u>Watford Council</u>	(Website address: www.watford.gov.uk)	01923 226400
<u>Welwyn Hatfield Council</u>	(Website address: www.welhat.gov.uk)	<u>General Enquiry Number</u> (9) 01707 357000

end