



ISLINGTON

Section 106 Community Benefits

ISLINGTON COUNCIL
Planning Division

April 2003

ISLINGTON'S UNITARY DEVELOPMENT PLAN

supplementaryplanning**guidance**

1. Introduction

- 1.1 Strategic Policy ST14 (13.5) and IMP 13 of Islington's Unitary Development Plan (UDP) sets out the circumstances in which the Council will seek to secure agreements under Section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991). This "Supplementary Planning Guidance" (SPG), provides further clarification in relation to the Council's position.
- 1.2 This SPG also provides information on what may be required when a development is considered by the Council in relation to planning obligations in order to recommend it for approval. The guidance incorporates the Government's Modernising Planning Agenda, and takes on board the five key planning themes identified by the Urban task force – transparency, clarity, certainty, speed and practicality.
- 1.3 This Supplementary Planning Guidance covers the following matters:
- Status of this document.
 - What is a Planning Obligation and Legal Context
 - UDP policy context
 - Procedure and types of obligations
 - Area based strategies
 - Planning Briefs and Advice
 - Implementation and monitoring of planning obligations
 - Frequently asked questions
 - Further information

2. Status of the SPG

- 2.1 This guidance for planning obligations is non-statutory guidance, which supplements the policies and proposals of the Islington Unitary Development Plan (UDP), adopted in June 2002. The Development Plan should be referred to for the Council's policies and proposals for the use of land in the borough.
- 2.2 Only the policies of the Development Plan can have the special status afforded by Section 54A of the Town and Country Planning Act 1990 (as amended) in deciding planning applications. However, Supplementary Planning Guidance (SPG) may be taken into account as a material consideration. This has greater weight if it has been prepared in consultation with the public and has been the subject of a Council resolution. This document was subject to public consultation during February and March 2003 and was adopted by the Executive Committee of April 2003.
- 2.3 The guidance supplements Strategic Policy ST14 (13.5) and IMP 13 in the adopted Unitary Development Plan and refers to other complementary policies where applicable.
- 2.4 This guidance should be read in conjunction with the Council's SPG on Affordable Housing.

3. What is a Planning Obligation and Legal Context

- 3.1 The power of a local planning authority to enter into a planning obligation with the owner of land in its area is contained within section 106 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991).
- 3.2 There are two types of planning obligation; an agreement between the developer and the Council or a unilateral undertaking by a developer. Unilateral undertakings are mainly used by developers at planning appeals to overcome objections to a proposal.
- 3.3 A planning obligation can be used in four ways:

- i. To restrict the development or use of land in a specified way;**
- ii. To require specific operations to be carried out;**
- iii. To require land to be used in a specific way; or**
- iv. To require sums of money to be paid for specified uses.**

Types of obligations that might be sought are outlined below in section 5.

- 3.4 Government advice on the application of section 106 is contained within Circular 1/97.

Circular 1/97 – A Planning Obligation

- May restrict the development or use of land, require specified operation or activities to be carried out, require land to be used in some specified way, or require cash payments to be made.**
- May be either positive, ie requiring a person to do a specified thing; or negative, ie. restricting the person from using the land in a specified way.**
- May be entered into either by agreement with the local authority or by an undertaking by the developer to which the local planning authority is not a party.**
- Must be entered into by way of a Deed (which can be varied later if necessary).**
- Must be registered as a local land charge (for the purpose of the Local Land Charges Act 1975).**
- Runs with the land and may be enforced not only against the person who enters into it, but also against successors in title.**
- Can be enforced by means of an injunction.**

- 3.5 Circular 1/97 advises that amongst other factors, the guidance requires planning obligations to be sought only where they meet the following tests:

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

- 3.6 The broad principles of government policy are that the planning system should operate in the public interest, and should aim to foster sustainable development, providing homes, investment and jobs in a way that adds to rather than detracts from the quality of the environment. In achieving this policy through preparation of development plans or development control functions, planning authorities may seek to secure modifications or improvements to proposals submitted for approval. This may include conditions or agreement of planning obligations with a developer regarding the use of or development of the land concerned or of other land or buildings.
- 3.7 To retain public confidence, such arrangements must be operated in accordance with the fundamental principle that planning permission may not be bought or sold. Negotiations in relation to planning obligations should therefore be conducted in a way that is seen to be fair, open, reasonable and in accordance with the Nolan Report on standards in public life. In this way, and properly used, planning obligations may enhance the quality of development and enable proposals to go ahead which might otherwise have been refused. Conversely, unacceptable development should not be allowed because of planning obligations offered.
- 3.8 “Planning: Delivering a Fundamental Change” 2001 is the Green Paper containing the Government’s draft proposals for changing the planning system. The Green Paper emphasises the importance of making sure that planning obligations are negotiated openly and fairly.
- 3.9 “Planning Obligations: Delivering a Fundamental Change” 2001, is the Government’s consultation paper setting out proposals for changes to the way planning obligations are used. The consultation document states that planning obligations should be centred around delivering sustainable development and should be transparent to all stakeholders.
- 3.10 It is not clear how Government policy may alter as a result of the outcomes of the consultation document and any changes may require amendment to this document. From initial feedback, it would seem that SPG’s will continue to have effect. It is expected that a new planning bill setting out the new policy will be considered during 2003.

4. UDP Policy Context

- 4.1 The policy context for community benefits is set out in Strategic Policy ST14, sub-policy 13.5 of the UDP and reads as follows:

13.5 COMMUNITY BENEFITS

STRATEGIC POLICY

To ensure that appropriate social and environmental benefits are achieved through new development.

Community Benefits

Imp 13 When dealing with development proposals, the Council will seek to secure benefits for the community through legal agreements in direct relation to the nature and scale of the proposed development, to its effect on the character of the area and to its likely impact on local infrastructure, facilities and services.

Supporting Information

13.5.1 Community benefit will normally be provided on the development site itself, or in the immediate area. Further policies relating to several specific types of development are set out elsewhere in this plan. The types of development principally concerned are:

- redevelopment and changes of use for business uses (policy E2);
- residential developments where affordable housing will be sought (policy H16);
- major retail development (policy S15).

13.5.2 When appropriate the Council will also seek suitable community benefit in relation to other categories of development. Failure to provide a benefit which does not meet the tests on 'planning obligations' laid down in Circular 1/97 or PPG1, or in any superseding government circular or PPG, will not constitute grounds for a refusal of planning permission. However, where the provision of a particular benefit is necessary to satisfy the requirements of Circular 1/97 the Council will regard failure to provide it as a legitimate ground for refusal of the application.

13.5.3 Development briefs may be used to specify the benefit sought on particular sites. In addition the Council will produce detailed guidance where this is necessary to clarify the intention of the policies. Local consultation and open discussion will help to ensure that community benefits are fair, appropriate and relevant to local needs. Lists of appropriate planning benefits for particular neighbourhoods will be drawn up, and regularly revised, in consultation with local communities.

13.5.4 Wherever possible the Council will produce a detailed specification of the particular benefit sought. The community benefit may be of one or more of the types set out below, although this list is not exhaustive:

- i) improvements to the public transport system, defined by the Council in conjunction with the relevant public transport operator;
- ii) provision of benefits such as community buildings, open space and play provision, nature conservation measures, pedestrian or vehicle access, children's day care, public toilets, or other facilities for use by the public, on terms agreed by the Council as meeting its policy objectives;

- iii) special measures for the conservation of buildings or places of architectural or historic interest, where these would not otherwise form part of the proposal and are agreed by the Council to be necessary to achieve the objectives of its conservation policies;
- iv) provision of affordable housing, for occupation on terms agreed by the Council;
- v) provision of premises specifically for industrial use, to be occupied on terms agreed by the Council;
- vi) provision of local shops, where the Council is satisfied that this is in accordance with its retail policies;
- vii) other environmental or infrastructure improvements (including improvements to safety and security of nearby areas used by the public, for example by improved lighting) which serve the local area;
- viii) local recruitment and training agreements.

13.5.5 Where capital works, resulting from a section 106 or other legal agreement, incur a maintenance cost to the Council, above and beyond any existing regime, part of the agreement may include a contribution towards revenue costs. This will normally be a fixed sum paid into an endowment fund to support the required maintenance over a defined period to be agreed between the developer and the Council.

As noted above, other parts of the UDP are also relevant including policies H16/17 (Affordable Housing), E2 (Business Use), S15 (Retail Development) and D10 (Public Art)

5. Procedure and types of Obligations

- 5.1 There are a large number of environmental issues in Islington (social and economic, physical and cultural). These issues are often exacerbated due to the impacts of new development.
- 5.2 S106 agreements are a very important way of helping to mitigate these impacts and to promote regeneration and sustainability initiatives. The Council will therefore seek that where applicable, s106 agreements are entered into to ensure that development makes a positive and sustainable contribution to the Borough.
- 5.3 Notwithstanding the above, most planning applications will not require a s106 planning obligation. The circumstances where an obligation will be required will be determined by the precise merits of the case, taking into account the location, scale and nature of the proposal.
- 5.4 The type of planning obligation required will also be determined on the individual impacts of the application. However, to facilitate this process, the Council will produce a series of area based

strategies linked to this SPG to help identify local environmental and social pressures and impacts arising from development. This will recognise the fact that many parts of the Borough are under significant development pressure and that much of this development does not result in benefits to the local community and environment whilst giving rise to adverse impacts from the development. These impacts derive from additional people living or working in an area, impacts of construction and the type of development.

- 5.5 Therefore planning obligations will normally be sought in relation to all major developments and redevelopments in the Borough or development that has adverse impacts upon the Borough in order that direct, indirect and cumulative impacts of development are mitigated and that such development adds to rather than detracts from the environment. This will recognise that the environment consists of social and economic, physical and cultural elements as well as the interactions between these.
- 5.6 Identification of circumstances where planning obligations are required for planning applications will normally be undertaken by the case officer with reference to Circular 1/97, UDP policy, this SPG, any relevant planning advice note and the area based strategies. Reference will be made to planning obligations arising from similar developments to ensure a fair and consistent approach.
- 5.7 Without prejudice to sections 5.1 to 5.6 above, types of applications that will generally be the subject of a s106 agreement include but are not limited to:
- ❑ Any major planning application for the development or redevelopment of land, particularly where the density of development is increased
 - ❑ Any development or redevelopment of a prominent site or site located on, or adjoining a public space or building
 - ❑ Any situation where planning conditions are not sufficient to control the impacts of a development
 - ❑ Any development where new residential units are proposed (including conversions)—especially if there are over 10 units or the development appears to be trying to avoid the requirements of the Affordable Housing SPG
- 5.8 If it is considered that planning obligations are required in order to recommend a proposal for approval, the case officer will raise this with the developer at the earliest opportunity in order to facilitate agreement of these.
- 5.9 Matters that may be included in a s106 agreement are broadly outlined in the UDP and will be expanded upon in the area strategies. These may include restrictions on the use of land, works, monies, provision of sites and buildings or a combination thereof paid to the Council or other bodies in order to undertake the following:
- ❑ Affordable housing (see SPG on Affordable Housing)
 - ❑ Car free housing or restrictions on car parking spaces
 - ❑ Public highways improvements, restrictions and dedication of land
 - ❑ Improvements to or the creation of local open space areas or parks
 - ❑ Public and community transport initiatives
 - ❑ Management plans such as servicing, green travel or traffic management plans, including the management of car parks including pricing, uses and hours of operation

- ❑ Provision of sustainable freight transport including rail and water
- ❑ Use of local businesses, services, and local employment, especially during construction, but also thereafter where appropriate
- ❑ Cycle access and cycle parking / storage provision
- ❑ Pedestrian access
- ❑ Disability access
- ❑ Training and employment initiatives
- ❑ Code of construction practice to mitigate construction impacts including the costs of monitoring compliance with this code
- ❑ Conservation or enhancement of buildings, structures, or places of historic, archaeological and architectural interest
- ❑ Community access to and involvement in archaeological excavation. Interpretation and display of archaeological remains to the public
- ❑ Environmental improvements such as tree planting, works to privately owned land (including social housing areas)
- ❑ Creation, enhancement or protection of nature conservation sites, natural features, trees or other sites
- ❑ Energy efficiency, building efficiency, renewable energy
- ❑ Waste management, recycling and litter management
- ❑ Type and mixture of uses of a development
- ❑ Restrictions and obligations on the use of land
- ❑ Community facilities and premises and access thereto
- ❑ Education and health facilities, services and contributions
- ❑ Day care / nurseries and before and after school and holiday care
- ❑ Links to or partnership with regeneration initiatives such as SRB projects, EC1 New Deal and the Neighbourhood Renewal Strategy
- ❑ Town centre, estate and commercial / industrial area management contributions
- ❑ Tourism and visitor facilities
- ❑ Public Art (taking into account policy D10 of the UDP)
- ❑ Public safety and crime reduction
- ❑ Bonds to secure works or other actions
- ❑ Ongoing maintenance or enhancement of land and buildings or provision of services
- ❑ Land charges, legal, project management, monitoring and implementation costs

5.10 This list is not exhaustive - each planning application and s106 agreement will be dealt with individually on its merits and restrictions and requirements not on this list may also be needed.

5.11 Where appropriate, the Council will explore pooling of s106 monies arising from a number of different developments in order to fairly and efficiently mitigate their combined or cumulative impacts. This may include contributions for strategic projects to address issues such as education or health facilities, the public realm and public transport.

5.12 The Council will normally seek to agree the details of the s106 agreement prior to a planning application being considered by Committee so that the terms of the agreement can be considered by Committee along with the application. If the terms of the agreement are agreed by Committee, then the final legal agreement would be drawn up by the Council's Legal Service. Applicants will be expected to meet these reasonable legal costs. Planning permission is not issued until such time as the s106 agreement has been signed.

- 5.13 For applications of strategic importance, the applicant should be aware that the Mayor will direct refusal if he considers that the planning obligations proposed would not lead to a satisfactory development.
- 5.14 Planning obligations run with the land and therefore if ownership changes, the new owner will also be bound by the obligation.

6. Area Based Strategies

- 6.1 The environment of Islington is widely disparate. This policy recognises that there are different pressures and impacts arising from development in different parts of the Borough. Therefore planning obligations are required to mitigate these impacts and to ensure that such development adds to rather than detracts from the environment will also differ across the Borough.
- 6.2 The Borough is made up of 16 wards grouped into four areas – North, South, East and West. Even within these areas there are widely different areas and issues. Area based strategies will be drawn together for each of these four areas recognising and providing for these differences and the impacts and pressures of development.
- 6.3 These strategies will be based upon the priorities and objectives as set out in the Council's Corporate Plan, Community and Neighbourhood Renewal Strategy and Cultural Strategy – in particular sustainability and regeneration of the Borough. They will identify existing constraints (including areas where the incremental effect of development has given rise to shortfalls in local facilities). The Strategies will assist in identifying where future developments may exacerbate such constraints and shortfalls.
- 6.4 The area strategies should be read in conjunction with other relevant regeneration strategies and policies. It is the Council's aim to draw together the area-based strategies in consultation with the community during 2003 / 04.
- 6.5 The outline process for the drawing together strategies is set out in Appendix 1.

7. Planning Briefs and Advice

- 7.1 In addition to these area based strategies, the Council will also identify specific planning obligations for particularly important development sites through planning briefs and other formal advice notes.
- 7.2 Planning briefs will normally be as specific as possible about the type and scope of planning obligations expected in relation to development of each site. Such guidance is not necessarily exhaustive and may not anticipate all impacts arising from development. There may therefore be other planning obligations required that are not explicitly referred to in planning briefs.

8. Implementation and Monitoring of Planning Obligations

- 8.1 How planning obligations are implemented will depend on what is required. The Council will generally wish to implement obligations as early as possible in relation to the development process so as impacts are mitigated before they arise. The delivery of the obligations can take considerable time and resources and often requires public consultation. Financial contributions should therefore be paid as early as possible in the development period, generally prior to commencement of the development. The Council will also generally index link payments to ensure the contribution payable will be sufficient to implement obligations required on a continuing basis.
- 8.2 The Council maintains a central register and monitoring system of all planning obligations and will actively seek to ensure that benefits arising from planning obligations are realised as early as possible. It is recognised that delivery of planning obligations can however take time and may require public consultation, Committee resolutions or involvement and support of third parties.
- 8.3 Monies paid for financial contributions are individually logged and monitored against the planning application reference code and are not held in a general fund or used for any purpose other than that agreed under the s106 agreement. Spend against each sum is monitored and reported on a regular basis.
- 8.4 As the Council is party to a large number of s106 agreements, it takes a significant amount of resources to project manage and implement schemes funded by planning obligations. The Council will therefore normally seek the payment of a financial contribution towards the costs of undertaking this work.
- 8.5 The Council will seek to project manage the implementation of s106 obligations in an effective manner through the use of a central monitoring system, development of project initiation documents, cross divisional working and partnership arrangements with other organisations.
- 8.6 Where necessary, the Council will take enforcement action to ensure that planning obligations have been complied with or are being complied with on an ongoing basis as appropriate. In such circumstances, the Council may seek to recover its costs arising from this action.

9. Frequently Asked Questions

9.1 Will more than one issue be covered by a planning obligation agreement?

A s106 agreement may contain clauses relating to a number of different benefits sought, or may cover only one matter, for example affordable housing.

9.2 Do planning obligations relate to only the land or buildings covered by the planning application?

Where planning obligations physically relate to will depend on the benefit sought and whether it is most appropriate that this is provided on the application site, or on another site. If the benefit is to be provided on another site, this should directly relate to the application site and will require that the owner of such land is party to the agreement.

9.3 Will the effect of the obligation on the viability of the proposed scheme be considered?

The Council is aware that there may be financial consequences for developers entering into an obligation, and can take into account the viability of any proposed schemes if this is material. However, the purpose of planning obligations is to secure an acceptable development, therefore if a planning requirement cannot be met, the application would normally be recommended for refusal. The Council can arrange independent valuations of schemes if a developer considers that the scheme could not viably support a necessary obligation. This will require the applicant to adopt an “open book” approach. Any information supplied can be treated as confidential. The cost of such an appraisal will need to be met by the applicant.

9.4 Can obligations be made under other legislation?

The Council has the power in some instances to secure works or financial contributions under non-planning legislation such as section 278 of the Highways Act 1980. The Council would only seek to exercise such powers if there is a planning justification for doing so. Applicants should also be aware that for the Strategic Road Network, Transport for London (TfL) is the relevant Highway Authority. It can therefore be beneficial to include TfL in s106 discussions at an early stage, especially when section 278 matters are involved.

9.5 Will the Council seek contributions towards subsequent maintenance of land?

Generally, the Council will not seek payments towards ongoing maintenance costs, however there may be exceptions where it is considered that this is appropriate such as where the development results in additional maintenance costs to the Council or there is a need for a benefit to be provided on an ongoing basis, such as public transport or open space. This will normally be a fixed sum paid into an endowment fund to support the required maintenance over a defined period to be agreed between the developer and the Council.

10. Further information

For further information on s106 planning obligations, please contact:

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Appendix 1: Development of Area Based Strategies

1. Policy and Linkages

- 1.1 The legal framework for s106 is set out in the SPG above. This will form the over-arching policy guidance for the development of the area based strategies.
- 1.2 The Council has developed a UDP, Corporate Plan, Community and Neighbourhood Renewal Strategy as well as a draft Cultural Strategy. These documents outline a vision for Islington with priorities and targets based upon the views and aspirations of local people.
- 1.3 The strategies will also need to link with the Local Development Document (LDD) that is proposed in the Planning Green Paper and emerging legislation, that will replace the UDP (guidance on the format the LDD will take is awaited from the ODPM).
- 1.4 These documents have been (or will be in the case of the LDD) developed with considerable public consultation and incorporate the views of many organisations and groups who operate within the Borough. These will therefore form the strategic basis and guide the outcomes sought by the area strategies. This will help to provide a consistent approach across the Borough.
- 1.5 Within each of the areas of the Borough, there are many different impacts arising from development and a variety of environmental issues. The strategies will need to be developed to recognise and provide for these. This will be achieved by drawing upon and making linkages with a number of developing and emerging area based regeneration strategies (Angel Town Centre, Kings Cross Central Development, Finsbury Park SRB, EC1 New Deal) and theme based documents (such as housing, openspace, education). This will help to ensure linkages with existing initiatives (especially those that span administrative boundaries such as the Angel Town Centre), and avoid duplication of work.

2. Process and Consultation

- 2.1 It is intended that an area based strategy will be drawn together for each of the four administrative areas of the Borough – North, South, East and West.
- 2.2 The first step will be to develop the framework for the strategies and identify existing initiatives and priorities in the areas that can inform the strategies. This will then provide the basis for consultation with local people, local regeneration bodies (such as the ISP, EC1 New Deal and the EC1 New Deal), interest organisations, service providers, tenants associations, adjoining boroughs and Council departments. A consultation strategy will need to be developed for all strategies to ensure that the consultation process is as inclusive as possible.
- 2.3 This information would then be reviewed and built into a draft area strategy that would then be put to the relevant area committee for approval and adoption as an appendix to this SPG.

3. Review and Monitoring

- 3.1 The area strategies will need to be monitored and reviewed with further opportunity for public input. The review process and proposed changes to the strategies should be undertaken on an annual basis.