

*Annex 2*

# **The Essex County Council Developers' Guide To Infrastructure Contributions**

**Revised Edition 2015**

## Foreword

Essex is proud to have been at the forefront of development of housing, industry and infrastructure for many years now; it provided support for two of the post-war New Towns and other developments such as major town expansions like Witham and the creation by Essex County Council (ECC) of a fundamentally new settlement in South Woodham Ferrers, established using clear master planning and design guide principles. On this basis we have a clear track record in facilitating development.

It should also be recognised that Essex is a uniquely diverse county containing in equal measure, thriving urban environments and sweeping open rural landscapes which residents naturally wish to see retained and enhanced where possible. Planning is about achieving the right balance between conserving the best of the environment and providing for people's needs through development. What we all - developers and local authorities- are looking for is high quality development which is sympathetic to its surrounding environment, whether this is urban or rural.

Because of these challenges, we feel we need a more dynamic approach to the management of development in our County, ensuring the right balance between those competing needs and facilitating much needed infrastructure provision through whole-heartedly advocating the national policy desire to operate a plan led system. It is clearly recognisable that our main roads are struggling to cope with the demands of today's traffic, let alone the traffic we may expect in future. The only way of appropriately managing this is to ensure a holistic approach to our County's development requirements, allowing proper assessment of impact and enabling resistance to speculative development proposals.

There have been many and various changes to the planning system in the recent past aimed at accelerating development, particularly housing. It is far too early yet to say if this will be successful in the long term but there is an inherent danger that increased pace of delivery will compromise the provision of accompanying infrastructure unless authorities like ECC adopt a more transparent and collaborative approach with the

development industry. This guide is aimed at providing exactly that – a clear and transparent way for the development industry to understand our expectations and how to approach the provision of development should they wish to do business in Essex. In return we commit to a high quality and professional approach in our engagement with the planning process – advocating development that is compliant with emerging or adopted local plans and resisting speculative applications that have not demonstrated adequate assessment of their impact in the light of these Local Plans and provided appropriate mitigation.

That's why we are issuing through this, the third edition of our Developers' Guide; a call to developers to help us meet this challenge. To succeed over the longer term here in Essex we need an innovative partnership with developers where we all look further into the future to ensure a steady pipeline of sustainable development.

This approach is clearly in line with the aspirations of national policy, being overt in our support for planned and high quality development that brings with it appropriate infrastructure provision and economic benefits for Essex whilst resisting ill thought out and speculative applications. Developers should understand as a result that if their planning applications are deficient in terms of infrastructure provision, there will be a greater likelihood that such applications will be resisted to avoid further impact on our communities and pressure on ever decreasing public funds that would otherwise have to pick up the shortfall.

ECC is particularly concerned with issues such as the cumulative impact of development across a number of sites in close proximity on the existing local infrastructure. We want to ensure that differing developers all contribute appropriately to mitigating the collective impact of these sites. Experience has suggested that developers often don't agree on their contribution and this can cause delays.

The County Council and District Local Planning Authorities are up for the challenge and are in the process of lobbying Central Government for devolution of powers as it has to other regions in the country. So that decisions are taken as far as possible locally and there is clear accountability for those decisions by those that represent the Essex communities, it is vital that we have the both the accountability and the power to ensure that the infrastructure promised to residents is provided on time and to budget. The corollary of such

devolution is that different areas of the country should have the ability to formulate policies designed to meet their needs as long as they accord with the spirit of centralised policies issued by Whitehall.

In some cases we are going to ask developers to take a longer and more strategic view than they might normally take. ECC expects developers, both individually and where appropriate working together, to design infrastructure to complement and sustain the integrity of the highway network in which it will become an integral part, including the provision for future traffic growth due to the success of individual development sites. This will ensure that the longer term impacts of the development on ECC infrastructure are comprehensively dealt with. As a hypothetical example and in the spirit of fostering good will between local authorities and the development industry there might be an opportunity now to carry out works to make a road junction fit for purpose for many years to come rather than the usual short timescale that both developers and we are used to. This might perhaps include the provision by the developer of land rather than the authority having to acquire such land by other more lengthy processes at a later date. If developers can help ECC in this regard they will be assisting their own customers as well and development will ultimately be more sustainable as a result.

While we expect over the next few years for most of the Essex Districts to come forward with Community Infrastructure Levy (CIL), planning obligations (S106) will still be working alongside CIL when dealing with transfers of land and site level mitigation. Whilst the use of a tariff approach is not current Government policy, the work to establish the additional infrastructure cost (or burden) of each new house is still of relevance and demonstrates that everyone should be contributing to this shared issue in a fair and even handed way.

We have also noted that Government seems to listen and act when a strong local coalition of interests comes together to pursue a single, shared objective. We want and need to build that type of coalition in Essex.

The cost of making the investment we need is undoubtedly large but the cost of not doing what needs to be done is even larger still. There can be no 'Do Nothing' option. Good quality infrastructure is expensive but inadequate infrastructure will cost even more in the long run and it is only through the provision of planned

development, complemented by appropriate infrastructure provision that we can achieve a truly sustainable future for Essex.

**Cllr R Hirst**

**ECC Cabinet Member for Transport, Planning and the Environment**

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## **1. Introduction**

### **1.1 the purpose of the Guide**

This document is the third edition of the Essex County Council Developers' Guide to Infrastructure Contributions, which replaces the edition of February 2010 (DS092154). As with previous editions, it details the scope and range of contributions towards infrastructure which Essex County Council may seek from developers and land owners in order to make development acceptable in planning terms.

A significant change to developer contributions has come into force since the previous edition of the Guide, namely the Community Infrastructure Levy Regulations 2010. These regulations allow Local Planning Authorities to introduce a floor-space based charge, on new development known as the Community Infrastructure Levy. At present only one District in Essex has implemented CIL but a number of others are making progress. At the same time, as part of the process of bringing in CIL the Regulations have put limits on Section 106 (s106) contributions and specifically the number of contributions which can be 'pooled' to finance a single infrastructure project, or type of infrastructure. That maximum has been set at five contributions and that provision came into force in April 2015, although contributions agreed since April 2010 count towards the maximum of five. This provision coming into force and the implications it will have for providing infrastructure for many Essex County Council services is a further factor requiring an update of the Developers' Guide at this time

The Guide fits with the overall aims of the National Planning Policy Framework by supporting sustainable development. By promoting a consistent and transparent approach, developers can be assured that they are making a fair contribution to the infrastructure needed to support growth, and local residents can understand how development in their area makes a positive contribution to their community. The Guide also aims to assist Local Planning Authorities in producing Local Plans and, if applicable, Community Infrastructure Levies. Our aim is to ensure that infrastructure is delivered in a timely manner and thereby ensure that new development does not have a negative impact upon the quality of life in Essex.

## 1.2 Infrastructure this guide covers

The Guide covers the administrative area of Essex County Council. Southend-on-Sea and Thurrock are unitary authorities that lie outside of Essex, in administrative terms. They thereby provide services such as education and highways that Essex County Council would otherwise deliver for their communities. Their developer contribution policies are therefore not covered here.

The Guide also does not cover services provided by second tier district authorities (City, District and Borough Councils), such as affordable housing or open space, nor contributions that may be sought by other infrastructure providers, such as the NHS or the Police.

## 1.3 The status of the Guide

In developing this Guide, Essex County Council has worked with a number of partners and carried out appropriate public consultation. The Guide has also been screened for its environmental impact and has undergone a sustainability appraisal. Details of the consultation and the environmental impact assessment can be found on Essex County Council's web site [www.essex.gov.uk](http://www.essex.gov.uk).

The Guide has been adopted by Essex County Council as 'County Supplementary Guidance'. It should thereby be considered a 'material consideration' in the determination of planning applications.

## 1.4 Essex County Council's role in relation to district councils

Essex County Council is responsible for delivering and maintaining much of the large scale infrastructure that its residents and businesses require, such as roads, libraries and schools. Full details are set out in section five of the Guide.

Local services are also provided to each part of the county by the appropriate district authority (City, District or Borough Council). There are twelve such local authorities in Essex's administrative area (listed in section 6). As well as providing services such as waste collection, recreation facilities and affordable housing they also act, in most instances, as the Local Planning Authority i.e. planning applications for new housing and commercial buildings are submitted to and decided by these authorities rather than Essex County Council.

Essex County Council, as a major infrastructure provider, works closely with the district authority, as Local Planning Authority, identifying the infrastructure that is needed to support growth set out in Local Plans. In this work, Essex County Council may provide advice regarding the suitability of potential growth locations in terms of how well they are, and can in the future be, served by infrastructure.

When a planning application is made, Essex County Council is also consulted by the Local Planning Authority and, in turn, provides appropriate comments and advice regarding infrastructure needs. Such advice may include requests for developer contributions to fund the infrastructure Essex County Council needs to serve the development in question. On occasions Essex County Council will object to new development that cannot suitably mitigate its own impact on local roads, schools and other community infrastructure.

## **2 The Legal Framework**

### **2.1 Community Infrastructure Levy**

The 2008 Planning Act paved the way for the introduction of a charge on new development that Local Planning Authorities could collect to fund infrastructure needed to provide for growth in their area. In April 2010, the government published regulations setting out how this Community Infrastructure Levy (CIL) could be set and collected.

In order to set a CIL, the Local Planning Authority must have an up-to-date Local Plan setting out the development planned in their area and the cost of the infrastructure required to support it. They must also identify other potential sources of funding. To establish the case for setting a charge they must establish that there will be a gap between the cost of the infrastructure required by development and the available funding. In terms of setting the actual level of the charge, the Local Planning Authority must consider its impact on new housing and other development. The charge must be set at a level that will not impact development viability to the extent that the growth set out in its Local Plan is undeliverable. The 'charging schedule' must be scrutinised through public consultation and approved by an inspector.

If approved, the CIL is collected by the Local Planning Authority from developers and land owners. The charge is calculated on the additional floor-space proposed by the planning application in question. Developments of less than 100 square metres are exempt, as are social housing and developments owned by charities. In some cases in-kind payments may be accepted in terms of land and buildings, on the basis of their open market value.

The Local Planning Authority is not required to introduce a CIL and, if introduced, a zero rate may be approved in relation to particular types of development or parts of the district in question.

The spending of monies collected is a matter for the Local Planning Authority. They are required to pass a proportion of the money to the local communities where new development is located. This is usually channelled through the Parish Council in parished areas. Monies should also be passed to appropriate infrastructure providers, such as Essex County Council, to fund the projects that were identified to justify the charge.

## 2.2 Section 106 Agreements

Section 106 of the Town and Country Planning Act 1990 (as amended) provides a mechanism whereby developers can address the impact of their development on the local community through the provision of, or contribution towards infrastructure. The Local Planning Authority can thereby take into account any such mitigation offered when deciding whether or not to approve a planning application. Mitigation can take the form of works, money, land or buildings that must be contributed to an appropriate body that will then maintain the asset in question or deliver the required service. This body may be a public, private or charitable organisation depending on circumstance and statutory powers related to the service in question.

Legal agreements are used to secure obligations to deliver the contributions that are agreed. For an obligation to be lawful it must meet the following legal tests:

- it must be necessary to make the development acceptable in planning terms;
- it must be directly related to the proposed development and
- it must be fairly and reasonably related in scale and kind to the proposed development.

The Local Planning Authority may also only consider up to five obligations for the same project or unspecified general type of infrastructure.

### 2.3 Relationship between Community Infrastructure Levy & Section 106

CIL is intended to help provide major infrastructure to support the development of an area, rather than to make individual planning applications acceptable in planning terms. Section 106 agreements are used to mitigate site specific impacts. Developers and land owners may thereby be liable, in many circumstances, to pay the Community Infrastructure Levy and also enter into a Section 106 Agreement.

To avoid double charging, where a Community Infrastructure Levy is in place, Local Planning Authorities are required to set out in a 'Regulation 123 List', the types of infrastructure or individual projects they will use the Community Infrastructure Levy to fund. The items on the 123 list cannot then be funded by Section 106 contributions.

### 2.4 Planning Conditions and other legal agreements

There are differing views on whether planning conditions should be used to secure non-monetary contributions whereby the developer builds the infrastructure required. The Planning Condition will usually require the detailed design of the infrastructure in question to be submitted and approved at a later date.

Planning conditions have been used because entering into a legal agreement takes time and has an associated cost

Planning Conditions are commonly used in relation to Highway works. In order to undertake works in the Highway, however, the Local Highways Authority (Essex County Council) must give permission and this may require the developer to enter into a legal agreement e.g. Section 38 or 278 agreements.

### **3 Guidance applicable to all Section 106 contributions**

#### **3.1 Identifying infrastructure requirements**

Developers are strongly advised to contact the appropriate Local Planning Authority (listed in section 6) to discuss their plans at the earliest opportunity. Some Local Planning Authorities will require a formal pre application enquiry to be submitted and there may be a fee. The Local Planning Authority will advise whether they wish to conduct discussions with infrastructure providers, such as Essex County Council, or whether they are happy for the developer to approach them directly. At the date of this Guide, Essex County Council does not charge for pre-application advice. Proposals to introduce a fee from April 1<sup>st</sup> 2016 are, however, being considered and further details will, if applicable, be published on the Essex County Council web site.

Essex County Council welcomes early involvement in discussions and aims to help resolve key issues before planning applications are submitted. Contact details and a developer enquiry form are provided on the back cover of this document, in appendix B and on Essex County Council's web site. Using the information provided, Essex County Council will endeavour to identify the impact of the development on local infrastructure and services; suggest possible mitigation measures and estimate the cost of any developer contributions that it may seek once a planning application is submitted.

While it is the County Council's role to assess the impact of a new development on the services it provides, it is the Local Planning Authority's duty to decide whether or not the level of contribution requested is appropriate. As a result of this division of responsibilities, Essex County Council will not negotiate directly over the level of contribution requested unless asked to do so as part of a tripartite discussion including relevant Local Planning Authority officers and other infrastructure providers. Only the Local Planning Authority can look at the cumulative cost of the developer contributions requested and, thereby, assess how the viability of the development should be balanced against the need to fund infrastructure. In the course of the tripartite discussions mentioned above, issues such as equalising contributions between multiple developers on sites will be addressed

In general, a development should not externalise any of its costs, but it is accepted that on occasions there may be overwhelming public benefits that can only be realised by giving permission to a scheme which would not be viable if full planning obligations were met. In these circumstances a decision of 'not viable' should not

stem from a developer paying too much for land and the Local Planning Authority will usually expect an 'open book' independent financial assessment before exceptions to policy are made.

In the event that planning applications are turned down by the Local Planning Authority, representations pertaining to infrastructure need may be recorded as objections and thereby reasons for refusal. Essex County Council will assist Local Planning Authorities in defending such reasons for refusal at any subsequent appeal. Clearly Section 106 agreements may be entered into prior to the appeal to overcome the need for Essex County Council to raise such objections with the appeal inspector.

### 3.2 Types and level of contributions

Each development will be assessed on its own merits and, where Essex County Council seeks developer contributions, it will provide evidence that the infrastructure is required (in whole or in part) to serve the proposed development. Any appropriate local surplus service capacity will be taken into account before making any request. The level of contribution will always be relative to the need generated by the development in question.

Section 106 contributions will not be requested where the infrastructure is expected to be delivered through an adopted Community Infrastructure Levy. Where Section 106 is the appropriate funding route, no more than five contributions may be pooled to deliver the required infrastructure.

Broad levels of contribution for each type of infrastructure are set out in section 5 of this guide. Most projects will, however, require bespoke costings to prove an accurate estimate. It is essential that applicants provide comprehensive information regarding the intended unit mix and land uses on the development to allow a realistic estimate of the infrastructure requirements. Formulas are, however, enshrined in most agreements to allow the precise contribution to reflect the final development and avoid the need for agreements to be varied each time plans change.

Some contributions are only likely to be required by major developments and there is a threshold, usually in terms of numbers of dwellings, which will trigger different services to consider the need for developer contributions. These are set out in section 5 of this guide. In cases where adjoining or nearby plots (regardless of ownership) are likely to be developed separately, these thresholds may be deemed to have

been reached on the basis of the sites' cumulative capacity. This approach ensures that developer contributions cannot be circumvented by sites being split up and likewise ensures there is no disincentive to developers working together to bring forward comprehensive regeneration schemes .

With the largest contributions, it is sometimes appropriate to phase payments. It should be noted, however, that Essex County Council will not support contributions being paid in arrears i.e. after the buildings, to which the amounts pertain, have been occupied. If later payments are considered essential by the Local Planning Authority to ensure development viability, Essex County Council may request surety from the developer, through a bond provider, to protect payment in the event of insolvency.

On large developments involving a range of different contributions, it may be possible to deliver mutual benefits by combining different types of contribution. For example a community building may be proposed that provides both for youth services and library provision.

### 3.3 Indexation

Once a contribution has been established it must be future proofed against cost inflation. This is done through indexation. The appropriate index for each type of contribution is given in section 5 of this guide. In each case the indexation must run from the date the costing is based, up until the date of payment.

In general, indexation works by establishing a base date at which the index equals 100. If costs rise then the index point also rises by an equivalent percentage i.e. if costs have increased by 5% since the base date the current index point will stand at 105. The index can also fall if costs reduce. Updated indices are regularly published and points are given for each past quarter and in some cases for future quarters, based on estimates of cost inflation. For ease and consistency it is often appropriate to base contributions on the cost at the start of the current financial year. If this is done the indexation that must be applied to the contribution will also start from the start of the appropriate financial year rather than the date the figure is actually provided.

To apply the index and work out the contribution that is payable, the sum quoted must be divided by the index point pertaining to the 'from' date and multiplied by the index point pertaining to the 'to' date. For example, if a contribution of £10,000 is to be indexed from April 2014 where the index point is shown as 200,

to the date of payment where the index point is 210, the amount payable would be £10,500 (£10,000 divided by 200 then multiplied by 210).

Most indices are available on a subscription basis. Unfortunately, Essex County Council cannot, thereby, provide the index to developers as that would be in breach of copyright. Essex County Council will, however, perform the calculation and provide an explanation of the result if requested to do so.

### 3.4 Legal agreements

The simplest type of agreement is known as a Unilateral Undertaking. These do not require the Local Planning Authority or Essex County Council to perform any duties or become a signatory. They are, however, only appropriate for small developments where a full planning application has been made and the dwelling mix is fixed.

In the case of complex developments, full tripartite agreements are necessary. This is because Essex County Council and the Local Planning Authority will need to enter into obligations with the developer such as:-

- to use financial contributions for specific purposes;
- to place sums in interest bearing accounts and
- to return unused contributions after ten years.

Where the development is supported in the Local Plan, it may be appropriate to draft a legal agreement prior to planning permission being sought. Generally, however, they are completed once the Local Planning Authority has considered the application and it is clear that there will not be any abortive effort due to a decision to refuse the application.

In most cases Essex County Council provides a first draft of the clauses required to deliver the contributions they have requested. A template agreement is provided as appendix A, with a separate schedule for each type of contribution. This template should be used as a starting point to avoid the delay and expense associated with reinventing the wheel.

Once completed, the Local Planning Authority will record the appropriate obligations as land charges. Both Essex County Council and the Local Planning Authority will then monitor compliance with the agreement.

### 3.5 Fees

The planning applicant is responsible for the cost of producing any legal agreement, including the charge Essex County Council makes for its involvement. City, District and Borough Councils may also add their own fees. Standard agreements, that closely follow the template given as appendix A should not be expensive or time consuming to produce. Agreements involving land or works in kind are inevitably more complex and protracted negotiation will obviously lead to additional expense. Where a contribution is taken via agreement, up to 2% of each appropriate amount may at the discretion of the County Council be expended for the purpose of monitoring compliance with the agreement.

## 4. Land, buildings and contributions in kind

### 4.1 When land may be needed

There are a number of circumstances under which Essex County Council may need land to be transferred to its ownership under a S106 agreement. These include:

- New or expanded schools and Early Years & Childcare settings
- Shared community buildings (e.g. youth, library or adult learning facilities, District and NHS services)
- Land to be dedicated as Highway

In most cases land is needed to establish a new facility on the development itself but in some circumstances it may be needed to expand an existing one. On such occasions it may be appropriate to ask the developer to acquire the land on Essex County Council's behalf rather than make an additional financial contribution.

## 4.2 Site suitability

During pre-application discussions the applicant and Essex County Council need to work closely with the Local Planning Authority to identify potential locations that both fit with the emerging development master-plan (if relevant) and provide the best position for the infrastructure under consideration. Any land that is intended for public use must be safe and fit for purpose. Issues which will need to be examined include: ground conditions; sources of contamination; flood risks and the proximity of incompatible land uses. In the case of community use, the land will need to be central to the population it is intended to serve and well connected to walking and cycling routes.

Once a potential location for new facilities has been identified, the quality of the land itself needs to be considered in detail. New school sites, in particular, have a number of requirements that should be considered at the earliest opportunity in the planning process. The need to meet Department for Education guidelines (e.g. Building Bulletin 103) to establish sports pitches and ensure pupil safety are all key. The Education Site Suitability Checklist provided as appendix C sets out, in general terms, the issues and concerns that should be looked at. The list is not exhaustive and any other features of the site or surrounding area that may impact upon its use should be brought to Essex County Council's attention at the outset. Many of these criteria apply equally to other community facilities.

Ensuring that new facilities fit with, and are complemented by, the rest of the development must also be considered before a planning application is submitted. Appendix D provides exemplar layouts for education and community facilities, highlighting the key issues of reducing school run traffic and providing safe drop off space. In general schools are not encouraged to provide on-site space for parents to drop children off by car for the following reasons: -

- The school site area guidelines reflect the space required for education use and it is not appropriate to set aside significant areas for other purposes;
- Schools should not be expected to manage or maintain facilities which may give rise to an insurance liability in the event of accidents and
- Bespoke drop off facilities can attract additional school run traffic and concentrate vehicle movements in a particular location, leading to an unpleasant or unsafe environment. For these reasons ECC would not agree to a school being situated in a cul de sac

The preferred approach is thereby to maximise the opportunities for safe drop off around the school perimeter, utilising the visitor parking space that the development is required to provide. The immediate area around school entrances should, where possible, be traffic free to prevent 'honey potting' i.e. a point that attracts a disproportionate level of traffic that could cause inconvenience to other road users. Such pedestrianised areas also function as a space for parents and younger siblings to congregate safely at the beginning and end of the school day and thereby encourage a sense of community. Such spaces should be well connected to walking and cycling routes to make alternative modes of travel attractive.

#### 4.3 Land Compliance requirements

In finding a suitable location, checking the quality of land and designing the environment around it, a significant amount of information will need to be collected and analysed. This information must be formalised and submitted with the planning application in the form of a Land Compliance Study.

Local Planning Authorities are asked to make this a policy requirement and Essex County Council may object to the application if a sufficiently robust study is not submitted, proving the land is fit for purpose and meets the criteria set out in this document. By way of guidance, the following sections should be included in the Land Compliance Study report:

- Site boundary plan
- Development master-plan including partner organisation intentions
- Site Suitability Checklist (as per appendix C in the case of education sites)
- Site history & previous uses including planning policy
- Neighbouring land uses including ditches and power lines et al
- Ground conditions including local geology maps
- Topography including survey maps
- Contamination including radiation, soil and ground water
- Flood risk including Environment Agency flood zone designation

- Mobile phone/radio mast locations including operating characteristics
- Physical encumbrances
- Habitat, arboriculture & ecology study including site walkover report
- Archaeology
- Noise (for education sites assessment against criteria in DfE Building Bulletin 93)
- Air quality including reference to local Air Quality Management Areas
- Access (pedestrian & vehicular) and public rights of way
- Utility and service connections/capacity including searches
- Proposed pre-transfer works

As part of its response to a planning application including land intended for transfer, Essex County Council will validate the Land Compliance Study submitted by the developer, and provide feedback to the Local Planning Authority. Such feedback will include any requirements that must be included in a Section 106 agreement to make the land acceptable. These will include a number of standard works that the developer will be expected to complete prior to the site being transferred to Essex County Council. The most common requirements are decontamination, site levelling, access, utility connection rights and fencing. Appendix E sets some of these out in more detail, in relation to education sites.

Developers and land owners must obtain collateral warranties for any studies or works undertaken, either as part of their Land Compliance Study or during site preparation. Essex County Council will require such warranties to be transferred so that it can rely on the information or works in question. By doing so, validation of the Land Compliance Study can be speeded up and the number of precautionary S106 obligations can be reduced.

#### 4.4 Legal Agreements to transfer land

Legal agreements usually include a ten year option period during which Essex County Council can require transfer of the land. The land will in most cases be provided at a cost of £1 as 'consideration' must be given

to form a legal contract of sale. It is important that the agreement is sufficiently flexible on timescales to provide Essex County Council adequate time to make a decision, and not be pressed into establishing a new facility prematurely. If Essex County Council has not entered into contracts to provide the facility within five years of transfer then the land will be handed back to the developer. Developers are, thereby, advised to consider how the Local Planning Authority might view potential alternative uses for the site in the event that it is not used by Essex County Council.

#### 4.5 Works and buildings

In some cases developers may agree to carry out works in lieu of financial contributions. Such works could include the construction of a building that is then transferred to Essex County Council along with land. Such contributions are subject to strict rules, detailed specifications and appropriate surety being provided.

Developers must also be aware of European procurement and competition laws that require public works contracts to be openly tendered if they exceed a certain value. In circumstances where works in lieu are deemed acceptable, Essex County Council will require an indemnity against any claim resulting from a breach in these regulations.

## **5. Contribution Requirements by Service Area**

### **5.1 Early years and childcare**

#### **5.1.1 Background**

High quality local childcare is often on the 'shopping list' of young families looking for a new home. Demand for early years and childcare provision in an area is also generated by levels of local employment. People often prefer to arrange care for their pre-school age children close to where they work so that they can respond quickly in an emergency. Developer contributions for early years and childcare are thus sought from both residential and employment led development.

The Childcare Act 2006 places a range of duties on local authorities regarding the provision of sufficient, sustainable and flexible childcare that is responsive to parents' needs. Local authorities are required to play a lead role in facilitating the childcare market within the broader framework of shaping children's services in partnership with the private, voluntary and independent sector.

Section 6 of the Act defines 'sufficient childcare' as sufficient to meet the requirements of parents in the area who require childcare in order to enable them to take up, or remain in, work or undertake education or training which could reasonably be expected to assist them to obtain work.

Section 7 sets out a duty to secure free early years provision for preschool children. The current regulations prescribe that every child aged three or four is entitled to 15 hours per week free early years provision for 38 weeks of the year. This provision must also be provided for two year olds from less well-off families (currently around 40% of children).

Early Years and Childcare provision includes full day care, pre-schools, crèches, child minders, breakfast, after-school and holiday clubs and nursery classes in schools. This multiplicity of provision, working in partnership with the private and voluntary sectors, enables a wide range of childcare options to be available.

#### **5.1.2 How the need for additional provision is assessed**

All residential developments of twenty or more dwellings will be assessed to see if a developer contribution towards additional Early Years and Childcare is necessary. Commercial developments that will employ fifty or more people (whole time equivalent posts) may also be expected to contribute towards early years and

childcare provision. Applications for smaller developments will be exempt unless their co-location with other sites necessitates a holistic look at their cumulative impact.

The Early Years & Childcare Service will only require developer contributions where there is a current or forecast lack of provision in the immediate area of the proposed development. Unfilled places at one type of provider cannot, however, be taken as evidence that provision in an area is sufficient. The work patterns and incomes of parents are all different and so are their childcare needs. Essex County Council has a duty to facilitate diverse provision and thereby broadly meet the needs of all groups.

Details of Childcare Sufficiency Assessments and Area Action Plans are published on the Essex County Council website. These assessments give a snapshot of different providers in an area and the number of places that are filled. They should be read in conjunction with Local Plans, and other development proposal documents, plus census information to gain a holistic view of future demand.

### 5.1.3 Calculating demand from new housing development

When estimating the number of children that a new housing development will generate and that will require additional provision (child yield), the Early Years & Childcare Service takes account of the number of houses and flats that are suitable to accommodate children. For Early Years and Childcare contribution purposes, houses are all dwellings with two or more floors and with sole access to private outdoor space. Maisonettes, trailers and bungalows (not chalet style bungalows with an attic room) may thus be treated as flats. One bedroom units and dwellings, such as student and elderly accommodation, are excluded from the calculation.

The child yield from qualifying houses is nine children per one hundred homes (0.09 per dwelling) with half this number expected from qualifying flats i.e. 0.045 per dwelling.

Example: A development consisting of 120 x one bed units; 200 x flats (with two or more bedrooms) and 65 houses would generate the following number of children requiring a place:-

Dwelling Type	Units	Factor	Child Yield
One bed	120	0	0
Flats	200	0.045	9
Houses	65	0.09	5.85
<b>Total</b>	<b>385</b>		<b>14.85</b>

#### **5.1.4 Calculating demand from employment sites**

When estimating the number of Early Years & Childcare places that a new employment proposal will require, a factor of four places per one hundred employees is used. In the case of outline applications where the number of employees is not stated, an estimate based on floor space is made. The latest guidance on employment densities in different types of business was published, in 2010, by the Homes and Communities' Agency under the title 'Employment Densities'.

Example: - A development expected to employ 150 staff would generate the following number of children requiring a place:-

150 employees X 0.04 places per employee = demand for 6 places.

#### **5.1.5 Types and use of contributions**

Financial contributions may be sought to help extend existing provision or provide a new facility. Up to five developments may be earmarked to contribute towards a project if a cumulative impact is identified. Larger groups of development (upwards of 250 dwellings or 500 employees) are most likely to trigger the need for a new setting and in such circumstances a land contribution is also required.

For a standard 56 place day nursery, around 0.13 ha of land is needed. The process for agreeing a suitable piece of land is explained in section 4 of this guide.

Where the development in question also triggers the need for other community facilities it is often appropriate to co-locate Early Years and Childcare facilities. Provision is commonly included in plans for new schools but it may also be appropriate to consider the benefits of an Early Years and Childcare provider acting as anchor tenant in a joint use community facility.

In some circumstances, subject to procurement and competition rules, it may be appropriate for the developer to provide buildings in lieu of a financial contribution. Where this approach is accepted the facility must comply with a specification provided by Essex County Council (example provided as appendix F) and any tenant, and their business model, must also be approved. When the County Council commissions additional EY&C places and uses S106 funding to provide those places, it will require the provider to enter into a legal agreement detailing the building works and the number of additional places to be provided.

### **5.1.6 Contribution costs**

The cost of each project and, thereby, any appropriate developer contribution must be considered on a case by case basis. By way of guidance, however, the expansion of existing facilities has in the past cost around £13,500 per place. Appendix G provides an exemplar cost breakdown for a new 56 place day nursery, which is considerably higher than the cost of an expansion.

All contributions sought are index linked. The 'PUBSEC' Building Tender Price index is used to index link all Early Years and Childcare contributions. The index is published by the Business Information Service of the Royal Institute of Chartered Surveyors.

## **5.2 Schools**

### **5.2.1 Background**

The availability of places at a popular and successful local school is likely to be an important pull factor for families considering the purchase of a new home. Conversely, new residential development is unlikely to be welcomed by the existing community if additional pupils moving to the area deny their children a place at the local school or lead to larger class-sizes. Developer contributions towards education provision thus play an important role in the success of new residential developments.

Under section 14 of the 1996 Education Act, local authorities must secure sufficient school places to serve their area. The available schools must be sufficient in number, character and equipment to provide all pupils with the opportunity of an appropriate education. Section 2 of the 2006 Education and Inspections Act further places Essex County Council, as the appropriate local authority, under a duty to secure diversity in the provision of schools and increase opportunities for parental choice. Subsequent legislation has encouraged the development of a more diverse range of education providers, particularly academy trusts and free schools.

Section 2 of the 2008 Education and Skills Act requires that all persons under the age of eighteen yet to obtain a 'level three' qualification (for example two 'A' levels), must participate in education or training. Participation does not require all young people to stay on at school, as employment-based training can fulfil this requirement.

Paragraph 72 of the NPPF states that 'The Government attaches a great deal of importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to the development that will widen choice in education. They should:

- Give great weight to the need to create, expand or alter schools; and
- Work with schools promoters to identify and resolve key planning issues before applications are submitted.'

The County Council acts as a commissioner rather than a provider of new schools. It has the duty to set out the requirements for any new school needed to serve a new community in order that potential providers may express their interest in providing that school. Where a Section 106 agreement provides the land and funding for a new school, the County Council will usually procure the school building and then transfer the new building for the successful provider to occupy.

Regardless of whether schools have academy status, are free schools, or are maintained schools, the County Council remains the responsible authority for ensuring that there are sufficient school places available within the county to meet the educational needs of its school age (5-19 years) population. This means that the County Council remains the appropriate authority to assess the requirements for school place provision for any new housing developments; be a signatory to any S106 agreement and receive the appropriate contributions.

### **5.2.2 How the need for additional school places is assessed**

The threshold for contributions is based on the pupil product figure. Any development that would produce more than 6 pupils could generate a request for a contribution. This is justified on the ground that as any project is limited to 5 S106 agreements 30 pupils (6 pupils x 5 S106 agreements) would generate sufficient funding for a single class base.

The process described in this section is summarised diagrammatically in appendix H.

Attached below is a worked example:

### Primary

Dwellings	Factors	Pupil product
20 houses	0.3	6
40 x 2 bed flats	0.15	6
Mixed development of 15 houses and 10 x 2 bed flats	0.3 & 0.15	6

### Secondary

Dwellings	Factors	Pupil product
30 houses	0.2	6
60 x 2 bed flats	0.1	6
Mixed development of 20 houses and 20 x 2 bed flats	0.2 & 0.1	6

Contributions towards the provision of additional places will not be sought where pupil forecasts suggest that existing local schools can reasonably accommodate the expected increases in demand for places without expansion.

The document 'Commissioning School Places in Essex' is published on an annual basis and sets out the current availability of school places in each area of the county. It also includes a forecast outlining the picture in five years' time based on G.P. registration data, numbers of pupils on school rolls, planned housing development, historical trends and other factors likely to affect admissions to particular schools. The forecast methodology is outlined in the document, along with an evaluation of the accuracy of previously published forecasts.

The need for additional school places to serve new development may either be immediate or gradual. It is considered reasonable to take account of the future demand for places as well as the current picture since:

- there will be a time lag between the planning application and completion of the development;

- the peak of additional demand for places generally comes a few years after a development is first occupied and
- the development will be a permanent feature of the local community and it should not thus cater just for its immediate impact.

Any school accommodation that is temporary in nature, as defined by either its planning permission or design life, is excluded from the assessment of available places. The presence of temporary accommodation should be taken as evidence that a school is already under pressure for places. Although some 'temporary' class-bases can remain on school sites for a considerable period of time, they will eventually be removed if not needed by the existing community. It would be unreasonable for pupils from a new development to generate the need for temporary class-bases to be converted to permanent build without the developer making an appropriate contribution.

School capacity figures used in assessing the need for a developer contribution are either based on the Department for Education's 'Net Capacity' assessment model or on the capacity set out as part of an Academy funding agreement. 'Commissioning School Places in Essex' may for some schools show an intended future capacity figure which includes works that the County Council expects to need to be undertaken during the five year period covered by the document. This could include work based on the assumption that developer contributions are going to be made to accommodate the additional pupils from new housing in a particular locality.

It is generally accepted that education provision in an area should not operate at 100% of its capacity, as it is important to retain some level of surplus places. The National Audit Office report 'Capital Funding for New School Places' (2013) refers to a minimum 5% surplus that the Department for Education assumes in its planning as necessary to support operational flexibility (mid-year admissions) and facilitate parental choice. A deficiency may thus be deemed to exist without the certainty of every local place being filled.

In deciding which local provision it is reasonable to include in an assessment, the needs of the new development must be balanced against those of the existing community. If the new development displaces pupils from another area there may be significant local opposition to the scheme. It is, therefore, important to look not just at the nearest school but also at the wider area. There may, for example, be places at a school within reasonable distance of the new development to which pupils could safely walk. Conversely there may be surplus places forecast at the nearest school that will be needed by the current population because another local school is forecast to be oversubscribed.

Traditionally schools have admitted pupils from their priority admissions or 'catchment' areas. Current school admissions are, however, also based on a number of other criteria including the presence of siblings at the school, faith or aptitude in a particular curriculum area. Schools with admissions policies that could exclude the majority of pupils moving to a new development from gaining admission are excluded from the assessment of developer contributions. A list of admissions criteria for schools can be found in the Schools Admission Policies Directories which are available on the Essex County Council website.

Having taken all the above factors into account, where it can be demonstrated that the number of pupils generated by a development is greater than the surplus capacity in permanent accommodation in a suitable school(s), the County Council may require a developer contribution to build additional permanent capacity. This may on occasions include the transfer of land. For this purpose a suitable school is any academy, free school or maintained school that provides education appropriate to the age, ability and aptitude of a child between the ages of 4-19. This definition excludes schools providing education exclusively for pupils with special educational needs or disabilities. Whilst selective schools and faith schools can and do provide education that is appropriate to the age, ability and aptitude of children between the ages of 4-19 they are excluded from the assessment of developer contributions on the basis that their admissions policies could exclude the majority of pupils moving onto a new development.

In addition to contributions to build additional permanent places, a contribution may also be sought to fund transitional costs. This may apply when there is no surplus capacity at schools within a reasonable travelling distance and additional provision cannot be delivered quickly to serve the development. In such cases Essex County Council will need to provide temporary accommodation at existing schools and/or provide school transport to schools in excess of two miles for children under the age of eight and three miles for older children. These distances are measured via the shortest available safe walking route.

Essex County Council may seek developer contributions to fund these costs in addition to the sums required to provide the permanent places needed. This situation will only usually arise during the first phases of a major development or when the phasing of development does not allow a new school to be delivered early on.

### **5.2.3 Calculating demand from new housing development**

When estimating the number of children that a new housing development will generate, and that will require a school place (yield), Essex County Council takes account of the number of houses and flats that are suitable

to accommodate children. One bedroom units and dwellings, such as student and elderly accommodation, are excluded from the calculation. For education contribution purposes, houses are all dwellings with two or more floors and with sole access to private outdoor space. Maisonettes, trailers and bungalows (not chalet style bungalows with an attic room) may thus be treated as flats.

The primary school yield from qualifying houses is thirty pupils per one hundred homes (0.3 per dwelling) with half this number, fifteen, expected from qualifying flats (0.15 per dwelling). For secondary schools (including post 16 education or sixth form places) the yield is 20 pupils per 100 qualifying houses (0.2 per dwelling) and 10 pupils per 100 qualifying flats (0.1 per dwelling).

Example: A development consisting of 120 x one bed units; 200 x flats (with two or more bedrooms) and 65 houses would generate the following number of children requiring a place:-

Dwelling Type	Units	Primary		Secondary	
		Factor	Yield	Factor	Yield
One bed	120	0	0	0	0
Flats	200	0.15	30	0.1	20
Houses	65	0.3	19.5	0.2	13
<b>Total</b>	<b>385</b>	<b>Pupils</b>	<b>49.5</b>	<b>Pupils</b>	<b>33</b>

#### 5.2.4 Expanding existing provision

If it is not planned to build a new school, financial contributions will be used to fund capital works to add additional capacity at academies, free schools or maintained schools in the appropriate area.

It may not always be practical or desirable to use S106 contributions to provide additional capacity at the nearest school because, for example, the site may be constrained or the school may not have the necessary infrastructure, in terms ancillary accommodation, to support the increased capacity. In addition, due to legislation that enables voluntary aided schools, free schools and academies to refuse proposed expansions, the County Council may be forced to look further afield. In these circumstances the contributions could be used to provide additional capacity through extension, refurbishment or re-modelling of other schools where

the needs could be best met. This may result, through parental choice, in changes to local admission patterns or require priority admission area changes to be negotiated with local schools.

When the County Council commissions additional places through a free school or academy, and uses S106 funding to provide those places, it will require the provider to enter into a legal agreement detailing the building works and the number of additional places to be provided.

### **5.2.5 Thresholds for new schools**

Essex County Council's own guidelines for new primary schools anticipate that the minimum size for any new mainstream provision will be two forms of entry (420 places), unless there are specific factors that make this approach unviable. The minimum size of a new primary school that can be considered is a single form of entry (210 places).

Where new provision is funded by Section 106 contributions, the size of the school will be determined by the size of the site that can be justified by the scale of development and the level of financial contribution. However, Essex County Council may request on occasion that additional land, that can be purchased, is set aside to allow a two form entry school to be established through additional funding from other sources.

Approximately 210 primary aged pupils represent one form of entry, across seven year groups, and this number is likely to be generated by approximately 700 new houses or a mixed development of approaching 1,000 dwellings. However, it must be recognised that if suitable existing local schools cannot be expanded, a new school may become necessary to cater for any number of additional pupils.

With regard to secondary education, new schools are only likely to be required to serve large green field sites. Four forms of entry (600 pupils in the 11 to 16 age range), is the minimum secondary school size that would normally be considered to be financially viable. This would equate to some 3,000 houses or a mixed development of over 4,000 dwellings (i.e. houses and flats).

To achieve this size, and to integrate communities, it is likely that such a school would serve a wider area than a single new housing development. The precise number of new homes to trigger the need for a new secondary school thus requires careful consideration on a case by case basis.

## 5.2.6 The Cost of Additional Places

At current costs extending an existing primary school can be estimated to cost on average in the region of £12,200 per place. The equivalent cost for secondary places is circa £18,500.

With an extension scheme it is often unnecessary to expand all the common areas used by a school such as the staff room, toilets or the hall. The cost of major works and new schools is thus higher. Example new school costs are provided in appendix I

The precise cost of projects will be determined by Essex County Council after reviewing the Land Compliance Study report (see section 4) that the developer must submit with any planning application that includes land for a new school.

## 5.2.7 School Site Areas

The area of land that Essex County Council requires for schools is based on current Department for Education Building Bulletins, the latest being BB103, and other relevant publications. In line with its aspiration to increase educational achievement and enhance skills, Essex County Council will always seek site areas towards the top end of the recommended range. Central government also encourage 'extended schools' that include other community services and, clearly, larger sites are required if joint use of school facilities is to be considered. In order to produce a school with manageable year groups, Essex County Council may require slightly more land than is indicated by a straight forward calculation of pupils from a development. The following figures are a guide to likely requirements in terms of land:

Primary				
Class bases	Pupils / Places	Site Area (hectares)	Ideal Dimensions (metres)	
			Length	Width
7 (1FE)	210	1.0926	130	84
14 (2FE)	420	1.9452	162	120

21 (3FE)	630	2.7978	175	160
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<b>Secondary</b>	
11 -16 Places / Pupils	Site Area (hectares)
900	6.77
1200	8.66
1500	10.55

One extremely important consideration when considering the land required for a new school is the provision of sports pitches. For a playable surface, a consistent gradient of approximately 1 in 70 widthways should be achieved. This encourages suitable water run off without hindering play.

The following pitch sizes need to be considered:

<b>Pitches - including run off areas</b>			
<b>Age</b>	<b>Width (metres)</b>	<b>Length (metres)</b>	<b>Area (hectares)</b>
Minimum Primary	49	82	0.402
Preferred Primary	59	92	0.543
Age 13 to 15 min.	54	87	0.470
Age 15 to 17 min.	59	103	0.608
Senior (18) min.	72	114	0.821
Adult min.	76	118	0.897

Where ideal site areas cannot be achieved artificial pitches may be considered as a way of reducing the land that a school requires. The cost of providing and maintaining artificial pitches is, however, significant and likely to add considerably to the financial contribution sought by Essex County Council from the developer.

### **5.2.8 Additional site requirements to consider**

The main requirements that a school site must meet are set out in appendix C and the process and evidence needed to agree a site are explained in section 4 of this guide. There are, however, a number of considerations specific to schools which warrant additional guidance here.

## Utility Requirements

Places	210	315	420	630
Electrical (three phase)	100KVA 200amps	130KVA 200amps	150KVA 200amps	200KVA 300amps
Gas (21mbar at meter)	230KW/HR	300KW/HR	400KW/HR	550KW/HR
Water (domestic)	50mm 1.5L/S	65mm 2.0L/S	65mm 3.0L/S	65mm 4.2L/S
Water (sprinkler system)	A 100mm mains connection pressurised system is required, storage tank with pumps to fill the tank in 36 hours.			
Telecom ducts (90 mm)	2	2	2	3

N.B. Advice should be sought from Essex County Council's Infrastructure Delivery team and the appropriate project manager before relying on these estimates.

## Fence Requirements

Prior to transfer to Essex County Council all school sites must be fenced by a 1.8 metre high welded mesh polyester powder coated (conforming to BS1722-16:1992) fence with vertical wire diameter of at least 5mm and horizontal wire diameter of at least 7mm conforming to BS 1722 Part 14:2001 'specification for open mesh steel panel fences Category 1 (general purpose fences up to 2.4m high)' and gated at both highway access points.

Where congruent to vegetation or soft landscaping the fence must be supplemented by rabbit-proof fencing that shall be a minimum of 0.9m in height. The rabbit-proof fencing must be constructed with wire netting, to be 18-gauge (1.2mm diameter) with 31mm hexagonal mesh conforming to the appropriate British Standard and European DIN Standard. The base of the fence must be turned outwards from the school site by a

minimum of 150mm and buried with clean topsoil. The specification for the rabbit fencing, including all posts, struts and stakes must also be in accordance with CIRIA report C645 'A Guide to Rabbit Management'.

Where appropriate, fencing should be supplemented by landscaping. New tree and shrub planting should also be protected with individual rabbit guards. Species should be considered carefully to ensure that plants will not prove a burden to the school either in terms of maintenance, safety and or security.

#### Soil Quality Requirement

The levels of any compound in the soil, to a depth of at least three metres below the final soil level, shall not exceed figures set for residential end use as defined by the Soil Guideline Values (SGV) derived using the Contaminated Land Exposure Assessment (CLEA) model and published by the Environment Agency and also the Generic Assessment Criteria values published by Land Quality Management and the Chartered Institute of Environmental Health at the time of the assessment. Any contaminants leaching from the site must not exceed the levels published in the United Kingdom Environmental Quality Standards (statutory and proposed).

### 5.3 School transport & sustainable travel

#### **5.3.1 Assessing the need to provide School Transport**

The Education Act 1996, as amended by Part 6 of the Education and Inspections Act 2006, places a duty on Local Authorities to make suitable travel arrangements free of charge for eligible children as they consider necessary to facilitate their attendance at school. Walking distance is defined by S 444(5) of the Education Act 2006 at two miles for under-eights and three miles for those who have attained eight years.

These distances are measured by the shortest available walking route. An 'available route' is one which a child, accompanied as necessary, may walk with reasonable safety to school. In excess of these distances Essex County Council has to fund 'free' school transport. Where development is proposed in locations that may require Essex County Council to provide school transport, developer contributions are sought to fund provision for a minimum of seven years for primary and five years for secondary pupils

On average the cost of transporting a primary school child to school is around £8 per day (return). The cost for secondary school transport is £4.30. This is due to economies of scale. The calculation of school transport contributions is based on 190 days per year.

### **5.3.2 Promoting sustainable modes of travel**

The County Council has statutory duties to promote the use of sustainable methods of transport for all education and training related journeys, from pre-school age to post 16 students. Under the Education and Inspections Act 2006 authorities are encouraged to develop Travel Plans with schools.

Essex County Council will use its highways, transport and schools expertise to examine the provision of safe walking and cycling routes from new housing to education and other community facilities. Safe direct routes that encourage parents to leave the car at home will be required on all new developments. Financial contributions may also be required for off-site works. Such contributions may also be appropriate from smaller developments.

Where appropriate Highway contributions (as set out in section 5.6.3 below) to establish a safe walking route will be considered before seeking a school transport contribution.

## **5.4 Youth**

### **5.4.1 Background**

Youth work in Essex is delivered through a range of informal learning and personal development services that fulfil a number of statutory obligations (detailed in appendix J) as well as providing personal development opportunities. Access to good quality youth services is vital in ensuring strong community cohesion and can ultimately contribute to the success of a development and the area's economic well-being.

The Service works mainly with young people between the ages of 13-19. It works alongside schools and other partners to:

- Provide access to advice and guidance;
- Deliver targeted support to those at risk of not progressing;
- Support volunteering and community development;

- Provide access to personal and social development programmes;
- Support young people to have a voice and active involvement in their communities.

Services are delivered from 'youth hubs', satellite centres, community buildings, mobile units and outdoor spaces where young people gather. Critical to the work is involving partners, particularly young people, who are fully involved in service design, delivery, governance and evaluation of our services.

#### **5.4.2 What is needed to serve new development**

It is estimated that for every 20 dwellings there will be a young person needing some youth work provision. The minimum size of development requiring a bespoke youth centre or dedicated youth space (catering for approximately 60 young people) is around 1200 houses. The capital cost of such a facility can be put at around £700,000.

Most youth provision is, however, delivered through flexible community spaces. The need for developer contributions, thereby, needs to be considered on a case by case basis and in partnership with other services that may be delivered out of multi-functional community hubs.

In addition to community buildings there are a number of low cost 'big win' facilities that can be provided as part of new development of various sizes. Examples include (at current costs):

- Multi Sports Arena or Multi Use Games Area (MUGA) - costing around £40,000;
- A basic skate park - costing around £35,000;
- Youth shelters - costing around £10,000.

### **5 .5 Social Care & Public Health**

#### **5.5.1 Background**

City, Borough and District Councils in Essex are responsible for securing contributions from developers towards Affordable Housing but Essex County Council has responsibilities for housing some vulnerable groups and will work with districts on how these responsibilities can best be met.

These services are provided to deliver wider benefits to individuals and communities as well as to meet statutory duties. The strategic and legislative framework for social care is set nationally with local strategies and initiatives developed to interpret national strategy and reflect local priorities.

The Care Act 2014 has integrated the provision of social care and health services for the benefit of the client. Health and social care providers in Essex are increasingly seeking to join up their efforts into integrated pathways which provide a consistent service for citizens and make best use of resources. Essex County Council has appointed Integrated Commissioning Directors to work with each of the five local Clinical Commissioning Groups (CCGs) to join up services.

#### 5.5.2 Specialist housing need

In order to deliver its aims and duties, the Council seeks to develop a range of supported living options and to commission services to support people to remain living independently for as long as possible.

Since 2012 Essex County Council has offered capital grant support to developments for working age adults with disabilities and in 2014 began to make a similar offer for housing for older people. The number of schemes accessing these grants is lower than anticipated and insufficient to meet the current and future demands.

In 2014 the Essex County Council began developing a strategic approach to the delivery of housing for older people at scale; districts, providers and developers are involved in shaping the outcomes. This work will be progressively concluded in 2015 with information published throughout the year. It is likely to include details of a continued capital grant scheme, models for land and building donations to support scheme viability and proposals for Essex County Council to work in closer partnership with a number of developer/providers. A similar process is being considered to meet the needs of working age adults with disabilities.

A Market Position Statement, which is updated at regular intervals, provides a picture of the County in terms of demand, supply and opportunity for a range of specialist housing. Specific needs identified include:

- Older people: Data analysis tells us that there are approximately 5,000 Essex residents who meet the criteria to access specialist housing with care that is being provided as an affordable housing option. This figure increases only slightly over the next 5 years. A proportion of these 5,000 residents will be

best served by a form of specialist housing with care.

- Working age adults with disabilities: There is an identified shortfall of around 270 units of supported accommodation of various types across the County.

Details on the characteristics of suitable sites/ buildings for specialist housing with care for older people and working age adults with disabilities can be found in Appendix O.

- Mental health: There is a need for blocks of 12 or so flats, with an on-site office, in a number of areas. In addition, there is a need for move-on accommodation of self-contained flats in general needs accommodation.
- Vulnerable people: Support is currently provided to a range of vulnerable groups such as women fleeing domestic violence; homeless single people and families, older people and people with substance misuse problems.

### 5.5.3 How Essex County Council will work with developers

Essex County Council is keen to see integrated and supportive communities for all the citizens of Essex. It is already working with developers and providers to deliver a range of supported living options and wants to expand that approach and work is underway to explore the options of how this can be achieved.

## 5.6 Highways and Transportation

### 5.6.1 Background

An efficient transport system is central to the growth of the Essex economy. Essex County Council, thereby, works closely on long-term transport plans with each Local Planning Authority in support of their Local Plans. This work assesses the overall impact of development and identifies solutions to potential congestion, including better passenger transport, public rights of way, travel planning and network management.

Essex County Council, acting as the Highway Authority, is consulted by the Local Planning Authority on any planning application that may have an impact on the Highway. In its response, it may object to schemes that

impact negatively on the network or do not meet specific policy requirements. To assist developers in overcoming objections, Essex County Council may request mitigation measures in the form of works to the Highway; actions such as the provision of travel packs or financial contributions towards strategic projects.

### **5.6.2 Assessing the impact of development**

Any development site that proposes 50 dwellings or more, or commercial development that generates equivalent or higher traffic flows, will require a full Transport Assessment or a Transport Statement. The assessment will identify the impact of the development and how to make the site sustainable in transport terms and, therefore, acceptable to the Highway Authority. Early discussions with the Highway Authority are recommended to set out the scope of any Transport Assessment or Transport Statement. Details on the thresholds for Transport Statements and Transport Assessments are given in Appendix B of ECC's Development Management Policies February 2011 and any subsequent updates.

Small scale developments, in particular those in urban and town centre locations, may have a cumulative impact on existing transport infrastructure. Given the scale of this type of development, in most cases it is unlikely that a Transport Assessment or Transport Statement will be required.

Identifying solutions, priority must be given to promoting 'smarter choices' i.e. alternatives to private car use and those that make efficient use of the transport network. Essex County Council employs a sequential test under which measures such as travel planning will be looked at first, then schemes designed to enhance walking and cycling, followed by public transport enhancement and then highway works. In mitigating the impact of a development on the highway network, direct mitigation by the developer is preferred

### **5.6.3 Highway works versus contributions**

Large scale strategic projects identified through the Local Plan process are likely to be funded through a Community Infrastructure Levy, where one is in place. When considering the impact of individual developments, Essex County Council will require developers to complete or procure any necessary works to mitigate the impact of their development. Where more than one development in an area (but no more than five) generates the need for a specific Highways project which does not directly form part of one of the developments, it may be appropriate for Essex County Council to secure financial contributions through a Section 106 agreement and procure the necessary works. This approach will, however, only be taken in exceptional circumstances.

The purpose of any Highway works will be set out in a Section 106 agreement between Essex County Council and the developer along with a broad description of the measures and location. A Section 278 or similar agreement may then be required prior to the works commencing to agree the precise design of the measures.

#### **5.6.4 Highway Works and Surety**

By requiring developers to undertake works under a Section 278 or Section 38 agreement, the work is completed as part of the development. There is, however, an associated risk that works may not be completed to the standards or designs approved by Essex County Council and, therefore, an appropriate surety (either a cash deposit or a paper bond) that can be called on to pay for the completion of works, in the event of default, is required. For minor works, Essex County Council will consider issuing a works permit instead of requiring a legal agreement. Where this is accepted, the value of works must still be backed by a surety.

#### **5.6.5 Inspection fees**

Where developers are working in the highway, inspections have to be carried out by Essex County Council and fees are charged, based on the cost of the works. At the current time the following fees apply:

Cost of Works	% fee applied to cost of works
Under £10,000	£850
£10,000 to £500,000	8.5% of cost of works
£0.5m and £1.5m	7.5% of cost of works
Above £1.5m	Determined case by case

In the case of larger fees, these are payable in stages with the first advance payment being £3,000. More details can be found on pages 26-27 of Essex County Council's Development Construction Manual.

### **5.6.6 Traffic Regulation Orders (TROs)**

Where a development requires a traffic regulation order e.g. to provide waiting restrictions, there is a fee payable, to Essex County Council, to cover the costs of processing and advertising the order(s). The fee starts at £2,000 but varies according to what order and associated works are required. Details can be found on page 27 of the Development Construction Manual. Where Essex County Council takes a contribution to complete Highway Works through a Section 106 agreement, it will include the cost of Traffic Regulation Orders in the sum requested.

### **5.6.7 Commuted Sums for Maintenance**

When the Highway Authority takes on assets from developers it incurs maintenance costs for the life of the assets, and replacement costs at the end of their useful life. Commuted sums to cover these costs are required from the developer. These sums are most commonly secured through Section 38 agreements, but any agreement that includes the transfer of an asset to Essex County Council may require such a contribution. The types of asset include:

- Street lighting
- Traffic signals and illuminated signs
- Pedestrian crossings
- Highway structures such as retaining walls, bridges and gantries
- Landscaping and adopted land
- Fencing and noise bunds
- Bus shelters and other public transport infrastructure
- Street furniture and bollards
- Soak-aways

- Drainage infrastructure including SUDS
- Tree planting in soft and hard landscaping, hedges
- Culverts
- Traffic management features
- Interceptors
- Pavements

The calculation of commuted sums for maintenance follows the principles set out in the guidance produced for the Department for Transport by ADEPT, the Association of Directors of Environment, Economy, Planning and Transport, formerly the County Surveyors' Society. More details of this guidance, and how sums are arrived at, are given in appendix K. A full list of assets, with relevant maintenance contributions, is given in appendix L. It must be noted that developers should not assume that Essex County Council will accept responsibility for or maintain all Highways infrastructure. For example, street lighting that does not form a useful network function may not be requested on some roads and it would not thereby automatically be eligible for adoption.

Any asset that a developer is seeking Essex County Council to adopt must be in an appropriate condition and any required maintenance work at that time must be completed by the developer prior to transfer. Where proposed materials are not within the current specification applied by the Highway Authority, additional sums may be added or adoption of the item refused.

There are also special circumstances whereby Essex County Council will require commuted sums for maintenance of an asset it already owns. For example, if construction traffic is likely to damage the carriageway, the developer may be required to deposit a sum with Essex County Council. The sum will in whole or in part be returned if no damage occurs. This type of maintenance is usually secured through a Section 106 agreement.

## 5.7 Sustainable Travel Planning

### 5.7.1 Background

Travel Plans are long term management strategies providing a framework for managing transport issues and promoting travel choice. Developing a Travel Plan can help to reduce the use of the private car, which in turn helps to tackle localised congestion.

In accordance with the requirements of the NPPF, Travel Plans are an essential component of workplace, schools and residential planning applications. Each plan contains targets, such as 'modal share' and identifies measurable outcomes, along with arrangements for monitoring the Plan's progress and actions to be agreed in the event that targets are not met.

### 5.7.2 Workplace Travel Plans

Workplace Travel Plans are required for all commercial developments, including expansion plans, where the proposal would take total staff numbers to 50 employees or more. A robust Travel Plan can aid recruitment, retention and morale, improve transport infrastructure and reduce congestion in and around the site, also raising the ethical profile of the company. More information on developing a Workplace Travel Plan can be found in the document 'Helping you create a Business Travel Plan.' Examples of frameworks for Workplace, Residential and School Travel Plans can be obtained from [travelplanteam@essex.gov.uk](mailto:travelplanteam@essex.gov.uk).

### 5.7.3 Residential Travel Planning

Focusing on travel by residents and designed to encourage sustainable travel from the start of a journey, rather than to a specific destination, and for a number of journey reasons, i.e. work, leisure, education and/or accessing services.

The requirements for Residential Travel Planning are broken down as follows:

*Residential Travel Information Pack - applicable for all residential developments comprising of 1 to 249 dwellings:*

A leaflet, tailored to the specific District or Borough of the site location, containing information on sustainable travel options and promoting their benefits; including tickets for free bus (or rail) travel.

Sections included are listed below:

- Introduction
- Local Area - map to show local amenities and travelling distance.
  - Cycling and walking
- Local Facilities and Amenities
- Bus Travel ((Depending on the development and the bus operator concerned these are likely to be First All Essex scratch card tickets or Arriva monthly season tickets)
- Rail Travel (including free tickets if applicable)
- Car Sharing
- Other ways to get around
- Useful Contacts

The Packs can be purchased at a charge through the Sustainable Travel Planning team. ( Prices to be confirmed). Fees and ticket prices could increase through the life of the guide.

*Residential Travel Plan - applicable for all residential developments comprising of 250+ dwellings:*

A working plan includes a number of travel plan measures (listed below) to ensure sustainable means of travel are available to residents. The Plan will incorporate the Travel Information Statement, a personalised travel plan, a Travel Plan Co-ordinator, aims & objectives, targets (including an action plan) and an agreed monitoring programme (including biennial travel surveys and traffic counts).

Measures include:

- Safe pedestrian and cycle routes
- Car Clubs
- Transport maps, leaflets and information
- Developer websites, travel information boards or online portals

- Community travel events
- Community Engagement Group
- Walking/cycling challenges
- Car charging points (standard and rapid chargers)

Please note: the above descriptions for each of the individual elements are the current requirements, however these could be altered and more detail added in the near future.

#### 5.7.4 School Travel Plans

Where a new development includes a proposal for building new educational or training spaces, developers will be expected to help minimise the carbon footprint produced by the education establishment through the design and layout of the development, i.e. through better routes or provision to/from the location.

They will be required to work with the Sustainable Travel Planning team to implement a School Travel Plan. This will involve consideration of access to the educational site and the walking & cycling routes to it, including any appropriate crossing facilities and the funding of a School Crossing Patrol (for Primary Schools), in line with the ECC School Crossing Patrol Policy. (<http://www.essexhighways.org/transport-and-roads/gettingaround/walking/school-crossing-patrol.aspx>)

#### 5.7.5. Section 106 requirements

Details of the legal obligations associated with Travel Plans are set out in the template Section 106 agreement provided as appendix A to this guide. Developers are required to pay a one-off fee of £3,000, index-linked with the Government's Consumer Price Index (CPI) and based on April 2015, for Essex County Council to monitor and review each Workplace Travel Plan. The fee pertains to Essex County Council involvement over a five year period from the date of first occupation, to ensure the Travel Plan remains an 'active' document with the overarching aim of achieving a reduction in single car occupancy

Monitoring and review consists of three main activities:

- 1 Management and co-ordination of annual travel surveys
- 2 Setting modal shift targets annually with agreement between both parties
- 3 Providing advice and support to the on-site Travel Plan Co-ordinators

The fee structure for residential developments is detailed below:

Up to 249 dwellings: No charge  
250 to 449 dwellings: £1,500 per annum (index-linked as above)  
450 to 749 dwellings: £2,500 p/a (index-linked as above)

750+ dwellings: £3,000 per annum (index-linked as above)

For applications of more than 1000 dwellings, the monitoring fee will be negotiated case by case

An authority may require a developer to prepare a full Residential Travel Plan (including employment of a Travel Plan Co-ordinator and traffic counts) for a development which has fewer dwellings than those identified in the thresholds specified above, for example because the development is in an area that is particularly congested or has an air quality issue. In such cases the County Council will require an annual fee of £1,500 to monitor and review the Travel Plan.

This fee is for services supplied to the developer by Essex County Council, for the provision of support and advice to the onsite Travel Plan Co-ordinator on the management and implementation of the Residential Travel Plan; enabling them to effectively deliver the Travel Plan and co-ordinate travel surveys and/or traffic data counts.

In all cases (both Workplace and Residential) the developer is responsible for producing the draft plan and any travel packs that are required. The developer may however seek Essex County Council's assistance and under certain circumstances buy-in ECC's expertise.

## 5.8 Passenger Transport

### 5.8.1 Background

Essex County Council acknowledges the role public transport has in keeping communities connected, supporting economic growth, reducing congestion and helping maintain journey time reliability for all road users. Public transport supports our individual ability to reach essential services and has a major influence on our overall quality of life. Such services are particularly important in rural communities and for sections of society that do not have access to a car, such as young people.

Essex County Council, as the Local Highway and Transportation Authority, has responsibilities for public transport under the Transport Act 1985, the Transport Act 2000, the Traffic Management Act 2004 and the Local Transport Act 2008. The legislation requires the production and review of a Local Transport Plan which identifies transport policies and how these will be delivered.

Essex County Council has published a Road Passenger Transport Strategy adopted as part of its Local Transport Plan. The Council's policies for dealing with the public transport issues arising from new developments are described in these documents.

The third Essex Local Transport Plan was published in April 2011 and sets out the Council's long-term strategy for delivering a transport system which supports sustainable economic growth and improves quality of life. The Plan, and the policies contained within it, covers both revenue spending on transport services and capital investment. Accompanying the strategy in the Plan is a short-term implementation plan, which identified priorities for investment over the plan period (based on evidence of need and consultation findings). These informed the development of a costed programme of infrastructure improvements. Developer contributions are sought to support the aims of the Essex Local Transport Plan and should, thereby, optimise the benefits for Essex.

### **5.8.2 Common developer contribution requirements**

Where small scale developments are located near to frequent current bus routes, developer funding may be required to improve existing bus infrastructure. Requirements may include the provision of footway access,

raised access kerbs, and dropped kerbs, central pedestrian refuges at safe crossing points, bus stop signs, timetable cases, passenger shelters and/or real time passenger information.

For larger developments, diversions to existing bus routes or new services may be required to ensure that walking distances to bus stops are sufficiently attractive and accessible to all. Developers will be required, through a Section 106 agreement, to negotiate directly with bus companies and deliver an appropriate package of services. So as to encourage modal shift, bus services should be provided at the time dwellings are first occupied. It is thereby likely that in most cases the developer will be expected to subsidise a service until it becomes commercially viable. The agreement may, however, set time, occupation or cash limits to this contribution.

Recognising that many households will require parking for private cars, adequate provision for unimpeded through routing of buses must be made. The design of roads intended as bus routes is key but parking restrictions may also be required. Developers should expect to contribute towards any necessary Traffic Regulation Orders and the delivery of associated signs. The intention to establish bus routes, and the associated measures, must be made clear to potential new residents to ensure that unnecessary objections to Traffic Regulation Orders are avoided.

## 5.9 Public Rights of Way

The Highway Authority may seek works or a financial contribution from developers to ensure that Public Rights of Way either on, or in areas adjoining new developments, are appropriate to accommodate the additional use new residents will generate. Where the Public Right of Way or relevant part thereof, is over land within the control of the developer, the developer will be required to complete the works under a Section 278 agreement. Where the works require the agreement of any third party owners, Essex County Council may agree to take a financial contribution, and complete the appropriate works, but will only do so where it is evident that the upgrade is achievable. Any transport strategy that relies upon the delivery of an upgraded Public Right of Way must be proved feasible by the developer to be accepted.

Such improvements, where appropriate, may be secured by a Section 106 Agreement (which can have attached to it a public path creation agreement) or by a suitably worded planning condition. Where such improvements are for the provision of a cycle track, which coincides with an existing public path, the developer would be expected to fund the necessary Cycle Track Conversion Order. The agreement would

also require the cycle track to be constructed in accordance with specifications agreed by the Highway Authority.

Specimen clauses for insertion to secure Public Rights of Way as part of a development scheme are available in Appendix A

## 5.10 Waste Management

### 5.10.1 Background

Essex County Council has overall responsibility for waste planning; and the disposal of local authority collected waste arising in its area. Essex County Council also has a duty to provide accessible facilities to the public for the disposal of waste; this is currently fulfilled through the provision of twenty one Recycling Centres for Household Waste. Essex County Council works jointly with the twelve District, Borough and City (lower tier) councils, in its area, in managing local authority collected municipal waste. The twelve lower tier Councils are responsible for waste collection and recycling services.

The full cost of waste disposal is currently in excess of £100 per tonne; and will continue to rise as landfill capacity decreases and the need to meet higher environmental standards come into effect. Each household currently produces in excess of a tonne of waste per annum.

The Joint Municipal Waste Management Strategy for Essex provides the vision for waste management in Essex. It responds to waste level predictions, legislative requirements, landfill capacity and emerging technology. Essex favours an approach led by waste minimisation, coupled with high levels of recycling and composting and the bio-treatment of residual waste. It has an aspiration to recycle 60% of waste and no longer send any waste to landfill.

### **5.10.2 Infrastructure Need**

The adoption of the Joint Municipal Waste Management Strategy required the development of a Mechanical

Biological Treatment plant for the treatment of residual waste. The facility has been developed in Basildon and is currently undergoing hot commissioning; it's due to become fully operational during 2015. It will become the single treatment point in Essex for residual waste which would have previously been disposed to landfill. The strategy also requires the development of:

- six satellite waste transfer stations;
  - in-vessel/anaerobic digestion composting facility; and
- a network of easily accessible Recycling Centres for Household Waste

These are currently being developed and are expected to all be operational by 2017

### 5.10.3 Assessing contributions

The waste infrastructure proposed and under development has been designed with some head room capacity built in to accommodate forecast population growth and the associated impacts on waste tonnages. However, the cumulative impact of development will erode this headroom capacity and may require additional infrastructure.

Many of Essex's recycling centres for household waste are already operating at or close to capacity and may be impacted by additional housing in their areas. Contributions through Section 106 agreements may thus be considered on a case by case basis in these areas.

Significant development may also impact on the waste transfer station network and require the expansion of existing stations or the development of new ones in the locality of the waste source. Large developments may be asked to contribute through Section 106 Agreements or funding from a Community Infrastructure Levy.

## 5.11 Public art

### 5.11.1 Background

It is recognised that public art is an important factor in improving the aesthetics of our built environment, enhancing a sense of community and place, whilst also fostering community pride and ownership. All initiatives in the built environment can benefit from the skills and approach of an artist. These include opportunities for the local context to be creatively explored, community collaboration, site appraisals,

contributing to design teams, master plans and other development partnerships.

Essex County Council has a longstanding commitment to the commissioning of public art as part of its Capital Development Programme. The Public Art programme has included headline projects related to art in architecture and highways projects, with Essex gaining recognition on a national level for quality and strategic focus. This forms part of the County Council's Commissioning Strategies for 'People in Essex experiencing a high quality and sustainable environment' and able to '...enjoy good health and wellbeing', to enhance and improve the image of the County of Essex nationally and internationally as an exciting, forward looking and developing location.

Essex County Council has established a Public Art Common Fund to improve strategic planning and align investment decisions with priorities, ensuring that plans fit into wider community services and infrastructure planning processes and timeframes.

Public Art has the ability to support:

- Enhancement of the natural, built and historic built environment
- Social development, enabling people to investigate and celebrate local identity and/or issues, extending opportunities to participate and engage in culture through public art
- Assist in local economic development initiatives

However, there are limitations as to what the County Council can achieve on its own with limited resources. Private developments also have a major role to play in enhancing the environment for communities through the use of appropriate art work

#### 5.11.2 The contribution of development to public art

Within the NPPF there is a requirement to include cultural wellbeing within the Planning system; the contribution of Public Art in delivering cultural wellbeing has been identified with guidance documents.

Further information can be accessed through the website(s) in the Glossary.

To be most effective, artists should be engaged at an early stage in shaping any proposition for development and, certainly, in advance of the submission of a planning application.

To secure opportunities and funding for Public Art it is necessary for a Local Planning Authority to produce a long-term policy and strategy which identifies where, when, how and why public art will be delivered as part of specific development sites and as part of the development of a place as a whole. Details of the policy and strategy should be included within the local planning authority's Local Plan.

Large developments may be asked to contribute through Section 106 Agreements or funding from a Community Infrastructure Levy sought where levies are in place. Contributions through Section 106 agreements may thus be considered on a case by case basis within each Local Planning Authority.

The County Council will encourage all private sector developments to include the integration of art within their schemes. This can manifest itself in many forms such as:

Large scale, three-dimensional artworks such as sculpture or environmental land art providing a focal point aiding navigation or enhancing an area's identity

Integrated artwork, incorporated into the architecture or public realm

Smaller scale, high impact projects including street furniture, which can make a contribution by the sensitive use of fencing, paving, railings, security screening, tree grills, lighting and bollards.

New media, performances or audio works as part of temporary installations or events.

Place Services lead the delivery of Essex County Council's Public Art Strategy to ensure the work and skills of artists feature in the structures and functioning of new development, either as part of a County Council funded programme, through liaison with Districts & Borough Councils, or by acting as expert consultants for privately funded development. As these arrangements range from district to district, early consultation is strongly recommended.

An approach to development contributions for Culture and Public Art is set out in the 'Urban Place Supplement', a website address for this publication is given in the Glossary below.

## 5.12 Protecting Biodiversity

Essex has been in the lead in piloting a new approach to offsetting the impact of development on biodiversity (or habitats). Protecting biodiversity is backed in the N.P.P.F (paragraphs 109 and 118). The approach involves calculating the value of the habitat which may be lost in 'biodiversity units' and this amount of units has to be replaced (more details of the approach are provided in appendix N). Offsetting can be on or off-site and can be undertaken by the developer directly or can be purchased from a provider of offsets. The Local Planning Authority concerned is best placed to give advice on biodiversity offsetting schemes in their area.

## 5.13 Libraries

### 5.13.1 Background

The Library Service is statutory (1964 Public Libraries & Museums Act), and is required to provide a comprehensive and efficient service for all residents and persons working and studying in Essex. This statutory requirement is articulated by central Government through its inspection regime. Further information is found on the Department of Culture, Media and Sport website.

The Library service has increasingly become a shared gateway to other services and also for accessing digital information and communications. The Library service reviews its community profiles for existing libraries on a regular basis,

### 5.13.2 Service delivery

Essex County Council has been able to increase its level of library service in recent years, opening a 74<sup>th</sup> library in 2013. It would wish to engage with developers to ensure the same high level of service is maintained to new residents

### 5.13.3 When contributions will be considered

Contributions will be sought to provide additional facilities where there is expected to be significant growth in population created by development, where a new community remote from an existing provision, is established

For provision of new libraries, including within community shared facilities, the process below is followed, with local district considerations taken into account:

- Planning applications for developments with 20 or more dwellings will be considered
- Other known growth in area will be taken into account
- Long term capacity and future requirements across the area
- The Essex guideline for a new stand-alone library is that it should serve a discrete community of at least 7,000 people - very few developments will demand a library for itself so there is likely to be a need to 'pool' contributions.
- Where the increase in projected population more than doubles an existing library catchment area, it is likely that a new facility or building will be required: Provision of this space could be as part of a shared community or educational facility for example – and would allow consideration to be made for varying scales of development

#### 5.13.4 How the money will be used

- Monies may be used to enhance existing service points; work with other County Council, district, voluntary and other services, eg NHS, to establish joint community facilities or, in the case of the largest developments, to build new libraries.
- Land acquisition costs are not included although in the case of relocation of library or other services there will/may be an asset which could be sold to contribute towards the costs
- Additional requirements, which may include expansion of existing buildings, and/or furniture, technology and stock, will be directly proportional to the increase in the projected population of the specific area
- 5.13.5 How the contribution will be calculated

Detailed calculation is based on a number of factors:

- A service requirement of 30m<sup>2</sup> net of public library space per 1000 population, based upon the current model of delivery and found in the MLA advice.

- Building costs based on the RICS BCIS tender Price Index and new build prices
- Fitting out costs including furniture and technology based upon current fitting out costs of new provision in Essex – e.g. Springfield
- Provision of stock based on the Public Library Standard “Stock level per 1000 population” and average price of new books

## 5.14 Flood & Water Management and Sustainable Drainage Systems (SuDS)

### 5.14.1 Background

SuDS are a requirement of the NPPF (paragraph 103). Most Local Planning Authorities also require their inclusion in new developments under their local policies in order to meet water quantity, water quality and amenity/biodiversity requirements. From 6 April 2015 Government has made the upper tier authorities as the Lead Local Flood Authorities a statutory consultee to be consulted by local planning authorities in relation to surface water and SuDS proposals put forward in relation to major planning applications.

In addition to the requirement for major planning applications to provide on-site SuDS, there is an overriding need to ensure that there is a viable option for the maintenance of sustainable drainage systems to ensure that SuDS can be implemented and do not fall into disrepair which may result in flooding. As SuDS are holistic systems that often cater for private and highway water within the same features, Essex County Council position is to adopt SuDS in exceptional circumstances, for which a Policy will be published in June 2015, and this will be subject to SuDS being designed and built to the required standard and the long term maintenance is addressed through an up-front commuted sum payment. SuDS design should accord with the Essex County Council SuDS Design Guide. Agreement to adopt will be on a voluntary basis for the developer and ECC. Some of the Local Planning Authorities have reflected the SuDS Design Guide in their own Supplementary Planning Document adoption statements.

Where this exception SuDS adoption policy does not apply, local planning authorities will work with the developers to identify an alternative SuDS adoption body which could include a Water Authority or private management company. The local planning authority will work with the developer to secure the long term

maintenance of SuDS through a combination of planning obligation, planning condition and commuted sum payment guaranteeing their long term maintenance. Whichever SuDS maintenance option is chosen by the developer, early engagement with the relevant adoption organisation and the local planning authority is essential to achieving a successful outcome.

As a Lead Local Flood Authority, Essex County Council must develop, maintain, apply and monitor a strategy for local flood risk management in its area consistent with national strategies and in accordance with the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010 Paragraphs 9 (1), (2), (3) and (4). Surface Water Management Plans provide the platform for the identification of Critical Drainage Areas, a suite of feasible measures to reduce the flood risk in the CDAs and preliminary costs of delivering these measures. Therefore in accordance with NPPF (paragraph 100), Local Plans should be supported by SFRAs taking into account advice from risk management authorities such as LLFAs. Essex County Council has taken the approach of undertaking SWMPs for all the District, Boroughs and City Councils in Essex and views these as the most up-to-date body of evidence about surface and ordinary water course flood risk. The SWMP documents should constitute a significant component of the evidence needed by LPAs when negotiating Section 106 contributions from developers in order to mitigate the impacts of developments on the level of flood risk in a CDA. They should also inform any Infrastructure Baseline Studies and Infrastructure Delivery Plans and facilitate setting up a CIL charging schedule to provide flood defence infrastructure in order to accommodate new developments.

#### 5.14.2 Commuted sums for SuDS

Whilst whole life maintenance costs of SuDS features are accepted by the industry to be comparable to those of conventional drainage, the routine maintenance is often more frequent/expensive and the replacement costs less frequent/expensive. The commuted sum should reflect this short term increase in cost. As vegetative SuDS features are expected to last longer before requiring replacement there is also an argument that the commuted sum fee period should be extended to include one replacement. Therefore, Essex County Council will require a 30 year commuted sum maintenance payment, to include the replacement cost of SUDS infrastructure. In addition, the County Council will be publishing separately the specification it will apply in those instances where the Council adopt SuDS. The fees and charges will increase annually in line with inflation and/or the actual cost of delivering the service

### 5.15.1 Heritage Assets

Essex County Council and Districts are involved in the protection of heritage assets within the county, Place Services provides historic environment advice to some Essex local authorities and to the County Council itself. Where developments will directly affect heritage assets, which are of national or regional significance, there will be potential for positive management and enhancements to be put in place and defined within a section 106 agreement. .

## 6. Further Advice

Developers are strongly advised to check the scope and level of potential obligations prior to purchasing development land or submitting a planning application. In the first instance developers should contact the Local Planning Authority responsible for the area in which their proposed development lies. Their contact details are as follows:

<b>Council</b>	<b>Email</b>	<b>Phone</b>
Basildon Borough	customerservices@basildon.gov.uk	01268 533333
Braintree District	planning@braintree.gov.uk	01376 552525
Brentwood Borough	planning@brentwood.gov.uk	01277 312500
Castle Point Borough	info@castlepoint.gov.uk	01268 882200
Chelmsford City	On line form on <a href="http://www.chelmsford.gov.uk">www.chelmsford.gov.uk</a>	01245 606826
Colchester Borough	planning.services@colchester.gov.uk	01206 282598
Epping Forest District	contactdc@eppingforestdc.gov.uk	01992 564000
Harlow District	contact@harlow.gov.uk	01279 446655
Maldon District	contact@maldon.gov.uk	01621 854477
Rochford District	planning.applications@rochford.gov.uk	01702 318191
Tendring District	planning.services@tendringdc.gov.uk	01255 686868
Uttlesford District	planning@uttlesford.gov.uk	01799 510510

The Local Planning Authority may request that developers contact Essex County Council direct regarding some of the aspects listed in the guide. A Contribution Enquiry Form is provided, as appendix B to this document. This can be sent in by post to the address on the back cover of this guide or a copy can be downloaded from [www.essex.gov.uk](http://www.essex.gov.uk) and emailed to [development.enquiries@essex.gov.uk](mailto:development.enquiries@essex.gov.uk).

It must be stressed that circumstances can change between advice being issued and the formal assessment of a planning application. The estimated level of financial contributions will also rise in line with cost inflation during any intervening period.

## **7. Glossary**

### **Affordable Homes**

Dwellings provided at a cost below open market prices and commonly provided in association with Registered Social Landlords. Such homes may include shared ownership schemes as well as traditional social rented properties. Some may be reserved for people in the community who cannot live independently.

### **Agri-environment**

Schemes run by central government which pay farmers and landowners to allow some of their land not to be used for agriculture but to assist the environment and biodiversity

### **Biodiversity offsetting**

Biodiversity offsetting means that an offset provider delivers a quantifiable amount of biodiversity benefit to offset the loss of biodiversity resulting from a development.

### **Bond**

A cash deposit or a surety provided by a third party (e.g. a major bank or insurance company) that can be called on, to complete works, if the developer is not able to complete them satisfactorily.

### **CLG**

Department of Communities and Local Government central Government department, responsible for local government and planning

DFE Department For Education, central Government Department responsible for Education

### **CCG**

Clinical Commissioning Group, responsible for commissioning local NHS services

### **Charging schedule**

Documents to be produced by a Planning Authority, following consultation with the appropriate infrastructure providers, setting the proposed level(s) of the CIL. A planning inspector will examine the proposed charge in relation to its impact on the viability of development.

### **Community Engagement Group**

A group set up on a residential or commercial development to continue the work of the Travel Plan Coordinator in promoting sustainable means of transport during and after the period of the Travel Plan

**DCMS**

The Government Department of Culture, Media and Sport which is responsible for policy, amongst other things, on libraries.

**DEFRA**

The Government Department for the Environment, Food and Rural Affairs which, amongst other things, oversees policy on biodiversity.

**Development Construction Manual**

An Essex County Council publication which sets out the detail of the engineering construction requirements which developers are required to adhere to in carrying out the highways aspects of their developments in Essex

**District**

A lower tier non unitary authority / District or Borough or City Council, which acts as the Local Planning Authority for most development.

**EA**

Environment Agency, the Government agency responsible, amongst other things, for flood prevention.

**Early Years & Childcare**

The County Council service which organises childcare and pre statutory education age learning (EY&C).

**Essex County Council SuDS Design Guide**

The publication setting out design details of Sustainable Drainage Systems

**Employment density**

In industrial or commercial uses the number of employees for a given number of square metres. This figure varies according to the type of business involved eg warehousing generates fewer jobs per square metre than manufacturing.

**EPOA**

Essex Planning Officers' Association, the professional association for Planners working in Essex.

**Extra Care Homes**

Self-contained accommodation for older people with flexible care and support services. Seen as a more independent alternative to residential care.

**Infrastructure**

Public buildings, roads, open spaces and parks, flood defences, police stations, fire stations and other structures in the public domain.

**Infrastructure Delivery Plan**

A key document in the Local Plan/CIL process in which the District sets out the infrastructure required to support the development in the Local Plan, its cost and its deliverability

**Independent Examination**

The final stage in the scrutiny of a District's Local Plan or CIL It is conducted by an inspector from the Planning Inspectorate.

**Lead Local Flood Authorities**

Upper tier authorities , such as Essex County Council , are Lead Local Flood Authorities. They are responsible for managing risks from local sources and act as a statutory consultee to local planning authorities in relation to surface water and SuDS proposals put forward in relation to major planning applications.

**Local Plan**

The strategies, policies and supporting documents which the Local Planning Authority must adopt under the NPPF setting out its plans for growth and development policies. Previously known as Local Development Frameworks.

**Local Planning Authority** An authority which is invested with the power to make binding planning decisions, such as a District, Borough, City or unitary Council.

**Material consideration**

A matter which can be taken into account by Local Planning Authorities in decisions on planning applications.

**MLA**

Museums, Libraries and Archives (Council) - provides standards on libraries.

**Modal share**

The share of the overall transport market represented by an individual form of transport, eg rail, bus, private car, cycling, walking

### **Modal shift**

A policy to influence the pattern of transport use towards more sustainable modes, eg towards walking, cycling and public transport use and away from the use of single occupancy private cars

### **National Planning Policy Framework (also NPPF)**

The Government's main document on planning policy published on March 27 2012 which sets out the Government's support for sustainable development

### **Parish/Town Councils**

A tier of local government, in some areas, below a district. They carry out a number of very local services and provide some local infrastructure. Where there are parishes, they can receive a proportion of the CIL revenue from developments in their area.

### **Place Services**

Place Services are a traded service of Essex County Council providing environmental assessment, planning, design and management services to over 15 local authorities within the South-eastern region, including independent advice on protection of heritage assets, public art, and sustainability

### **Planning Obligations**

A developer may have to comply with certain obligations to make a development acceptable in planning terms, which could include section 106 monetary contributions, land, buildings or work-in-kind.

### **Pooling contributions**

The number of Section 106 contributions which can be 'pooled' to finance a single infrastructure project, or type of infrastructure is limited by the CIL Regulations. The maximum has been set at five contributions and that provision came into force on 6 April 2015 Contributions agreed since April 2010 count towards the maximum of five..

### **Public Art**

Public art can manifest itself in many forms such as:

Large scale, three-dimensional artworks such as sculpture or environmental land art providing a focal point aiding navigation or enhancing an area's identity

Integrated artwork, incorporated into the architecture or public realm

Smaller scale, high impact projects including street furniture, which can make a contribution by the sensitive use of fencing, paving, railings, security screening, tree grills, lighting and bollards.

New media, performances or audio works as part of temporary installations or events Further information can be accessed via:

[http://cultureandsportplanningtoolkit.org.uk/fileadmin/user\\_upload/2013\\_Guide/TCPA\\_Culture\\_Guide.pdf](http://cultureandsportplanningtoolkit.org.uk/fileadmin/user_upload/2013_Guide/TCPA_Culture_Guide.pdf)

### **Regulation 123 list**

A CIL Charging Authority has to produce such a list for the examination in public indicating which types of infrastructure it will fund from CIL. The list then determines which obligations can be sought through section 106 agreements in the area.

### **Section 38**

The Section in the Highways Act regulating the adoption of estate roads by the Highway Authority.

### **Section 106**

The Section in the Town and Country Planning Act 1990 which gives Local Planning Authorities the right to seek contributions from developers to make their development acceptable in planning terms

### **Section 278**

This Section of the Highways Act allows the Highway Authority to make an agreement with the developer permitting the developer to carry out works in the highway

### **SPD**

Supplementary Planning Document, a document which forms part of the Local Plan, eg setting out the District's policy on planning contributions

### **Surface Water Management Plan (SWMP)**

The most up-to-date evidence base which documents areas at high risk of surface water, ground water and ordinary watercourse flooding, suggests measures which could be taken to alleviate the risk and preliminary costs of delivering these measures.

### **Strategic Flood Risk Assessment (SFRA)**

is the assessment and categorisation of flood risk which provide an indication of the likely flood risk issues at a site from all sources of flooding

### **SuDS**

Sustainable Drainage Systems aim to manage water quantity, water quality, amenity and biodiversity.

### **Sustainable/sustainability**

The principle underlying the planning system that 'the current generation satisfies its basic needs, enjoys an improving quality of life without compromising the position of future generations' - CLG Guidance on sustainable impact test.

### **Transport Assessment/ Transport Statement**

A study to be submitted alongside planning applications of varying sizes setting out the developer's projections of the traffic impacts of a development as a basis for negotiations over if and how those impacts can be alleviated.

### **Urban Place Supplement**

The advisory reference book produced by the Essex County Council Place Services team which encourages high standards of urban design and sustainability.

Further information can be accessed via: [www.placeservices.co.uk/resources/urban-place-supplement](http://www.placeservices.co.uk/resources/urban-place-supplement).

## Appendix A: Section 106 Agreement Template

### AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990 as amended

BETWEEN

(1)

ESSEX COUNTY COUNCIL (2)

and

DISTRICT COUNCIL (3)

[ BANK ](4)

[ OWNER ](5)

Re: Contribution [of land for (an early years & childcare) (primary) and (secondary school) facilities]  
[monetary contributions for education purposes] [monetary contribution towards transportation measures and  
highway works in the vicinity of ( ) Essex]

P M Thomson

Director for Essex Legal Services

New Bridge House

60-68 New London Road

Chelmsford

Essex CM2 0PD

(Ref: )

DATE

20

PARTIES

(1) [of] [whose registered office is situated at]  
(the Developer)

(2) ESSEX COUNTY COUNCIL of County Hall Market Road Chelmsford Essex CM1 1QH (the County)  
and

(3) DISTRICT COUNCIL of (the Council)

[(4) whose registered office is situate at ] (the Bank) and]

[(5) whose registered office is situate at (the Owner)]

WHEREAS

- (1) The Council and the County are local planning authorities for the purposes of the Town and Country Planning Act 1990 for the area within which the Site is situated
- (2) The County is the local highway authority and the local authority for statutory age education and pre-school age education and childcare in the area within which the Site is situated
- (3) The Developer is the owner of the Site which forms the land registered at HM Land Registry with Freehold Title Absolute under Title Number [subject only to the Charge] and has an interest in the Site within the meaning of Section 106 (9) (b) of the 1990 Act

OR WHERE THE DEVELOPER IS NOT THE OWNER

- (3) The Owner is the owner of the Site which forms the land registered at HM Land Registry with Freehold Title Absolute under Title Number [subject only to the Charge] and has an interest in the Site within the meaning of Section 106 (9) (b) of the 1990 Act and the Developer has agreed with the Owner subject to the satisfaction of certain conditions to purchase the Site
- (4) A Planning Application given the Reference Number has been made to the Council for planning permission for the Development on the Site
- (5) The Council and the County consider it expedient that provision should be made for regulating or facilitating the development or use of the Site in the manner hereinafter appearing and the County consider that entering into this Agreement will be of benefit to the public
- (6) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and or the County against the Developer [and the Owner] and its successors in title
- (7) In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 all of the parties are satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms are directly related to the Development and fairly and reasonably relate in scale and kind to the Development
- [(8) The Bank consents to the giving by the Developer of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them]
- [(9) The Owner consents to the giving by the Developer of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them]

1. OPERATIVE POWERS

1.1 THIS AGREEMENT is made pursuant to Section 106 of the 1990 Act as amended by the 1991 Act and 2004 Act and 2008 Act and 2011 Act to the intent that it shall bind the Developer [and the Owner] and its successors in title and assigns and the persons claiming under or through it subject to Clause 8.18 of this Agreement

- 1.2 The covenants restrictions and requirements imposed upon the Developer [and the Owner] under this Agreement create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council and the County as local planning authorities against the Developer [and or the Owner]
- 1.3 This Agreement is conditional on the grant of the Planning Permission
- 1.4 Nothing in this Agreement is intended to confer any benefit on any party other than the parties executing this Agreement
- 1.5 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the 1972 Act and Section 1 of the 2011 Act and all other enabling powers

## 2. DEFINITIONS

2.1 In this Agreement the following expressions shall have the following meanings:

**the 1972 Act** means the Local Government Act 1972

**the 1980 Act** means the Highways Act 1980

**the 1982 Act** means the Local Government (Miscellaneous Provisions) Act 1982

**the 1990 Act** means the Town and Country Planning Act 1990

**the 1991 Act** means the Planning and Compensation Act 1991

**the 2004 Act** means the Planning and Compulsory Purchase Act 2004

**the 2008 Act** means the Planning Act 2008

**the 2011 Act** means the Localism Act 2011

**Charge** means the legal charge dated \_\_\_\_\_ between the Developer and the Bank

**Commencement** means the carrying out on the Site of a material operation described in Section 56(4) of the 1990 Act PROVIDED ALWAYS for the purposes of this Agreement Commencement shall exclude demolition site survey investigation preparation remediation the removal of services or the erection of fences or hoardings and Commence shall mutatis mutandis be construed accordingly

**Commencement Date** means the date on which the Development Commences (by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) (a-d) of the 1990 Act )

**Completion Notice** means the notice served by the Developer [and or the Owner] on the County pursuant to Clause 5.5.3

**Contribution** means any payment made pursuant to the obligations set out in this Agreement save for the the Residential Travel Information Fee and the Travel Plan Monitoring Fee

**Development** means the development permitted by the Planning Permission to construct (*insert description*)

**Dwelling** means a house self-contained flat bungalow maisonette or other domestic property constructed as part of the Development or created by conversion of an existing building on the Site and for the avoidance of doubt for the purposes only of the Education Land Schedule and the Education Contributions Schedule of this Agreement this definition shall exclude any dwelling that by condition set out in the Planning Permission cannot under any circumstance be Occupied by persons under the age of nineteen (19) years of age

**Index** means the most recently published edition at the time of use of each index used under the terms of this Agreement to calculate any amount to be paid with or in addition to a Contribution due under the terms of this Agreement to add to or reduce the Contribution to reflect changes in cost over time

**Index Point** means a point shown on the relevant Index indicating a relative cost at a point in time

**Notice of Commencement** means the written notice served pursuant to Clause 5.5.1

**Occupation** means occupation of a building constructed as part of the Development for the purposes permitted by the Planning Permission but excluding day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and materials and **Occupied** and **Occupy** shall mutatis mutandis be constructed accordingly

**Payment Notice** means a written notice advising of a proposed payment served pursuant to Clause 5.5.2

**Planning Application** means the application for planning permission for the carrying out of the Development carrying the reference and for the avoidance of doubt for the purposes of this Agreement the term Planning Application shall include any application(s) to vary a condition on the Planning Permission or any application(s) for reserved matters approval provided that such application(s) shall not change the Unit

Mix if stated in the first Planning Application and shall relate substantially to the same development of the Site as is proposed under the aforementioned application reference number

**Planning Permission** means the planning permission granted for the Development subject to conditions pursuant to the Planning Application

**Purpose** means the relevant purpose or purposes defined in the Schedules to this Agreement for which each of the Contributions are to be utilised

**“Seven Day LIBID Rate”** shall mean an assessment of the rate of interest the County can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow eurocurrency deposits

**Site** means the area edged red on drawing \_\_\_\_\_ attached hereto comprising of \_\_\_\_\_ [ (XX)] hectares of land

**(Triggers** means when ( Contributions or part thereof are due to be paid to the County] [when the Highway Works are to commence] [and when the Education Site Option Period shall start]

**Working Days** means any day(s) upon which banks in the City of London are open to the general public

## 2. FORMAT

2.2 Where in this Agreement reference is made to a Clause Paragraph Schedule Plan or Recital such reference (unless the context otherwise requires) is a reference to a Clause Paragraph Schedule Plan or Recital of or in the case of a Plan attached to this Agreement

2.3 Where in any Schedule or Part of a Schedule reference is made to a Paragraph such reference shall (unless the context otherwise requires) be to a Paragraph of that Schedule or (if relevant) Part of a Schedule

2.4 References in this Agreement to the Developer [and the Owner] or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them

2.5 Words importing the singular meaning where the context so admits include the plural meaning and vice versa

- 2.6 Words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 2.7 Any reference to a statute a provision thereof a statutory instrument or such Specification Code of Practice or General Direction as is issued under statutory authority or by a Secretary of State shall include any modification extension consolidation or re-enactment thereof 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 thereunder or deriving validity therefrom
- 2.8 Clause headings and Paragraph headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the parts of this Agreement to which they relate
- 2.9 The word including shall mean including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word include and its derivatives shall be construed accordingly

### 3. OBLIGATIONS OF THE PARTIES

- 3.1 The Developer [and the Owner] so as to bind the Site covenants with the Council and the County to comply with the obligations set out in this Agreement and the Schedules to this Agreement
- 3.2 The County covenants with the Developer [and the Owner] to comply with the obligations set out in this Agreement and the Schedules to this Agreement
- 3.3 Representatives of the Council and the County may enter upon the Site at any reasonable time (and in the case of an emergency immediately) to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all health and safety requirements notified by the Developer

### 4. TRANSFER OF INTERESTS

- 4.1 Upon passing an interest in the Site to a successor in title to the Site the Developer [and the Owner] shall be released from all obligations rights and duties (save for liability in respect of any antecedent breach) pertaining to the relevant interest under the terms of this Agreement Provided That For The Avoidance of Doubt if the Developer [and the Owner] shall retain an interest in any part of the Site the Developer [and the Owner] shall remain liable insofar as such liability relates to such retained interest
- 4.2 Otherwise than in relation to individual purchasers of dwelling houses the Developer [and the Owner] shall give to the County within one month of the Developer [and the Owner] disposing of any part of the land comprised in the Site written notice of the name and address of the person to whom the land has been transferred
- 4.3 The provisions of Clause 4.1 and 4.2 shall apply in relation to any successor in title of the Developer [and the Owner] as the owner of the Site or any part thereof mutatis mutandis

## 5. NOTICES

- 5.1 The address for any notice or other written communication is as specified above in the case of each party hereto or (at the option of the recipient) such address as may be specified for service from time to time provided that the same is within the United Kingdom or (at the option of the party giving notice or other communication) the last-known place of abode or business in the United Kingdom of the recipient
- 5.2 Any notice or other written communication to be served or given by one party upon or to any other under the terms of this Agreement shall be deemed to have been validly served or given if received by electronic mail AND delivered by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is sent to the email address stated and marked as follows for each recipient:
- 5.2.1 for the Developer to *(insert email address)* and marked for the attention of *(insert description of person)*
- 5.2.2 for the County to *development.enquiries@essex.gov.uk* and marked for the attention of the s106 Officer Strategic Development (EGD) County Hall Chelmsford CM1 1QH

- 5.2.3 for the Council to *(insert email address)* and marked for the attention of *(insert description of person)*
- [5.2.4 for the Bank to *(insert email address)* and marked for the attention of *(insert description of person)*]
- [5.2.5 for the Owner to *(insert email address)* and marked for the attention of *(insert description of person)*]
- 5.3 Unless the time of actual receipt is proved a notice demand or communication sent by the following means is to be treated as having been served
  - 5.3.1 In the case of electronic mail in the absence of evidence of a delay at the time the message was sent
  - 5.3.2 in the case of recorded delivery at the time delivery was signed for
- 5.4 If a notice demand or any other communication is served after 4.00 pm on a Working Day or on a day that is not a Working Day it is to be treated as having been served on the next Working Day
- 5.5 The Developer [and the Owner] shall serve on the County
  - 5.5.1 the Notice of Commencement not less than three (3) months prior to Commencement stating the expected Commencement Date an estimate of the Triggers and any further information stipulated in the Schedules to this Agreement
  - 5.5.2 the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to the County under this Agreement stating the date that such payment becomes due and any further information stipulated in the Schedules to this Agreement
  - 5.5.3 the Completion Notice within 30 Working Days of all Dwellings being Occupied for the first time stating the date that the last Dwelling was Occupied for the first time and any further information stipulated in the Schedules to this Agreement and for the avoidance of doubt any dispute regarding any notice to be served under this Agreement may be resolved through the 2

mechanisms set out in Clause10 of this Agreement

## 6. CONTRIBUTIONS

- 6.1 The County hereby covenants to place each Contribution and part thereof when received from the Developer [Owner] in to an interest bearing account and utilise the appropriate amount for the appropriate Purpose and it is hereby agreed that up to 2% of each appropriate amount may at the discretion of the County be expended by the County for the purpose of monitoring compliance with this agreement.
- 6.2 In the event that a Contribution is overpaid by the Developer [Owner] then the County shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County have spent the Contribution or have entered into a legally binding contract or obligation to spend the Contribution
- 6.3. If requested in writing by the Developer [and or the Owner] no sooner than the tenth (10<sup>th</sup>) anniversary of the date that the last Payment Notice due to be served under this Agreement was validly served but no later than one (1) year thereafter the County shall return to the party that made the payment of the relevant Contribution any part of the relevant Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT [if the County retains land passed to it under this Agreement or the option to acquire such land and no legally binding contract has been entered into to deliver building works on such land any Contribution or part thereof that may be used under the terms of this Agreement to build on the land shall not be deemed repayable unless and until the afore mentioned option to acquire land has expired without a land transfer taking place or the land transferred has been returned unused to the original owner AND FURTHER PROVIDED ALWAYS THAT ]if the County is legally obliged to make a payment in respect of any Purpose the unexpended part of the Contribution shall not be repaid until such payment is made and the unexpended part of the Contribution to be repaid shall not include such payment
- 6.4. Upon receipt of a written request from the Developer [and or the Owner] prior to the eleventh (11<sup>th</sup>) anniversary of the date the last Payment Notice due under this Agreement was due to be served the County shall provide the Developers [and or the Owner] with a statement confirming whether the Contributions have been spent and if the Contributions have been spent in whole or in part outlining how the Contributions have in whole or in part been spent

- 6.5. Any dispute in relation to how a Contribution has been spent must be raised in writing by the Developer [or the Owner] and received by the County within twenty (20) Working Days of receipt by the Developer [or the Owner] of the Council's statement referred to in Clause 6.4 and shall clearly state the grounds on which the expenditure is disputed
- 6.6. In the event that no written request is received by the County from the Developer [or the Owner] pursuant to Clause 6.3 or no valid dispute is raised by the Developer [or the Owner] pursuant to Clause 6.5 the Developer [and the Owner] shall accept that the Contributions have been spent in full on their appropriate Purposes

## 7. INTEREST

- 7.1 In the event that a Contribution or part thereof is paid later than the date payment is due then the amount of the Contribution or part thereof payable by the Developer [and or the Owner] shall in addition include an amount equal to any percentage increase in costs shown by the relevant Index between the Index Point prevailing at the date payment is due and the date payment is received by the County multiplied by the Contribution or part thereof due or if greater an amount pertaining to interest on the Contribution or part thereof due calculated at the Seven Day LIBID Rate or such other rate as the County deems appropriate from the date payment is due until the date payment of the amount due is received by the County

## 8. GENERAL

- 8.1 Unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed or imposed (as the case may be) but may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement certificate consent permission expression of satisfaction or other approval shall at all times act reasonably and where any payment of costs or other payments are to be made by the Developer [and or the Owner] to the County and or the Council such costs and other payments shall be deemed to be reasonable and proper

- 8.2 Any covenant by the Developer [and the Owner] not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred
- 8.3 No compensation shall be payable by the Council or the County to any party to this Agreement or their successors in title arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer [and the Owner] and at no cost to the Council or the County
- 8.4 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax (VAT) properly payable PROVIDED ALWAYS THAT if at any time VAT is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly
- 8.5 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the County and the Council in the exercise of their functions in any capacity and the rights powers duties and obligations of the County and the Council under private public or subordinate legislation may be effectively exercised as if neither were a party to this Agreement and in particular neither shall be precluded from entering into any agreement under the 1980 Act and/or the 1990 Act with any other party and shall not be deemed to be in breach of this Agreement by so doing
- 8.6 Any agreement obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately [and where the Developer and the Owner are different persons agreements obligations covenants and undertakings given by either shall be deemed to be given jointly and severally by both]
- 8.7 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of

the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of the parties

- 8.8 No variation to this Agreement shall be effective unless made by Deed or pursuant to the determination of an application made under Section 106A of the 1990 Act or an appeal under section 106B of the 1990 Act
- 8.9 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement
- 8.10 The Developer [and the Owner] hereby agrees to pay prior to the date of this Agreement both the Council's and the County's reasonable legal costs and disbursements incidental to the preparation negotiation and entering into of this Agreement
- 8.11 The Developer [and the Owner] hereby agrees to pay prior to the date of this Agreement the County's costs in connection with the negotiation entering to and completion of this Agreement
- 8.12 This Agreement shall be enforceable as a local land charge and shall be registered as such immediately by the Council and the Council covenants with the Developer [and the Owner] that it will note the local land charges register and the planning register following the occurrence of the compliance performance and satisfaction of all of the said obligations
- 8.13 This Agreement is governed by the laws of England and Wales and is subject to the exclusive jurisdiction of the English and Welsh Courts
- 8.14 It is hereby agreed and declared that a person who is not a party to this Agreement shall not be entitled in his own right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999
- 8.15 This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts and each of those counterparts when executed and delivered shall constitute an original but all the counterparts together shall constitute one and the same instrument

- 8.16. This Agreement will come to an end if
- 8.16.1 the Planning Permission is quashed revoked or otherwise withdrawn or otherwise materially modified without the consent of the Developer [and or the Owner] before Commencement so as to render this Agreement irrelevant impractical or unviable or
  - 8.16.2 the Planning Permission expires
- 8.17 Where the Agreement comes to an end under Clause 8.16.1 the Council is on the written request of the Developer [and or the Owner] to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site
- 8.18 This Agreement shall not be enforceable against
- 8.18.1 Owner-occupiers of individual dwellings or other buildings constructed
  - 8.18.2 Any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity gas water drainage telecommunications education services community facilities transport or public services
- 8.19 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement
- 8.20 This Agreement shall not be construed as limiting any right to develop any part of the Site in accordance with any planning permission granted by the Council or the County Council or by the First Secretary of State on appeal or reference to him after the date of this Agreement

## 9. COMMENCEMENT

- 9.1 Save in respect of those Clauses and Paragraphs which will become operative on the date of this Agreement and in respect of obligations expressly in this Agreement requiring compliance prior to Commencement and which will become operative on the issue of the Planning Permission this Agreement will come into effect on the Commencement Date

## 10. DETERMINATION OF DISPUTES

- 10.1 Subject to Clause 10.7 if any dispute arises relating to or arising out of the terms of this Agreement either party may give to the other written notice requiring the dispute to be determined under this Clause 10 and the notice shall propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute
- 10.2 For the purposes of this Clause 10 a Specialist is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to the matters in dispute
- 10.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power with the right to take such further advice as he may require to determine the appropriate type of Specialist and to arrange his nomination under Clause 10.4
- 10.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power with the right to take such further advice as he may require to determine and nominate the appropriate Specialist or to arrange his nomination and if no such organisation exists or the parties cannot agree the identity of the organisation then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute)
- 10.5 The Specialist is to act as an independent expert and
- 10.5.1 each party may make written representations within twenty (20) Working Days of his appointment and will copy the written representations to the other party
- 10.5.2 each party is to have a further fifteen (15) Working Days to make written comments on the others representations and will copy the written comments to the other party

- 10.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require
- 10.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other
- 10.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision which is to be in writing and is to give reasons for his decision and
- 10.5.6 the Specialist is to use all reasonable endeavours to publish his decision within twenty (20) Working Days from the last submission of evidence
- 10.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause<sup>10</sup> including costs connected with the appointment of the Specialist and the Specialist's own costs but not the legal and other professional costs of any party in relation to a dispute will be decided by the Specialist
- 10.7 This Clause 10 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England
- [11. BANK'S CONSENT
  - 11.1 The Bank consents to the giving by the Developer [and or the Owner] of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them in the event the Bank as mortgagee takes possession of the Site or enforces its rights under the Charge by foreclosure or exercise a power of sale in respect of the Site]
- [12. OWNER'S CONSENT
  - 12.1. The Owner consents to the giving by the Developer of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them]

## EDUCATION LAND SCHEDULE

### DEFINITIONS

1. In this Schedule the following expressions shall have the following meanings:

**County's Nominee** means any person(s) company (ies) body (ies) or organisation(s) that the County shall employ fund or work in partnership with in connection with the design construction commissioning running or maintenance of the Education Facility and for the avoidance of doubt the County's Nominee may include any providers of free state education or childcare of any type

**Education Facility** means indoor and outdoor facilities for education childcare sports and ancillary uses (paid or otherwise) commensurate to the capacity of the Education Site

**Education Site** means the [ (xx)] hectares (ha) of usable land identified edged [red] on the 'Education Site' drawing (*insert number*) appended to this Schedule

**Education Site Access Plan** means a plan setting out the location design and specification of routes on the Site to be adopted as public highways which shall provide pedestrian and emergency vehicle access to the Education Site via a paved pedestrianised public area of at least one hundred (100) metres square abutting the [xxx] boundary of the Education Site and also separate vehicular access to the [xxx] boundary of the Education Site for construction grounds maintenance and emergency vehicles and also separate vehicular access to the [xxx] boundary of the Education Site for parking delivery and emergency access and also any additional such access infrastructure that the County may reasonably require to adequately and properly serve and service the Education Facility from adopted public highway

**Education Site Notice** means the notice that the County may serve on the Developer [and or the Owner] pursuant to Paragraph 5 of this Schedule

**Education Site Option Period** means a period of time starting on the date that [twenty (20)] Dwellings are Occupied for the first time and ending ten (10) years after the date the Completion Notice is validly served

**Education Site Specification** means the criteria set out in the 'Education Site Specification' appended to this Schedule with which the Education Site must comply

**Education Site Transfer Terms** means all terms and conditions in this Agreement to be met by the Developer [and or the Owners] to facilitate the transfer of the Education Site to the County or to the County's Nominee

**Education Site Utility Plan** means a plan setting out the design specification and layout of Utilities infrastructure that shall meet the County's requirements to properly and sufficiently serve the Education Facility and shall be provided by the Developer [and or the Owner] to the boundary of the Education Facility at points specified by the County and that shall where specified provide the capacities set out in the 'Minimum Education Site Utility Capacities' appended to this Schedule as a minimum

**Education Site Works** means all reasonable works required to render the Education Site congruent to the Education Site Specification and fit for use for an Education Facility in all respects to the satisfaction of the County

**Utilities** means gas water electricity telephone broadband foul drainage and surface water drainage (including such legal rights as the County considers necessary for the discharge of surface water over adjoining land) and any and all other media services and or utilities as may in the County's reasonable view be appropriate with appropriate rights to use all relevant delivery infrastructure

2. From the date of this Agreement the Developer [and the Owner] hereby covenant
  - 2.1 not to use or allow or permit any works or activities to be carried out on the Education Site that may render the Education Site unsuitable for use as an Education Facility in any way or add to the cost or time taken to construct an Education Facility including for the avoidance of doubt storage and or car parking
  - 2.2 to share with and provide at no cost to the County and or the County's Nominee as appropriate any relevant data studies surveys drawings reports mapping and or other evidence held that may be of assistance in the design and or construction and or commissioning of an Education Facility on the Education Site that shall for the avoidance of doubt include such information pertaining to topography ecology archaeology contamination arboriculture noise and Utilities including depths invert levels and manhole locations
3. At any time during the Education Site Option Period the County may at the County's total discretion serve the Education Site Notice on the Developer [and or the Owner]

4. On service of the Education Site Notice the Developer [and the Owner] hereby covenant with immediate effect
  - 4.1 to grant to the County and the County's Nominee the right to the free and uninterrupted use passage and running of all Utilities and the like over through and along all Utilities infrastructure (permanent and or temporary) and the like which shall at the time exist or which shall within eighty (80) years of the Commencement Date exist on the Site and if required by the County (acting reasonably) grant such legal rights as the County considers necessary for the discharge of surface water through land adjacent to and in the vicinity of the Education Site
  - 4.2 to grant to the County and the County's Nominee rights of way with or without vehicles and for all purposes over any roads or routes (temporary or permanent) on the Site constructed or to be constructed within a period of eighty (80) years from the Commencement Date which are intended for public or construction use
5. The Developer [and the Owner] hereby covenant to within six (6) months of the date on which the Education Site Notice is served:
  - 5.1 with all due diligence to complete in full the Education Site Works to the County's satisfaction
  - 5.2 to allow the County and or the County's Nominees access to the Education Site with or without vehicles plant and machinery for the purposes of investigation or verification that the Education Site Works have been satisfactorily completed and or for the purposes of carrying out works for the laying out of playing fields or any other works which the County may reasonably require in pursuit of the establishment of an Education Facility
  - 5.3 to provide in favour of the County and if appropriate the County's Nominee surety in the form of a collateral warranty backed by appropriate insurance as agreed by the County guaranteeing that the Developer [and the Owner] have met the duties set out in Paragraph 5.1 of this Schedule and in the event that the Education Site is later found by the County not to meet the Education Site Specification in full then the County or the County's Nominee shall be entitled to carry out any such works required to render the Education Site congruent to the Education Site Specification and recover all costs reasonably incurred by the County or the County's Nominee from the Developer [and the Owner] and or the Developer's [and the Owner's] surety pertaining to the cost of these works and also any incidental expenses in connection with such works such payment to

be made by the Developer [and the Owner] within twenty eight (28) days of any such works being completed

- 5.4 to agree in writing with the County the Education Site Utility Plan and the Education Site Access Plan ensuring always that there are no ransom strips that prevent full access to the Education Site or use of Utilities
  - 5.5 to provide to the boundary of the Education Site at points agreed by the County with rights to use adequate infrastructure sufficient to bring suitable and adequate electricity and water and drainage (foul and surface water) to the Education Site for uninterrupted construction and commissioning of the Education Facility until such time as connection to all permanent Utilities is provided pursuant of Paragraph 6.1 of this Schedule and until such permanent Utilities have been commissioned rendering the temporary supplies unnecessary ensuring always that there is no break in supply from such Utilities to the Education Site during any required changeover
  - 5.6 to provide and grant to the County and the County's Nominee access over a temporary route and surface suitable for the free and uninterrupted passage ingress and egress of plant machinery vehicles and pedestrians over the Site from the existing maintainable highway to the boundary of Education Site such route being agreed between the Developer [and the Owners] and the County which shall remain in existence and be maintained at the Developer's [and the Owner's] expense until such time as a permanent maintainable highway has been provided over such route and which is open to the public to the boundary of the Education Site pursuant to Paragraph 6.2 of this Schedule
  - 5.7. to complete the transfer free of encumbrances of the Education Site to the County or if so directed by the County to the County's Nominee on the Education Site Transfer Terms in exchange for consideration not exceeding in total the sum of one pound sterling (£1)
6. The Developer (and the Owner) hereby covenant to within eighteen (18) months of the date on which the Education Site Notice is served
    - 6.1 provide the Utilities as set out and agreed by the County in the Education Site Utility Plan
    - 6.2 provide the access as set out and agreed by the County in the Education Site Access Plan

- 6.3 agree with the County and then provide and install including any necessary traffic regulation orders appropriate road signage pertaining to the Education Facility all at the Developer's [and the Owner's] expense
- 6.4 provide footways three (3) metres in width to all highways (excluding non-thru-routes) within one hundred (100) metres of the Education Site
- 7. The County hereby covenants:
  - 7.1 to use the Education Site for the sole purpose of an Education Facility including any ancillary uses paid or otherwise that shall not detract from the primary function of the Education Facility
  - 7.2 that in the event that the whole or a substantial part of the Education Site is not being used as an Education Facility on the tenth (10th) anniversary of the Education Site being transferred to the County or the County's Nominee and it is not demonstrated that there will be a need for such future use then in the absence of a legally binding contract or obligation requiring the construction or provision of facilities pertaining to an Education Facility the Developer [and or the Owner] may serve on the County or the County's Nominee as appropriate a notice requiring that the part or the parts of the Education Site that are not being used as an Education Facility shall be transferred to the Developer with vacant possession in consideration of the sum of one pound sterling (£1)

#### Appendix Education Site Drawing

Bespoke – to be inserted by developer/owner

#### Appendix Education Site Specification

This Appendix will be based on criteria set out in Appendix C of this Guide and will include a requirement to fence the site in line with the specification in para 5.2.8 of the Guide

#### Appendix Minimum Education Site Utility Capacities

This Appendix will be based on figures provided in paragraph 5.2.8 of this Guide

## EDUCATION CONTRIBUTIONS SCHEDULE

1. In this Schedule the following expressions shall have the following meanings

**Education Contribution** means the sum of the [Early Years and Childcare Contribution] and [the Primary Education Contribution] and [the Secondary Education Contribution] and the [Employment Contribution] and the [School Transport Contribution] to which sums the Relevant Education Indexation shall be added

**Education Index** means the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC Index) or in the event that the PUBSEC Index is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County

**Education Purposes** means [Early Years and Childcare Purposes] and [Primary Education Purposes] and [Secondary Education Purposes] and [School Transport Purposes]

**Flat** means a Dwelling that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Dwelling and no other persons

**House** means a Dwelling that does not meet the definition of a Flat

**Qualifying Flats** means the total number of Dwellings that meet the definition of a Flat and that shall have two or more rooms that may by design be used as bedrooms

**Qualifying Houses** means the total number of Dwellings that meet the definition of a House and that shall have two or more rooms that may by design be used as bedrooms

**Relevant Education Indexation** means the amount that the Developer [and or the Owner] shall pay with and in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change shown in the Education Index between the Index Point pertaining to April [20XX] and the Index Point pertaining to the date the payment is due to be made to the County

**Unit Mix** means the number of Qualifying Flats and the number of Qualifying Houses and the number of Dwellings that by definition shall not be counted as Qualifying Houses or Qualifying Flats the sum of

which shall for the avoidance of doubt equal the total number of Dwellings to be constructed on the Site or created by conversion of an existing building on the Site

### **School Contribution Definitions**

**Primary Education Contribution** means the Primary Pupil Product multiplied by the cost generator of (*insert amount*) pounds sterling (£XX)

**Primary Education Purposes** means the design (including feasibility work) and or delivery and or provision of [the Education Facility] [facilities] for the education and/or care of children between the ages of 4 to 11 (both inclusive) including those with special educational needs [on the Education Site] [at (*insert school and description of works*)] including the reimbursement of capital funding for such provision made by the County in anticipation of the Primary Education Contribution

**Primary Pupil Product** means the sum of the Qualifying Flats multiplied by 0.15 plus the Qualifying Houses multiplied by 0.3

**Secondary Education Contribution** means the Secondary Pupil Product multiplied by the cost generator of (*insert amount*) pounds sterling (£XX)

**Secondary Education Purposes** means the design (including feasibility work) and or delivery and or provision of [the Education Facility] [facilities] for the education and/or care of children between the ages of 11 to 19 (both inclusive) including those with special educational needs [on the Education Site] [at (*insert school and description of works*)] including the reimbursement of capital funding for such provision made by the County in anticipation of the Secondary Education Contribution

**Secondary Pupil Product** means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2

### **Early Years and Childcare [Employment] Contribution Definitions**

**Early Years and Childcare Contribution** means the Early Years and Childcare Pupil Product multiplied by the cost generator of (*insert amount*) pounds sterling (£XX)

**Early Years and Childcare Pupil Product** means the sum of the Qualifying Flats multiplied by 0.045 plus the Qualifying Houses multiplied by 0.09

**Early Years and Childcare Purposes** means the design (including feasibility work) and or delivery and or provision of [the Education Facility] [facilities] for the education and/or care of children between the ages of 0 to 5 (both inclusive) including those with special educational needs [on the Education Site] [at (*insert provision and description of works*)] including the reimbursement of capital funding for such provision made by the County in anticipation of the Early Years and Childcare Contribution

[**Employees** means the estimated number of full time equivalent persons that are employed by businesses or organisations housed within buildings on the Site and working from these buildings on an average Working Day when 100% of the Employment Floorspace is Occupied as set out in the Commencement Notice

**Employment Contribution** means an amount equal to the Employment Demand multiplied by (*insert amount*) pounds sterling (£XX)

**Employment Demand** means the number of Employees multiplied by a factor of 0.04 places per employee

**Employment Floorspace** means the floor area of non-residential uses within the Site]

### **School Transport Definitions**

**Primary School Transport Contribution** means the Primary Pupil Product multiplied by the cost generator of (*insert pounds*) pounds sterling and (*insert pence*) pence (£X.XX) multiplied by one hundred and ninety-five (195) (being the average days in an academic year) multiplied by seven (7) (being the number of years a pupil is in primary school)

**School Transport Contribution** means the Primary School Transport Contribution and the Secondary School Transport Contribution

**Secondary School Transport Contribution** means the Secondary Pupil Product multiplied by the cost generator of (*insert pounds*) pounds sterling and (*insert pence*) pence (£X.XX) multiplied by one hundred and ninety-five (195) being the average days in an academic year multiplied by five (5) (being the number of years a pupil is in secondary school)

**School Transport Purposes** means the transportation of children generated by the Development to school

1. The Developer [the Owner] hereby covenants to pay:
  - 1.1 [fifty (50)] percent of the Education Contribution to the County prior to Commencement and shall not Commence until the County has received payment of [fifty (50)] percent of the Education Contribution
  - 1.2 [the remaining fifty (50)] percent of the Education Contribution to the County prior to the first Occupation of a Dwelling and shall not cause or allow a Dwelling to be Occupied until the County has received payment of [the remaining fifty (50)] percent of the Education Contribution and 100% of the Education Contribution has thereby been paid
  
2. The Notice of Commencement shall in addition to that information stipulated in Clause 5.5.1 to this Agreement
  - 2.1 state the Unit Mix and in the event that the Unit Mix constructed or to be constructed should at any time differ from the Unit Mix notified to the County then the Developer [and or the Owner] shall serve on the County a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the further event that the Developer [and or the Owner] fails to serve any notice set out in this Paragraph 2.1 the County may estimate and determine the Unit Mix as it sees fit acting reasonably
  - [2.2 provide clear evidence of the number of Employees and in the event that the number of Employees or the Employment Floorspace constructed or to be constructed should at any time differ from the number of Employees or the Employment Floorspace used to estimate the number of Employees the Developer [and the Owner] shall serve on the County a

further notice stating the revised number of Employees within ten (10) Working Days of the revised number of Employees being known and in the further event that the Developer [and the Owner] fails to serve any notice set out in this Paragraph 2.2 the County may estimate and determine the number of Employees as it sees fit acting reasonably]

3. The Payment Notice shall state the Unit Mix [and the number of Employees] on which the payment is to be based
4. The Completion Notice shall state the final Unit Mix [the final Employment Floorspace and the actual number of Employees]
5. In the event that the Unit Mix to be constructed on the Site [and or the number of Employees] does not match the Unit Mix [and or the number of Employees] on which the Education Contribution or part thereof paid was based the Developers [and the Owner] hereby covenant to pay to the County as soon as the revised Unit Mix [and or number of Employees] becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education Contribution that would have been payable using the revised Unit Mix [and or number of Employees] and any such additional amount shall from the date payment is received by the County form part of the Education Contribution

## HIGHWAYS SCHEDULE

1. In this Schedule the following expressions shall have the following meaning

**Highway Contribution** means the sum of (*insert amount*) thousand pounds sterling (£XX) to which sum the Relevant Highway Indexation shall be added

**Highway Contribution Works** mean (*insert description*) as the County considers necessary in the vicinity of the Site and shall include any design and feasibility work (even if abortive) in relation to such works

**Highway Contribution Purpose** means the carrying out of the Highway Contribution Works

**Highway Works** mean [*insert description of works*] [as identified and set out in principle on the drawings provided as the Highway Works Drawings appended to this Schedule] and including any necessary alterations to and reinstatements of existing highways and statutory undertakers equipment to the provision of or alteration to street lighting road signs drainage structures traffic signals related accommodation and any other works normally associated with the construction of a highway or required as a result of the County's inspections

**Highway Works Agreement** means an agreement entered into pursuant to all powers enabling the parties to regulate the carrying out of the Highway Works (in particular Sections 38 and 72 and 278 of the 1980 Act and Section 33 of the 1982 Act) and shall include but not be limited to the following matters

- (a) securing of a bond to ensure that third party funds are available to complete the Highway Works to the satisfaction of the County
- (b) payment of the County's works inspection fees maintenance fees special orders fees supervision fees and any other such fees as the County shall require
- (c) payment of the County's legal administrative and other fees and disbursements associated with the drafting negotiating and completion of the Highway Works Agreement
- (d) preparation and advance approval of works drawings and traffic management measures
- (e) certification and maintenance of the Highway Works
- (f) regulating of the issue of the Works Licence to enable the Highway Works to be carried out

- (g) the securing of a bond relating to both Land Compensation Act 1973 matters and Noise Insulation Regulations 1975 as amended by the Noise Insulation (Amendment) Regulations 1988 (SI 1988/2000) and any other indemnity and bonds for liability issues as the County shall require
- (h) the dedication of land as public highway
- (i) the standards and procedures for carrying out the Highway Works
- (j) traffic regulation orders and statutory processes

**Highway Index** mean the Department for Business Innovation and Skills Price Adjustment Formulae Indices (Civil Engineering) Series 2 (BIS) or in the event that the BIS is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County

**Relevant Highway Indexation** means the amount that the Developer [and or the Owner] shall pay with and in addition to each part of the Highway Contribution paid that shall in each case equal a sum calculated by taking the amount of the Highway Contribution being paid and multiplying this amount by the percentage change shown in the Highway Index between the Index Point pertaining to (*insert date that request for the Highway Contribution was based on*) and the date of the most recent Index Point published in relation to the date the payment is due to be made to the County

1. The Developer [and the Owner] hereby covenants
  - 1.1 to pay the Highway Contribution to the County prior to the first Occupation of a Dwelling and shall not cause or allow the first Occupation of a Dwelling until the County has received payment of the Highway Contribution
  - 1.2. to enter a Highways Works Agreement in relation to the Highway Works prior to [Commencement] [Occupation]

Appendix Highway Works Drawings

Bespoke –to be inserted by developer/owner

## SUSTAINABLE TRAVEL SCHEDULE

1. In this Schedule the following expressions shall have the following meanings

**Relevant Sustainable Travel Indexation** means the amount that the Developer [and or the Owner] shall pay with and in addition to each part of the Residential Travel Information Fee [and the Travel Plan Monitoring Fee] paid that shall in each case equal a sum calculated by taking the amount of the Residential Travel Information Fee [and the Travel Plan Monitoring Fee] being paid and multiplying this amount by the percentage change shown in the Sustainable Travel Index between the Index Point pertaining to April 20XX and the date payment is made to the County

**[Residential Travel Information Pack** means a brochure containing information as agreed by the County to promote the benefits of sustainable travel and secure a model shift from the private car and increase the number of people using sustainable methods of travel and shall be in the format as stated in the 'Residential Travel Information' appended to this Schedule]

**Residential Travel Information Fee** means a non-refundable sum of (*insert amount*) pounds sterling (£X) plus Relevant Sustainable Travel Indexation payable towards the County's costs in approving the Residential Travel Information [Statement] [Brochure]

**Sustainable Travel Index** means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County

**Travel Plan** means a working plan to include all measures to ensure sustainable means of travel are available to [residents] [and] [employees] of the Development in accordance with the requirements of the National Planning Policy Framework and shall include but not be limited to such [Residential] [Workplace] Travel Plan Measures as stated in the 'Travel Plan' appended to this Schedule

**Travel Plan Co-ordinator** means a member of staff appointed by the Developer [and or the Owner] for (*insert number*) (XX) hours per week based (*insert where*) with appropriate skills and budgetary provision and resources to fulfil the role of the [Residential Travel Plan Co-ordinator] [and] [Workplace Travel Plan Co-ordinator] as described in the job description[s] stated in the 'Travel Plan Co-ordinator Job Description' appended to this Schedule

**Travel Plan Monitoring Fee** means the non-refundable sum of (*insert amount*) pounds sterling (£X) plus Relevant Sustainable Travel Indexation payable towards the County's costs in approving and or monitoring and or reviewing the Travel Plan

**Travel Vouchers** means tickets passes credits or other means of accessing transport or journey planning information as agreed with the County including the following as a minimum [either six carnet or scratchcard bus tickets per household (*insert for how long*) that can be used by each eligible member of the household OR a season ticket voucher] and or [incentives for rail travel with the local rail operator] and or [MyPTP credits to access an online tool to generate personalised travel plans using a home and destination postcode to provide details of different travel modes/options travel routes/maps and timetable information]

2. The Developer [and or the Owner] hereby covenants with the County

[Residential Travel Information Statement / Brochure

- 2.1 To submit a draft Residential Travel Information [Statement] [Brochure] to the County for written approval prior to first Occupation of a Dwelling and not to cause or allow first Occupation of a Dwelling prior to the Residential Travel Information [Statement] [Brochure] being submitted to and approved in writing by the County
- 2.2 To provide the prospective occupier of each Dwelling with an approved Residential Travel Information [Statement] [Brochure] and Travel Vouchers prior to Occupation of that Dwelling and not to cause or permit Occupation of each Dwelling unless and until the Developer has provided the prospective occupiers with an approved Residential Travel Information [Statement] [Brochure] and Travel Vouchers
- 2.3 To pay the Residential Travel Information Fee to the County prior to Commencement and not to Commence until the County has received the Residential Travel Information Fee]

[Travel Plan

- 2.4 To formulate and submit to the County for approval a Travel Plan prior to first Occupation and not to cause or allow first Occupation prior to the Travel Plan being submitted to and approved in writing by the County
- 2.5 To appoint a Travel Plan Co-ordinator prior to first Occupation and not to cause or allow any Occupation prior to the appointment of a Travel Plan Co-ordinator and to notify the County of the identity and contact details of the Travel Plan Co-ordinator as soon as an appointment is confirmed
- 2.6 To continue to employ a Travel Plan Co-ordinator for a period of (XX) years [or if later until one year after the Occupation of the final Dwelling on the Site] and in the event of a vacancy occurring in the post to re-appoint within two (2) months of the vacancy occurring and to notify the County of the appointment as soon as the appointment is confirmed
- 2.7 To ensure that the Travel Plan Co-ordinator discharges his or her duties in accordance with the duties specified in the job description[s] of the [Residential Travel Plan Co-ordinator] [and] [Workplace Travel Plan Co-ordinator] stated in the 'Travel Plan Co-ordinator Job Descriptions' appended to this Schedule
- 2.8 Not to change the responsibilities or role of the Travel Plan Co-Ordinator without prior written approval of the County
- 2.9 To implement the Travel Plan in a timely manner and at its own expense and to comply in all respects with the requirements of the Travel Plan
- 2.10 To pay the Travel Plan Monitoring Fee to the County prior to Commencement and not to Commence until the County has received the Travel Plan Monitoring Fee]

#### Appendix Residential Travel Information

Residential Travel Information is detailed in para.5.7.3 of this Guide

## Appendix Travel Plan

Travel Plans are defined in para. 5.7.1 of this Guide.

## Appendix Travel Plan Co-ordinator Job Description

Please see paragraphs 2.5 to 2.8 above

## **PUBLIC RIGHTS OF WAY SCHEDULE**

### **(Relevant clause set dependent upon Circumstances)**

In this Schedule the following expressions shall have the following meanings

**PROW Improvement Scheme** means a scheme for the provision of public rights of way as shown on the 'PROW Drawing' numbered \_\_\_\_\_ appended to this Schedule which may be subject to revision as agreed in writing between the Developer [and the Owner] and the County following the date of this Agreement

The Developer [and the Owner] hereby covenants to

1. provide the PROW Improvement Scheme within the Site so as to enhance the existing public rights of way network
  - 1.1 the PROW Improvement Scheme shall be provided in accordance with a timetable and construction standard to be agreed with the County (*insert when*) and shall upon completion be maintained by the County as highways maintainable at the public expense
  - 1.2 the timescale for construction diversion and dedication of the PROW Improvement Scheme shall be agreed with the County in writing prior to Commencement and
  - 1.3 the PROW Improvement Scheme shall be made available for the public to use as a public right of way no later than (*insert time /event trigger here*)
2. enter such agreements under the 1980 Act and 1990 Act as shall be considered appropriate by the County to facilitate the provision of the PROW Improvement Scheme within the Site including the diversion of such public rights of way and shall seek to obtain the appropriate diversion orders under the 1990 Act

## **OR**

In this Schedule the following expressions shall have the following meaning

**Bridleway** means a new bridleway link three (3) metres wide from (*insert location*) to (*insert location*) within the Site so as to enhance the existing public rights of way network and to be constructed in accordance with the route as shown on the 'Bridleway Plan' (*insert plan number*) appended to this Schedule

**Bridleway Creation Works** mean such works required by the County to bring the Bridleway to the standard required to be capable of use by the public such works to be at the Developer's [and the Owner's] expense

**Section 25 Agreement** means an agreement or agreements entered into by the Developer [and the Owner] with the County under Section 25 of the 1980 Act in the form of the County's standard 'Section 25 Agreement' appended to this Schedule

**Section 25 Agreement Application** means an application submitted to the County by the Developer [and the Owner] for the purpose of entering into the Section 25 Agreement on the Section 25 Application Form appended to this Schedule

1 The Developer [and the Owner] hereby covenants

1.1 prior to public access to the (*e.g. Public Open Space*) being permitted

1.1.1 to submit to the County a Section 25 Agreement Application and

1.1.2 to enter into the Section 25 Agreement with the County

1.1.3 to carry out the Bridleway Creation Works to the satisfaction of the County in accordance with a timetable and reasonable construction standard to be approved in writing by the County prior to its construction

1.1.4 to dedicate the Bridleway as a public bridleway and such dedication shall take effect in accordance with the terms and conditions and drawings contained in the Section 25 Agreement

1.2 The dedication of the Bridleway shall take effect in accordance with the terms and conditions and drawings contained in the Section 25 Agreement upon the issue of a certificate of completion by the County following the satisfactory completion of the Bridleway Creation Works for the use by the public

2 The County hereby covenants

2.1 To enter into a Section 25 Agreement with the Developer [and the Owner] prior to the occupation of the [Public Open space appropriate trigger]

**OR**

**Permissive Bridleway`** means a new permissive way (over which the right of way is intended to be on foot and by pedal cyclists and on horseback or leading a horse) to be carried out in accordance with the details stated in the 'Permissive Bridleway Specification' appended to this Schedule to link to the existing public footpath numbers (*insert details*) and the proposed Site access at the boundary of the Development as shown by a (*insert colour*) line indicatively on the 'Permissive Bridleway Plan' (*insert number*) appended to this Schedule the final alignment of which shall be subject to the approval of the Council and the County

**Permissive Bridleway Works** means the works to provide the Permissive Bridleway to the standard required by the County to be capable of use by the public the cost of such works to be borne entirely by the Developer [and the Owner]

**Warning and Advisory Signs** means signs to be placed at appropriate points on the Permissive Bridleway in the positions marked on the Permissive Bridleway Plan (*insert number*) appended to this Schedule warning motorists of the possible presence of walkers cyclists and horse riders and a notice at both ends of the Permissive Bridleway pursuant to Section 31(3) of the 1980 Act so as to negate the intention of the Developer [and the Owner] to dedicate the Permissive Bridleway as a highway maintainable at the public expense

1. The Developer [and the Owner] hereby agrees and covenants to

1.1 prior to the first Occupation of a Dwelling to carry out the Permissive Bridleway Works as a permissive way to the satisfaction of the County in accordance with a scheme to be approved in writing by the

County prior to Commencement including the requirement that the width of the Permissive Bridleway shall be no less than three (3) metres along its entire length

- 1.2 prior to the first Occupation of a Dwelling to provide and erect the Warning and Advisory Signs at the Developer's [and the Owner's] expense in accordance with the requirements of the County
- 1.3 maintain the Permissive Bridleway to the standard reached upon completion of the Permissive Bridleway Works from the date of issue of the certificate of completion in perpetuity being a period of no less than eighty (80) years
- 1.4. place a restriction on the Developer's [the Owner's] title at HM Land Registry requiring that no transfer of any part of the land containing the Permissive Bridleway shall take place unless the transferee first enters into a covenant with the transferor to maintain the Permissive Bridleway in perpetuity being a period of no less than eighty (80) years in accordance with the requirements of this Agreement

2. The County hereby agrees and covenants with the Developer [and or the Owner] to

- 2.1. to liaise with the Developer [and or the Owner] in relation to the erection of the Warning and Advisory Signs and notices to negate the intention to dedicate the Permissive Bridleway as a highway maintainable at the public expense
- 2.2 to issue an appropriate certificate of completion following the satisfactory completion of the Permissive Bridleway Works for the use by the public

Appendix PROW Drawing

Bespoke – to be inserted by developer/owner

Appendix Bridleway Plan

Bespoke – to be inserted by developer/owner

Appendix Section 25 Agreement

Please see paragraph under this heading above

Appendix Section 25 Application Form

Please see paragraph under this heading above

Appendix Permissive Bridleway Specification

See para 1.1 on page 99 above

Appendix Permissive Bridleway Plan

Bespoke – to be inserted by developer/owner

## PASSENGER TRANSPORT SCHEDULE

1. In this schedule the following expressions shall have the following meanings

**Bus Service** means a bus service to serve the Development on the following basis or as otherwise agreed in writing between the County and the Developer [and the Owner] so as to be operative at the following times and frequency: [insert details]

**Bus Service Subsidy** means the sum of XXX pounds sterling (£ ) less the revenue achieved from running the Bus Service

The Developer [and the Owner] hereby covenants to

- 2 procure the Bus Service prior to occupation of the XXth Dwelling and not to cause or allow occupation of the XXth Dwelling until the Bus Service has been procured
3. deliver and retain the Bus Service from the Occupation of the XX Dwelling until the first to occur of either
  - 3.1 the lapse of a period of no less than five years from the Occupation of the XXth Dwelling or
  - 3.2 the full amount of the Bus Service Subsidy has been expended by the Developer [and or the Owner] in delivering the Bus Service and the Developer [and or the Owner] have first provided full documentary written evidence of such expenditure that has been accepted as a true record by the County



THE COMMON SEAL of )  
BANK )  
was hereunto affixed in the )  
presence of: - )

Director

Secretary

THE COMMON SEAL of )  
OWNER )  
was hereunto affixed in the )  
presence of: - )

Director

Secretary

Appendix B

**Contribution Enquiry  
Form**

Return to: Infrastructure Planning, Essex County Council, County Hall, Chelmsford CM1 QH

Telephone: 03457 430 430

E-mail: [development.enquiries@essex.gov.uk](mailto:development.enquiries@essex.gov.uk)

**Who to contact**

Title	First Name	Last Name	Job Title
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Email Address	Direct Line		Mobile Phone
<input type="text"/>	<input type="text"/>		<input type="text"/>

**About your organisation**

Organisation Name	Organisation Web Site	Switch Board
<input type="text"/>	<input type="text"/>	<input type="text"/>
Office address	Town	
<input type="text"/>	<input type="text"/>	
	Postcode	<input type="text"/>

**About the site**

Development Name

Town

Site  
Address

Postcode

Residential Development

Number of Units

Houses

Flats

Qualifying Units

<input type="text"/>	<input type="text"/>
----------------------	----------------------

1bed/Discounted Units

<input type="text"/>	<input type="text"/>
----------------------	----------------------

Commercial Development

Number of Employees

Non Residential Floorspace (sq.m.)

Net Site Area(ha)

Est Start  
Date

Development Partners

LPA Officer

Est Completion  
Date

Additional Information

Information given on this form may be stored electronically in compliance with the Data Protection Act and may be shared with the Local Planning Authority.

Estimates based on this information are given without prejudice.

## Appendix C: Education Site Suitability Checklist

Site Name & Address:	Postcode	
	Site Area (hectares)	

Please tick one column for each criterion. Supporting evidence must be provided for each answer as part of a Land Compliance Study. Please use the final column to signpost your evidence and any accompanying studies.

CRITERIA	Does Meet	Will Meet	Won't Meet	Evidence
<i>Is the land suitable for the construction of high quality education buildings and outside spaces?</i>				
Flat ground				
Broadly level (A gradient of 1 in 70, across the width, is ideal to assist water run-off from most pitches)				
At level with surrounding areas and in particular with suitable points of access (vehicular and pedestrian )				
Roughly rectangular in shape				
Sufficient width and length for size of an education facility				
At least 30cm of clean topsoil				
Free draining				
Standard trench fill / strip foundations can be used				
<i>Is the site appropriately located for a school / early years &amp; childcare facility to be established? Accessible from suitable Highways (not a cul de sac) and safe direct</i>				

<i>walking &amp; cycling routes</i>				
Centrally located to the overall development or area the school will serve				
Well located in relation to other neighbourhood facilities and public realm				
Not crossed by any public rights of way or access wayleaves				
Not liable to flooding				
Not crossed by or bounded by any power-lines				
Not crossed by and sufficiently distant from any gas mains				
Outside the cordon sanitaire of any sewage plant				
Free of items or structures of archaeological interest				
Free from protected species or habitats of special interest				
Site not part of a conservation area or subject to any special planning authority restrictions				
<i>Is the site and surrounding area free of pollution, contamination and other risk factors?</i>				
Free of soil and water table contamination				
Outside any current or proposed 55db LAeq (30min) noise source or contour				
Free from radiation or potential sources thereof				
Air quality standards are met				
Free from invasive plants such as Japanese Knotweed				
Not affected by ground gasses and vapours				
Not affected by potential sources of light pollution e.g. major roads, car parks or industry				
<i>Is the site sufficiently distant from any land use that could cause public anxiety?</i>				
Chemical or petro-chemical production or storage				
Establishments storing or handling live viruses				
Facilities housing or treating people with a history of violence or a threat to children				

Incinerators				
Sites currently or previously used for land fill or rubbish disposal				
Aviation or high speed transportation e.g. train lines or helipads				
Major roads or traffic honeypots e.g. large retail outlets				
Prisons or facilities for persons with a history of offending				
Phone or radio masts and transmitters				
High voltage power lines				
Firing ranges, premises storing live ordnance / ammunition or UXB sites				
Land or buildings with a use emitting a strong odour				
Quarries or other major sources of dust				
Premises housing dangerous animals, birds, reptiles or insects				
<i>Is the site free from encumbrances that may need to be removed?</i>				
Free of buildings and other surface structures				
There are no trees on or abutting the site				
Free of pipes, cables and the like				
Free of ponds, ditches or water courses				
Free from foundations, fuel tanks and other buried structures				
Free from spoil and fly tipping				
Free from filled spaces including mineral workings and land fill				
Free of void spaces including wells, sumps and pits				

*If you have answered 'Will Meet' in relation to any criteria, please give details below or on a separate sheet.*

*Please give details of any current or proposed adjoining land use that may disrupt the normal functioning of a school or early years & childcare facility, detract from learning or place anyone associated with the establishment at risk.*

*Please give any other details you know about, that may make this land unsuitable for a school or early years & childcare facility or may add to the cost of building or establishing one on the site.*

**DECLARATION**

I confirm that the information I have given represents full disclosure of the facts and I have taken all necessary steps to ensure it is accurate beyond reasonable doubt. Should any information become evident in the future, that may have altered the response I have given, I will bring these facts to Essex County Council's attention Immediately.

SIGNED:

Print  
Name

ON BEHALF OF:

DATE:

Supporting Information

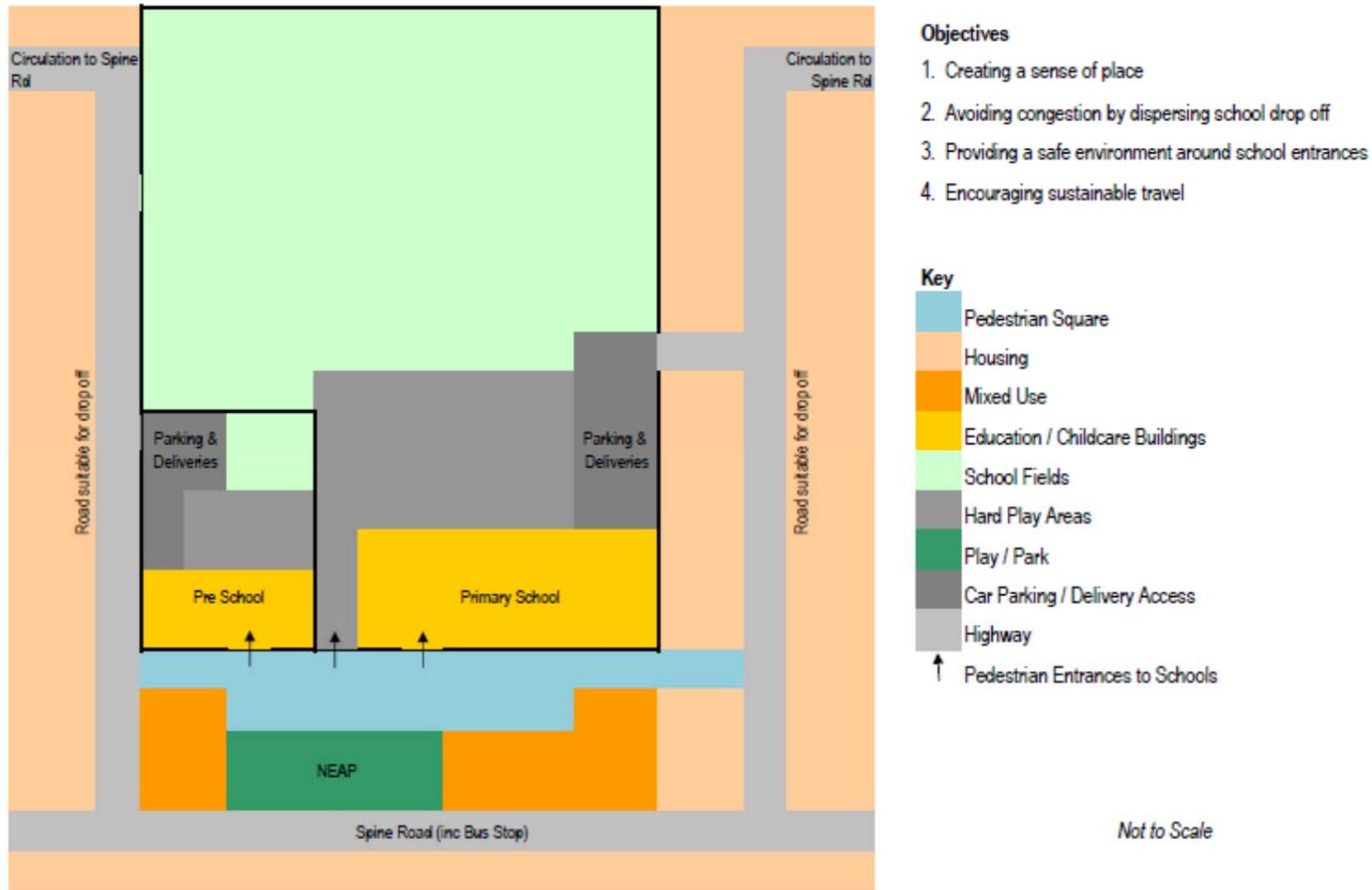
The developer is required to attach to the completed checklist a set of survey information listed below that have a transferable warranty that ESSEX COUNTY COUNCIL or our contractors can rely upon. It would be expected that the developer would already have much, if not all, of this information

1. Ordnance Survey map or drawing and historical documents on previous use;
2. Topographical Survey of area;
3. Ground Conditions Study including local geology maps;

4. Soil & Ground Water Contamination Study;
- 5 .Flood Risk Assessment, including Environment Agency flood zone designation;
6. Habitat, Arboriculture and Ecology Study including site walkover report;
7. Planning Policy documents including relevant planning history;
8. Noise Assessment against criteria in DfE Building Bulletin 93 or equivalent;
9. Air Quality Assessment including reference to Air Quality Management Areas;
- 10 .Partner organisation plans for area.



## Appendix D: Exemplar Layouts for Education and Community facilities





N.B.

Not to Scale

**Objectives**

1. Creating a sense of place
2. Avoiding congestion by dispersing school drop off
3. Providing a safe environment around school entrances
4. Encouraging sustainable travel

**Key**

- Community Building / Shops
- Pedestrian Only Area / Walkways
- Car Parking
- Highway
- Housing / Mixed Use
- Education / Childcare Buildings
- School Pitches
- Other School Areas
- Pedestrian Entrances to Schools

## Pre Transfer Requirements

<i>The site must provide suitable vehicular and pedestrian access for both construction and final use i.e.</i>
Access to all parts of the site for investigation purposes
Usable vehicular/plant access suitable for construction and commissioning purposes
Adopted public highway with suitable vehicular access to service buildings
Separate suitable vehicular access to service the playing field
Access to both ends of the site for emergency purposes
Direct pedestrian access to facilitate 'safe routes to school'
A safe pedestrian realm to which children can egress at the end of the school/pre-school day
Traffic calming or 20mph speed limits on surrounding roads
Three metre wide footways surrounding and on major routes to the facility
Safe and direct cycle routes usable by the population to be served by the new facility
Nearby links into the public transport network

<i>The development must provide suitable utility connections to the boundary including ...</i>
--

Water*
Electricity*
Gas*
Telecommunications and broadband*
Foul sewers
Surface water drainage

<i>The developer must include suitable boundary treatment including ...</i>
Fence*
Gates
Screening from overlooking
Planting

Appendix F: Early Years & Childcare Facility Specification

<b>56 place Day Nursery Facility Requirements</b>	<b>Places</b>	<b>M<sup>2</sup></b>
<b><u>Play Space for 0-2 year olds</u></b>	12	
Play Space (3.5m <sup>2</sup> of area per child)		42
Milk preparation area		6
1 child's assisted toilet + baby change area		9
Defined sleep area ( included within play space allowance)		12
<b><u>Play Space for 2-3 year olds</u></b>	20	
Play Space (2.5m <sup>2</sup> of area per child)		50
2 children's assisted toilets + baby change area (ratio of 1:10)		9
<b><u>Play Space for 3-4 year olds</u></b>	24	
Play Space (2.3m <sup>2</sup> of area per child)		55
2 children's assisted toilets (ratio of 1:10)		6
Play space (2.3m <sup>2</sup> of area per child)		55
<b><u>Other facilities</u></b>		55
Laundry room - incl. washing machine and tumble dryer		6
Servery - incl. sink, fridge, kettle, microwave		15
Office / 1 to 1 meeting room		12
Accessible WC - incl. space for mobile baby change table		4

Staff toilets ( unisex)		3
Reception area / drop in		15
Secure buggy store / lobby		10
Reception/Admin office for 1 full time staff + 1 hot desk		10
General Store		10
Cleaner's Store		3
<b>SUB TOTAL</b>		<b>265</b>
Plant room @ 3% of Sub Total		8
Internal walls @ 4% of Sub Total		11
Circulation @ 15% of Sub Total		47
<b>GROSS INTERNAL FLOOR AREA</b>		<b>337</b>
Outdoor play (5m <sup>2</sup> per child) South or Southeast facing preferred		280
Service area and parking		300
<b>OUTDOOR AREA</b>		<b>580</b>

**TOTAL SITE AREA REQUIRED**

**56**

**917**



Appendix G: Example Early Years & Childcare Facility Costing

## Model Brief

### 56 PLACE EARLY YEARS & CHILDCARE FACILITY - Costs at April 2015

Description	Qty	Unit	Rate	Cost
<b><u>BUILDING</u></b>				
56 place Day Nursery new build	337	m <sup>2</sup>	£ 1,900	£ 64,000
<b><u>EXTERNAL WORKS</u></b>				
EY&C - Additional Car Parking / Service area	300	m <sup>2</sup>	£ 65	£ 19,500
EY&C - Separate Play Area	280	m <sup>2</sup>	£ 25	£ 7,000
Drainage- Foul/Surface water to buildings	400	m <sup>2</sup>	£ 10	£ 4,000
Drainage- Surface water to external hard areas	300	m <sup>2</sup>	£ 5	£ 1,500
Drainage- allowance for land drainage	1	P Sum	£ 10,000	£ 10,000
<b><u>INCOMING SERVICES</u></b>				

Allowance for sub-mains distribution of electricity, gas, water and BT from suitable connection points left by developers	1	P Sum	£ 75,000	£ 75,000
<b><u>CONTINGENCY</u></b>	10%			£87,700
<b><u>FEES</u></b>				
Design Team Fees on Works	10%			£ 96,470
Statutory Fees	1.5%			£ 14,471
Survey Fees	1.5%			£ 14,471
Project Management & CM	4%			£ 38,588
QI Fees	2%			£ 19,294
ESSEX COUNTY COUNCIL Project Management Fees	3%			£ 28,941
Framework Fees				£ 5,000
E- Documents				£ 2,500
<b>TOTAL ESTIMATED COST</b>				<b>£ 1,064, 810</b>

Cost per Place	£ 19014
----------------	---------

### Assumptions

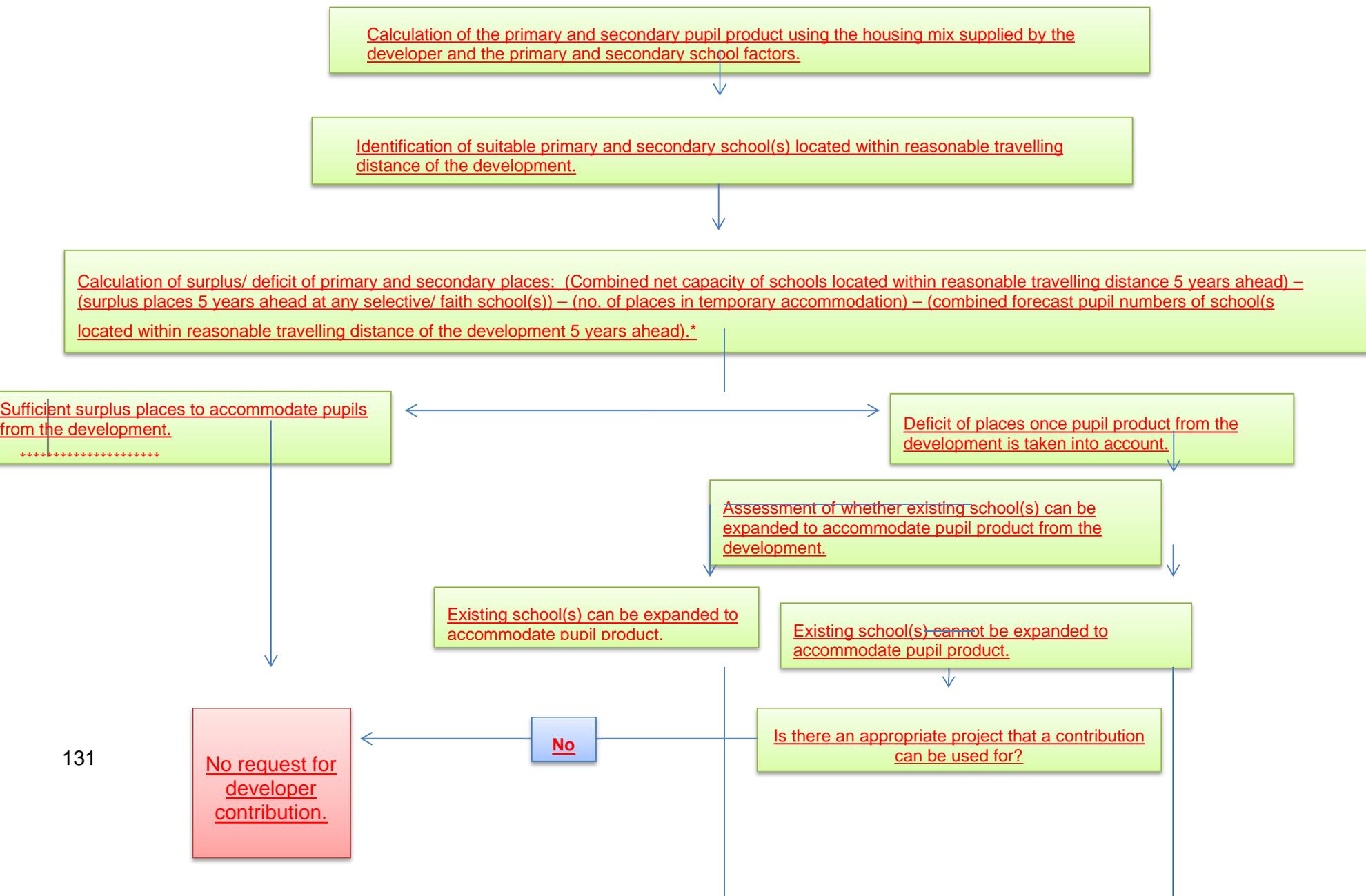
Cost/m2 rate based on benchmark data for standard single storey building

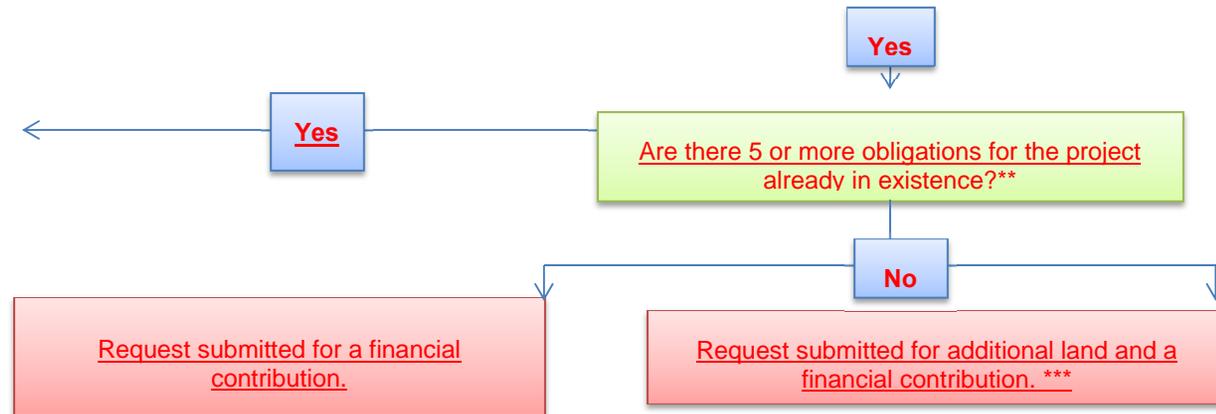
Contingency/Risk allowed is 10% to cover design/construction risks

### Exclusions:

- Abnormal costs unless included above
- VAT
- Site investigation works and additional works resulting therefrom
- Loose furniture/ FF&E
- Removal of contaminated land
- Upgrading incoming services
- Fencing & gates

Appendix H Methodology for assessing the need to request an Education developer contribution





\*Account may be also taken of the following factors:

- any housing developments that have been granted outline or full planning permission after the production of the pupil forecasts for the area in which the proposed development is located;
- any forecast deficits in places at schools in the same forecast planning group as those located within reasonable travelling distance of the development.
- any anticipated expansions of school capacities dependent on developer contributions.

\*\*This only applies to planning obligations entered into after April 2010

\*\*\*In those circumstances where the pupil product from a proposed development cannot be accommodated within existing schools and it is clear that the proposed development could not, of itself, provide a new school site and fund the provision of a new school and remain financially viable ESSEX COUNTY COUNCIL may submit an objection to the planning application.

Appendix I: Example New Primary School Costing

<b>Model Brief</b>				
420 PLACE (2 form entry) PRIMARY SCHOOL - Costs at April 2015				
Description	Qty	Unit	Rate	Cost
<b><u>BUILDINGS</u></b>				
2FE primary school	2,072	m <sup>2</sup>	£ 1,900	£ 3,936,800
<b><u>EXTERNAL WORKS</u></b>				
Grass playing pitches	8,400	m <sup>2</sup>	£ 40	£ 336,000
Hard surface games courts	1,440	m <sup>2</sup>	£ 65	£ 93,600
Hard informal social areas	1,030	m <sup>2</sup>	£ 90	£ 92,700
Soft informal social areas	1,850	m <sup>2</sup>	£ 40	£ 74,000
Habitat area	620	m <sup>2</sup>	£ 20	£ 12,400
Float site area to balance with ESSEX COUNTY COUNCIL Model Brief likely minimum gross site area	1,830	m <sup>2</sup>	£ 30	£ 54,900

Drainage- Foul/Surface water to buildings	2,150	m <sup>2</sup>	£ 10	£ 21,500
Drainage- Surface water to external hard areas	4,300	m <sup>2</sup>	£ 5	£ 21,500
Drainage- allowance for land drainage	1	P Sum	£ 10,000	£ 10,000
<b><u>INCOMING SERVICES</u></b>				
Allowance for sub-mains distribution of electricity, gas, water and BT from suitable connection points left by developers	1	P Sum	£ 75,000	£ 75,000
<b><u>CONTINGENCY</u></b>				
	10%			£ 475,840
<b><u>FEES</u></b>				
Design Team Fees on Works	10%			£ 520,424
Statutory Fees	1%			£ 52,042
Survey Fees	1%			£ 52,042
Project Management & CM	3%			£ 156,127
QI Fees	2%			£ 104,084

ESSEX COUNTY COUNCIL Project Management Fees	3%		£	156,127
Framework Fees			£	5,000
E- Documents			£	2,500
<b>TOTAL ESTIMATED COST</b>			£	<b>6,252,586</b>
<b>Cost per Place</b>			£	<b>14,887</b>

### Assumptions

Cost/m2 rate based on benchmark data for standard single storey building

Contingency/Risk allowed is 10% to cover design/construction risks

### Exclusions:

- Abnormal costs unless included above
- VAT
- Site investigation works and additional works resulting therefrom
- Loose furniture/FF&E

- Removal of contaminated land
- Upgrading incoming services- Fencing and Gates

## Appendix J: Statutory Duties Covered by the Youth Service in Essex

Section 507B of the Education Act 1996 requires that a local authority in England must, 'so far as reasonably practicable, secure for qualifying young persons in the authority's area access to –

1. sufficient **educational** leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities; and
2. sufficient **recreational** leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities.

Section 507B also requires that local authorities publicise information on positive activities and facilities in their area and that they keep this information up to date.

### **Carers (Recognition and Services) Act 1995**

This Act puts a duty on the local authority to carry out a carer's assessment as part of its community care assessment, if the carer 'provides or intends to provide a substantial amount of care on a regular basis'. The youth service carries out this function for young carers.

## Appendix K ADEPT guidance on maintenance costs

The ADEPT guidance document which dates from 2007, suggests a long term interest rate of 4.5% and a value for the RPI-X of 2.25% (that is RPI excluding mortgage payments) giving an effective annual interest rate of 2.2%.

The ADEPT guidance suggests “there should not be any requirement to calculate any ‘degree of benefit’ to the local authority in respect of commuted sums for Section 278 works, even where such works are considered to provide some benefit to the general public (e.g. an improved junction layout with enhanced pedestrian facilities being provided).”

### **Calculation of Commuted Sum**

The following formula should be used to calculate the sum payable. An Excel spreadsheet to aid in the calculation has been developed and is available for modification to specific situations.

**Commuted sum =  $\Sigma M_p / (1 + D/100)^T$** , where:

**$M_p$  = Estimated periodic maintenance cost (£)**

Each asset type will have a number of different periodic maintenance activities, as well as periodic replacement where necessary. The current cost of each activity (or replacement) should be based on current contract rates, or historic information where more appropriate.

The cost should include elements for inspection, design of repair, supervision, and even relocation of the asset in some instances. The frequency of periodic maintenance (or replacement) should be in accordance with current Highway Authority policy.

**D = Discount rate (effective annual interest rate) (%)**

This is calculated to ensure that both the interest earned on the commuted sum, and the effects of inflation are taken into account. The calculation is:

All calculations here are based upon 15 years, 30 years or 60 years of maintenance depending on the asset going forward and are calculated for areas dedicated as Highway, maintainable at public expense, which ECC would use to pay various contractors, including the district councils, to maintain the appropriate assets. The intention would not be for Essex Highways to transfer land from ECC to the District Council.

Attached below is a standard worked example for one asset chosen at random. The method to calculate sums for other assets is identical: -

**Infiltration Trenches**

Weed killing, cleansing & re-stoning / replacement = 80p every year + £6.64 every 10 years

(80p = 60p regular + 20p monitoring from Science Report 2007)

Discount rate (effective annual interest rate)  $D = (1.0337/1.023) - 1 = 1.0459\%$

where 1.0337 is the interest rate (3.37% based on November 2014 Public Work Loan Board (PWLB) current fixed long-term neutral base rate)

and 1.023 is the inflation rate (2.3% based on November 2014 RPI).

Future Values below =  $£0.80 / (1+D/100)^{NT}$

Infiltration Trenches		(annual maintenance)	
(per sq.m)			
Labour			
Price	n	NT	Future Value
0.80	1	1	0.79

2016

0.80	2	2	0.78	2017
0.80	3	3	0.78	2018
0.80	4	4	0.77	2019
0.80	5	5	0.76	2020
0.80	6	6	0.75	2021
0.80	7	7	0.74	2022
0.80	8	8	0.74	2023
0.80	9	9	0.73	2024
0.80	10	10	0.72	2025
0.80	11	11	0.71	2026
0.80	12	12	0.71	2027
0.80	13	13	0.70	2028
0.80	14	14	0.69	2029
0.80	15	15	0.68	2030
0.80	16	16	0.68	2031
0.80	17	17	0.67	2032
0.80	18	18	0.66	2033
0.80	19	19	0.66	2034
0.80	20	20	0.65	2035

0.80	21	21	0.64	2036
0.80	22	22	0.64	2037
0.80	23	23	0.63	2038
0.80	24	24	0.62	2039
0.80	25	25	0.62	2040
0.80	26	26	0.61	2041
0.80	27	27	0.60	2042
0.80	28	28	0.60	30 years
0.80	29	29	0.59	Total
0.80	30	30	0.59	<b>20.51</b>

Future Values below =  $\text{£}6.64 / (1+D/100)^{NT}$

Infiltration Trenches				
maintenance every 10 years				
Price	n	NT	Future Value	
6.64	1	10	5.98	30 years
6.64	2	20	5.39	Total

6.64	3	30	4.86	<b>16.24</b>
------	---	----	------	--------------

Total for 30 years of Maintenance = 20.51 + 16.24 = 36.74 per square metre

Appendix L - Standard Commuted Sums for Maintenance (April 2015)

Material or feature	Unit	Operation	Cost per 15yr cycle (£)	Cost per 30yr cycle (£)
<b>Extra-over Areas</b>				
Extra-over areas not required for highway purposes	Sq. m	One weed killing & sweep per year, 3 <sup>rd</sup> of surface replaced at year 15	23.81	
<b>Roads</b>				
Granite setts to road hump, roundabout & speed control bend overrun areas	Sq. m	Replacement of individual setts & 10% kerbs at years 7 & 14	646.42	
Tegular blocks to road hump / table	per linear metre (based on 1.8m depth)	Replacement of individual blocks & kerbs at years 7 & 14	87.87	
<b>Drainage</b>				
Permeable Paving Blocks (10% replacement at Year 30)	Sq. m	Cleansing, two sweeps & one weed kill per year. 10% replacement at year 30.		38.56
Swales	Sq. m	Cleansing, one cut & one weed kill per year		9.99
Filter Drain	Sq. m	Cleansing, one cut & one weed kill per year & some stone replacement		30.78
Infiltration trenches	Sq. m	As above		36.74

<b>Other Sustainable Drainage Systems (SuDS) or non-standard elements</b>	<b>Site-specific calculation</b>			
<b>Hydrobrake (evidence of replacement timescale required from developer)</b>	<b>Item</b>	<b>Maintenance, one cleanse every 2 years, replaced at year 15</b>	<b>1,452.81</b>	
<b>Soak-away</b>	<b>Item</b>	<b>Inspection, one cleanse every 2 years, replace stone at year 15</b>	<b>3,659.54</b>	
<b>Crate Soak-away (up to 2m deep)</b>	<b>Sq. m</b>	<b>Inspection, jet every 2 years &amp; rejuvenate at year 15</b>	<b>560.65</b>	
<b>Petrol &amp; Oil Interceptors</b>	<b>Item</b>	<b>1 hour inspection per year, disposal of contaminated waste and specialised cleanse every 2 years. Replace D400 cover &amp; frame at year 15.</b>	<b>3,294.38</b>	
<b>Combined kerb &amp; drainage systems - 'beany blocks'</b>	<b>Linear metre</b>	<b>Maintenance (enhanced cleansing regime required - every 9 months)</b>	<b>76.26</b>	
<b>Pavements (footways, cycleways &amp; cycle tracks)</b>				
<b>Surface Dressing (note - in excess of footway rate)</b>	<b>Sq. m</b>	<b>Re-applying at year 12</b>	<b>32.96</b>	

<b>Street Lighting (All columns must conform to ESSEX COUNTY COUNCIL requirements under BSEN40. However embellishment kits are allowed to be attached to columns)</b>				
<b>Non-standard Lanterns and/or painted columns</b>	<b>Site specific calculation</b>	<b>General maintenance, lantern changes, overhaul of switch gear &amp; column repaint where appropriate</b>	<b>Development Management team to calculate following discussion with Street Lighting Team</b>	
<b>Traffic Signals &amp; Controlled Crossings</b>				
<b>Zebra crossing</b>	<b>per pair of Beacons</b>	<b>Cost of energy &amp; maintenance (ensure wearing course has high PSV to eliminate need for high friction surfacing). £51.89 electricity/year/beacon + 5% increase year on year, plus £39.64 maintenance agreement/year</b>	<b>3,519.76</b>	
<b>Other signalised junctions &amp; crossings</b>	<b>Site specific calculation</b>	<b>Inspection costs, general maintenance, energy consumption &amp; communications costs</b>	<b>Development Management team to calculate following discussion with ITS</b>	

<b>Public Transport (ONLY UPON DEVELOPMENT)</b>				
<b>Bus Shelters - Wooden Framed - standard 2 bay enclosed shelter</b>	<b>Item</b>	<b>Cleansing, power wash every Spring, maintenance &amp; cost of energy. Stain every 5 years.</b>	<b>2,887.04</b>	
<b>Bus Shelters - metal framed 2 bay</b>	<b>Item</b>	<b>Cleansing, maintenance &amp; 1 replacement at Year 15. Paint every 5 years, power wash every Spring, £2.97 RTPI electricity/year + 5% increase year on year, plus £20.72 maintenance agreement/year, replace 1 polycarbonate panel of 4 panels per 2 years due to damage, &amp; whole replacement at year 15.</b>	<b>8,669.76</b>	
<b>Bus Shelters - metal framed 3 bay</b>	<b>Item</b>	<b>As above</b>	<b>9183.06</b>	

Real time passenger information, bus gates, VMS, CCTV	Site specific calculation	General maintenance & cost of energy	Development Management Team to calculate following discussion with Passenger Transport Team	
<b>Structures</b>				
Extra-over or enhancements upon standard structure. Includes bridge, culvert, tunnel, retaining wall, headwall, high mast or barrier, gantry, canopy, basement or water attenuation structure	Site specific calculation	Inspection costs, general maintenance, energy consumption & communications costs for 60 years	Contact relevant Project Engineer	
<b>Signs or Bollards</b>				
Extra-over or enhancements upon standard sign or bollard	Item	¼ hour visit for cleansing, maintenance, strim around posts. 1 sq.m sign & posts replacement at year 15	557.61	
<b>Fencing</b>				
Knee rail, or timber post & 3 rail fencing	Linear metre	One replacement at year 15	63.55	

<b>Trees, Planting</b>				
<b>Tree in soft landscaping</b>	<b>Item</b>	<b>General maintenance, several visits for first 5 Summers for watering and failures, then ¼ hour visit per year</b>	<b>350.37</b>	
<b>Tree with grills, pit or watering system, generally in hard landscaping</b>	<b>Item</b>	<b>As above &amp; one replacement of grills at year 10</b>	<b>536.01</b>	
<b>Shrub/ground cover planting (Landscaping) or plantation screening</b>	<b>Sq. m</b>	<b>General maintenance, one trim per year</b>	<b>16.58</b>	
<b>Hedges</b>	<b>Linear metre</b>	<b>General maintenance, one trim per year, out of bird nesting season</b>	<b>20.72</b>	
<b>Street Furniture</b>				
<b>Enhanced cycle racks, street art if not licenced, etc.</b>	<b>Site specific calculation</b>	<b>Cleansing, maintenance &amp; replacement</b>		
<b>Grit Bins</b>	<b>Item</b>	<b>£37.56 of grit per year &amp; replacement at year 15</b>	<b>672.20</b>	

The fees and charges will increase annually in line with inflation and/or the actual cost of delivering the service

## Appendix M: Travel Plan Accreditation Scheme

Essex County Council's Sustainable Travel Planning team is working with businesses and schools to develop Travel Plans that deliver measurable progression in achieving modal shift.

The Sustainable Travel Planning team will provide Travel Plan support and advice to businesses throughout the County and help to develop Voluntary Travel Plans with local establishments that employ 50 staff or more.

Travel Plans will be reviewed, monitored and where applicable, accredited with either a Bronze, Silver, Gold or Platinum standard award. These awards will reflect the business, or organisation's efforts in the promotion and development of their Travel Plan, ensuring that it remains an "active" document.

For further information on Sustainable Travel Plans contact [travelplanteam@essex.gov.uk](mailto:travelplanteam@essex.gov.uk) or call 0845 603 7631.

## Appendix N Protecting Biodiversity

What is biodiversity offsetting?

Biodiversity offsetting is where an offset provider delivers a quantifiable amount of biodiversity benefit to offset the loss of biodiversity resulting from a development. The losses and gains are measured in the same way, even if the habitats concerned are different. The measurement is done in 'biodiversity units', which are the product of the size of an area, the distinctiveness and condition of the habitat it comprises. The biodiversity units lost and gained can be calculated using the approach set out here. If they can, developers can provide an offset themselves, or they can commission someone else to do it for them.

If a developer chooses the latter, it is the units of biodiversity benefit that are sold. The developer is not buying the biodiversity itself, or the land that it stands on. This is not putting a price on biodiversity. The cost of providing an offset will be calculated by the offset provider, on a case-by-case basis, depending on the conservation action they are taking.

In a biodiversity offsetting trial in Essex, developers were required to provide compensation for biodiversity loss under planning policy and were given the option of delivering that compensation by using offsetting. If they decided against offsetting, they were required to deliver compensation to the LPA's satisfaction.

### **Offsetting and planning policy**

Good developments incorporate biodiversity considerations early in their design, but can still result in some biodiversity loss when there are unavoidable impacts, which can't be resolved by design or location, or mitigated by other measures.

Current planning policy for biodiversity is set out in the National Planning Policy Framework (NPPF) which came into force on 27 March 2012. For biodiversity offsetting, the relevant policies in the NPPF are:

“The planning system should contribute to and enhance the natural and local environment by .... minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to Government’s commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures”. (Para 109)

“When determining planning applications, if significant harm resulting from a development cannot be avoided (through locating on an alternate site with less harmful impacts), adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.” (para 118)

In pre-application discussions for a proposed development the LPA will ask the developer to decide whether it wishes to deliver any compensation required under planning policy for biodiversity loss through offsetting, or by using other existing processes.

## **The benefits**

There are advantages to developers of using biodiversity offsetting:

- it simplifies discussion about how much compensation is needed: the impact of the development can be measured in units, and equivalent amount of compensation sourced.
- it is transparent: information about the amounts of loss involved, and compensation required, is open and available to all from the start of the process.
- developers can choose to use an offset provider to provide compensation on their behalf and take responsibility for managing that compensation:

## **A seven step process to calculate how many biodiversity units have to be compensated for**

Step 1 – Apply the ‘avoid, mitigate, compensate’ hierarchy to understand residual biodiversity loss.

Biodiversity offsets come at the end of this ‘mitigation hierarchy’. The NPPF does not define these key terms, but generally accepted definitions are:

**Harm** – Any impact, direct or indirect, that may adversely affect biodiversity.

**Avoid** – Ensuring that negative impacts do not result from planning decisions by, eg, locating development away from areas of ecological interest.

**Mitigate** – Mitigation measures reduce negative impacts. Examples of mitigation measures include changes to project design, construction methods or the timing of work, or enhancing or restoring other interests or areas on a site so overall ecological value is retained.

**Compensate** – Measures which make up for loss or permanent damage to biodiversity. Where some harm to biodiversity is reduced through mitigation, compensation will represent the residual harm which cannot or may not be entirely mitigated. Compensation measures may be on or outside the development site.

Apply this hierarchy to the action you will be taking on your development site.

If you avoid biodiversity loss, or are able to take sufficient mitigation action on site, you will not need to provide compensation for residual biodiversity loss. If you do need to provide compensation, you can decide to use biodiversity offsetting to do this.

The decision whether a development needs to provide compensation for biodiversity loss is for the LPA to take, in line with planning policy.

Some very valuable habitats are very rare and difficult/impossible to recreate. Whilst development on these habitats would be unlikely, if an LPA did decide that development should go ahead on this type of habitat, any compensation would be bespoke, and managed on a case by case basis. It would be for the LPA to decide if offsetting could be used.

Step 2 – Map the habitat type(s) impacted by the development

In biodiversity offsetting, habitats are assigned to one of three habitat type bands, based on their distinctiveness. Distinctiveness is a collective measure of biodiversity and with parameters such as species richness, diversity, rarity and the degree to which a habitat supports species rarely found in other habitats. The list of habitats and the corresponding distinctiveness bands can be found in **Distinctiveness Bands for the Biodiversity Offsetting Pilot**, which is available on Defra’s website<sup>4</sup>. Each band of habitat distinctiveness has a number associated with it as shown in **Table 1** below.

This is the starting point for calculating the number of “units” of biodiversity per hectare you will need to compensate for.

5 and 7 Based on the paper “Biodiversity Offsets”, Treweek et al.

6 <http://naturalengland.etraderstores.com/NaturalEnglandShop/NE264>. Please note that you may need to scroll to the bottom of the internet page for the link to the manual.

<b>Table 1: Habitat distinctiveness</b>	
High	6
Medium	4
Low	2

Step 3 – Assess the baseline condition of each habitat

The methodology used is contained in the Farm Environment Plan handbook for the Higher Level Scheme, an agri-environment scheme run by Defra/Natural England, to assess habitat condition. This can be found in the document “Higher Level Stewardship: Farm Environment Plan (FEP) Manual”<sup>6</sup>

If the condition is being assessed at a sub-optimal time of the year (e.g. grassland in autumn/winter) you may need to take a precautionary approach or wait until a more suitable time of year to carry out the ecological assessment.

.An assessment of the habitat's condition gives a weighting as shown in Table 2.

Table 2: Condition weighting Habitat Condition	
Good	3
Moderate	2
Poor	1

Step 4 – Combine the habitat type and condition weighting to calculate an overall number of biodiversity units.

The condition weighting is combined with the distinctiveness band to give an overall score expressed in biodiversity units per hectare, set out in Table 3 below.

Table 3: Matrix showing how condition and distinctiveness are combined to give the number of biodiversity units per hectare				
		Habitat distinctiveness		
Low (2)		Medium (4)	High (6)	
Condition	Good (3)	6	12	18
	Moderate	4	8	12

	(2)			
	Poor (1)	2	4	6

8 Based on the paper “Biodiversity Offsets”, Treweek et al.

This calculation has to be done for each of the habitats impacted by a development. In many cases there will only be one habitat type, but in some big developments a number of different habitats may be involved. You now have one or more figures that represent the number of biodiversity units per hectare you need to provide as compensation.

Step 5 – Work out if you have particular requirements for the type of offset you will need to provide

If the habitat impacted is in the high distinctiveness band, the offset will usually need to be ‘like for like’ i.e. it will need to create/restore the same type of habitat. In other cases, the offset does not need to be like for like. For habitat of medium distinctiveness, the offset should be largely made up of habitat from the same distinctiveness band or higher (i.e. habitat from the medium or high distinctiveness band). Where the habitat lost was low distinctiveness, the offset project should involve a ‘trade up’ in distinctiveness (i.e. be largely made up of habitat from the medium or high distinctiveness band). This is summarised in Table 4. This approach reflects the guiding principle that offsetting should result in an improvement in the extent or condition of the ecological network.

Table 4: Matching the habitat impacted with the offset project Distinctiveness of habitat lost	Distinctiveness of habitat provided by an offset
High	High – and usually the same habitat type
Medium	Medium or high
Low	Medium or high

Step 6 – Managing hedgerows

Hedgerows are a very important feature of the English countryside. Their contribution, by area, to biodiversity in the landscape is far greater than even the most biodiversity rich habitats. They cannot be treated as another habitat.

If a development causes the loss of hedgerows, that loss has to be offset with like for like habitat – i.e. an offset involving hedgerows. Requirements relating to hedgerows are measured in metres, rather than biodiversity units. Only planting new hedges is appropriate as an offset project,. This is because of the complexity of defining restoration and assigning metres of offset requirement to hedge restoration work.

As with other habitats, use the FEP Manual mentioned above, to assess the quality of hedgerows lost. The condition of the hedgerow lost will affect the offset requirement, which is calculated by using a simple multiplier, as shown in Table 5 below.

Table 5: Multiplier required for different conditions of offset provision Condition of hedgerow lost	Multiplier applied
Good	3
Moderate	2
Poor	1

### Examples

A development results in the loss of 100 metres of hedgerow in poor condition. As it's in poor condition, the multiplier is one. An offset will need to be 100 metres of newly planted hedgerow.

A different development results in the loss of 100 metres of hedgerow in good condition. As it's in good condition, the multiplier applied is 3. An offset will need to be 300 metres of newly planted hedgerow.

Although this describes how hedgerows should be dealt with when using biodiversity offsetting, the approach could apply to other linear features eg hedge banks, ditches and rows of trees.

## Step 7: Decide how you want to provide compensation

You may want to provide the compensation yourself. If this is the case, please refer to the guidance for offset providers on Defra's website. This Guidance explains how to calculate how many biodiversity units an offset project can provide, and includes information on other issues offset providers need to consider, eg, how to manage delivery risks.

In some cases, conservation activity carried out on the development site itself may reduce the amount of compensation to be provided off-site through offsetting. Such on-site offsetting has to be consistent with the local offsetting strategy, and deliver something additional, beyond what might otherwise have happened. In these cases, as the developer will be providing an offset, they will therefore need to calculate the number of biodiversity units that the on-site works deliver, using the Guidance for offset providers. If their proposal is acceptable to the LPA, the number of biodiversity units will be subtracted from the overall number of biodiversity units that need to be delivered, in the absence of this activity.

Alternatively, you may wish to ask somebody else to provide the compensation for you.

### Finding an offset provider

If you would like somebody else to provide the offset for you, you could:

Speak to the LPA who may know of people interested in providing offsets. In addition, they will also have a strategy for offsetting, which will set out what habitat types they would like created through offsetting, and where. This should be helpful for finding offset providers.

Speak to the Natural England offset adviser in the area. Natural England will be quality assuring offset providers and their projects and advising LPAs

Speak to any existing contacts you may have, with for example, local wildlife organisations or landowners, about the potential for them to provide an offset for you

Standards are important to ensure that the biodiversity benefits of offsetting are delivered. Standards are also important for giving developers, LPAs and the public confidence in the approach. Ensuring a certain level of quality is important, to ensure that biodiversity benefits are delivered, and to ensure that confidence in the approach is not undermined by poor quality projects.

Natural England assess the capability of offset providers to deliver offsetting projects, quality-assuring their Biodiversity Offset Management Plans, to advise LPAs. Plans will be assessed to decide if they are

sufficiently robust and likely to deliver and maintain the proposed number of biodiversity units. The offset provider should have a management plan or agreement for the proposed offset project, which has been assessed by Natural England.

The cost of providing an offset, and therefore the price an offset provider will ask, will depend on a range of factors, eg, what habitats they can create or enhance, what type of conservation action is involved, the costs of managing the site at the required condition in the long term, and how any risks to delivery of the biodiversity outcomes are managed. . Whether an offset proposal is an acceptable means of delivering required compensation is for the LPA to determine.

#### Appendix O : Site characteristics profile for housing for older people and adults with learning disabilities

Characteristic	Specialist housing with care for older people
Size (acres)	Dependent on no of units and storeys.
Building storey heights	Buildings over one storey will require lifts.
Location/ setting	Close to town centre.

	Ideally schemes would be in a large town or large village in close proximity to public transport links to access a larger urban centre.
Transport	Good access to transport
Local amenity	Good access to amenities
Green space	Communal private green space
Parking	Visitor parking
Security	By design
No of units	60 - 300
What	Self-contained flats or town houses. A blend of 1 and 2 bedroom units. All units to have en-suite bathroom, living room with sufficient space for a dining table, kitchen.
Other accommodation	Staff accommodation (sleeping quarters and lounge), space for overnight visitors, communal social facilities.

<b>Characteristic</b>	<b>Housing for working age adults with disabilities</b>
Size (acres)	Dependent on the number of units.

Building storey heights	Buildings over one story may require lifts for people with limited mobility.
Location/ setting	Good access to community facilities including shops and leisure services. Ideally schemes would be in larger towns (populations of 10,000 plus) or have good public transport links into large towns.
Use class	Typically C2
Transport	Good access to transport links. No more than 5 minute walk to key transport link.
Local amenity	Good access to amenities – Shops, leisure facilities , GP surgery etc.
Green space	Communal private green space – size dependent on site.
Parking	Parking for staff and visitors. One space per unit.
Security	Dependent on client group.
No of units	6 to 14.
What	Self-contained flats (circa 46m <sup>2</sup> ). Bedroom, bathroom, kitchen, small living area
Other accommodation	Staff accommodation (sleeping-in facilities with shower / bathroom) and some office accommodation. Some schemes would benefit from communal area.









