5. Infrastructure and planning contributions

5.1 Introduction

5.1.1 The Council needs to review its existing Local Plan policies relating to infrastructure and planning contributions because, since its adoption in 2010 (known as the Core Strategy at the time):

- The Council’s Community Infrastructure Levy (CIL) Charging Schedule and Regulation 123 (R123) List has taken effect (6 April 2015), limiting what the Council can negotiate in terms of Section 106 agreements (S106s); and
- The wider legislative, policy and guidance context relating to infrastructure and planning contributions has changed significantly.

5.1.2 The issues which the Council considers the Local Plan Partial Review needs to address in light of these changes are set out in the following sections:

- Issue 1: S106 vs CIL infrastructure categories, standard charges and pooling;
- Issue 2: Public art provision and contributions;
- Issue 3: Open space provision and contributions;
- Issue 4: Infrastructure planning to support the Local Plan Partial Review;
- Issue 5: Thresholds for seeking S106s; and
- Issue 6: Viability and transparency.

74 www.rbkc.gov.uk/cil
5.2 Existing Local Plan policies

Issue 1: S106 vs CIL categories, standard charges and pooling

5.2.1 Chapter 29 ‘Policies and Actions’ of the existing Local Plan introduces ‘Infrastructure and Planning Obligations (s106)’ and the existing policy as follows:

**Policy C1 Infrastructure Delivery and Planning Obligations**

**Infrastructure Requirements and Delivery**

New development will be coordinated with the provision of appropriate infrastructure to support the development. The Council will require that there is adequate infrastructure to serve developments, including through the use of planning obligations, working with infrastructure providers and stakeholders to identify requirements.

In determining applications for planning permission, the Council will take into consideration the nature, scale and location of the proposed development, and where the need arises from the development either because of its individual or cumulative impact, will seek prescriptive, compensatory or mitigatory measures to secure the necessary social, physical, green or environmental infrastructure, or improvements to the proposals submitted to enable the development to proceed, in accordance with advice in national guidance.

**Planning Obligations**

Planning obligations will be negotiated whenever appropriate in accordance with Circular 05/2005 *Planning Obligations*, and taking account of the proposed development, and in determining which measure receives priority, account will be taken of the individual characteristics of the site, the infrastructure needs of the site and the surrounding area, and the London Plan. Proposals that form part of potentially wider sites will be assessed in terms of the capacity of the site as a whole...

5.2.2 Chapter 29 of the existing Local Plan also suggests measures which may be suitable for planning obligations, including:

1. Environmental improvements
2. Economic initiatives
3. Provision of affordable housing
4. Provision of community, social and health facilities
5. Provision of transportation facilities
6. Conservation of buildings of architectural or historic interest and other conservation projects such as archaeological investigation
7. Sports, leisure, recreational and visitor facilities
8. Green infrastructure improvements
9. Cultural facilities
10. Play facilities
11. Energy efficiency and renewable energy
12. Utility infrastructure requirements
13. Waste management and recycling to mitigate the impact of the development
14. Land charges, legal, project management, monitoring and implementation
costs, and management and maintenance costs on completion

**Unitary Development Plan (UDP)**

5.2.3 The Council’s Unitary Development Plan (UDP, May 2002) also contains an extant policy relating to infrastructure provision which is set out below and is part of the scope of the Local Plan Partial Review:

**Policy H8**

To require the provision of appropriate social and community facilities within major residential schemes.

**Planning Obligations Supplementary Planning Document (SPD)**

5.2.4 The Council adopted a Planning Obligations Supplementary Planning Document (SPD) and Calculator in August 2010 to provide further guidance on the Local Plan (at the time, the Core Strategy) policies. The SPD sets out a range of ‘categories’ of infrastructure for which S106s will be sought (see Figure 5.2). Chapter 9 of the existing SPD sets out its general approach of seeking “Standard Charges” through S106s and states:

The Council will adopt a consistent approach to the application of standard charges in order to ensure fairness, predictability and transparency... Negotiated planning obligations will normally be required for large and complex developments. In such cases, the standard charges may act as a starting point for negotiations.

Each case will be considered on its merits to ensure that any obligation sought is sufficient to ensure that the proposed development is acceptable in policy terms... and the statutory tests contained in the CIL Regulations 2010 are met.  

(Paragraphs 9.3 and 9.6)

5.2.5 Chapter 11 sets out the existing SPD’s general approach to “Pooling of Funds”. The SPD states:

In cases where a financial contribution is sought towards off-site provision, funds may be pooled towards the strategic aims of the Development Plan.

In cases where individual developments will have some impact but not sufficient to justify the need for a discrete piece of infrastructure, contributions may be sought from developers towards future provision where the combined impact of a number of developments does, may or will create a need for infrastructure.  

(Paragraphs 11.5 and 9.4)

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[75](www.rbkc.gov.uk/planning-and-building-control/planning-policy/section-106)
5.2.6 The Council’s Community Infrastructure Levy (CIL) Charging Schedule and Regulation 123 (R123) List came into effect on 6 April 2015. The full details of these documents, and information on how CIL works is set out on the Council’s dedicated CIL webpage and will not be duplicated here but, importantly for this Local Plan Partial Review, the Council can no longer seek S106s for items which are included within the R123 List, because these are intended to be funded through CIL instead.

5.2.7 For the sake of clarity, the R123 List sets out ‘exceptions’ where S106s can still be sought by the Council. The categories used in the R123 List reflect those used in the Planning Obligations SPD for consistency and are replicated in Figure 5.2 below:

<table>
<thead>
<tr>
<th>Category</th>
<th>Item</th>
<th>R123 List: S106 or CIL?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Affordable Housing</td>
<td>Affordable Housing</td>
<td>S106</td>
</tr>
<tr>
<td>B Education</td>
<td>Education</td>
<td>CIL</td>
</tr>
<tr>
<td>C Community Facilities</td>
<td>Health; Libraries; Sport and Leisure; Community Facilities; Policing Resources and Emergency Services; Revenue Contributions; Cultural Facilities</td>
<td>CIL</td>
</tr>
<tr>
<td>D Public Realm</td>
<td>Parks and Open Space; Streetscape; Community Safety; Revenue Payments; Public Art</td>
<td>CIL, S106</td>
</tr>
</tbody>
</table>

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| Category                        | Item                                                                 | R123 List:  
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>E Transport</td>
<td>Public Transport; Highways and Traffic Works</td>
<td>CIL</td>
</tr>
<tr>
<td></td>
<td>On-site provision of new or enhanced access from the highway or public transport facilities to a development site</td>
<td>S106/278</td>
</tr>
<tr>
<td></td>
<td>Highway measures necessary to directly mitigate the impact of particular development proposals</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Changes to, or introduction of, local traffic management or controlled parking</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Removal, relocation or replacement of street furniture, dropped kerbs, crossovers, street trees</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Revenue ‘pump priming’ of new/extended local bus routes/services and/or increased service frequencies</td>
<td>S106</td>
</tr>
<tr>
<td></td>
<td>Parking Restrictions; Travel Plans and Car Clubs</td>
<td>S106</td>
</tr>
<tr>
<td>F Natural Resource Management</td>
<td>Flood Risk; Air Quality; Waste; Biodiversity</td>
<td>CIL</td>
</tr>
<tr>
<td></td>
<td>Energy Efficiency; Renewable Energy</td>
<td>S106</td>
</tr>
<tr>
<td>G Employment and Training</td>
<td>Local Training in Construction; General Employment and Training Contributions; Securing Employment Premises; Town Centres, Regeneration and Affordable Shops</td>
<td>S106</td>
</tr>
<tr>
<td>Monitoring and Programme Costs</td>
<td>Monitoring and Programme Costs</td>
<td>S106</td>
</tr>
<tr>
<td>Other exceptions to R123 List</td>
<td>An item of infrastructure (or the improvement, replacement, operation or maintenance of any infrastructure) that is specifically required to make a development acceptable, subject to the ‘S106 tests’ and the pooling restrictions, including the below requirements</td>
<td>S106</td>
</tr>
<tr>
<td></td>
<td>On-site provision of infrastructure required in accordance with the Development Plan</td>
<td>S106</td>
</tr>
<tr>
<td></td>
<td>For development in the Earl’s Court and West Kensington Opportunity Area / Earl’s Court Strategic Site and/or the Kensal Gasworks Strategic Site / Kensal Canalside Opportunity Area, any infrastructure from all Categories required in accordance with the Development Plan (such as infrastructure specified in SPDs or the IDP)</td>
<td>S106</td>
</tr>
<tr>
<td></td>
<td>For commercial floorspace subject to zero Borough CIL rates, any infrastructure from all Categories (except A Affordable Housing and B Education) required in accordance with the Development Plan (such as infrastructure specified in SPDs or the IDP)</td>
<td>S106</td>
</tr>
</tbody>
</table>

Figure 5.2: Categories of infrastructure from the Planning Obligations SPD and whether they are intended to be funded through S106 or CIL as per the R123 List

Issue 2: Public art

5.2.8 Chapter 33 of the existing Local Plan also contains a policy on streetscape which refers to public art. The extract from this policy is set out below and forms part of the Local Plan Partial Review:

Policy CR4 Streetscape

... h. require all major development to provide new public art that is of high quality and either incorporated into the external design of the new building or carefully located within the public realm.
5.2.9 The remainder of Policy CR4 is not part of the Local Plan Partial Review because the other elements of the policy were considered as part of the Core Strategy ‘Conservation and Design’ Review, which was adopted in December 2014.

5.2.10 Chapter 40 of the Council’s existing Planning Obligations SPD deals with “Public Art” under the wider category of “Public Realm” and sets out how the Council will seek S106s for public art – through a ‘standard charges’ S106 financial contribution approach.

5.2.11 The Council adopted a Public Art Supplementary Planning Guidance (SPG) document in August 2004 and sets out a number of ways in which public art may be sought in the Borough, including through on-site provision or financial planning contributions. Section 7 of this consultation report deals with ‘arts and cultural uses’ and refers to the Council’s corporate policies on ‘cultural placemaking’.

Figure 5.3: CIL R123 List (April 2015) and Public Art SPG (Aug 2004)

5.2.12 The Council’s existing R123 List specifically identifies “Public Art” as an exception from the R123 List because the Council cannot spend CIL on public art (because it is not ‘infrastructure’ for the purposes of CIL as set out in the Planning Act 2008). This means that the Council may, in theory, still seek S106s for public art, subject to satisfying the necessary ‘S106 tests’ set out in national legislation and policy (see section 5.3).

**Issue 3: Open space**

5.2.13 Chapter 33 ‘An Engaging Public Realm’ of the existing Local Plan contains a
policy on open space which refers to S106s. The extract from this policy is set out below (emphasis added) and forms part of the Local Plan Partial Review. The other elements of the policy are not intended to form part of the Partial Review.

**Policy CR5 Parks, Gardens, Open Spaces and Waterways**

... 

d. require all major development outside a 400m radius of the closest entrance to the nearest public open space to make provision for new open space which is suitable for a range of outdoor activities for users of all ages, which may be in the form of communal garden space. Where this is not possible for justified townscape reasons, that a S106 contribution is made towards improving existing publicly accessible open space. 

... 

5.2.14 The remainder of Policy CR5 is not part of the Local Plan Partial Review because the other elements of the policy were considered as part of the Core Strategy ‘Conservation and Design’ Review, which was adopted in December 2014.

5.2.15 Chapter 38 of the Council’s existing Planning Obligations SPD deals with “Parks and Open Space” under the wider category of “Public Realm” and sets out how the Council will seek S106s for open space.

5.2.16 The Council’s existing R123 List specifically identifies “Parks and Open Space” as infrastructure the Council intends may be funded by CIL and so can no longer be sought through S106s (unless any of the R123 List ‘exceptions’ apply).

**Issue 4: Infrastructure planning**

5.2.17 Chapter 37 ‘Infrastructure’ of the existing Local Plan introduces the ‘Infrastructure Delivery Plan (IDP)’ and the ‘Infrastructure Schedule’. The IDP uses the following ‘categories’ of infrastructure:

- Transport
- Utilities and Waste
- Social Infrastructure
- Environmental and Green Infrastructure
- Culture and Leisure

5.2.18 Subsection 37.2 introduces the ‘Infrastructure Schedule’ of the Local Plan which sets out the key infrastructure requirements in the Borough that are necessary to support the delivery of the Local Plan. For each project, the Schedule sets out:

- Where?
- What?
- Why?
- Lead delivery organisation / management organisation (Who?)
- Cost (How much?)
- When?
- Sources of funding
- Any dependencies
5.2.19 Since the original adoption of the IDP and Schedule in the Local Plan in 2010 (at the time known as the Core Strategy), a more up-to-date version of the IDP, using the same categories, has been published by the Council (March 2014)\textsuperscript{78} as part of the evidence base to support the Council’s CIL Charging Schedule.

5.2.20 Chapter 38 ‘Monitoring’ of the existing Local Plan includes a subsection 38.2 on ‘Section 106 Implementation and Infrastructure Monitoring’.

**Issue 5: S106 thresholds**

5.2.21 Thresholds for seeking S106 planning obligations are set out in Table 55.1 of the existing Planning Obligations SPD and summarised in Figure 5.4 below:

<table>
<thead>
<tr>
<th>Categories</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Affordable Housing</td>
<td>800m$^2$</td>
</tr>
<tr>
<td>B Education</td>
<td>School places 1 unit</td>
</tr>
<tr>
<td>C Community Facilities</td>
<td>Health 1 unit</td>
</tr>
<tr>
<td></td>
<td>Libraries Major*</td>
</tr>
<tr>
<td></td>
<td>Sport and leisure Major*</td>
</tr>
<tr>
<td></td>
<td>Community facilities Major*</td>
</tr>
<tr>
<td></td>
<td>Policing resources and emergency services</td>
</tr>
<tr>
<td></td>
<td>Community facilities revenue contributions N/A</td>
</tr>
<tr>
<td>D Public Realm</td>
<td>Parks and open spaces Major*</td>
</tr>
<tr>
<td></td>
<td>Streetscape Case-by-case</td>
</tr>
<tr>
<td></td>
<td>Public art Major*</td>
</tr>
<tr>
<td></td>
<td>Community safety Case-by-case / to meet</td>
</tr>
<tr>
<td></td>
<td>safety needs / based on visitor numbers</td>
</tr>
<tr>
<td></td>
<td>Public realm revenue payments N/A</td>
</tr>
<tr>
<td>E Transport</td>
<td>Public transport Case-by-case, including</td>
</tr>
<tr>
<td></td>
<td>majors*</td>
</tr>
<tr>
<td></td>
<td>Highways and traffic works Case-by-case</td>
</tr>
<tr>
<td>F Natural Resource Management</td>
<td>Air quality Major*</td>
</tr>
<tr>
<td>G Employment and Training</td>
<td>Local training in construction Major*</td>
</tr>
<tr>
<td></td>
<td>General employment and training Major*</td>
</tr>
<tr>
<td></td>
<td>commercial, &gt;50 employees</td>
</tr>
<tr>
<td></td>
<td>Securing employment premises Major*</td>
</tr>
<tr>
<td></td>
<td>commercial within town centres</td>
</tr>
<tr>
<td></td>
<td>Town centres and affordable shops Major*</td>
</tr>
</tbody>
</table>

\textit{Figure 5.4: Thresholds for financial contributions from Table 55.1 of the Planning Obligations SPD. *major \geq 10 units or \geq 0.1ha or \geq 1,000sqm for non-residential}  

\textsuperscript{78} [www.rbkc.gov.uk/planning-and-building-control/planning-applications/consideration-and-obligations/community-0](http://www.rbkc.gov.uk/planning-and-building-control/planning-applications/consideration-and-obligations/community-0)
5.2.22 Thresholds for seeking affordable housing as part of residential development proposals are not considered in this section but are instead covered within Issue 5 ‘Affordable housing threshold’ in section 10 ‘Housing’ of this Issues and Options consultation document.

**Issue 6: Viability and transparency**

5.2.23 Policy C1 of the existing Local Plan also covers financial ‘viability’ issues:

**Policy C1 Infrastructure Delivery and Planning Obligations**

**Planning Obligations**

The viability of the development will also be taken into account. In the case of an enabling development, or where the development is unable to deliver all the policy requirements for reasons of viability, a viability study will be required to accompany the planning application. s106 contributions will be reviewed in the context of this viability study. The viability study should use the GLA toolkit or an agreed alternative. The applicant will fund the independent assessment of the viability study, or other technical studies requiring independent assessment, prior to the application being determined.

5.2.24 Chapter 6 “Viability Issues” of the Planning Obligations SPD provides further guidance to the policy with regard to viability assessments and transparency in stating:

The applicant will be required to provide any financial information to support the viability assessment to the Council and/or to the independent assessor, on a strictly confidential basis. Open book appraisal may be required.

(Paragraph 6.4)

5.2.25 The SPD goes on to support a residual land value approach, assuming that land values are “set by the application of planning policy in determining the permissible scope of development (paragraph 6.5). The SPD also states, with regard to viability ‘review mechanisms’:

In order to address economic uncertainties which may arise over the lifetime of the proposal the Council will give consideration to put in place provisions for re-appraising the viability of schemes prior to implementation in whole or in part. These are also known as “contingent obligations” and may also be known as “overage” provision of clauses. These will obligate the applicant to resubmit a financial appraisal immediately prior to the commencement of the development. If the margins of viability/profitability have increased since determination further obligations will be payable. If the situation has not improved the approved obligation stands. This allows for development to be carried out when it may otherwise would [sic] not be viable to do so, or to do so would be at increased levels of risk. It may also serve to encourage development sooner rather than later.

(Paragraph 6.6)
5.3 Legislation, policy and guidance context

Issue 1: S106 vs CIL categories, standard charges and pooling

National

5.3.1 Section 106 of the Town and Country Planning Act 1990 (as amended) sets out the legal basis for S106 agreements:

Any person interested in land... may, by agreement or otherwise, enter into an obligation...

(a) restricting the development of use of the land in any specified way;

(b) requiring specified operations or activities to be carried out in, on, under or over the land;

(c) requiring the land to be used in any specified way; or

(d) requiring a sum or sums to be paid to the authority... on a specified date or dates periodically.

5.3.2 Regulation 122 of the CIL Regulations 2010 (as amended) set out the S106 ‘tests’\(^{79}\) which state that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development

5.3.3 Regulation 123 of the CIL Regulations introduces pooling restrictions for S106s. These came into effect on 6 April 2015 when the Council’s CIL Charging Schedule took effect meaning that “no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a S106 agreement, if five or more obligations for that project or type of infrastructure have been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy”\(^{80}\).

5.3.4 There is a general expectation that when CIL is introduced, S106s “should be scaled back to those matters that are directly related to a specific site, and are not set out in a R123 List”\(^{81}\).

5.3.5 However, “the Government considers there is still a legitimate role for development-specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be

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\(^{79}\) Replicated exactly in the NPPF paragraph 204, NPPG Planning Obligations paragraph 001

\(^{80}\) NPPG CIL paragraph 099

\(^{81}\) NPPG CIL paragraph 097
mitigated”. Planning obligations are intended to “mitigate the impact of unacceptable development to make it acceptable in planning terms”. The NPPF is clear that S106s should be used “where it is not possible to address unacceptable impacts through a planning condition”. NPPG makes clear that “Policies for seeking planning obligations should be set out in a Local Plan”.

Regional

5.3.6 London Plan Policy 8.2 Planning Obligations states that “Boroughs should set out a clear framework for negotiations on planning obligations in DPDs...”. Policy 3.16 ‘Protection and Enhancement of Social Infrastructure’ states that “Boroughs should ensure that adequate social infrastructure provision is made to support new developments”.

5.3.7 The Mayor of London’s Supplementary Planning Guidance (SPG) on ‘Use of planning obligations in the funding of Crossrail, and the Mayoral CIL’ sets out how S106s should be sought for funding Crossrail for the areas of the Borough which fall within central London. The SPG also provides guidance on the implementation of the Mayor’s and Borough CIL.

5.3.8 The Mayor’s Social Infrastructure SPG sets out a range of categories of social infrastructure which should be considered as part of plan-making and new development, such as: health and social care, education, sports facilities, burial needs and community facilities. The Mayor’s Housing SPG provides some additional broad guidance on social infrastructure needed to support London’s housing growth.

Issue 2: Public art

5.3.9 In March 2014, paragraph 004 of the original version of the NPPG on Planning Obligations stated (emphasis added):

Planning obligations should not be sought – on for instance, public art – which are clearly not necessary to make a development acceptable in planning terms...

5.3.10 However, in March 2015, the NPPG on Planning Obligations was amended to remove the specific reference to public art and now simply states:

Planning obligations should not be sought where they are clearly not necessary to make the development acceptable in planning terms.

5.3.11 Policy 7.5 ‘Public Realm’ of the London Plan states that “Opportunities for the integration of high quality public art should be considered” as part of decisions on planning applications.

82 NPPG CIL paragraph 094
83 NPPG Planning Obligations paragraph 001
84 NPPF paragraph 203
85 NPPG Planning Obligations paragraph 003
86 http://planningguidance.communities.gov.uk/revisions/23b/004/
Issue 3: Open space

National

5.3.12 NPPF paragraph 73 states “Access to high quality open spaces... can make an important contribution to the health and well-being of communities”. NPPG on ‘Open space, sports and recreation facilities’ states that “Open space should be taken into account in planning for new development and considering proposals that may affect existing open space” (paragraph 001).

Regional

5.3.13 London Plan Policy 2.18 Green Infrastructure states that “Enhancements to London’s green infrastructure should be sought from development” and Policy 7.18 Protecting Open Space states that “The Mayor supports the creation of new open space in London to ensure satisfactory levels of local provision”.

5.3.14 The Mayor’s All London Green Grid (ALGG) SPG states that “deficiencies in provision... can be reduced through projects that create new public open space, expand or improve the quality of existing sites... improve the links between parks and improve the access to existing sites...” (paragraph 4.11). The SPG also states “The inclusion of the ALGG... in DPDs will provide a basis for potential use of Section 106 agreements for the creation, improvement and management of the ALGG. Boroughs are encouraged to use the S106 mechanism, where appropriate, to remedy explicit on-site issues” (paragraph 3.13).

Issue 4: Infrastructure planning

National

5.3.15 The NPPF states that the “provision of infrastructure” is part of the “economic role” of planning and that “Planning policies should recognise and seek to address potential barriers to investment, including... any lack of infrastructure” by identifying “priority areas for... infrastructure provision...”. A “strategic priority” for Local Plans is “the provision of infrastructure” and they should “plan positively for the development and infrastructure required in the area”. The NPPF requires Councils to “work with other authorities and providers to... assess the quality and capacity of infrastructure” for a range of infrastructure categories and types. The NPPF also states:

It is equally important to ensure that there is a reasonable prospect that planned infrastructure is deliverable in a timely fashion. To facilitate this, it is important that local planning authorities understand district-wide development costs at the time Local Plans are drawn up. For this reason, infrastructure and development policies should be planned at the same time in the Local Plan (paragraph 177)

87 NPPF paragraph 7
88 NPPF paragraph 21, see also 160
89 NPPF paragraphs 156-7
90 NPPF paragraph 162
The NPPF requires Councils to “work collaboratively with private sector bodies, utility and infrastructure providers” and Local Plans should “provide the land and infrastructure necessary to support current and projected future levels of development”\(^{91}\).

Regional

5.3.17 London Plan Policy 8.1 ‘Implementation’ states\(^{92}\):

The Mayor will work with boroughs, infrastructure providers, national government, regulators and others involved in infrastructure planning, funding and implementation to ensure the effective development and delivery of the infrastructure needed to support the sustainable management of growth in London and maintain its status as a world city...

5.3.18 The Mayor’s London Planning Statement SPG states that a key role for the London planning system is:

Ensuring a growing city has the infrastructure (including transport, energy and other utilities, health, education and other social and community safety provision, flood management, parks and other green infrastructure) it needs. The London planning system should identify needs and likely gaps in provision, and then help to lever resources to help meet them... The Mayor intends to work with boroughs, developers and others to make a step change improvement in infrastructure planning in London...

\(^{91}\) NPPF paragraph 180-1
\(^{92}\) See also London Plan paragraph 8.6B – 8.7
5.3.19 The Mayor’s Social Infrastructure SPG sets out a range of categories of social infrastructure which should be considered as part of plan-making and new development, such as: health and social care, education, sports facilities, burial needs and community facilities.

5.3.20 The Mayor has also published a London Infrastructure Plan 2050 Update which sets out a vision for London to 2050 and considers transport, green infrastructure, digital connectivity, energy, waste/recycling, water and social infrastructure categories.

**Issue 5: S106 thresholds**

5.3.21 A Written Ministerial Statement ‘Small-scale developers’ was made in November 2014\(^93\) which introduced a ‘vacant building credit’ for affordable housing contributions (affordable housing is considered in section 10 of this consultation document) and a threshold of 1,000m\(^2\) or 10 units for other ‘tariff style’ or pooled ‘pot’ planning contributions. The NPPG on Planning Obligations was updated at the same and further updated in February and March 2015 (paragraph 012-023).

5.3.22 A High Court ruling in July 2015\(^94\) quashed the Government’s policy although in September, the Government was granted permission to appeal against that ruling.

5.3.23 However, the Housing and Planning Minister, Brandon Lewis MP has been quoted as saying "I’m still very focused on making sure that if we are building ten homes or less [sic] that we make it as accessible for small builders as possible"\(^95\) and so it may be the case that, depending on the outcome of the appeal, the Government revisits this policy.

**Issue 6: Viability and transparency**

*National*

5.3.24 The NPPF requires the Council to “work closely with the business community to understand their changing needs and identify and address barriers to investment, including a lack of… viability” (paragraph 160). The NPPF also states:

…the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should… provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.

(paragraph 173)

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\(^93\) [www.gov.uk/government/speeches/small-scale-developers](http://www.gov.uk/government/speeches/small-scale-developers)

\(^94\) [R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government [2015] EWHC 2222 (admin)](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2015/2222.html)

5.3.25 The NPPG on Planning Obligations sets out a principle of transparency with regard to viability in stating “Wherever possible, applicants should provide viability evidence through an open book approach to improve the review of evidence submitted and for transparency” (paragraph 007).

5.3.26 The NPPG on Viability provides more detailed guidance on the topic of viability specifically. It states:

Understanding Local Plan viability is critical to the overall assessment of deliverability. Local Plans should present visions for an area in the context on an understanding of local economic conditions and market realities. (paragraph 001)

5.3.27 The NPPG on viability goes on to state “There is no standard answer to questions of viability, nor is there a single approach for assessing viability” (002) and that “Transparency of evidence is encouraged wherever possible” (paragraphs 002 and 004).

Figure 5.6: ‘Glorious Beauty’ 2014, 375 Kensington High Street (Simon Hitchens)
Regional

5.3.28 London Plan Policy 8.2 Planning Obligations states that “the Mayor will take into account... economic viability” when considering planning applications of strategic importance. Paragraph 3.75 of the London Plan states, with regard to viability ‘review mechanisms’:

...boroughs should consider whether it is appropriate to put in place provisions for re-appraising the viability of schemes prior to implementation. To take account of economic uncertainties, and in respect of schemes presently anticipated to deliver low levels of affordable housing, these provisions may be used to ensure that maximum public benefit is secured over the period of the development.

5.3.29 Viability ‘review mechanisms’ are considered further in the Mayor’s Draft Interim Housing SPG as set out below:

Contingent obligations / review mechanisms: are used to maximise affordable housing output by putting in place provisions for re-appraising the viability of schemes or phases prior to implementation in whole or in part. Such provisions are sometimes incorrectly called “overage”.

... Review mechanisms should be considered when a large scheme is built out in phases and the mechanism should specify the scope of a review of viability for each phase. For schemes with a shorter development term, consideration should be given to using S106 clauses to trigger a review of viability, if a scheme is not substantially complete by a specified date.

(paragraphs 4.4.34-35)

5.3.30 The SPG also considers the issue of transparency in stating “A recent judgement has helped clarify the circumstances in which requests for details of such appraisals under freedom of information regimes may be upheld” (paragraph 4.4.33).

Summary

5.3.31 Figure 5.7 summarises the main legislation, policy and guidance of particular relevance to this section.

<table>
<thead>
<tr>
<th>Date</th>
<th>Document</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1990</td>
<td>Town and Country Planning Act 1990(^{96}) (as amended)</td>
<td>HM Government</td>
</tr>
<tr>
<td>Apr 2010</td>
<td>The Community Infrastructure Levy Regulations 2010(^{97}) (as amended)</td>
<td>HM Government</td>
</tr>
<tr>
<td>Dec 2014</td>
<td>National Infrastructure Plan 2014(^{98})</td>
<td>HM Treasury</td>
</tr>
<tr>
<td>Mar 2012</td>
<td>National Planning Policy Framework (NPPF)(^{99})</td>
<td>DCLG</td>
</tr>
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### Table 5.7: Summary of legislation, policy and guidance

<table>
<thead>
<tr>
<th>Date</th>
<th>Document</th>
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</thead>
<tbody>
<tr>
<td>Mar 2014</td>
<td>National Planning Practice Guidance (NPPG): Planning Obligations (as amended)</td>
<td>DCLG</td>
</tr>
<tr>
<td>Mar 2014</td>
<td>National Planning Practice Guidance (NPPG): CIL (as amended)</td>
<td>DCLG</td>
</tr>
<tr>
<td>Nov 2014</td>
<td>Written Ministerial Statement: Small-scale developers</td>
<td>DCLG</td>
</tr>
<tr>
<td>Mar 2015</td>
<td>The London Plan Policy 2.18 Green Infrastructure</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>Mar 2015</td>
<td>The London Plan Policy 7.5 Public Realm</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>Mar 2012</td>
<td>All London Green Grid (ALGG) Supplementary Planning Document (SPG)</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>Nov 2012</td>
<td>Housing Supplementary Planning Guidance (SPG)</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>Apr 2013</td>
<td>Use of planning obligations in the funding of Crossrail, and the Mayoral CIL</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>May 2014</td>
<td>London Planning Statement Supplementary Planning Guidance (SPG)</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>Mar 2015</td>
<td>London Infrastructure Plan 2050 Update</td>
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<tr>
<td>May 2015</td>
<td>Social Infrastructure Supplementary Planning Guidance (SPG)</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>May 2015</td>
<td>Draft Interim Housing Supplementary Planning Guidance (SPG)</td>
<td>Mayor of London</td>
</tr>
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</table>

#### 5.4 Evidence base

**5.4.1** Much of the local, regional and national evidence base for infrastructure and planning contributions has been referenced in the previous sections, largely in the form of various infrastructure plans and schedules.

**5.4.2** In terms of S106, the amount of S106 financial contributions agreed in each

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102 [www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141128/wmstext/141128m0001.htm](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/)
103 [www.london.gov.uk/priorities/planning/london-plan](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/)
104 [www.london.gov.uk/priorities/planning/publications/all-london-green-grid-spg](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/)
105 [www.london.gov.uk/priorities/planning/publications/housing-supplementary-planning-guidance](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/)
107 [www.london.gov.uk/priorities/planning/publications/london-planning-statement](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/)
110 [www.london.gov.uk/priorities/planning/consultations/draft-interim-housing-supplementary-guidance](http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/)
financial year for each ‘category’ of infrastructure is set out in Figures 5.8 and 5.9:

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<tr>
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<tr>
<td>Air Quality</td>
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<td>£3,600</td>
<td>£2k</td>
<td>£36k</td>
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<td>Facilities for Local Community Groups and Young People</td>
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<td>£30k</td>
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<td>Education Contributions</td>
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<td>£1.5m</td>
<td>£74k</td>
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<td>Healthcare</td>
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<td>Transport</td>
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<td>Libraries</td>
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<td>Parks and Open Space / Children and Young Person’s Play</td>
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<td>£85k</td>
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<td>£289k</td>
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<td>Public Art</td>
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<td>£125k</td>
<td>£55k</td>
<td>£119k</td>
<td>£180k</td>
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<tr>
<td>Public Realm / Streetscape</td>
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<td>£128k</td>
<td>£150k</td>
<td>£22k</td>
<td>£82k</td>
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<tr>
<td>Sport and Leisure Facilities</td>
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<td>£0</td>
<td>£89k</td>
<td>£193k</td>
<td>£133k</td>
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<tr>
<td>Trees</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£0</td>
<td>£6.7k</td>
<td>£79k</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£1.5m</strong></td>
<td><strong>£10.6m</strong></td>
<td><strong>£2m</strong></td>
<td><strong>£2m</strong></td>
<td><strong>£37m</strong></td>
<td><strong>£15m</strong></td>
</tr>
</tbody>
</table>

Figure 5.8: Amount of S106 financial contributions agreed in each financial year (April – March) for each category of infrastructure (excluding Earl’s Court)

Figure 5.9: Total amount of S106 financial contributions agreed in each financial year (April – March) for all categories of infrastructure (excluding Earl’s Court)

5.4.3 In terms of viability, the Housing section of this consultation document (section 10) provides more detailed evidence regarding viability, particularly with regard to the viability of affordable housing through on-site provision and payments in lieu.
5.5 **Issues and options**

### Issue 1: S106 vs CIL categories, standard charges and pooling

#### S106 vs CIL categories

5.5.1 The Council needs to update its current approach to S106s in Local Plan policies and in the SPD to reflect the fact that, in light of the R123 List, many items of infrastructure can now be funded through CIL and cannot be funded through S106s anymore (see Figure 5.2).

5.5.2 However, the Council needs to be sure that it can continue to seek S106s to fund or provide necessary infrastructure for development which is subject to to 'nil' (£0/m²) rates in the CIL Charging Schedule, namely:

- Commercial floorspace (subject to a ‘nil’ £0/m² CIL rate); and
- Development in the Earl’s Court and Kensal Gasworks Strategic Sites (Zones G and H respectively, subject to ‘nil’ £0/m²CIL rates).

5.5.3 Whilst Local Plan policy could be updated to reflect the detail of the R123 List, it should be recognised that the R123 List can be changed following just a single “appropriate local consultation” in response to local circumstances, whereas Local Plan policy must go through several iterations of consultation and a public examination.

5.5.4 The Council considers there are two options available:

**Option 1**

Local Plan policy should set out high level principles regarding ‘planning contributions’ and not make a distinction between S106 / CIL, for which the detail can be considered in any revisions to the R123 List and/or the Planning Obligations SPD.

**Option 2**

Local Plan policy should reflect the detail of the R123 List and precisely require S106s only for those items of infrastructure that can continue to be funded through S106.

#### Standard charges and pooling

5.5.5 As set out in section 5.2, for those items of infrastructure which remain currently capable of being funded by S106s, the Council’s existing Planning Obligations SPD generally adopts a ‘standard charges’ tariff approach to financial contributions. However, in each case, the S106 ‘tests’ as set out in section 5.3 must be demonstrated to be met to ensure the obligations are appropriate.

5.5.6 Legislation (set out in section 5.3) also prevents a S106 planning obligation being sought for a specific infrastructure project or type where five or more S106s have already been entered into since 6 April 2010 for that project or type of

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111 NPPG CIL paragraph 098
infrastructure. This essentially restricts ‘pooling’ of S106s, often from ‘standard charges’ or tariffs.

5.5.7 It should be noted that the pooling restrictions only apply to S106s which provide for ‘infrastructure’, which does not include items such as affordable housing and employment and training initiatives, which may continue to be pooled.

**Option 1**
For those items of infrastructure which are still capable of being funded by S106s, the Council should continue with a ‘standard charges’ approach, as adopted in the Planning Obligations SPD, and revise Local Plan policy to make clear that the S106 ‘tests’ must continue to be met in each case. This may result in less bespoke approaches, but more certainty.

**Option 2**
For those items of infrastructure which are still capable of being funded by S106s, the Council should move away from a ‘standard charges’ approach, as adopted in the Planning Obligations SPD, and revise Local Plan policy to make clear that S106s should be sought purely on a case-by-case basis. This may result in more bespoke approaches, but less certainty.

**Question 1**
Should the Council continue to seek monitoring costs, programme costs, revenue payments through S106s? Are there any other provisions which should be sought through S106s e.g. enforcement of Construction Traffic Management Plans (CTMPs).

**Do you have any other comments, issues or options (reasonable alternatives) you would like to raise regarding this section?**

**Issue 2: Public art**

5.5.8 Existing Local Plan Policy (see section 5.2) requires all major development to provide new public art in the external design of the new building or within the public realm. The Council’s Planning Obligations SPD generally adopts a ‘standard charges’ approach to achieve this.

**Option 1**
Local Plan policy should confirm a ‘standard charges’ approach to seeking S106 financial contributions for public art.

**Option 2**
Local Plan policy should seek public art as an integral part of the design and development of sites, rather than through separate S106 financial contributions.

**Option 3**
Local Plan policy should no longer seek public art through the planning system.

**Do you have any other comments, issues or options (reasonable alternatives) you would like to raise regarding this section?**
Issue 3: Open space

5.5.9 Existing Local Plan policy (see section 5.2) requires a “S106 contribution... towards improving existing publicly accessible open space” where open space cannot be provided on site as part of a major development. However, the more recent R123 List lists open space as an item intended to be funded by CIL and so can no longer be funded by S106s, except where the R123 list ‘exceptions’ apply (for example, on-site provision as part of strategic sites).

Option 1
Local Plan policy should set out high level principles regarding ‘planning contributions’ for open space and not make a distinction between S106 / CIL, for which the detail can be considered in any revisions to the R123 List and/or the Planning Obligations SPD.

Option 2
Local Plan policy should reflect the detail of the R123 List and no longer seek open space through S106s (except where the R123 List exceptions apply).

Do you have any other comments, issues or options (reasonable alternatives) you would like to raise regarding this section?

Figure 5.10: Avondale Park
**Issue 4: Infrastructure planning**

5.5.10 The Council intends to update the existing Infrastructure Delivery Plan from 2014 (see section 5.2) to set out the infrastructure necessary to support the emerging proposals in the Local Plan Partial Review. In particular, the infrastructure requirements of (new and existing) site allocations will need to be considered, as well as the implications of any wider demographic changes in the Borough.

**Question 1**
Do you have any suggestions for an updated Infrastructure Delivery Plan in terms of methodology, categories of infrastructure or specific infrastructure schemes?

Do you have any other comments, issues or options (reasonable alternatives) you would like to raise regarding this section?

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**Issue 5: S106 thresholds**

**Question 1**
Do you have any comments on the existing thresholds for S106s set out in Figure 5.4?

5.5.11 Thresholds for seeking affordable housing as part of residential development proposals are not considered in this section but are instead covered within Issue 5 ‘Affordable housing threshold’ in section 10 ‘Housing’ of this Issues and Options consultation document.

Do you have any other comments, issues or options (reasonable alternatives) you would like to raise regarding this section?

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**Issue 6: Viability and transparency**

5.5.12 Options regarding viability and transparency are covered within Issue 7 ‘Securing the maximum reasonable amount of affordable housing’ in section 10 ‘Housing’ of this Issues and Options consultation document. Transparency issues are considered in Option 1 and viability ‘review’ mechanisms are considered in Option 2.

Do you have any other comments, issues or options (reasonable alternatives) you would like to raise regarding this section?