



Local Plan Partial Review – Submission  
Policy Formulation Report – May 2017  
Infrastructure and Planning Contributions



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

# Contents

1.	Introduction .....	4
1.1	Local Plan Partial Review .....	4
1.2	Infrastructure and planning contributions.....	4
2.	Issue 1: S106 vs CIL infrastructure categories, standard charges and pooling.....	5
2.1	Introduction.....	5
2.2	Legislation, policy and guidance context .....	5
2.3	Evidence base .....	11
2.4	Options, consultation and Integrated Impact Assessment (IIA) .....	13
2.5	Publication policy with Proposed Modifications .....	18
2.6	Duty to cooperate and strategic issues.....	19
3.	Issue 2: Public art.....	23
3.1	Introduction.....	23
3.2	Legislation, policy and guidance context .....	23
3.3	Evidence base .....	24
3.4	Options, consultation and Integrated Impact Assessment (IIA) .....	25
3.5	Publication policy with Proposed Modifications .....	27
3.6	Duty to cooperate and strategic issues.....	28
4.	Issue 3: Open space provision and contributions .....	29
4.1	Introduction.....	29
4.2	Legislation, policy and guidance context .....	29
4.3	Evidence base .....	30
4.4	Options, consultation and Integrated Impact Assessment (IIA) .....	31
4.5	Publication policy with Proposed Modifications .....	32
4.6	Duty to cooperate and strategic issues.....	34
5.	Issue 4: Infrastructure planning .....	35
5.1	Introduction.....	35
5.2	Legislation, policy and guidance context .....	35
5.3	Evidence base .....	38
6.	Issue 5: Thresholds for seeking S106s .....	40
6.1	Introduction.....	40
6.2	Legislation, policy and guidance context .....	40
6.3	Publication Policy with Proposed Modifications .....	41
7.	Issue 6: Viability and Transparency .....	42



# 1. INTRODUCTION

## 1.1 LOCAL PLAN PARTIAL REVIEW

- 1.1.1 The Council is undertaking a Partial Review of its existing Local Plan to ensure it is up-to-date and fit-for-purpose.
- 1.1.2 The Local Plan Partial Review covers the topics which have not already been subject to recent reviews since the existing Local Plan was adopted by the Council in 2010 (then known as the Core Strategy). As part of this, the topic of **infrastructure and planning contributions** needs reviewing. This is a cross cutting topic which relates to a number of existing Local Plan chapters and policies.
- 1.1.3 This Policy Formulation Report has been written to explain the reasoning behind the **infrastructure and planning contributions** sections of the Publication Policies with Proposed Modifications.
- 1.1.4 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)<sup>1</sup>, 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.

## 1.2 INFRASTRUCTURE AND PLANNING CONTRIBUTIONS

- 1.2.1 This topic of the Local Plan Partial Review relates primarily to the following chapters and policies of the existing Local Plan:

- **Chapter 29.2:** Policies and Actions
- **Chapter 33:** Engaging Public Realm
- **Chapter 37:** Infrastructure

- 1.2.2 The issues which the Council considers the Local Plan Partial Review needs to address 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

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<sup>1</sup> [www.rbkc.gov.uk/cil](http://www.rbkc.gov.uk/cil)

## 2. ISSUE 1: S106 VS CIL INFRASTRUCTURE CATEGORIES, STANDARD CHARGES AND POOLING

### 2.1 INTRODUCTION

- 2.1.1 The Council needs to review its existing Local Plan policies relating to infrastructure categories, standard charges and pooling in light of new national policy and guidance.

### 2.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL

#### THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

- 2.2.1 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.

#### CIL REGULATIONS 2010 (AS AMENDED)

- 2.2.2 Regulation 122 of the CIL Regulations 2010 (as amended) set out the S106 'tests'<sup>2</sup> 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

- 2.2.3 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

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<sup>2</sup> Replicated exactly in the NPPF paragraph 204, NPPG Planning Obligations paragraph 001

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”<sup>3</sup>.

2.2.4 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”<sup>4</sup>.

2.2.5 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 mitigated”<sup>5</sup>. Planning obligations are intended to “mitigate the impact of unacceptable development to make it acceptable in planning terms”<sup>6</sup>. The NPPF is clear that S106s should be used “where it is not possible to address unacceptable impacts through a planning condition”<sup>7</sup>. NPPG makes clear that “Policies for seeking planning obligations should be set out in a Local Plan”<sup>8</sup>.

#### CIL REVIEW PANEL REPORT AND THE HOUSING WHITE PAPER

2.2.6 In February 2017 the CIL Review Panel published its key findings and recommendation to Ministers on the extent to which CIL does or can provide an effective mechanism for funding infrastructure and what changes would improve its operations to support Governments wider housing and growth objectives. The key recommendations were:

- that the Government should replace the Community Infrastructure Levy with a hybrid system of a broad and low level Local Infrastructure Tariff (LIT) and Section 106 for larger developments.
- that Combined Authorities should be enabled to set up an additional Mayoral type Strategic Infrastructure Tariff (SIT)

2.2.7 The recommendations propose the operation of CIL (i.e. LIT/SIT) alongside S106 and the removal of S106 pooling restrictions. The Housing White Paper, published for consultation in February 2017 clearly indicated that the Government will examine the options for reforming the system of developer contributions including ensuring direct benefit for communities, and will respond to the independent review and make an announcement at the Autumn Budget 2017.

2.2.8 There are no direct and immediate implications arising from the CIL Review Panel Report recommendations and Housing White Paper in respect of Community Infrastructure Levy to the RBKC Local Plan Partial Review.

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<sup>3</sup> NPPG CIL paragraph 099

<sup>4</sup> NPPG CIL paragraph 097

<sup>5</sup> NPPG CIL paragraph 094

<sup>6</sup> NPPG Planning Obligations paragraph 001

<sup>7</sup> NPPF paragraph 203

<sup>8</sup> NPPG Planning Obligations paragraph 003

## REGIONAL

### THE LONDON PLAN

- 2.2.9 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”.
- 2.2.10 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.
- 2.2.11 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.

## LOCAL

### EXISTING LOCAL PLAN POLICY

- 2.2.12 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...

2.2.13 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

#### EXISTING UNITARY DEVELOPMENT PLAN (UDP) POLICY

2.2.14 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)

2.2.15 The Council adopted a Planning Obligations Supplementary Planning Document (SPD) and Calculator<sup>9</sup> 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. 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

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<sup>9</sup> [www.rbkc.gov.uk/planning-and-building-control/planning-policy/section-106](http://www.rbkc.gov.uk/planning-and-building-control/planning-policy/section-106)

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)

2.2.16 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)

#### CIL CHARGING SCHEDULE AND R123 LIST

2.2.17 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<sup>10</sup> 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.

2.2.18 For 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 2.1:

Category	Item	R123 List: S106 or CIL?
A Affordable Housing	Affordable Housing	S106
B Education	Education	CIL
C Community Facilities	Health; Libraries; Sport and Leisure; Community Facilities; Policing Resources and Emergency Services; Revenue Contributions; Cultural Facilities	CIL
D Public Realm	Parks and Open Space; Streetscape; Community Safety; Revenue Payments	CIL
	Public Art	S106
E Transport	Public Transport; Highways and Traffic Works	CIL

<sup>10</sup> [www.rbkc.gov.uk/cil](http://www.rbkc.gov.uk/cil)

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

Figure 2.1: 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

## NEIGHBOURHOOD PLANS

2.2.19 Where a neighbourhood plan has been made, communities must be consulted on

how to spend 25% (rather than the standard 15%) of levy revenues arising from the development that takes place in their area. The Council and communities must consider how this Neighbourhood CIL funding can be used to deliver the infrastructure identified in the neighbourhood plan required to address the demands of development.

- 2.2.20 There are two neighbourhood areas. The Norland Neighbourhood Plan was made in March 2014 and the St Quintin and Woodlands Neighbourhood Plan passed referendum in February 2016. Both neighbourhood plans contain infrastructure items which can be funded through Neighbourhood CIL.

## SUMMARY

Date	Document	Organisation
May 1990	<a href="#">Town and Country Planning Act 1990</a> (as amended)	HM Government
Apr 2010	<a href="#">The Community Infrastructure Levy Regulations 2010</a> (as amended)	HM Government
Mar 2012	<a href="#">National Planning Policy Framework (NPPF)</a>	DCLG
Apr 2013	<a href="#">Use of planning obligations in the funding of Crossrail, and the Mayoral CIL Supplementary Planning Guidance (SPG)</a>	Mayor of London
Mar 2014	<a href="#">National Planning Practice Guidance (NPPG): Planning Obligations (as amended)</a>	DCLG
Mar 2014	<a href="#">National Planning Practice Guidance (NPPG): CIL (as amended)</a>	DCLG
May 2014	<a href="#">London Planning Statement Supplementary Planning Guidance (SPG)</a>	Mayor of London
Mar 2016	<a href="#">The London Plan</a> Policy 8.2 Planning Obligations	Mayor of London
Mar 2016	<a href="#">Use of planning obligations in the funding of Crossrail, and the Mayoral CIL Supplementary Planning Guidance (SPG) Update</a>	
Oct 2016	<a href="#">A New Approach to Developer Contributions</a>	CIL Review Panel
Feb 2017	<a href="#">Housing White Paper: Fixing Our Broken Housing Market</a>	DCLG

## 2.3 EVIDENCE BASE

### S106 MONITORING

- 2.3.1 In terms of S106, the amount of S106 financial contributions agreed in each financial year for each 'category' of infrastructure is set out in Figure 2.2:

Category	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
<b>Affordable Housing</b>	£750k	£1.4m	£50k	£1m	£7.9m	£10.9m	£15.4m
<b>Air Quality</b>	£450	£3,600	£2k	£36k	£65k	£42k	£8k
<b>Facilities for Local Community Groups and Young People</b>	£0	£543k	£51k	£30k	£48k	£142k	£8k
<b>Education Contributions</b>	£158k	£6m	£1.5m	£74k	£26.9m	£1.2m	£55k
<b>Employment and Training Initiatives</b>	£100k	£475k	£94k	£121k	£527k	£1.3m	£129k
<b>Healthcare</b>	£175k	£140k	£800	£177k	£230k	£459k	£32k
<b>Transport</b>	£195k	£1.3m	£50k	£351k	£621k	£584k	£613k
<b>Libraries</b>	£0	£23k	£0	£8	£60k	£102k	£12k
<b>Parks and Open Space / Children and Young Person's Play</b>	£0	£85k	£1k	£172k	£289k	£137k	£5k
<b>Public Art</b>	£100k	£400k	£125k	£55k	£119k	£180k	£51k
<b>Public Realm / Streetscape</b>	£45k	£128k	£150k	£22k	£82k	£20k	£11k
<b>Sport and Leisure Facilities</b>	£0	£0	£0	£89k	£193k	£133k	£38k
<b>Trees</b>	£0	£0	£0	£0	£6.7k	£79k	£0
<b>Total</b>	<b>£1.5m</b>	<b>£10.6m</b>	<b>£2m</b>	<b>£2m</b>	<b>£37m</b>	<b>£15m</b>	<b>£16.4m</b>

Figure 2.2: Amount of S106 financial contributions agreed in each financial year (April – March) for each category of infrastructure (excluding Earl's Court)

## CIL MONITORING

- 2.3.2 The Council as a CIL charging authority is required under Regulation 62(2) of the CIL Regulations 2010 (as amended) to prepare a report for any financial year in which it collects CIL. The Council had no Borough CIL Charging Schedule in effect for the financial year 2014/15. The Monitoring Report 2016 reports that at the end of the first year of its operations on the 31 March 2016 £406,661 CIL monies were collected.
- 2.3.3 The Council has been a collecting authority for the Mayor of London's CIL since April 1 2012; however, Mayoral CIL receipts are not reported in the Council's Monitoring Report because CIL Regulation 62(2) makes it clear that the reporting requirement does not apply where an authority collects CIL on behalf of another charging authority.

## INFRASTRUCTURE DELIVERY PLAN

- 2.3.4 The Local Infrastructure Delivery Plan (2017) provides an evidence base for the Local Plan Partial Review Infrastructure Chapters (Chapters 29 and 37). (See Issue 4 below). The IDP is regularly updated and informs the infrastructure schedule.

## LONDON INFRASTRUCTURE PLAN 2050 UPDATE

- 2.3.5 The London Infrastructure Plan 2050 was commissioned by the Mayor to ensure that London has the infrastructure it needs to remain one of the best cities in the

world in which to live, work and do business. It sets out proposals about London’s high level strategic infrastructure requirements up to 2050 in transport, green, digital, energy, water and waste, along with the estimated costs associated and potential funding and financing options.

## SUMMARY

Date	Document	Organisation
Mar 2015	<a href="#">London Infrastructure Plan 2050 Update</a>	Mayor of London
Dec 2016	<a href="#">Monitoring Report 2016</a>	RBKC
May 2017	<a href="#">Local Infrastructure Delivery Plan</a>	RBKC

## 2.4 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)

2.4.1 Alternative options were consulted on as part of the Issues and Options (December 2015) and Draft Policies (October 2016) consultation documents. The Consultation Schedules and Consultation Summaries for these are set out in the Consultation Statement published alongside the Publication Policies (February 2017) consultation document and as part of the Submission (May 2017) documents. The options considered through the consultations and as part of the Integrated Impact Assessment (IIA) are summarised below.

2.4.2 The Council has considered the options particularly in light of the ‘tests of soundness’ which are set out in the NPPF:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.

(paragraph 182)

### S106 VS CIL CATEGORIES

2.4.3 The options and alternatives considered are:

Option		Status	Reason
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 revision to the R123 List and/or Planning Obligations SPD	Preferred option for Publication Policies with Proposed Modifications	<p>Positively prepared This option allows:</p> <ul style="list-style-type: none"> <li>- infrastructure needs to reflect local circumstance;</li> <li>- a more responsive approach to changing local infrastructure needs to support development throughout the Plan period; and</li> <li>- the council to respond positively and quickly to possible future government changes to CIL and S106 regimes to ensure that infrastructure to support development is delivered.</li> </ul> <p>Justified This option is justified as details of:</p> <ul style="list-style-type: none"> <li>- the infrastructure to be funded through CIL can be set out in the R123 List; and</li> <li>- items of infrastructure that can continue to be funded through S106 can be set out in an updated Planning Obligations SPD</li> </ul> <p>Effective The evidence which underpins the R123 List and Planning Obligations SPD has been prepared through consultation with a range of internal and external infrastructure providers (See Infrastructure Delivery Plan). This option is effective as it ensures that infrastructure delivery can respond to local circumstance over the plan period.</p> <p>Consistent with national policy</p> <p>The option is consistent with National Policy and</p>

Option		Status	Reason
			Guidance, in particular NPPF and NPPG.
2	Local Plan policy should reflect the detail of the R123 List precisely require S106 only for those items of infrastructure that can continue to be funded through S106	Reasonable alternative	<p>Positively prepared</p> <p>This option:</p> <ul style="list-style-type: none"> <li>- restricts the Council's ability to quickly and easily respond to changing circumstances compared to Option 1. This could impinge on meeting future infrastructure requirements if they change over the plan period;</li> <li>- will not allow the Council to respond to possible future changes to S106 and CIL regimes.</li> </ul> <p>Justified</p> <p>This option does not allow the R123 List to be monitored and reviewed regularly to reflect local circumstances. The NPPF and NPPG do not require Local Plans to replicate the R123 List and guidance only requires Local Plans to include a policy on planning obligations.</p> <p>Effective</p> <p>The evidence which underpins the R123 List and Planning Obligations SPD has been prepared through consultation with a range of internal and external infrastructure providers (See Infrastructure Delivery Plan).</p> <p>This option would be ineffective as it would:</p> <ul style="list-style-type: none"> <li>- restrict the ability of the council to respond positively and quickly to changes in local circumstances as the infrastructure priorities would already be set in the Local</li> </ul>

Option	Status	Reason
		<p>Plan.</p> <p>- could restrict the Council's ability to negotiate meaningful S106s to make development acceptable in planning terms.</p> <p>Consistent with national policy</p> <p>The option is consistent with National Policy and Guidance, in particular NPPF and NPPG in respect of planning obligations, however there is no national policy requirement to replicate the Reg 123 list in the Local Plan.</p>

## STANDARD CHARGES AND POOLING

2.4.4 The options and alternatives considered are:

Option	Status	Reason
1	Reasonable alternative	<p>Whilst regulations, national policy and guidance advocate a shift away from a standard charges approach to planning obligations it may be appropriate to apply a standard charges approach to some planning obligations sought through s106, particularly where this may relate to payment in lieu of onsite provision.</p>
2	Preferred option for Publication Policies with Proposed Modifications	<p>Positively prepared</p> <p>This option will ensure that the continued delivery of infrastructure.</p> <p>Justified</p> <p>This option is justified as it based upon advice and</p>

Option	Status	Reason
<p>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.</p>		<p>guidance in regulations, national planning policy and guidance.</p> <p>Effective This option is the most effective approach to ensuring delivery of onsite infrastructure required to make development acceptable in planning terms. By seeking S106s on a case by case basis this will ensure that;</p> <ul style="list-style-type: none"> <li>- only the necessary planning obligations to make development acceptable are sought in relation to the specific proposal proposed</li> <li>- that there is minimal impact on development viability</li> </ul> <p>Consistent with national policy This option is consistent with regulations, national policy and guidance. The policy should state that S106 tests must be met.</p>

## MONITORING COSTS

2.4.5 The Issues and Options consultation asked whether the Council should continue to seek monitoring costs, programme costs and revenue payments through S106s.

2.4.6 The options and alternatives considered are:

Option	Status	Reason
<p>1 Maintain existing approach of seeking monitoring costs, programme costs, revenue payments and other costs through S106s</p>	<p>Preferred option for Publication Policies with Proposed Modifications</p>	<p>This option will ensure the effective and continued delivery of infrastructure by ensuring that all associated costs of delivering infrastructure are taken into account, in particular where these relate to the need for</p>

Option		Status	Reason
			<p>specialist monitoring to enable ongoing management and maintenance.</p> <p>These costs will be negotiated on a case by case basis, applying the national policy tests, to ensure that it is appropriate to seek them.</p>
2	Do not seek monitoring costs, programme costs, revenue payments and other costs through S106s	Reasonable alternative	This is considered a reasonable alternative however may not assist with the effective delivery of infrastructure.
3	Seek cleaning, planning enforcement (including CTMPs) and resident helpline costs through S106s	Not a Reasonable Alternative	<p>These provisions sit outside the remit of legislation relating to planning and S106s. Noise impact and hours of operation are dealt with as part of the planning application determination process. Monitoring costs will be negotiated on a case by case basis, applying the national policy tests, to ensure that it is appropriate to seek them.</p>

## 2.5 PUBLICATION POLICY WITH PROPOSED MODIFICATIONS

### PUBLICATION POLICY WITH PROPOSED MODIFICATIONS

- 2.5.1 Following consideration of the above options and reasonable alternatives, the existing Local Plan policy is proposed to be amended as follows (red = Draft Policies, blue = Publication Policies, green = Submission Proposed Modification):

## **Policy C1 Infrastructure Delivery, Planning ~~Obligations~~ Contributions**

### **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~~ contributions, 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 w~~. ~~Where the need arises from the~~ development generates a need either because of its individual or cumulative impact, ~~will seek prescriptive~~, compensatory or mitigatory measures will be sought 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~~ Contributions**

~~Community Infrastructure Levy will be applied in accordance with the Regulations and~~ ~~P~~planning obligations will be negotiated ~~whenever appropriate on a case by case basis~~ in accordance with current legislation, national policy and guidance. Circular 05/2005 ~~Planning Obligations, and taking account of the proposed development, and i~~

~~In determining which what measure receives priority~~ planning obligations would make development acceptable in planning terms, account will be taken of the proposed development, 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. The viability of the development will also be taken into account. ~~In the case of an enabling development, or w~~ ~~Where~~ the development is unable to deliver all the policy requirements for reasons of viability or where enabling development is necessary to bring development forward, a viability study will be required to accompany the planning application. ~~s~~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.

## **KEY DIAGRAM AND PROPOSALS MAP**

- 2.5.2 No changes are required to be made to the Key Diagram or the Proposals Map

## **2.6 DUTY TO COOPERATE AND STRATEGIC ISSUES**

- 2.6.1 The legal obligation of the 'duty to cooperate' requires the Council to "engage constructively, actively and on an ongoing basis" and have "regard to activities" (i.e. strategies, plans, policies) of other bodies in the preparation of Local Plans "so far as relating to a strategic matter". This includes "considering whether to consult on and prepare... agreements or joint approaches"<sup>11</sup>. A "strategic matter"

<sup>11</sup> Section 33A of the Planning and Compulsory Purchase Act 2004, as inserted by Section 110 of the Localism

relates to “sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular)... in connection with infrastructure that is strategic”<sup>12</sup>. Strategic matters are further defined in paragraph 156 of the NPPF<sup>13</sup> and paragraph 013 of the NPPG on the duty to cooperate<sup>14</sup>.

2.6.2 The below table shows the actions the Council has taken with regard to the duty and the relevant prescribed bodies. It should be noted that the Council has received a letter of general conformity from the GLA stating that “*the current draft of the Local Plan is in general conformity with the London Plan.*”

Prescribed body/ies / LPAs <sup>15</sup>	Action(s)	Date(s)
All	The Council has had regard to all relevant strategies, plans and policies of the relevant prescribed bodies in preparing the policies – as set out in Legislation, Policy and Guidance sections of Policy Formulation Reports (PFRs)	Ongoing
All	Local Plan Partial Review Issues and Options consultation – see Consultation Schedule	Dec 2015 – Feb 2016
All	Local Plan Partial Review Draft Policies Regulation 18 consultation – see Consultation Schedule	Oct – Dec 2016
All	Local Plan Partial Review Publication Policies Regulation 19 consultation – see Consultation Schedule	Feb 2017- Mar 2017
Mayor of London	Liaison meeting with GLA officers on the LPPR and emerging London Plan / SPGs	Feb + Nov 2016 + Mar 2017
LBHF	RBKC/LBHF Planning Policy Liaison meetings	Quarterly
LBHF	RBKC response to LBHF Regulation 18 Draft Local Plan: Strategic Policy Regeneration Areas - To ensure infrastructure demands from non-residential development are also addressed Old Oak Regeneration Area – Request that LBHF address linkages with Kensal Canalside, with Park Royal Opportunity Area and potential strategic public transport infrastructure hub and interchange at Old Oak Common.	Feb 2015

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Act 2010

<sup>12</sup> Section 33A(4) of the Planning and Compulsory Purchase Act 2004, as inserted by Section 110 of the Localism Act 2010

<sup>13</sup> <http://planningguidance.communities.gov.uk/blog/policy/>

<sup>14</sup> <http://planningguidance.communities.gov.uk/blog/guidance/duty-to-cooperate/>

<sup>15</sup> Regulation 4 of The Town and Country Planning (Local Planning) (England) Regulations 2012

Prescribed body/ies / LPAs <sub>15</sub>	Action(s)	Date(s)
	<p>Policy CC3 Reducing Water Use and the Risk of Flooding – in respect of sewer capacity and Counters Creek</p> <p>Policy CC5 Strategic Waste Management – in respect of managing waste capacity, support for safeguarding Old Oak Sidings (Powerday), objecting to removal of reference “Spare waste management capacity of up to 220,000 tonnes has been identified within Hammersmith and Fulham. This spare capacity could accommodate the needs of the Royal Borough of Kensington and Chelsea and be utilised for that purpose” and commitment of working with Western Riverside Waste Planning Authorities on emerging waste evidence base.</p> <p>Policy T1 Transport – road tunnel to preplace only the Hammersmith flyover and Crossrail 2 station.</p>	
LBHF	<p>RBKC response to LBHF Regulation 19 Proposed Submission Local Plan:  Policy CC3: minimising Flooding and Reducing Water Use, and CC4: Minimising Surface water Run-off with Sustainable Drainage Systems - in respect of Sewerage and drainage infrastructure capacity  Policy CC6 Strategic Waste Management - objecting to removal of reference “Spare waste management capacity of up to 220,000 tonnes has been identified within Hammersmith and Fulham. This spare capacity could accommodate the needs of the Royal Borough of Kensington and Chelsea and be utilised for that purpose “  Chapter 7: Planning Contributions and Infrastructure Planning – objection to a new Crossrail 2 station at Imperial Wharf. Support for provision of a Crossrail 2 station at King’s Road, Chelsea.</p>	Oct 2016
LB Brent	<p>RBKC response to DM Policies Proposed Submission:  Section 8 Transport - reference to step-free access at underground / rail stations</p>	Oct 2015
OPDC / LBHF / LB Ealing / LB	<p>Regular OPDC Project Team Meetings – attendance when necessary</p>	Fortnightly

Prescribed body/ies / LPAs <sup>15</sup>	Action(s)	Date(s)
Brent		
OPDC	RBKC/OPDC Planning Policy Liaison Meetings	May + Sep 2015; Jan + Apr 2016
OPDC	RBKC response to Regulation 18 Draft Local Plan	Mar 2016
Mayor of London / TfL	General liaison with GLA/TfL on Kensal Canalside Opportunity Area, Crossrail 1 and 2  Please refer to the DtC section of the Places and Site Allocations Policy Formulation Report for more details.	May + July 2016 Dec 2016, Feb 2017
Historic England	Mitigation of the impact of development of Kensal Canalside Opportunity Area on Grade 1 listed landscape Kensal Green Cemetery.	Nov 2016
West London CCG, NHS England, TfL; 'shared services' with LBHF; WCC	Drafting Infrastructure Schedule and Infrastructure Delivery Plan updates  West London CCG: NHS:	June 2016 (ongoing)  June + September 2016  Mar 2017
Mayor of London / TfL	RBKC/TfL Liaison Meeting	Oct 2016 Mar 2017

*Figure 2.3: Duty to cooperate strategic issues, prescribed bodies and Council actions*

## 3. ISSUE 2: PUBLIC ART

### 3.1 INTRODUCTION

- 3.1.1 The Council needs to review its existing Local Plan policies relating to public art in light of new national policy and guidance, legislation, policy and guidance context.

### 3.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL

##### NPPG: PLANNING OBLIGATIONS

- 3.2.1 In March 2014, paragraph 004<sup>16</sup> 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...

- 3.2.2 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.

#### REGIONAL

##### LONDON PLAN

- 3.2.3 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.

#### LOCAL

##### EXISTING LOCAL PLAN POLICY

- 3.2.4 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.

- 3.2.5 The remainder of Policy CR4 is not part of the Local Plan Partial Review because

<sup>16</sup> <http://planningguidance.communities.gov.uk/revisions/23b/004/>

the other elements of the policy were considered as part of the Core Strategy ‘Conservation and Design’ Review, which was adopted in December 2014.

## PLANNING OBLIGATIONS SPD

- 3.2.6 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.
- 3.2.7 The Council adopted a Public Art Supplementary Planning Guidance (SPG) document in August 2004<sup>17</sup> 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’.

## CIL REGULATION 123 (R123) LIST

- 3.2.8 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 2.2.1 above).

## SUMMARY

Date	Document	Organisation
Mar 2014	<a href="#">National Planning Practice Guidance (NPPG): Planning Obligations (as amended)</a>	DCLG
Mar 2016	<a href="#">The London Plan</a> Policy 7.5 Public Realm	Mayor of London

## 3.3 EVIDENCE BASE

- 3.3.1 The Council greatly values the Borough’s public realm and has undertaken a range of initiatives/projects during the monitoring period. The Council’s Public Art Panel continues to meet regularly. In the last year it has been involved in a number of initiatives, including the installation of a Nigel Hall sculpture at the Kensington Academy and Leisure Centre.
- 3.3.2 Section 2 of this report provides detailed S106 monitoring evidence which will not be duplicated here.

<sup>17</sup> [www.rbkc.gov.uk/planning-and-building-control/planning-policy/supplementary-planning-documents-and-guidance](http://www.rbkc.gov.uk/planning-and-building-control/planning-policy/supplementary-planning-documents-and-guidance)

### 3.4 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)

3.4.1 Alternative options were consulted on as part of the Issues and Options (December 2015) and Draft Policies (October 2016) consultation documents. The Consultation Schedules and Consultation Summaries for these are set out in the Consultation Statement published alongside the Publication Policies (February 2017) consultation document and as part of the Submission (May 2017) documents. The options considered through the consultations and as part of the Integrated Impact Assessment (IIA) are summarised below.

3.4.2 The Council has considered the options particularly in light of the ‘tests of soundness’ which are set out in the NPPF:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework. (paragraph 182)

3.4.3 The options and alternatives considered are:

Option	Status	Reason
1	Not a reasonable alternative	<p>The Council is unable spend CIL on public art as it is not considered to be within the definition of infrastructure under Section 216(2) of the Planning Act 2008.</p> <p>Due to high costs public art is often funded through the pooling of monies from planning obligations. The CIL regulations restrict the number of planning obligations which can be pooled, therefore limiting the scope of funds that can be</p>

Option	Status	Reason
		<p>generated for this item. Therefore, the Council's ability to secure financial contributions for public art through a 'standard charges' approach is restricted.</p> <p>This option would not be consistent with regulations, national policy and guidance.</p>
2	Reasonable alternative	<p>Positively prepared This option seeks to deliver public art.</p> <p>Justified Public art can be required to be designed into new development proposals through Local Plan policy.</p> <p>Effective</p> <ul style="list-style-type: none"> <li>- Continues to allow public art to be delivered</li> <li>- Will ensure that public art is an integral part of the proposal's design from conception</li> <li>- Does not fall foul of S106 pooling restrictions or CIL spending limitations.</li> </ul> <p>This option is consistent with regulations, national policy and guidance.</p>
3	Reasonable alternative	<p>The Council recognises the importance of public art in contributing to sustainable development, through a justified strategy which has been shown to be effective in securing delivery on the ground.</p>
4	Preferred option for Publication Policies with	<p>Positively prepared This option will ensure that the continued delivery of high quality public art</p>

Option	Status	Reason
<p>high quality and either incorporated into the external design of the new building or carefully located within the public realm. This is the existing Local Plan policy approach. Local Plan policy should also reference the possibility of using S106 financial contributions for public art.</p>	<p>Proposed Modifications</p>	<p>Justified High quality public art can be required to be designed into new development proposals through Local Plan policy. Where this may not be possible, S106 financial contributions may be sought.</p> <p>This option is the most effective as it:</p> <ul style="list-style-type: none"> <li>- Continues to allow high quality public art to be delivered.</li> <li>- Will ensure that public art is an integral part of the proposal's design from conception and where this is not possible an opportunity to deliver high quality public art in public spaces and adding to the borough's unique public realm.</li> <li>- Does not fall foul of S106 pooling restrictions or CIL spending limitations.</li> </ul> <p>This option is consistent with regulations, national policy and guidance.</p>

### 3.5 PUBLICATION POLICY WITH PROPOSED MODIFICATIONS

#### PUBLICATION POLICY WITH PROPOSED MODIFICATIONS

- 3.5.1 Following consideration of the above options and reasonable alternatives, the existing Local Plan policy is proposed to be amended as follows (red = Draft Policies and blue = Publication Policies and green = Submission Proposed Modification).

## Policy CR4 Streetscape

...

h. require all major development to provide new public art that is of high quality and wither incorporated in the external design of the new building or carefully located with the public realm. Where such provision is not appropriate, the Council may seek planning contributions for the provision of public art. New public art proposals should be ~~designed-developed~~ in consultation the Public Art Panel.

## KEY DIAGRAM AND PROPOSALS MAP

3.5.2 No changes are required to be made to the Key Diagram or the Proposals Map.

## 3.6 DUTY TO COOPERATE AND STRATEGIC ISSUES

3.6.1 Public art is not considered a strategic issue for the purposes of the duty to cooperate.

## 4. ISSUE 3: OPEN SPACE PROVISION AND CONTRIBUTIONS

### 4.1 INTRODUCTION

- 4.1.1 Existing Local Plan Policy CR5 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 includes 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). The existing Local Plan policy needs to be updated in respect of this. It is important to note that the scope of the Local Plan Partial Review does not cover other aspects of Policy CR5 which were considered as part of previous reviews to the Core Strategy 2010.

### 4.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL

##### NPPF

- 4.2.1 NPPF paragraph 73 states “Access to high quality open spaces... can make an important contribution to the health and well-being of communities”.

##### NPPG: OPEN SPACE, SPORTS AND RECREATIONAL FACILITIES

- 4.2.2 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

##### LONDON PLAN

- 4.2.3 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”.

##### ALL LONDON GREEN GRID (ALGG) SPG

- 4.2.4 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).

## LOCAL

### EXISTING LOCAL PLAN POLICY

- 4.2.5 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.

...

- 4.2.6 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.

### PLANNING OBLIGATIONS SPD

- 4.2.7 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.

### CIL REGULATION 123 (R123) LIST

- 4.2.8 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).

## SUMMARY

Date	Document	Organisation
Mar 2012	<a href="#">National Planning Policy Framework (NPPF)</a>	DCLG
Mar 2014	<a href="#">National Planning Practice Guidance (NPPG): Open space, sports and recreational facilities, public rights of way and local green space</a>	DCLG
Mar 2015	<a href="#">All London Green Grid (ALGG) Supplementary Planning Guidance (SPG)</a>	Mayor of London
Mar 2016	<a href="#">The London Plan</a> Policy 2.18 Green Infrastructure	Mayor of London

## 4.3 EVIDENCE BASE

- 4.3.1 Section 2 of this report provides detailed S106 monitoring evidence which will not

be duplicated here.

4.3.2 Holland Park and Kensington Gardens are the main public open spaces in the Borough. The Borough is characterised by garden squares. There are also fifteen open spaces on Historic England's Register of Parks and Gardens.

4.3.3 The Council continues with a substantial capital program. Work undertaken between 1 October 2014 and 30 September 2015 has included:

- Commissioning detailed designs for a Sustainable Urban Drainage System (SUDs) for Holland Park. This will channel rainwater away from the woodland paths, that are slowly eroding, and into small pools and channels, enhancing the woodland and creating new habitats for wildlife.
- Works to make the parks more accessible including handrails, path resurfacing and new access ramps.
- Refurbishment of the lavatories in Holland Park to make them more fit for purpose for the high level of usage they experience.
- Playground surface renovations. Play equipment lasts longer than the safety surface underneath so this is being renewed as part of a two-year programme and will significantly increase the lifespan of the playgrounds.

4.3.4 Ten of the Borough's parks now hold Green Flags, the national standard for parks and open spaces. There has been an increase of nine since that start of the Council's Ten Year Parks Strategy in 2006. Five of the Borough's parks also achieved Gold awards in the annual London in Bloom parks competition.

## 4.4 OPTIONS, CONSULTATION AND INTEGRATED IMPACT ASSESSMENT (IIA)

4.4.1 Alternative options were consulted on as part of the Issues and Options (December 2015) and Draft Policies (October 2016) consultation documents. The Consultation Schedules and Consultation Summaries for these are set out in the Consultation Statement published alongside the Publication Policies (February 2017) consultation document and as part of the Submission (May 2017) documents. The options considered through the consultations and as part of the Integrated Impact Assessment (IIA) are summarised below.

4.4.2 The Council has considered the options particularly in light of the 'tests of soundness' which are set out in the NPPF:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered

against the reasonable alternatives, based on proportionate evidence;

- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework. (paragraph 182)

4.4.3 The options and alternatives considered are:

Option	Status	Reason
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.	Preferred option for Publication Policies with Proposed Modifications	See 'S106 vs CIL categories' in section 2 above, similar reasons apply here.
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).	Reasonable alternative	See 'S106 vs CIL categories' in section 2 above, similar reasons apply here.

## 4.5 PUBLICATION POLICY WITH PROPOSED MODIFICATIONS

4.5.1 Following consideration of the above options and reasonable alternatives, the existing Local Plan policy is proposed to be amended as follows (red = Draft Policies, blue = Publication Policies and green = Submission Proposed Modification):

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

The Council will protect, enhance and make the most of existing parks, gardens and open spaces, and require new high quality outdoor spaces to be provided.

To deliver this the Council will, in relation to:

### **Parks, Gardens and Open Spaces**

- a. resist the loss of existing:
  - i. Metropolitan Open Land;
  - ii. public open space;
  - iii. private communal open space and private open space where the space gives visual amenity to the public;
- b. resist development that has an adverse effect upon the environmental and open character, appearance and function of Conservation Areas, Metropolitan Open Land or sites which are listed within the Register of Parks and Gardens of Special Historic Interest in England, or their setting;
- c. resist development that has an adverse effect on garden squares and communal gardens, including proposals for basements;
- 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;~~ require development to make planning contributions towards improving existing or providing new publicly accessible open space which is suitable for a range of outdoor activities and users of all ages;
- e. require all major developments to provide on site external play space, including for under fives, based on expected child occupancy;
- f. require all green open space to optimise biodiversity and wildlife habitat;
- g. protect the open spaces surrounding the Royal Hospital from inappropriate development both in the landscaped areas themselves and in the neighbouring streets.

### **Waterways**

- h. require opportunities to be taken to improve public access to, and along the Thames and the Grand Union Canal, and promote their use for education, tourism, leisure and recreation, health, well-being and transport.
- j. resist permanently moored vessels on the river, except where they would not have:
  - i. a detrimental effect on the river as a transport route and its special character, including biodiversity;
  - ii. an adverse affect on the character or appearance of the existing residential moorings at Battersea Reach;
- k. permit residential moorings on the Grand Union Canal provided that:
  - i. there are adequate services for permanently moored vessels;
  - ii. other canal users (both water and landbased) are not adversely affected.

## **KEY DIAGRAM AND PROPOSALS MAP**

4.5.2 No changes are required to be made to the Key Diagram or the Proposals Map

## **4.6 DUTY TO COOPERATE AND STRATEGIC ISSUES**

4.6.1 Whether open space contributions are made through S106 or CIL is not considered a strategic issue for the purposes of the duty to cooperate.

## 5. ISSUE 4: INFRASTRUCTURE PLANNING

### 5.1 INTRODUCTION

- 5.1.1 The Council is updating the existing Infrastructure Schedule / Table in the Local Plan from 2010 and the Infrastructure Delivery Plan from 2014 to set out the infrastructure necessary to support the emerging proposals in the Local Plan Partial Review – see 2017 version. 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.

### 5.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL

#### BUILDING OUR INDUSTRIAL STRATEGY GREEN PAPER

- 5.2.1 The ‘Building Our Industrial Strategy Green Paper’ sets out ten pillars to drive forward the industrial strategy across the entire economy. This includes infrastructure and it recognises the importance of undertaking upgrades and better aligning central government infrastructure investment with local growth priorities to ensure that businesses can thrive, services are resilient and can enable higher rates of house-building. The Green Paper announces new funding to enable central investment to support local growth:

**“Better matching infrastructure to local plans, using infrastructure to support local growth**

...The new £2.3 billion Housing Infrastructure Fund will allow joined-up planning for housing and infrastructure for the first time. At present, local councils’ choices about where to encourage development are constrained by a lack of resources to build roads, install utilities like electricity and sewerage, and carry out other requirements to make sites viable.

The Autumn Statement announced £1.1 billion of additional funding to upgrade local transport, to improve congestion, growth and housing. Through devolution deals with major cities we are devolving decisions over public transport, and roads from Whitehall, enabling cities to take a joined up approach to planning infrastructure for public transport, housing and industrial growth.”

#### NPPF

- 5.2.2 The NPPF states that the “provision of infrastructure” is part of the “economic role” of planning<sup>18</sup> 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...”<sup>19</sup>. A “strategic priority” for Local Plans is “the provision of infrastructure” and they should “plan positively

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<sup>18</sup> NPPF paragraph 7

<sup>19</sup> NPPF paragraph 21, see also 160

for the development and infrastructure required in the area”<sup>20</sup>. 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<sup>21</sup>. 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)

- 5.2.3 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”<sup>22</sup>.

## REGIONAL

### LONDON PLAN

- 5.2.4 London Plan Policy 8.1 ‘Implementation’ states<sup>23</sup>:

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...

### LONDON PLANNING STATEMENT SPG

- 5.2.5 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...

(paragraph 5.3)

## SOCIAL INFRASTRUCTURE SPG

- 5.2.6 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

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<sup>20</sup> NPPF paragraphs 156-7

<sup>21</sup> NPPF paragraph 162

<sup>22</sup> NPPF paragraph 180-1

<sup>23</sup> See also London Plan paragraph 8.6B – 8.7

development, such as: health and social care, education, sports facilities, burial needs and community facilities.

## LONDON INFRASTRUCTURE PLAN 2050 UPDATE

5.2.7 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.

### SUMMARY

Date	Document	Organisation
Mar 2012	<a href="#">National Planning Policy Framework (NPPF)</a>	DCLG
May 2014	<a href="#">London Planning Statement SPG</a>	Mayor of London
May 2015	<a href="#">Social Infrastructure SPG</a>	Mayor of London
Mar 2015	<a href="#">London Infrastructure Plan 2050 Update</a>	Mayor of London
Mar 2016	<a href="#">The London Plan</a> Policy 8.1 Implementation	Mayor of London
Jan 2017	<a href="#">Building Our Industrial Strategy Green Paper</a>	HM Government

### LOCAL

#### EXISTING LOCAL PLAN CHAPTER

5.2.8 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

5.2.9 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** – its location
- **What** – name of the piece of infrastructure
- **Why** – why it is needed, what leads to it being required, e.g. population increase
- **Specific requirements** – details of what is needed

- **Lead delivery organisation/management organisation** – together these provide the Who information
- **Cost** – is a required component, where it is known. In some cases the cost is to be confirmed and will be updated on an on-going basis
- **When** – the time scale that the new infrastructure is required
- **Sources of funding** – this will assist to identify funding gaps that need to be addressed
- **Policy reference** – the Local Plan policy to which this item relates to. In some cases there will be more than one policy and other cases there may be no specific policy reference

5.2.10 Since the original adoption of the Local IDP and Schedule in the Local Plan in 2010 (at the time known as the Core Strategy), the IDP was updated, using the same categories, and was published by the Council (March 2014)<sup>24</sup> as part of the evidence base to support the Council’s CIL Charging Schedule.

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

## 5.3 EVIDENCE BASE

### LOCAL INFRASTRUCTURE DELVIERY PLAN AND SCHEDULE UPDATE

5.3.1 To inform the Local Plan Partial Review, the Local IDP (2014) and Schedule is being updated. The update is an ongoing process and the infrastructure schedule will be refined at each stage of the plan making process.

5.3.2 The Local IDP (2014) and the update represent a method of planning investment as it identifies all major infrastructure in one document which the Borough will need or wishes to see in place over the life of the Local Plan. As the Council has now adopted a Community Infrastructure Levy (CIL) Charging Schedule a reassessment of Borough wide infrastructure requirements, capacities and costs, is being conducted to inform the Local Plan Partial Review. The document will set out infrastructure required to support growth in the Borough and identifies projects CIL monies can help deliver.

5.3.3 The update categorises infrastructure by the service responsible for delivery. This includes not only Council provided services and facilities but also those for which other public, private and voluntary sectors are responsible, for example the NHS.

5.3.4 The update is being undertaken on an ongoing basis by engaging a range of infrastructure providers within the Borough.

5.3.5 The resultant Local IDP Schedule replaces the existing Infrastructure Table by provider contained in Chapter 37 of the current adopted Local Plan. The most recently updated Schedule is available in the IDP itself and within the Publication Policies with Proposed Modifications and has not been replicated here for brevity.

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<sup>24</sup> [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)

## **KENSAL CANALSIDE DEVELOPMENT INFRASTRUCTURE FUNDING (DIF) STUDY**

- 5.3.6 The Council has commissioned a study to provide evidence to support the Local Plan Partial Review (LPPR) strategic site allocation for Kensal and the Kensal Canalside SPD.
- 5.3.7 The DIF provides a greater understanding of the scale, type and costs of infrastructure required to support the proposed level of development at Kensal Canalside. The work tests a number of different development scenarios, identifies the infrastructure requirements that arise from each and test the viability of delivering this infrastructure and affordable housing in each case. Decontamination requirements and costs are also identified as part of this study.
- 5.3.8 The Kensal DIF has been used to update the Infrastructure Schedule in the currently adopted Local Plan. This is available in the Publication Policies with Proposed Modifications and has not been replicated here for brevity.

## 6. ISSUE 5: THRESHOLDS FOR SEEKING S106S

### 6.1 INTRODUCTION

6.1.1 The Council needs to review its existing Local Plan policies relating to thresholds for seeking S106s in light of new national policy and guidance.

### 6.2 LEGISLATION, POLICY AND GUIDANCE CONTEXT

#### NATIONAL

##### WRITTEN MINISTERIAL STATEMENT: SMALL-SCALE DEVELOPERS

6.2.1 On 28 November 2014 the then Housing and Planning Minister, Brandon Lewis MP, made a Written Ministerial Statement which has the effect of national planning policy which said “Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought”.

##### NPPG: PLANNING OBLIGATIONS

6.2.2 Paragraph 031 of the NPPG on Planning Obligations states that “contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm” and “affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex of extension to an existing home”.

#### LOCAL

##### PLANNING OBLIGATIONS SPD

6.2.3 The Council’s existing thresholds for seeking S106 planning obligations are set out in Table 55.1 of the existing Planning Obligations SPD and summarised in Figure 6.1 below:

Categories		Threshold
<b>A Affordable Housing</b>		800m <sup>2</sup>
<b>B Education</b>	School places	1 unit
<b>C Community Facilities</b>	Health	1 unit
	Libraries	Major*
	Sport and leisure	Major*
	Community facilities	Major*
	Policing resources and emergency services	Major*
	Community facilities revenue contributions	N/A

Categories		Threshold
<b>D Public Realm</b>	Parks and open spaces	Major*
	Streetscape	Case-by-case
	Public art	Major*
	Community safety	Case-by-case / to meet safety needs / based on visitor numbers
	Public realm revenue payments	N/A
<b>E Transport</b>	Public transport	Case-by-case, including majors*
	Highways and traffic works	Case-by-case
<b>F Natural Resource Management</b>	Air quality	Major*
<b>G Employment and Training</b>	Local training in construction	Major*
	General employment and training	Major* commercial, >50 employees
	Securing employment premises	Major* commercial
	Town centres and affordable shops	Major* commercial within town centres

Figure 6.1: Thresholds for financial contributions from Table 55.1 of the Planning Obligations SPD. \*major  $\geq 10$  units or  $\geq 0.1$ ha or  $\geq 1,000$ sqm for non-residential

## SUMMARY

Date	Document	Organisation
Nov 2014	<a href="#">Written Ministerial Statement: Small Scale Developers</a>	DCLG
Mar 2014+	<a href="#">National Planning Practice Guidance (NPPG): Planning Obligations</a>	DCLG
Aug 2010	<a href="#">Planning Obligations Supplementary Planning Document (SPD)</a>	RBKC

## 6.3 PUBLICATION POLICY WITH PROPOSED MODIFICATIONS

- 6.3.1 The existing Local Plan does not set out detailed thresholds for S106 contributions and instead this is set out in the existing Planning Obligations SPD. This approach is not proposed to change. A revised Planning Obligations SPD will be consulted on by the Council in due course. Thresholds for seeking affordable housing as part of residential development proposals are not considered in this section but are instead covered within Chapter 35 Diversity of Housing of the Local Plan Partial Review Publication Policies with Proposed Modifications. .

## 7. ISSUE 6: VIABILITY AND TRANSPARENCY

- 7.1.1 Viability and transparency are covered within Chapter 35 Diversity of Housing of the Local Plan Partial Review Publication Policies with Proposed Modifications.



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA

[www.rbkc.gov.uk/planningpolicy](http://www.rbkc.gov.uk/planningpolicy)