

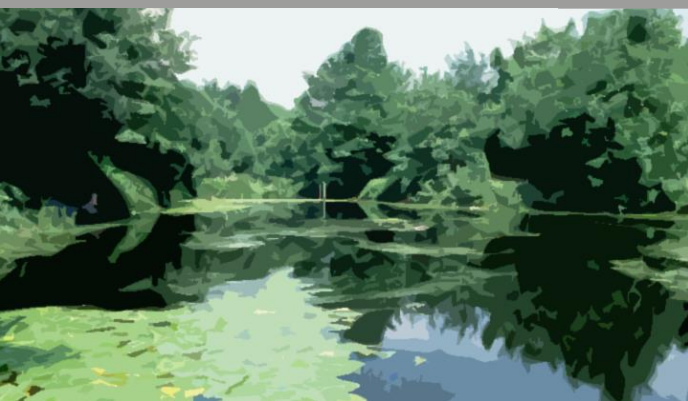


# Framework for spending Section 106 developer contributions

## Affordable housing



February 2025



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# 1. Introduction

- 1.1. Supplementary Planning Guidance (SPG) 5 provides guidance relating to affordable housing provision in new residential developments. The SPG was subject to consultation before being formally adopted by the Council on 1 January 2004. It was developed in order to primarily support the implementation of Unitary Development Plan Policy H4/1 (relating to affordable housing). The SPG is used by the local planning authority in negotiating and determining planning applications, and by developers in formulating residential planning applications.
- 1.2. The Council's First Homes policy position statement sits alongside the SPG, setting out the Council's approach to First Homes as introduced by Written Ministerial Statement on 24 May 2021. In accordance with NPPF 2024, the minimum 25% delivery requirement for First Homes no longer applies. However, the Local Eligibility Criteria remain in place where they are delivered as part of the affordable housing mix. In addition, the National Planning Policy Framework sets out the Government's planning policies including those related to the delivery of affordable housing.
- 1.3. The underlying principle is that affordable housing is required to be provided on-site and the Section 106 Agreement will incorporate a right for the Council to nominate and/or approve purchasers of the affordable units being provided to ensure that the units are occupied by persons on lower incomes and in need of affordable housing. Only if there are no applications from qualifying persons to purchase an affordable unit after a reasonable marketing period, will a financial contribution be acceptable.
- 1.4. Where it is shown that it is unviable for a policy compliant level of affordable housing to be provided on site at the planning application stage (and this has been verified by an independent expert), an applicant for planning permission will enter into an overage clause to provide a financial contribution for the delivery of affordable housing elsewhere in the Borough should the development prove to be more viable than expected.
- 1.5. Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:  
  
necessary to make the development acceptable in planning terms;  
  
directly related to the development; and

fairly and reasonably related in scale and kind to the development.

- 1.6. These tests are set out as statutory tests in regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework.
- 1.7. All affordable housing contributions are held in a ring-fenced fund and can only be used for the delivery of affordable housing in accordance with the terms of the individual Section 106 Agreement through which they were secured. Section 106 Agreements also include requirements for contributions to be spent, allocated or committed for expenditure within ten years of receipt or they have to be returned to developers with interest.
- 1.8. This document specifically sets out the framework and procedures under which S106 affordable housing contributions will operate and against which any monies secured to deliver affordable housing will be utilised.

## 2. Use of Affordable Housing contributions

- 2.1 The underlying principle of securing affordable housing contributions is to support the delivery of affordable housing. All contributions received must be spent in accordance with the terms of the individual Section 106 Agreement through which they were secured.
- 2.2 The use of affordable housing contributions will be strictly governed by State Aid ceilings as well as the tests set out in the Community Infrastructure Levy Regulations (2010) (as amended), the terms of each individual Section 106 Agreement and the National Planning Policy Framework. Examples of uses of affordable housing contributions include (but are not limited to):
  - Assisting with the acquisition of empty properties to be brought back into use as affordable housing;
  - Supporting the delivery of additional affordable housing on Council-led sites (over and above those units delivered on-site through planning policy requirements); and
  - Acquisition of new-build housing on private developments (in addition to affordable housing units provided on site through Section 106 Agreements).

### 3. Management of Affordable Housing contributions

- 3.1 Incoming payments will be paid into an account specifically set up for Section 106 Affordable Housing contributions. The account will be 'ring-fenced' to ensure that any monies will only be used for the intended purposes set out above.
- 3.2 Overall responsibility for allocating sums received and approving the expenditure of all affordable housing development contributions depends on the amount to be allocated, in accordance with the Council's constitution and scheme of delegation.
- 3.3 Relevant officers initially consider opportunities for and eligibility of potential expenditure taking account of the procedures and requirements of this Framework. Within the context of the criteria set out for the use of affordable housing contributions, officers will determine the eligibility of potential projects by primarily taking into account:
  - The terms of each individual Section 106 Agreement;
  - The Council's priorities for delivery of affordable housing;
  - Evidence of need for the proposed type and tenure of affordable housing;
  - Whether the project would result in additional benefits; and
  - Whether the project represents value for money.
- 3.4 Any proposals for acquisitions utilising Section 106 Affordable Housing contributions will be in accordance with the Council's Buy Back and Acquisitions Policy and Procedures 2024-2028.
- 3.5 Property acquired or built using affordable housing developer contributions may be supplemented with Right to Buy capital receipts, revenue income and/or prudential borrowing from the Housing Revenue Account and grant funding where applicable or, a combination of these funding streams where permitted, and/or other funding sources which may be available from time to time.
- 3.6 Dependent on the overall cost of the scheme, potential projects are submitted to the Executive Director of Place, with the decision to approve taken in accordance with the Council's constitution and scheme of delegation. Where appropriate, approval is delegated to the Executive Director of Place following



consultation with the Cabinet Member for Housing Services, and with finance and legal oversight.

- 3.7 Higher value proposals (in excess of £250,000) will require approval by the Chief Executive in consultation with the Executive Director and Cabinet Member for Housing (following finance and legal oversight). Allocation of sums with a value in excess of £500,000 will require Cabinet approval in accordance with the Council's constitution.
- 3.8 Responsibility for the day-to-day management of Affordable Housing contributions lies with the appropriate Officer within the Council's Strategic Planning and Infrastructure team, together with the Officers responsible for delivering the projects, and in conjunction with Finance.

## 4. Monitoring of Affordable Housing contributions

- 4.1 The Council's Unit Manager - Housing Strategy, Policy and Performance is responsible for assessing applications from qualifying persons to purchase on-site affordable units and confirming the point at which a financial contribution be acceptable. The Council's Strategic Planning and Infrastructure team will be responsible for monitoring affordable housing contributions received, in particular, when triggers for payment triggers have been reached, if and when money has been paid and where specific payments have been utilised.
- 4.2 In addition, any breaches of Section 106 Agreements will be identified and developers will initially be notified of the breach via correspondence from the Service Manager of Strategic Planning and Infrastructure. However, the Council's Legal Services will be instructed if breaches persist.
- 4.3 Provision will be made within any Section 106 Agreement for the return of funds if they have not been spent or committed within 10 years of payment.
- 4.4 An Infrastructure Funding Statement<sup>1</sup> is produced annually by the Council setting out Section 106 income and expenditure for the previous financial year.

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<sup>1</sup> <https://www.bury.gov.uk/planning-building-control/policy-and-projects/planning-policy/evidence-and-monitoring/infrastructure-funding-statement>

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