



DEVELOPER CONTRIBUTIONS

(draft)

SUPPLEMENTARY PLANNING DOCUMENT

April 2024

CONTENTS

1. INTRODUCTION

Purpose of this document	5
What are Developer Contributions?	6
Section 106 Agreements (s106)	6
Section 278 Agreements (s278)	7
Community Infrastructure Levy (CIL)	7
Infrastructure Levy	7
Planning Conditions	7
Grampian Conditions	8
Planning Policy Overview	8
National Policy	8
Local Policy	8
Links with the Infrastructure Delivery Plan	9
Corporate Priorities	10

2. WHAT DEVELOPER CONTRIBUTIONS WILL BE SOUGHT IN ST HELENS

Developer Contributions Sought	12
Affordable Housing	14
Background and Policy Requirements	14
Commuted Sum Calculation Method	15
Economic Viability	16
106 Agreements	16
Biodiversity	19
Background and Policy Requirements	19
Recreation Mitigation Strategy (RMS)	22
Bold Forest Park	23
Background and Policy Requirements	23
Required Developer Contributions	24
Education	25
Background and Policy Requirements	25
Required Developer Contributions	25

Forecasting pupil yields	26
Surplus Threshold	27
Calculating Developer Contributions towards School Places	27
Flood Risk, Water Management & Sustainable Drainage	29
Background and Policy Requirements	29
Healthcare Provision	32
Background and Policy Requirements	32
Required Developer Contributions	32
Enhancing Existing Health Provision	33
Strategic Development Requirements	33
Public Open Space and Outdoor Sports Provision	35
Background and Policy Requirements	35
Required Contributions	36
Outdoor Sports Facilities	36
Public Realm	38
Background and Policy Requirements	38
Required Developer Contributions	38
Social and Community Facilities and Provision	41
Background and Policy Requirements	41
Transport	42
Background and Policy Requirements	42
Required Contributions	42

3. THE COUNCIL'S DEVELOPER CONTRIBUTIONS PROCEDURE

Viability	45
Hierarchy	46
Approach to negotiating Planning Obligations	47
Cross-Boundary Developments	47
How will contributions be secured?	47
Drafting s106 Agreements	48
Legal and Administration Fees	48
Timing / Phasing of Payments	49
Indexation	49

Interest on late payments	49
Renegotiating a planning obligation	50

4. MONITORING AND IMPLEMENTATION

Financial Contributions	51
Monitoring and Enforcement of Obligations	51
Dispute resolution	
5Monitoring Fees	52

APPENDIX 1

Policy LPA07: Infrastructure Delivery and Funding wording	53
Policy LPC02: Affordable Housing wording	54

APPENDIX 2

Indicative Education Costs	55
School Site Area	55

DRAFT

1. INTRODUCTION

Purpose of this document

1.1 Supplementary Planning Documents (SPDs) are documents that build upon and provide more detailed advice or guidance on policies contained in an adopted Local Plan. SPDs cannot introduce new planning policies, nor can they add unnecessary financial burdens on development. SPDs are capable of being a material consideration in planning decisions but are not part of the Development Plan. The requirements for producing SPDs are set out at the current time, in Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

1.2 This SPD sits alongside the St Helens Borough Local Plan up to 2037 (2022) (the 'Local Plan'), which was adopted in July 2022. The purpose of this Developer Contributions SPD is to set out St Helens Borough Council's approach to seeking developer contributions. It provides guidance in relation to the interpretation and implementation of the policies in the Local Plan, in particular, Policy **LPA07: Infrastructure Delivery and Funding**¹ of the Local Plan.

1.3 Policy LPA07 of the Local Plan sets out what development proposals will be expected to include or contribute to in terms of provision, improvement or replacement of infrastructure arising from the development proposal. This may include direct provision of on-site or

off-site infrastructure and/or financial contributions. The policy also makes allowances in cases where viability constraints can be demonstrated, therefore introduces the application of a hierarchy for developer contributions.

1.4 This SPD is relevant to all development proposals (including residential, employment and retail) and its purpose is to:

- Outline the Council's approach to seeking contributions including the basis for requiring a contribution, viability testing and pre-application engagement requirements;
- Explain how specific contributions will be calculated;
- Set out how the Council expects developer contributions to be delivered and monitored, including consideration of future maintenance, management and retention in perpetuity of new infrastructure and facilities;
- Set out how local policies and strategy will guide the items for which contributions will be sought in instances when it has been demonstrated that the development would be unviable if all the contributions that are requested are payable; and
- Identify relevant index linking of financial contributions and administration, monitoring and non-payment processes.

1.5 This SPD sets out the Council's specific Section 106 requirements by type of infrastructure, unless this information is contained in another

¹ Full Policy wording is set out in Appendix 1

relevant SPD, which will be cross-referenced. For ease, Chapter 2 sets out what would be the specific requirements required separately for each type of infrastructure, alongside a cross reference to relevant Local Plan policies. Where relevant, additional commentary on the rationale behind certain requirements is also provided. Section 106 requirements by type of infrastructure:

- Education;
- Health;
- Sport and recreation facilities;
- Social and community facilities; and
- Other site-specific obligations.

What are Developer Contributions?

1.6 Developer contributions can take the form of planning obligations or agreements to either secure funding towards new development or provide infrastructure as part of new development. Planning obligations are planning tools that can be used to secure financial and non-financial contributions (including affordable housing), or other works, to provide infrastructure to support and mitigate the impact of development.

The main types of developer contributions include:

- Section 106 Agreements (s106)
- Section 278 Agreements (s278)
- Community Infrastructure Levy (CIL)

Section 106 Agreements (s106)

1.7 s106 agreements are legal binding agreements entered into between the Council and

landowners/developers and/or infrastructure providers to help make a development acceptable in planning terms, providing or contributing funding towards the delivery of infrastructure, and are the mechanism by which measures are secured to mitigate the impact of development on the local area. Developer contributions specified within a s106 agreement must be:

- necessary to make a development acceptable in planning terms;
- directly related to the development in question; and
- fairly and reasonable in terms of scale and type when compared with the development².

1.8 Developer Contributions are used for three purposes:

- 1) To prescribe the nature of development (for example, requiring a given portion of housing is affordable);
- 2) To compensate for loss or harm created by a development (for example, loss of open space); and
- 3) To mitigate a development's impact (for example, through increased public transport provision).

² As set out in paragraph 57 of the National Planning Policy Framework (July 2021), and

Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

1.9 Unless it is stated otherwise, planning obligations run with the lifetime of the development. Planning obligations can form part of the title deeds of the property and only be secured through the following type of Deed:

- s106 agreements with mutual obligations between the Council and owners with interest in the application site;
- Unilateral planning obligations, sometimes called unilateral undertakings signed solely by owners with interests in the application site which can impose no obligations on the Local Planning Authority (LPA).

Section 278 Agreements (s278)

1.10 A s278 agreement allows developers to enter into a legal agreement with the Highway Authority to fund alterations or improvements to the public adopted highway network, having regard to the needs of the development. Examples of such works could include the construction of a new access; junction improvements on the highway; or safety related works such as traffic calming or improved facilities for pedestrians or cyclists.

1.11 Requirements for s278 agreements will be negotiated separately, although an obligation will be imposed as part of the s106 agreement to enter into a s278 agreement. More information regarding s278s can be found in Section 2 under Transport.

Community Infrastructure Levy (CIL)

1.12 The Community Infrastructure Levy (CIL) is another method of collecting developer contributions. St Helens Borough Council does not currently have plans to introduce a CIL for the Borough. This approach reflects the evidence it has concerning development viability in the Borough and the availability of other means (primarily s106 obligations) to obtain developer contributions in appropriate cases.

Infrastructure Levy

1.13 As part of the Levelling Up and Regeneration Bill the Government are introducing a new Infrastructure Levy. The Levy aims to be more effective and transparent than the current system of developer contributions. Initially the Levy will be introduced through a 'Test and learn' approach, starting with a small number of LPAs once the regulations are made. This initial process will be monitored, evaluated and improved, with a national roll-out expected to take place over the course of a decade. Once in place it is expected that this Levy will replace this Developer Contributions SPD.

Planning Conditions

1.14 Planning conditions are the most commonly used and simplest mechanism for securing the provision of on-site infrastructure e.g., roads, sewers, play areas. They can also be used to secure the delivery of on-site affordable housing.

1.15 Planning conditions are imposed by the Council when granting planning permission to ensure that certain actions or elements related to the development proposal are carried

out. Paragraph 56 of the National Planning Policy Framework (the 'NPPF') states that planning conditions should be kept to a minimum and only be imposed where they are:

- necessary;
- relevant to planning and to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other aspects.

1.16 No payment of money or other consideration can be positively required by a condition when granting planning permission. However, where the above tests are met, it may be possible to use a negatively worded condition to prohibit development or occupation until a specified action has been taken.

Grampian Conditions

1.17 A Grampian condition is a condition attached to a planning permission, which prohibits development authorised by the planning permission commencing, or sometimes from being occupied, until a specified action has been taken or achieved, usually on land outside the applicant's control.

1.18 This Developer Contributions SPD provides clarity and detail about developer contributions that are required by the Council and sets out the procedures and formulae for securing, collecting, spending and monitoring developer contributions.

1.19 It is essential that all infrastructure requirements are

factored into the cost of a potential development when negotiating to buy or take an option on a site.

Infrastructure provision must be considered an integral part of any development proposal and planning application submission.

Planning Policy Overview

National Policy

1.20 National planning policy exists in the form of the NPPF and a small number of other policy documents and written ministerial statements, supported by an online practice guidance covering a series of themes (National Planning Practice Guidance (NPPG)). It also exists in the provisions of relevant legislation. Local Plans are prepared to be consistent with national policy.

1.21 Planning law and national policy recognises that it is reasonable to expect that developers should contribute towards the costs of services, infrastructure or resources that would not have been necessary but for their development.

Local Policy

1.22 All development proposals should be determined in accordance with the Development Plan unless material considerations indicate otherwise³. The Development Plan comprises of the St Helens Borough Local Plan up to 2037 (adopted July 2022), the Joint Merseyside and Halton Waste Local Plan (adopted July 2013) and the Bold Forest Park Area Action Plan (adopted July 2017).

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and

Country Planning Act 1990.

1.23 The Local Plan sets out that planning contributions will be sought where development creates a requirement for additional or improved services and infrastructure and/or to address the off-site impact of development so as to satisfy other policy requirements. This Developer Contributions SPD provides further guidance and interpretation of the policies contained in the Local Plan. As stated earlier, Policy LPA07 is the primary basis for this SPD. However, in addition to Policy LPA07 the Local Plan contains other policies that are relevant to this SPD which include:

- Policy LPA03: A Strong and Sustainable Economy;
- Policy LPA03.1: Strategic Employment Sites;
- Policy LPA04: Meeting St Helens Borough's Housing Needs;
- Policy LPA04.1: Strategic Housing Sites;
- Policy LPA06: Transport and Travel;
- Policy LPA08: Green Infrastructure;
- Policy LPA12: Health and Wellbeing;
- Policy LPC02: Affordable Housing;
- Policy LPC05: Open Space;
- Policy LPC06: Biodiversity and Geological Conservation;
- Policy LPC12: Flood Risk and Water Management;
- Policy LPD01: Ensuring Quality Development;
- Policy LPD03: Open Space and Residential Development; and
- Policy LPD07: Digital Communications.

1.24 Bold Forest Park Area Action Plan Policy BFP SN2: Planning Obligations, sets out how developer contributions will be sought to mitigate the site-specific impacts of new

development within or immediately adjacent to the Forest Park, subject to the financial viability of the proposed development. Contributions would be ringfenced to be spent within the defined Forest Park boundary.

Links with the Infrastructure Delivery Plan

1.25 The information contained in the St Helens Borough Council Infrastructure Delivery Plan 2020, (IDP), along with future iterations, will help identify where physical, social and green infrastructure exists, and where new infrastructure needs to be provided across the Borough during the Local Plan period. It also identifies the specific infrastructure requirements of each strategic allocation and, where known, how these will be delivered. Where gaps are identified, the infrastructure schedule will help identify where developer contributions have the potential to help provide the necessary infrastructure required to make the planned growth sustainable.

Corporate Priorities

1.26 The Council's Borough Strategy sets out a refreshed ambition and direction to address the challenges that face residents of the Borough. The six key strategic priorities are:

1. Ensure children and young people have a positive start in life.
2. Promote good health independence and care across our communities.
3. Create safe and strong communities and neighbourhoods for all.
4. Support a strong, thriving, inclusive and well-connected local economy.
5. Create green and vibrant places that reflect our heritage and culture.
6. Be a responsible council.

1.27 In order to deliver the Council's vision to make St Helens a better Borough, with residents at the heart of everything the Council do, the Council will continue to engage with residents, neighbourhoods, local businesses and partners as success in delivering this vision will ultimately be judged by those who live, work, study and visit in the Borough



ENSURE CHILDREN
AND YOUNG PEOPLE
HAVE A POSITIVE
START IN LIFE



PROMOTE GOOD
HEALTH, INDEPENDENCE
AND CARE ACROSS
OUR COMMUNITIES



CREATE SAFE
AND STRONG
COMMUNITIES AND
NEIGHBOURHOODS
FOR ALL



SUPPORT A STRONG,
THRIVING, INCLUSIVE
AND WELL-CONNECTED
LOCAL ECONOMY



CREATE GREEN
AND VIBRANT PLACES
THAT REFLECT OUR
HERITAGE AND CULTURE



BE A
RESPONSIBLE
COUNCIL

2. WHAT DEVELOPER CONTRIBUTIONS WILL BE SOUGHT IN ST HELENS

Developer Contributions Sought

2.1 This section provides specific guidance and details of the main types of developer contributions that will be sought in the Borough of St Helens to support new development, with cross-references to relevant national and local policy and other SPDs provided as appropriate.

obligations will typically address, but are not limited to, issues such as:

- Affordable housing
- Public Open Space
- Transport
- Social infrastructure, including education and healthcare.

2.2 For ease of reference, these potential requirements are set out under the following headings:

- Affordable Housing
- Biodiversity
- Recreation Mitigation Strategy
- Bold Forest Park
- Education
- Flood Risk, Water Management & Sustainable Drainage
- Healthcare Provision
- Public Open Space and Outdoor Sports Provision
- Public Realm
- Social and Community
- Transport

2.3 Table 2.1, further summaries the potential requirements and the thresholds that will apply and where to find specific or additional details other than this SPD.

2.4 Developer contributions will be sought where a development would otherwise be unacceptable, and the objections cannot be overcome by conditions. They will be negotiated on a site-by-site basis. Planning

Table 2.1: Threshold summaries for each type of infrastructure

Type of Infrastructure	Thresholds (if appropriate)	Source of information
Affordable Housing	<ul style="list-style-type: none"> New open market housing developments of 10 or more units (or sites of 0.5ha if the number is not known). Based on a Zonal Approach (see Figure 2.1). 	Affordable Housing SPD (2010) and any subsequent updates or iterations hereafter, and national legislation
Biodiversity	<ul style="list-style-type: none"> Where development will impact on protected sites, key habitats (including functionally linked land) and / or protected species. The Environment Act requires mandatory Biodiversity Net Gain of at least 10%, to be secured for 30 years. 	Future Nature Conservation SPD and national legislation
LCR Recreation Mitigation Strategy	<ul style="list-style-type: none"> To be set out in a separate SPD. 	Recreation Mitigation Strategy SPD (expected 2023/2024)
Bold Forest Park	<ul style="list-style-type: none"> Development proposals within the boundary of the Bold Forest Park. Contributions to infrastructure and tree coverage. 	Bold Forest Park Area Action Plan (2017)
Education	<ul style="list-style-type: none"> Where the proposed development would lead to a projected shortfall of primary and secondary places at schools within the local area of the said development (and not to address any existing shortfall). Only on major planning applications for residential development (i.e. 10 or more units). 	Developer Contributions SPD (2023)
Flood Risk, Water Management & Sustainable Drainage	<ul style="list-style-type: none"> Where development is at risk of flooding. Major development sites of a strategic nature and sites where development would benefit from proposed strategic flood defences. 	SuDS Strategy Sustainable drainage - St Helens Borough Council
Healthcare	<ul style="list-style-type: none"> On development of 200 or more units. Where it is demonstrated that there is insufficient capacity to meet the needs of the increase in population generated by the proposed development. The Council will consult with the ICB. 	Developer Contributions SPD (2023)
Public Open Space & Outdoor Sports Provision	<ul style="list-style-type: none"> New residential development of 40 dwellings or more. Where development results in a deficiency of open space or sports and recreation facilities in the locality. Larger residential developments may be expected to provide local recreational opportunities. 	Open Space Provision and Enhancements SPD (2023) Playing Pitch Strategy Assessment Report (2016) Playing Pitch Strategy & Action Plan (2016) and any subsequent updates or iterations hereafter
Public Realm	<ul style="list-style-type: none"> The Council will seek a financial contribution towards the provision or improvement of public realm on a case-by-case basis from relevant developments. 	Developer Contributions SPD (2023)
Social and Community	<ul style="list-style-type: none"> The Council will consider on a case-by-case basis whether there is a demonstrable need for the on-site provision of community facilities particularly on strategic sites. Any cumulative impact of growth in the area or to address a specific need (e.g. specialist housing provision) will be taken into account. 	Developer Contributions SPD (2023)
Transport	<ul style="list-style-type: none"> To be determined on a case-by-case basis. Development generating significant transport movement must be supported by a Transport Assessment or Transport Statement. Non-residential forms of development generating significant transport movement must be supported by a Travel Plan. 	Transport and Travel SPD (2023)

Affordable Housing

Background and Policy Requirements

2.5 A key priority of the Local Plan is to create and maintain sustainable communities by supporting the delivery of an appropriate mix of house types, size and tenures including affordable housing to meet the needs of the Borough. The NPPF emphasises the importance of the delivery of high-quality housing across all tenures, including affordable housing. Paragraph 64 of the NPPF states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required.

2.6 St Helens has for many years had an identified need for further provision of all affordable housing tenures. This is confirmed in the Mid Mersey Strategic Housing Market Assessment (SHMA) (January 2016) and St Helens SHMA update (January 2019). More recently, however, the NPPF has widened the definition⁴ of affordable housing to include a greater range of affordable home ownership products.

2.7 The Council produced an **Affordable Housing SPD (adopted 2010)**⁵, to provide additional policy guidance. This SPD will be updated as necessary to assist the implementation of Local Plan Policy LPC02, and any further Government updates on affordable housing.

2.8 Local Plan **Policy LPC02: Affordable Housing**⁶, requires proposals for new open market

housing developments of 10 or more units (or sites of 0.5ha if the number is not known) to contribute to the provision of affordable homes. The Local Plan identifies a need for a minimum of 117 new affordable dwellings per year and Local Plan Policy LPC02 sets out the circumstances in which affordable housing provision to help meet this need will be required and indicates the quantities that will be sought from open market housing development, based on a zonal approach due to known viability issues within the Borough (see Figure 2.1). In assessing the precise types of affordable housing to be provided on each site, the Council will consider the latest version of the SHMA, any other evidence of need, and the latest definition of affordable housing set by the Government.

2.9 Policy further requires that where affordable housing is required (or contributed towards) as part of a wider scheme, wherever possible, at least 10%⁷ of the overall housing provision resulting from the proposals should be for affordable home ownership, with the remaining provided for affordable rented accommodation.

2.10 The Council's preferred approach is to see the affordable housing provision within the application site unless the applicant can demonstrate that either there are insufficient local needs existing to justify on-site provision or there are overriding benefits by making

⁴

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

⁵

<https://www.sthelens.gov.uk/article/3775/Adopted-plans-and-policies>

⁶ See Appendix 1 for full Policy LPC02 Affordable Housing wording.

⁷ Unless funded through the Homes England Affordable Homes Programme, then a 50/50 tenure split will normally be required, under their terms and conditions.

alternative provision ‘off-site’, in which case a commuted sum in lieu of on-site provision will be required and secured in most cases via a s106 Agreement.

2.11 Off-site contributions in lieu of on-site provision will be ring-fenced for specific purposes. If the number of dwellings changes or the initial scheme becomes unviable, a new application will be required where affordable housing, amongst other issues, will be considered afresh.

Commuted Sum Calculation Method

2.12 Where a commuted sum in lieu of on-site provision is required, the following method will be used to calculate the off-site contribution required:

- The cost to a developer in providing shared ownership and social rented housing is assumed to be 25% (i.e. units would be transferred to a Registered Provider (RP) at 75% of open market value);
- The level of financial contribution required in lieu of on-site provision is 30% (assuming 30% provision) of the 25% cost, in line with the 30% affordable housing requirement;
- 7.5% (i.e. 25% of 30%) of total open market value will therefore be required;
- The open market value of each type of property will be based on the most up-to-date house price indices data (by ward)⁸; and
- These will be totalled to calculate the total open market value, of which 7.5% will be sought.

Table 2.2: Example: Assuming a development of 60 new dwellings in Rainford

Unit Type	% of Mix	No. of Units	Average Price ⁹	Open Market Value
Flat	20%	10	£122,000	£1,220,000
Terrace	15%	8	£214,000	£1,712,000
Semi-detached	40%	26	£226,000	£5,876,000
Detached	25%	16	£407,500	£6,520,000
Total	100%	60		£15,328,000
		Financial contribution (7.5% of total open market value)		£1,149,600

⁸ [Median house prices by ward: HPSSA dataset 37 - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/house-prices/median-house-prices-by-ward)

⁹ Example based on December 2022 figures.

Economic Viability

2.13 The provision of affordable housing linked to open market housing development must be realistic with regard to economic viability, but flexible to variations between sites and changes in market conditions over the Plan period. The St Helens Local Plan Economic Viability Report (2018) (EVA) demonstrates that there are geographical disparities in viability across the Borough. Therefore, Local Plan Policy LPC02 takes a zonal approach informed by the EVA. There are three separate affordable housing zones within the Borough, shown in Figure 2.1.

2.14 If a developer considers that the affordable housing requirements set out in Local Plan Policy LPC02 are not viable on a specific site, then this will need to be justified through a robustly prepared, transparent, and independent financial appraisal.

2.15 In such cases, the Council will commission an independent review of the viability study, for which the developer will bear the cost. In cases where such affordable housing provision is agreed there may be a requirement for 'overage' payments to be made. This will reflect the fact that the viability of a site will be agreed at a point in time and may need to be reviewed, at set point(s) in the future.

s106 Agreements

2.16 The Council will normally require provision of affordable housing and/or any control of occupancy to be secured by means of planning obligations pursuant to a s106 Agreement before a Decision Notice is issued. However, it is recognised that the use of s106 Agreements can prevent RPs from gaining Homes

England funding, therefore this will need to be addressed in the Affordable Housing Statement submitted alongside the planning application. If the number of dwellings changes or the initial scheme becomes unviable, a new application will be required where affordable housing, amongst other issues, will be considered afresh. Prior to the granting of planning permission, developers must also provide evidence to demonstrate that the units will remain affordable in perpetuity.¹⁰

2.17 In addition to the above, s106 Agreements may cover:

- Occupancy controls to ensure that dwellings will remain affordable to successive occupiers (in the absence of RPs involvement);
- The timing of on-site affordable housing provision within the overall scheme to ensure that affordable housing units are developed at an agreed rate in relation to the market housing;
- The location of the affordable housing provision within the site;
- Arrangements for the involvement and role of RPs or other appropriate Social Housing Agencies; and
- Details of dates for the spending of commuted sums (when applicable).

¹⁰ Unless funded through the Homes England Affordable Homes Programme, that allows eligible

tenants to purchase their social or affordable rented property on Shared Ownership terms.

Affordable Housing – Summary of Developer Contributions to be sought:

Proposals for new open market housing developments of 10 or more units (or sites of 0.5ha if the number is not known) will need to contribute to the provision of affordable homes. Based on a Zonal Approach as follows:

Zone 1

- No affordable housing requirement due to viability constraints

Zone 2

- 30% requirement on greenfield sites
- 0% requirement on brownfield sites

Zone 3

- 30% requirement on greenfield sites
- 10% requirement on brownfield sites

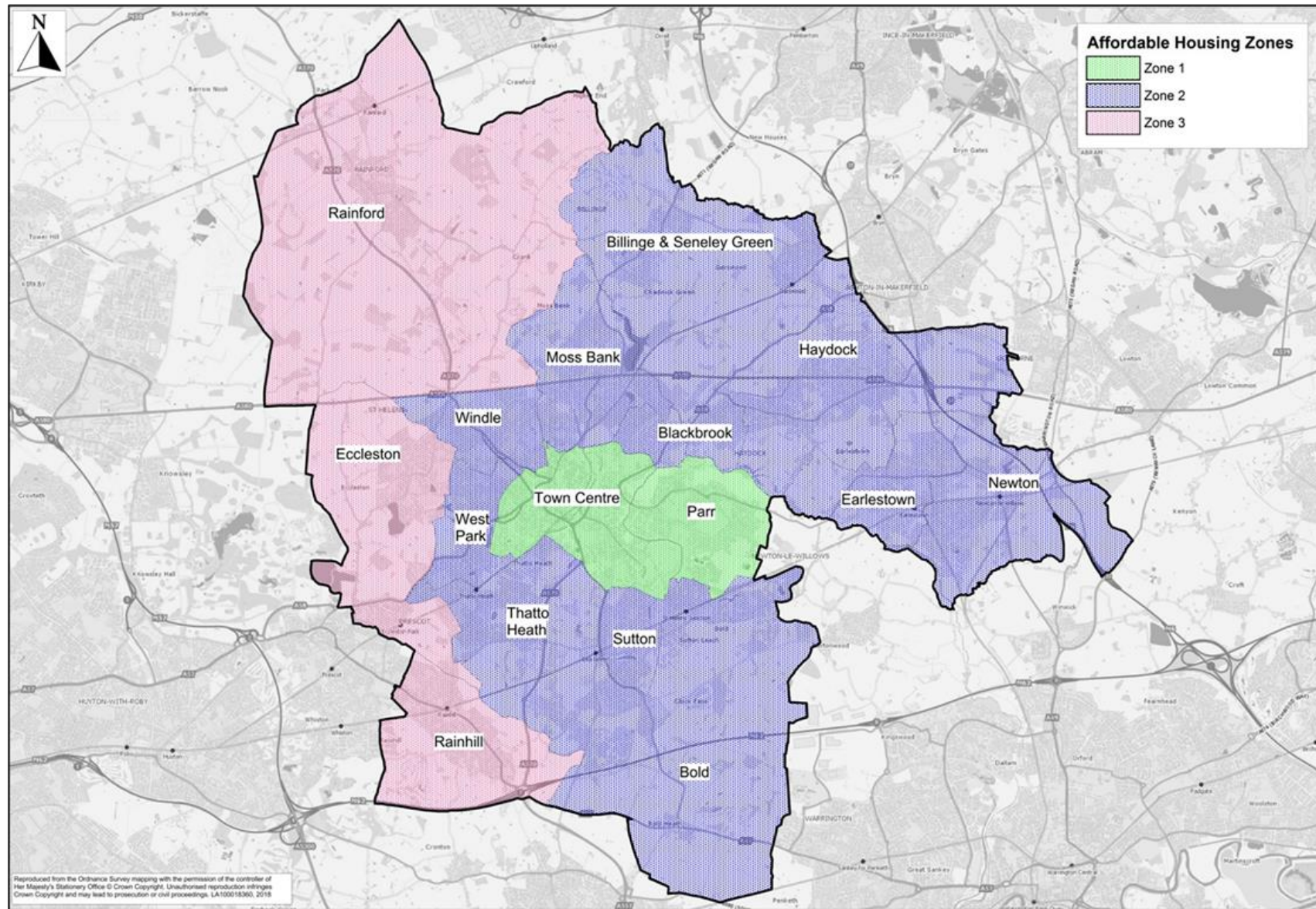
This will be secured by way of a s106 Agreement.

Relevant Local Plan Policy:

Policy LPC02: Affordable Housing
Affordable Housing SPD (2010) and any future updates or iterations of this document.



Figure 2.1: Affordable Housing Zones



Biodiversity

Background and Policy Requirements

2.18 The NPPF requires planning policies and decisions to contribute to and enhance the natural and local environment by minimising impacts on biodiversity, maintaining and enhancing networks of habitats and green infrastructure; restoring and improving priority habitats and species, ecological networks and providing net gains.

2.19 A key priority of the Council is to safeguard the quality of the environment by protecting and enhancing local character and distinctiveness, and the multi-functional network of green spaces and ecology throughout the Borough by promoting positive use and management.

2.20 Local Plan **Policy LPC06: Biodiversity and Geological Conservation**, sets out how the hierarchy of sites, habitats and species will be protected and managed with the objective of ensuring that there will be no net loss of the ecological resource. The policy also guides how appropriate mitigation, replacement or other compensation measures should be identified.

2.21 In addition, Local Plan **Policy LPC08: Ecological Network**, together with other Local Plan policies and the future St Helens **Nature Conservation SPD** seek to enhance the Borough's natural assets by encouraging the restoration or enlargement of natural habitats and other landscape features, and the creation of new habitats where appropriate. Once adopted applicants should refer to the Nature

Conservation SPD for further guidance.

2.22 Biodiversity Net Gain (BNG) is a concept introduced by the Environment Act and will become a statutory obligation from the 12 February 2024 (for major applications and April 2024 for small sites i.e. (0-9 units) unless exempt. It is a way to contribute to the recovery of nature while developing land. It will make sure the habitat for wildlife is in a better state than it was before development. National and local policy expects the BNG to be achieved on site. The Council requires that this is achieved through the use of the Statutory DEFRA Biodiversity Metrics. This should establish the baseline measurement for biodiversity for a site and the effect of both on and offsite habitat and landscape proposals (measured in habitat units), the impact of the development in terms of loss and the impact of the mitigation measures should be fully considered and be in accordance with the Biodiversity Gain Regulations 2024 and its associated Statutory Instruments. Further information will be set out in the future **Nature Conservation SPD**, and will include further information on local requirements relating to Biodiversity Net Gain.

2.23 Where development proposals would affect a nationally or locally designated nature conservation site, Priority Habitat(s), legally protected species or Priority Species applicants submit an Ecological Appraisal which includes details of any necessary avoidance, mitigation and/or

compensation proposals, and of any proposed management measures.

2.24 The Council will seek ecological mitigation and enhancement on site, and where that is not possible, the Council will seek contributions for off-site in order to ensure that development in St Helens positively contributes to the conservation and enhancement of biodiversity.

2.25 Off-site mitigation will only be considered if planning applications clearly demonstrate that the sequential approach to mitigation has been adhered to with the principle of avoidance first being applied. Then if evidenced that this is not possible, local mitigation should be looked at and then if that cannot be delivered other solutions and areas for compensatory mitigation should be proposed.

2.26 Planning obligations will be in accordance with the requirements Environment Act 2021 and Biodiversity Gain Regulations 2024 and its associated Statutory Instruments. Where this involves off-site provision or significant on-site provision of Biodiversity Net Gain this will be secured through Section 106 agreement and appropriate conditions. Developers will need to provide information under the Biodiversity Net Gain condition requiring a Biodiversity Net Gain Plan, as well as a Habitat Monitoring and Management Plan.

2.27 Over time, the Council is looking to support the development of

off-site biodiversity net gain opportunities with a range of partner organisations. As these opportunities become available, the Council will help to promote any availability of off-site habitat units, particularly through the pre-application process. Developers will also need to explore off site opportunities for biodiversity net gain and only resort to the use of Natural England Statutory credits if they can evidence that this is a position of last resort.

Biodiversity – Summary of Developer Contributions to be sought:

In accordance with Local Plan Policy LPC06, all new development must protect and enhance biodiversity, demonstrating a net gain in biodiversity.

Where necessary to avoid harm, appropriate mitigation, replacement or other compensatory provision will be required.

All development will therefore be expected to incorporate on-site mitigation and enhancement measures as appropriate. These will normally be secured by way of a planning condition and in the case of arrangements for long-term management and maintenance, potentially through a s106 agreement.

Where it is not possible to achieve adequate on-site mitigation or compensation, off-site in line with the mitigation hierarchy approach. The measures considered must also be in accordance with the requirements of the Environment Act 2021, The Biodiversity Gain Regulations 2024, and its associated Statutory Instruments and Guidance, It should also seek to take opportunities to use local off-site habitat unit provision as this becomes available.

Relevant Local Plan Policy:

Policy LPC06: Biodiversity and Geological Conservation

Policy LPC08: Ecological Network
Nature Conservation SPD (2023)



Recreation Mitigation Strategy (RMS)

Recreation Mitigation Strategy (RMS)

2.28 The coastal sites in the Liverpool City Region Combined Authority (LCR), which are internationally important for nature conservation, are under increasing pressure from recreational disturbance. The St Helens Borough Local Plan Habitats Regulations Assessment (HRA) identified the potential for the Mersey Estuary to be vulnerable to increases in recreational pressure from development proposals in the Local Plan in-combination with those of other projects and plans, such as the Local Plan documents for Halton and Liverpool.

2.29 Working under the Duty to Cooperate, the LCR authorities have agreed to prepare a joint Recreation Mitigation Strategy (RMS). It is proposed that the RMS is a costed per unit tariff-based strategy, which identifies a detailed programme of LCR wide mitigation measures, aimed at delivering the necessary mitigation to avoid adverse effects on the integrity of the European Sites from in-combination effects of new development.

2.30 Local Plan **Policy LPC06: Biodiversity and Geological Conservation** commits the Council to continuing to work with the LCR authorities to identify a strategic and consistent approach to the issue of recreational pressure.

2.31 It is proposed that a joint Recreation Mitigation SPD be prepared to implement the RMS and identify prioritised sites. It is proposed that the s106 contributions would be spent both at the European Sites and at existing greenspaces away from the European Sites. Such measures could potentially deflect recreation users from the coastal European Sites, by providing alternative recreational opportunities away from the coast. Drafting of the RMS and SPD are ongoing, and the once adopted the SPD will set out the developer contributions requirements.

Recreation Mitigation Strategy – Summary of Developer Contributions to be sought:

Developer contributions will be set out in accordance with the adopted Recreation Mitigation Strategy SPD, which will be based on a consistent and fair approach across the LCR.

Relevant Local Plan Policy:
Policy LPC06: Biodiversity and Geological Conservation
Recreation Mitigation Strategy SPD (2023/24)

Bold Forest Park

Background and Policy Requirements

2.32 The development of Bold Forest Park, in the south of St Helens Borough, is a fitting legacy to the former mining industry which helped shape the area and St Helens as a town. Following over 20 years of landscape restoration to transform ugly slagheaps into community woodlands, the Council and its partners are seeking to develop an extensive Forest Park on and around the woodland sites around the Bold area as the final phase of the long-term restoration process. The Forest Park will provide a platform for economic growth and rural entrepreneurship, principally in the visitor economy, whilst providing leisure opportunities for the community and the wider region, as a place for outdoor recreation and activity.

2.33 **Policy BFP SN2: Planning Obligations** of the adopted Bold Forest Park Area Action Plan (2017) (AAP), requires development within the defined boundary of the Bold Forest Park to contribute to the infrastructure of it. Where appropriate, contributions collected will be ring fenced to be spent within the Forest Park. Infrastructure can include the provision, maintenance or improvements to, footpaths, bridleways, recreation hubs, cycleways and car parks, improvements to signage and interpretative material and mitigation and enhancement for landscape conservation and biodiversity.

2.34 Almost all development has some impact on the need for infrastructure, services and amenities or benefits from it. It is, therefore, only reasonable that such development pays a share of the cost. It is also right

that those who benefit financially when planning permission is granted should share some of that gain with the community which granted it, to help sustain the infrastructure that is needed to make development acceptable and sustainable. Developer contributions will be sought to mitigate the site-specific impacts of new development within or immediately adjacent to the Forest Park, subject to the financial viability of the proposed development.

2.35 In addition, **Policy BFP ENV1: Enhancing Landscape Character** of the AAP, endeavours to enhance landscape character by increasing levels of tree cover up to 30% of the Forest Park. To meet this target, development proposals within the Forest Park will be expected to contribute to increasing tree cover through on-site landscaping or where appropriate, by contributions towards off-site provision within the Forest Park area.

2.36 The location and scale of the enhancements to landscape character (i.e. increasing tree cover) should not prejudice the development of land that may be needed for housing or other forms of development. Additional on-site landscaping or a contribution in lieu of on-site provision should ensure any new development integrates into the Forest Park setting, for example, by adopting garden village principles.

2.37 In addition, the NPPF, paragraph 196, states that Local Planning Authorities should set out a positive strategy for conservation and enjoyment of the historic environment and should take into account the wider social, cultural, economic and environmental benefits that

conservation of the historic environment can bring. As such **Policy BFP ENV3: Heritage** of the AAP, sets out ways in which the heritage of the Forest Park will be protected including the creation of the Bold Forest Park Heritage Trail. Therefore, development proposals will also be required to provide contributions towards the heritage trail, for waymarking, interpretation and displays along the route.

Required Developer Contributions

2.38 When a planning application is submitted to the Council within the defined boundary of the Forest Park, the Case Officer will consult with the Council's Open Space Team who will advise on specific schemes the proposed development should contribute to in order to provide improvements to the Forest Park. Off-site financial contributions will be secured through a s106 agreement.

Bold Forest Park – Summary of Developer Contributions to be sought:

Proposals for new development within the boundary of the Bold Forest Park will be expected to contribute towards the Forest Park's infrastructure, including footpaths, bridleways, recreation hubs, cycleways and car parks, heritage trail, improvements to signage and interpretative material and mitigation and enhancement for landscape conservation and biodiversity.

In addition, proposals will be expected to contribute to increasing tree cover through on-site landscaping or where appropriate, by contributions towards off-site provision within the Forest Park area.

Relevant Bold Forest Park Area Action Plan Policy:

Policy BFP SN2: Planning Obligations
Policy BFP ENV1: Enhancing Landscape Character



Education

Background and Policy Requirements

2.39 The Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities whilst also driving forward an ambitious housing agenda to increase housing delivery, home ownership and the creation of new communities. The timely provision of infrastructure with new housing is essential in meeting these objectives to secure high-quality school places where and when they are needed. The use of planning obligations where there is a demonstrable link between the development and its education requirements can provide certainty, subject to negotiation between developers and the local authority, over the amount and timing of the funding needed to deliver sufficient school places.

2.40 Education provision includes nursery, pre-school, primary (ages 4-11), secondary (ages 11-16), sixth form (post 16) and special needs education. Where new housing development creates a demand for school places in excess of those available, the Council will seek an education contribution from developers that is proportionate to the impact in order to mitigate against the effect of any new development on local infrastructure. It is critical that developers contribute towards school places as, without this, the Council will be unable to ensure school places are accessible, and this is likely to impact on the children and families who come to settle in new developments. This

would, therefore, raise concerns about the viability and sustainability of a new development.

Required Developer Contributions

2.41 On the submission of a major planning application for residential development (affordable and / or market), the Council's School Place Planning Team will be consulted and assess if the proposed development would lead to a shortfall or additional need for school places in that locality. Where it is demonstrated that existing school places are not sufficient to accommodate the potential additional pupils arising from the new development (this will exclude development for specialist older person housing schemes, as these property types do not accommodate children), the Council will seek to secure developer contributions towards additional school places. However, 'minor' applications may be assessed where their relationship to other housing developments may necessitate an area-wide look at the cumulative impacts.

2.42 Whilst the Council will normally seek to provide places in existing schools (to maintain stability in the existing school system; to provide places in a timely fashion and to achieve best value for money), it may not always be feasible to expand one or more existing schools. In this instance a new school may be required to address the shortfall of places.¹¹ Therefore, for the very largest development site(s) it is anticipated that any contribution(s) may also include a contribution

¹¹ New schools will be built in line with guidance contained in Building Bulletin 103 or any subsequent relevant updates.

(potentially in the form of land) towards the provision of a new school. It will be important to identify the proposed school site at the masterplanning stage and ensure that it is of a size sufficient to meet the needs arising from the development and allow for expansion of future needs. The size of any land provided for a new school would need to comply with Department for Education (DfE) guidance¹². Triggers on the transfer of land and payment of contributions will be secured in the s106 agreement.

Forecasting pupil yields

2.43 Forecasting a school's capacity to accommodate children from housing development is often complicated by the fact that a development will not start generating pupils for many years, long after the forecasting of local school capacity, which is based on a five-year pupil projection plan for primary education and a seven-year pupil projection plan for secondary education. Due to the inherent uncertainty in predicting future school capacity at the initial planning application stage it may be appropriate for the larger strategic sites (or those with an anticipated build out rate in excess of five-years) to consider pupil projections beyond the five-year and seven-year plan period in line with the build out projections. These longer-term projections use data that is based upon certain assumptions, such as estimated birth rates. The data used will be refined as more accurate information becomes available. This will allow for greater certainty that the level of contribution is commensurate with the impact of the relevant development and prevents a developer

contribution from being underestimated.

2.44 An education contribution will only be sought where there is a projected shortfall of primary and secondary places at schools within the local area of a development (and not to address any existing shortfall). If a shortfall is identified, the contribution sought will be for the full potential pupil yield of the development. Academy and Free Schools are included in assessments in the same way as any other maintained or aided school.

2.45 As part of their statutory obligation, the Council's School Place Planning Team monitor current housing developments in the Borough on a rolling three-year basis and count units yet to be completed to calculate any extra pupil places that might be needed as a result of new housing.

2.46 The DfE now provide a Special School Net Capacity Assessment tool for Local Authorities to use, as historically there was no standard capacity assessment applicable to special schools and other types of non-mainstream education, as their ability to accommodate pupil depends on the needs of each child. It is recognised that an increase in housing will inevitably lead to an increase in special educational needs/special educational needs and disabilities (SEN/SEND)¹³. As such, it is also considered reasonable and fair to seek developer contributions for the expansions to a sixth form and SEN/SEND provision. This will be commensurate with the need arising from the proposed development.

¹² Guidance on space standards for primary schools can be found here: <https://www.gov.uk/government/publications/primary-and-secondary-school-design/primary-and-secondary-school-design>

¹³ Special schools require more space per pupil than mainstream schools, and this will be reflected in the assumed costs of provision, potentially being four times the cost of mainstream places.

Again, the Council's School Place Planning Team will determine the need for SEN/SEND provision based on pupil yield data, and in line with DfE guidance, and will be requested where there is an identified need for additional SEN/SEND provision.

Surplus Threshold

2.47 In line with guidance from DfE, local authorities are expected to retain a degree of unfilled places in order to be able to operate their admissions systems effectively. Therefore, it should be noted that a healthy state of surplus school places in the Borough is considered to be between 2% and 7%. 7% is the minimum surplus capacity to allow for fluctuations in demand, parental choice and in-year transfer, and as such surplus school places are not counted as available when calculating developer contributions.

Calculating Developer Contributions towards School Places

2.48 As part of its commitment to education, the Government has updated the NPPG section on viability to address education needs, in association with the DfE. The DfE have also published a number of documents, including 'Securing developer contributions for education' (updated in August 2023) and 'Education provision in garden communities', in order to provide further advice to local authorities on how to plan for new school places that are required due to housing growth, including estimating pupil yield from proposed housing development.

2.49 To reduce inconsistencies and improve the baseline data available to local authorities the DfE has worked

with the Office for National Statistics (ONS) to develop a recommended methodology for estimating pupil yield from housing development, to assist local authorities demonstrating the need for education facilities when considering planning applications and to justify developer contributions towards education.

2.50 The Pupil Yield Dashboard provides pupil yield factors for each local authority in England. They can be displayed by education type (mainstream or special), phase (early years, primary, secondary and post-16) and filtered according to housing type (flats/houses), tenure (market/affordable) and size (bedroom numbers) and are provided for local authorities with a responsibility for providing sufficient school places under the Education Act 1996.

2.51 To calculate the level of required developer contributions towards new school provision, the Council's School Place Planning team will use the DfE Pupil Yield Dashboard to calculate the expected pupil yield from a proposed development. Should local data then show that the pupil yield from the proposed development would lead to a shortfall or additional need for school places in that locality, the amount of developer contributions required will be calculated using the current costs of providing for primary school places and secondary school places, based on the Basic Need Capital Allocations grant¹⁴. These costs predictably change on a regular basis so applicants will need to consult with the Council's School Place Planning team for the latest figures.

¹⁴ Based on DfE's published guidance in the Basic Need allocations for 2011 to 2025;

<https://www.gov.uk/government/publications/basic-need-allocations>

2.52 In circumstances where it is not possible to provide school places within a reasonable walking distance (2 miles for a primary school place and 3 miles for a secondary school place), an additional contribution towards the cost of providing transport for children to school may be required and secured through a s106 agreement. The contribution will reflect the cost of providing the transport for a defined period of time and be in line with the Information and application form for Assisted Travel to School – 2023/2024 Policy¹⁵.

2.53 Education contribution funding will secure the capital costs of accommodating school pupils. This could fund the capital build, access and associated site curtilage costs for an expansion or new build. In line with DfE guidance, developer contributions could also be used to provide temporary solutions to meet education needs where it may not be possible to open a permanent new school at the point of need. When a permanent new school is delivered (or the relevant financial contribution is received), no further contributions to temporary provision should be required.

2.54 The Council will continue to use the DfE's pupil yield data; however, the Council reserves the right to use different pupil yields should a more bespoke robust local evidence base come forward in the future.

Education – Summary of Developer Contributions to be sought:

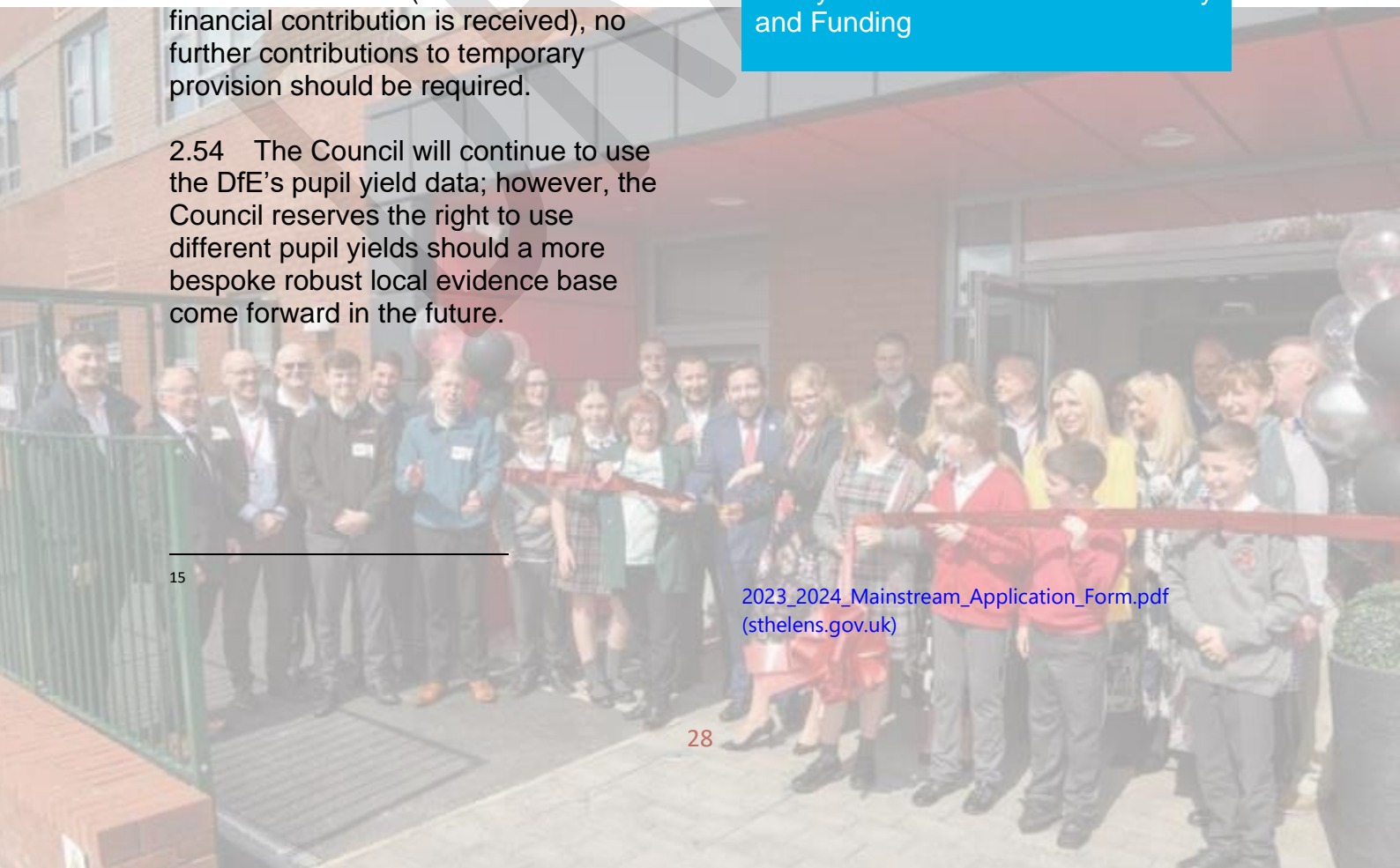
The Council's School Place Planning Team will be consulted on all major planning applications for residential development.

The team will then assess if the proposed development will lead to a shortfall or additional need for school places, including early years, sixth form and SEN/SEND educational facilities.

Where a need is demonstrated, a financial contribution will be calculated which will go towards the provision of educational facilities and associated infrastructure, including the provision of land (as appropriate) and extensions to existing facilities. These will be secured through a s106 Agreement.

Relevant Local Plan Policy:
Policy LPA07: Infrastructure Delivery and Funding

15



Flood Risk, Water Management & Sustainable Drainage

Background and Policy Requirements

2.55 There are extensive areas within the Borough that have been identified as being at risk of flooding. The vast majority of the Borough lies within the catchment of the River Mersey and the River Sankey sub catchment. The remainder is located within the Alt Catchment.

2.56 Management of 'local' flood risk and land drainage is a function of St Helens Borough Council in its role as the Lead Local Flood Authority (LLFA). When consulted on planning applications, the LLFA Officer will provide an assessment of the proposed developments potential impacts on the drainage network with regard to surface water discharge rates and volume, design standards and the continued safe operation and maintenance of the surface water drainage network to ensure that flood risk is appropriately managed.

2.57 Development alongside or close to water courses can make a significant contribution to slowing the flow by temporarily attenuating flood water. For this reason, proposals for major development that would abut, straddle or run alongside any watercourse will (unless this is not feasible or viable) be expected to include suitable measures in accordance with the Sankey Catchment Action Plan. The LLFA also has local land drainage by-laws in which part of it provides easements

alongside ordinary designated watercourses to control/manage development alongside the banks.

2.58 Surface water flooding is also a key flood risk consideration in St Helens. Surface water flooding includes surface water runoff (pluvial flooding) and sewer flooding. Whilst pluvial flooding from heavy rain fall can occur anywhere in the borough, there are certain locations in St Helens where the probability and consequences of these mechanisms are more prominent.

2.59 New development must not increase flood risk and should take the opportunity to reduce flood risk to the existing site and surrounding area. Site specific impacts that would result from new development will be required to be directly addressed through the development itself. In accordance with Local Plan **Policy LPC12: Flood Risk and Water Management**, flood risk will be managed using the sequential risk-based approach (and if necessary, the Exception Test) as set out in the NPPF to reduce the risk of flooding to people and property.

2.60 Currently, the NPPG requires sustainable drainage systems (SuDS) to be provided for all proposed major development (of more than 10 dwellings or one hectare of development) and states that priority must be given to the use of SuDS in areas at risk of flooding¹⁶. It is

¹⁶ At the time of producing this SPD, the Department of Environment, Food and Rural Affairs (Defra) announced plans to implement the need for SuDS to become a requirement for new developments and the introduction of the Council

becoming a Sustainable Approval Body (SAB), by 2024 under Schedule 3 of the Flood and Water Management Act 2010. The consultation period is currently underway on the process of a SAB, along

desirable for all developments, regardless of scale and constraints, to incorporate sustainable drainage, intended to replicate, as closely as possible, and the natural 'greenfield' drainage from a site.

2.61 Therefore, landowners and developers will need to ensure that appropriate flood resilient and resistant measures are incorporated, including SuDS to manage run-off and support improvements in water quality.

2.62 As part of its commitment to climate change, the Government are currently consulting on potential changes to Schedule 3 to the Flood and Water Management Act 2010, which would ensure that SuDS will be designed to reduce the impact of rainfall on new developments by using features such as soakaways, grassed areas, permeable surfaces and wetlands. Thereby reducing the overall amount of water that ends up in the sewers and storm overflow discharges. Implementation of this new approach is expected during 2024.

2.63 The Council will try to pursue the use of 'soft' drainage techniques¹⁷ where possible. However, there will be situations where the use of 'hard' drainage techniques¹⁸, will be required, and a comprehensive drainage strategy might use a combination of such measures, making use of both natural processes and engineering solutions to bring wider benefits to the local community in terms of habitat creation and provision of recreational opportunities.

with amendments to existing guidance, funding opportunities and existing rights for connections. Any changes in legislation will therefore be picked up in a separate SuDS Guidance document.

¹⁷ 'soft' drainage techniques include attenuation ponds, rills and swales that have been carved into

2.64 It is expected that landowners/ developers will meet the costs of the above measures including direct off-site flood risks and any indirect residual flood risks arising from their development.

2.65 Where the development requires off-site management of surface water and off-site works to manage any potential increase in the risk of flooding from sources arising from the development proposed, planning obligations will normally be sought.

2.66 On-site and off-site infrastructure which is required to alleviate the risk of flooding and reduce impacts on drainage infrastructure will normally form part of the details submitted and agreed through the planning application process, via a SuDS Management Plan. However, the on-going future management and maintenance of such infrastructure may need to be secured through a s106 Agreement or potentially commuted sums, unless a management company has been appointed by the developer.

2.67 In terms of the maintenance of on and off-site flood risk management and drainage infrastructure, this will need to be maintained to ensure it continues to be effective. Further information regarding the SuDS Management Plan and maintenance requirements can be found in the Council's Sustainable Drainage

the landscape to collect volumes of water in a storm event, that lets it soak away naturally.

¹⁸ 'hard' drainage techniques include such things as permeable paving systems, dams etc.

Systems (SuDS) 2020, Design and
Technical Guidance at

<https://www.sthelens.gov.uk/article/7555/Sustainable-drainage>.

Flood Risk – Summary of Developer Contributions to be sought:

The Council's LLFA Officer will be consulted on all major planning applications.

s106 Agreements may be sought for the effective maintenance of both on and off-site flood risk management and drainage infrastructure.

Relevant Local Plan Policy:

Policy LPA07: Infrastructure Delivery and Funding

Policy LPC12: Flood Risk and Water Management

Sustainable Drainage System (SuDS)

2020 Design and Technical Guidance

Sankey Catchment Action Plan



Healthcare Provision

Background and Policy Requirements

2.68 The NPPF (paragraph 97) requires that strategic policies should make provision for community facilities such as health facilities and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

2.69 The Cheshire and Merseyside Health and Care Partnership was designated an Integrated Care Systems (ICS) on 1 April 2021, and from April 2022 the ICS took on the statutory duties of the nine CCGs in the North West. Integrated Care Boards (ICBs) are responsible for commissioning planned hospital care, rehabilitative care, urgent and emergency care, most community health services, and mental health and learning disability services. Currently, the ICBs do not manage local NHS hospitals, however they commission many of the services they offer.

2.70 The Local Plan's vision states that by 2037, St Helens Borough will provide through the balanced regeneration and sustainable growth of its built-up areas, a range of attractive, healthy, safe, inclusive, and accessible places in which to live, work, visit and invest. Priority 2 of the Council's Borough Strategy aims to promote opportunities for healthier lifestyles through working with our health and wellbeing partners and providing not only leisure and recreation facilities but also to ensure that local health and social care facilities are provided to meet the needs of the community.

2.71 Recognising that new major residential development will introduce new populations with various health care needs into an area, the Local

Plan addresses this issue at a local level via Local Plan policies. **Policy LPA01: Spatial Strategy**, sets out to improve the quality of life, health and wellbeing of St Helens Borough's residents, workers and visitors and the quality of the natural environment will be supported by maintaining ecological, open space and recreational sites, requiring new development proposals to mitigate their contribution to climate change and to adapt to its impacts; and requiring development to support healthy lifestyles in accordance with Local Plan **Policy LPA12: Health and Wellbeing**.

2.72 Local Plan **Policy LPA02: Development Principles**, sets out to improve the economic well-being of the Borough's residents by contributing to the reduction of socio-economic inequality including health inequalities within the Borough, and by seeking to address the requirements of an ageing population, particularly in terms of housing, health and wellbeing. The policy also promotes healthy communities by improving access and opportunities for formal and informal recreation (including through the use of green infrastructure), improving cycling and walking routes, and minimising air, soil, and water pollution.

2.73 Further Local Plan Policies include **LPA07: Infrastructure Delivery and Funding**, and **Policy LPD10: Food and Drink**.

Required Developer Contributions

2.74 When a planning application is submitted to the Council, the case officer will consult with the local ICB who will assess the likely impact on existing health care services in the area and determine if the proposed

development will increase demand which would lead to an insufficient capacity to meet the needs of the new population generated by the development.

2.75 As a rule, the Council will consult with the ICB on major housing planning applications and applications with particular health/ care implications, such as care homes and extra care facilities. Where a direct link to increased demand on local health services can be demonstrated due to the proposed development, the Council will seek to secure developer contributions towards new or enhanced health and social care facilities in consultation and following advice from the ICB on the necessary mitigation measures that will be required to meet the needs of the new community.

2.76 Planning obligations relating to health provision are usually sought in one of two ways. Firstly, to mitigate the impact of development on the existing level of health provision in the area local to the site through extension, refurbishment and/or reconfiguration of existing facilities. Secondly where there is the need to secure a new health facility as part of a large-scale development of a strategic nature, or where a number of developments coming forward in an area collectively require the delivery of a new facility.

Enhancing Existing Health Provision

2.77 Depending on the scale of development and the nature of local health facilities serving the area this contribution may be made towards either the provision of new facilities or the extension of existing facilities. Contributions will relate only to the capital cost of health provision. The Council, working with the ICB, will identify a specific health project(s) for which the contribution will be used.

Larger and Strategic Development Requirements

2.78 An assessment will first be made as to whether existing facilities in the surrounding area can accommodate the increase in patients arising from the development. Where a development proposal is of such magnitude that it would result in an increase in population which cannot be accommodated by existing health provision developer contributions will be sought. This may include works such as refurbishment, reconfiguration or an extension to existing health facilities, or in some instances may justify the delivery of a new health facility. The Council will seek to secure the land at zero cost and then contributions towards the delivery of a health centre.

2.79 The mechanism for delivering a new health centre will need to be agreed with the Council and its NHS

Healthcare Provision – Summary of Developer Contributions to be sought:

The St Helens ICB will be consulted on proposals for major housing planning applications.

The ICB will then assess the likely impact on health services in the area and calculate the necessary mitigation measures that will be required to meet the needs of the community.

The financial contributions will be secured through a s106 Agreement.

Relevant Local Plan Policy:
Policy LPA07: Infrastructure Delivery and Funding

Partners, taking into account development viability.

2.80 Furthermore, it is understood that the Cheshire and Merseyside NHS are currently developing new guidance to provide a consistent approach in terms of calculating and securing developer contributions. Once this has been produced and adopted across the board, the way in which the Council collect and calculate developer contributions in regard to healthcare provision will likely change.

DRAFT

Figure 2.2: Example of Health Statistics for St Helens



Public Open Space and Outdoor Sports Provision

Background and Policy Requirements

2.81 Publicly accessible open space, play and sports facilities all have a vital role to play in helping to promote health and wellbeing in St Helens. The Council's aim is to protect existing facilities and to support development of new facilities by ensuring all major residential development contributes towards new or improved open space and facilities.

2.82 The NPPF recognises that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and wellbeing of communities. In addition, the provision of sufficient open space, of appropriate quality and accessibility, plays an important role in the sustainability of communities.

2.83 The Local Plan sets out a series of policies that establish how the provision, maintenance, enhancement and management of open space, and outdoor sport facilities will be required in accordance with policy requirements, and how development can be made acceptable in planning terms. The relevant policies of the Local Plan are:

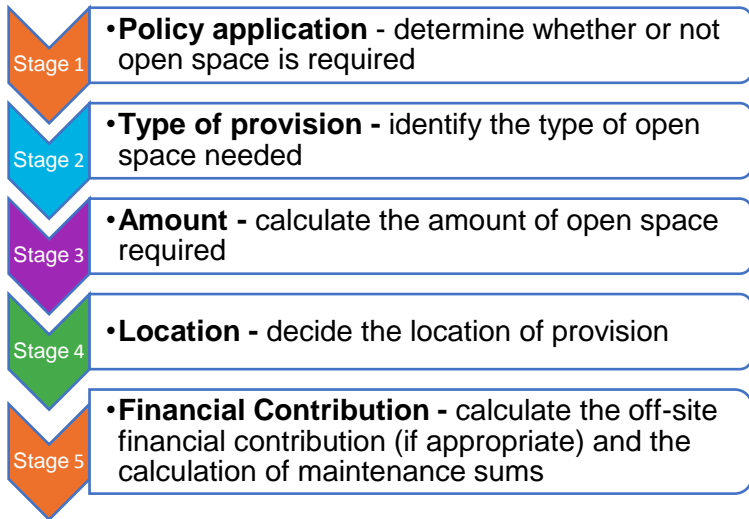
- Policy LPC05: Open Space
- Policy LPD03: Open Space and Residential Development

2.84 In addition, the **Bold Forest Park Area Action Plan Policy BFP SN2: Planning Obligations**, requires development to contribute to the infrastructure of the Forest Park, the provision of, maintenance or improvements to, footpaths, bridleways, cycleways and car parks,

improvements to signage and interpretative material and mitigation and enhancement for landscape conservation and biodiversity. Where appropriate, instead of on-site provision such as public open space, a contribution to the Forest Park would be accepted instead.

2.85 The Council's **Open Space Provision and Enhancement SPD (2023)**, provides additional policy guidance and sets out the Council's approach to negotiating and securing open space provision and/or enhancement for new housing developments, to ensure sufficient recreation and amenity open space and facilities cater for the anticipated increase in demand arising from the new development.

2.86 The **Open Space Provision and Enhancement SPD (2023)** provides a sound basis to ensure that relevant policy requests are undertaken in a transparent, fair and consistent manner. The SPD clearly sets out reasons why the open space provision and/or enhancements are needed and the thresholds in which contributions relating to open space will be sought, including the range of open space contributions that could be sought for new developments, along with how the specific contributions will be calculated.



2.87 Based on a five-stage approach (set out above) the SPD establishes the nature and extent of open space the Council will normally require as a result of new residential developments.

2.88 In addition, the SPD clearly sets out how the Council expects open space contributions to be delivered, managed and monitored.

Required Contributions

2.89 Developer contributions relating to open space will be sought for residential developments of 40 dwellings or more, in line with Local Plan Policy LPD03.

2.90 To determine the most appropriate form and amount of open space provision required, the Council will consider the anticipated new population generated by each development proposal alongside the latest evidence concerning the quantity, accessibility, and quality of existing open space in proximity to the proposed development. Detailed information and advice on these potential requirements are set out in the St Helens **Open Space Provision and Enhancement SPD (2023)**.

2.91 The Council will seek to secure the required amount of open space is

provided on the development site in the first instance, unless it has been demonstrated that developer contributions towards the provision, expansion, or enhancement of off-site open space within the locality would be more suitable (please refer to the **Open Space Provision and Enhancement SPD (2023)** for further details).

2.92 In some circumstances, it may be acceptable for sites in areas close to sufficient existing open space to make an appropriate compensating contribution to the extension or enhancement of open space in the vicinity, whether by provision of land, direct funding of equipment or commuted payments.

2.93 S106 agreements will be used to secure the type of open space necessary to make the development acceptable in planning terms including provision of children's play areas and commuted payments.



Outdoor Sports Facilities

2.94 Likewise, where identified shortfalls in outdoor sports¹⁹ and recreation provision (golf courses and recreational water bodies) would be exacerbated by the additional demand generated by housing development, a proportionate developer contribution will be sought towards the enhancement of these existing facilities or provision of new facilities in the area to address the new demand (and not to address any existing shortfall), as informed by the Playing Pitch Strategy and Action Plan (or any future update thereof).

Public Open Space and Outdoor Sports Provision – Summary of Developer Contributions to be sought:

New residential development of 40 dwellings or more to provide new open space.

New residential development resulting in a deficiency of open space or sports and recreation facilities in the locality or be in a location where a deficiency already exists, will be expected to include new, expanded or enhanced open space provision.

Larger residential developments may be expected to provide certain types of open space (such as play areas for children and young people and amenity green space) to provide local recreational opportunities.

This will be secured by way of a s106 Agreement.

Relevant Local Plan Policy:

Policy LPC05: Open Space
Policy LPD03: Open Space and Residential Development

Other Guidance:

Open Space Provision and Enhancement SPD (2023)
Latest Playing Pitch Strategy & Action Plan

¹⁹ Although Policy LPC05 only applies to outdoor areas and facilities, in accordance with national policy, built (i.e., indoor) sports and recreation facilities are afforded equal protection. Therefore,

where development proposals would result in the loss of built sports and recreational facilities, Policy LPA07 will apply.

Public Realm

Background and Policy Requirements

2.95 One of the overarching objectives of the NPPF is to ‘*support strong, vibrant and healthy communities by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being*’. A strong emphasis is also placed on creating healthy, inclusive and safe places and providing the social, recreational and cultural facilities that communities need, which in turn will improve the health, social and cultural well-being of all the Borough’s residents.

2.96 The design and quality of the public realm is central to creating successful places, in terms of providing the space for movement, interaction and activity, as well as defining the setting and relationship between surrounding buildings. A high quality and well-designed public realm can also serve to promote sustainable transport choices, by encouraging walking and cycling, and facilitating access to public transport hubs and services.

2.97 Local Plan Policies LPD01 and LPA12 provide the basis for the Council to seek contributions towards the provision or improvement of the public realm. **Policy LPD01: Ensuring Quality Development**, requires all new developments, having regard to its scale, nature, and location to be well-designed, taking account of local distinctiveness and the need to respond positively to the Borough’s character and history. Proposals for development will be expected to enhance the public realm, and

encourage the inclusion of, or make a contribution to public art within appropriate schemes (for example where the development would be of a substantial size and / or in a prominent gateway or town centre location).

2.98 Through Local Plan **Policy LPA12: Health and Wellbeing**, the Council (working with its health and wellbeing partners) will promote public health principles, by maximising opportunities for people to lead healthy lifestyles and reduce health inequalities for residents within the Borough. In providing this, the Council will seek to ensure the provision of easy-to-maintain, safe and attractive public areas and green spaces to serve new development that minimise the opportunity for and fear of crime and anti-social behaviour and that promote social cohesion and mental wellbeing.



Required Developer Contributions

2.99 There will be instances where new development will require improvement to the surrounding public realm in terms of providing a setting for the development that ensures its positive integration within the urban form, as well as facilitating access to and movement around the development. In other instances, a development may generate a requirement for an improvement to the public realm within the vicinity of the development, where that development will generate intensified use of the public realm. The requirement for improvement to the public realm can therefore extend beyond those areas that directly adjoin a development.

2.100 Not all developments will require an improvement to the public realm to make them acceptable in planning terms, and therefore a public realm contribution will not be sought in all instances. Similarly, it is not appropriate to define a standard formula for calculating the scale of any public realm contribution that is required, as this will clearly vary on a site-specific basis depending on the scale and location of the development.

2.101 Where obligations are required in relation to public realm, these will be negotiated between the Council and applicant on a case-by-case basis having regard to site-specific circumstances. Viability will be a legitimate consideration informing these negotiations. Where a contribution towards the provision or improvement of public realm is secured, it will be important that a contribution towards its future maintenance (over a 25-year period) is also obtained in order to ensure that the infrastructure can be managed to a

high standard that ensures its longevity.

2.102 Developers are therefore encouraged to engage with the Council at the pre-application stage, in order to determine whether a public realm contribution will be required, and the appropriate scale of any contribution. Contributions will be directed towards a specific public realm project which will be named within the planning obligation agreement. Contributions may be directed towards a wide range of projects, including for example:

- Environmental enhancements;
- Footpath, footbridges, footway or cycleway improvements;
- Tree planting, landscaping and other green infrastructure;
- Provision / improvement of public space, such as public squares;
- Signage and interpretation boards;
- Street lighting;
- Public art;
- Pedestrian prioritisation; and
- Street furniture.

Public Realm – Summary of Developer Contributions to be sought:

The Council will seek a financial contribution towards the provision or improvement of public realm on a case-by-case basis from relevant developments. The appropriate scale of any contribution will be negotiated having regard to site-specific circumstances.

Where a contribution towards the provision or improvement of public realm is required, a contribution towards its maintenance over a twenty-year period will also be secured.

This will be secured by way of a s106 Agreement.

Relevant Local Plan Policy:
Policy LPD01: Ensuring Quality Development
Policy LPA12: Health and Wellbeing



Social and Community Facilities and Provision

Background and Policy Requirements

2.103 Paragraph 97, of the NPPF states that planning policies and decisions should '*plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.*

2.104 Local Plan **Policy LPA02: Development Principles**, supports new development in the Borough, specifically where it minimises the need to travel and maximises the use of sustainable transport by '*supporting the provision and retention of shared space, community facilities and other local services (such as local shops, health facilities, education provision, meeting places, sports venues, cultural buildings, public houses, and places of worship)*'.

2.105 Furthermore, **Local Plan Policy LPA07: Infrastructure Delivery and Funding**, seeks to ensure satisfactory provision of all forms of infrastructure that are required to serve the needs of the local community. Existing infrastructure will be protected where there is an identified need for it, including the improvement of existing infrastructure and the safeguarding of land for planned new or improved infrastructure, and also requiring '*new community facilities and other social infrastructure to be located where they would be accessible by a choice of sustainable modes of transport and, where possible, clustered with other such facilities*'.

2.106 The provision of high-quality infrastructure is a key element in the delivery of successful, sustainable communities, including community facilities and institutions. Working with infrastructure providers and other partner organisations, the Council will seek to ensure that sufficient infrastructure is available to support new development. This will be done by supporting the effective protection and management of existing infrastructure (including effective demand management) and, where necessary, the provision of new or improved infrastructure; particularly in areas that are expected to accommodate major development.

Social and Community Facilities – Summary of Developer Contributions to be sought:

The Council will consider, on a case-by-case basis, whether there is a demonstrable need for the on-site provision of community facilities particularly on strategic sites.

The Council will take account of any cumulative impact of growth in the area or to address a specific need (e.g. specialist housing provision).

This will be secured by way of a s106 Agreement.

Relevant Local Plan Policy:
Policy LPA02: Development Principles
Policy LPA07: Infrastructure Delivery and Funding

Transport

Background and Policy Requirements

2.107 Section 9 of the NPPF: Promoting sustainable transport, requires transport issues to be considered at an early stage so that the potential impacts of development can be addressed. The focus should be on locating development in the most sustainable places, limiting the need for travel, and offering a genuine choice of transport modes.

2.108 In addition to the NPPF, Active Travel England is now a statutory consultee on all major planning applications for new developments. Sponsored by the Department for Transport, they strive to deliver the Government's mission to make walking, wheeling, and cycling an attractive choice for everyday trips, by investing in and improving standards for active travel schemes across England and integrating active travel in the planning and development system.

2.109 Increasing levels of congestion will act as a barrier to St Helens future growth, and therefore it is important that all new development maximises its potential to encourage sustainable travel patterns. In this context, it will be appropriate that planning obligations are secured to ensure that new development encourages walking, cycling and public transport use. This could involve securing financial contributions towards a range of infrastructure such as the provision or improvement of pedestrian and cycle routes, bus stops, or cycle storage facilities.

2.110 Local Plan **Policy LPA06: Transport and Travel**, seeks the

enhancement and delivery of an integrated transport network to support sustainable development and economic growth through a range of measures including - ensuring development minimises car trips, promoting and enhancing public transport and developing sustainable travel plans, connecting safety to the highway network for pedestrians, cyclists and vehicles and providing cycle and electric vehicle charging infrastructure.

2.111 The Council provides co-ordinated advice on development proposals through its consultation response on planning applications. This may specify requirements for measures to mitigate the transport and other impacts of the development, which can be secured through legal agreements. For all proposals, applicants are encouraged to engage with the Council at the pre-application stage, and National Highways when proposals may impact the Strategic Road Network.

2.112 Detailed information and advice on these potential requirements is set out in the St Helens **Transport and Travel SPD (2023)**. The SPD provides guidance to applicants on transport implications for new developments, including highway design and adoption standards and is aligned with the LCR's Local Transport Plan 4. It takes account of various best practice, including School Street initiative, Low Traffic Neighbourhoods and Healthy Streets (amongst others) as well as emerging updates such as Manual for Streets.

Required Contributions

2.113 In line with Local Plan Policy LPA06 proposals for new development that would generate significant amounts of transport movement must be supported by a Transport Assessment or Transport Statement, the scope of which must be agreed by the Council. In addition, in order to minimise air and noise pollution and carbon emissions, non-residential forms of development that would generate a significant amount of transport movement by staff or visitors must be supported by formulated Travel Plans. Again, further details can be found in the Transport and Travel SPD (2022).

Section 278 Agreements (s278)

2.114 As the Local Highway Authority, St Helens Borough Council may also use Section 278 Agreements (s278) to secure works to the public highway where necessary to facilitate or serve a proposed development. s278 agreements are entered into between the Local Highways Authority (St Helens Borough Council) and the site developer and apply to both residential and non-residential schemes.

2.115 Such agreements set out the works to be carried out in relation to the adopted highway. Identified works will either be undertaken directly by the Council at the developer's expense or directly by the developer themselves.

2.116 Highway infrastructure works will be secured to allow the development to connect safely to and mitigate its effects on the existing transport network. This will normally relate to works to the wider highway network, remote from the site boundary, and where works are often required to be undertaken as part of a

wider transportation mitigation strategy.

2.117 s278 agreements will normally be secured through securing of a planning condition which requires agreement with the Council on:

- I. Design of the works to be carried out;
- II. Funding arrangements; and
- III. Trigger point at which the works may commence.

Transport – Summary of Developer Contributions to be sought:

Development generating significant amounts of transport movement must be supported by a Transport Assessment or Transport Statement (the scope to be agreed by the Council).

Non-residential forms of development generating a significant amount of transport movement by employees or visitors must be supported by suitably formulated Travel Plans.

This will be secured by way of a s106 Agreement.

Where necessary and appropriate the Council may also use s278 Agreements to enable or serve the proposed development.

Relevant Local Plan Policy:
Policy LPA06: Transport and Travel
Transport and Travel SPD (2023)





3. THE COUNCIL'S DEVELOPER CONTRIBUTIONS PROCEDURE

Viability

3.1 Developer contributions are an additional 'cost' to a developer alongside other costs such as land purchase, construction, interest, professional fees etc. It is important that such costs do not render development unviable as that could affect the rate of housing delivery and other forms of development, thereby having negative consequences.

3.2 The NPPF is clear on viability and paragraph 58 states that '*Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable.*'

3.3 The Council will seek to secure a fair and reasonable developer contribution without adversely affecting the ability for new developments to take place. The Council has tested the development viability of a range of site types that are most likely to come forward over the Plan period up to 2037. This viability testing has confirmed that the policy requirements set out in the Local Plan are viable. Given that the Local Plan was recently adopted (July 2022), in line with National policy, the Council's starting point is that planning applications will be assumed to be viable, and it will be for individual applicants to demonstrate that there are particular circumstances to warrant a bespoke viability assessment in support of a particular application.

3.4 Whilst the guidance in this SPD does not present additional requirements over and above those existing policy obligations tested as part of the 2018 Economic Viability Assessment (EVA), the Council recognises the need for flexibility and a pragmatic approach to securing developer contributions in some circumstances. Therefore, where an applicant is able to robustly demonstrate that the requirements of a planning obligation would cause a development to be unviable, through the submission of an independent viability assessment as part of their planning application, the Council will consider whether there is a legitimate and demonstrable need to be flexible in seeking developer contributions. Other bodies (e.g. National Highways) will be drawn into such discussions as appropriate.

3.5 In some instances, the Council may need to seek independent professional advice on viability matters, the cost of which will need to be borne by the applicant.

Hierarchy

3.6 All contributions required by or to achieve compliance with local or national policies will be assessed during the consideration of the application. Where there are instances due to viability issues, and **all** contributions sought cannot be afforded if the otherwise plan-compliant development is to go ahead (as discussed above), for certain matters, the Local Plan specifically allows flexibility in its requirements to recognise viability challenges. In these cases, contributions may be prioritised and/or waived. However, the waiving of certain contributions on viability grounds would not necessarily be considered to make the development unacceptable.

3.7 Policy LPA07 sets out a hierarchy that decision makers will make as a general rule (with i. being the highest priority), the priority / hierarchy will be as follows:

- i. contributions that are essential for public safety (for example essential highway works or flood risk mitigation) or to achieve a minimum acceptable level of design quality;
- ii. contributions that are necessary to provide affordable housing or to address a local infrastructure requirement or deficiency that would be caused or exacerbated by the development, depending on site surroundings and the level of existing infrastructure, for example education needs or green space provision in areas of deficit; and
- iii. contributions that would not fall into categories i) or ii) as set out above.

3.8 However, where contributions are considered entirely necessary to make the scheme acceptable in planning terms such that its absence the scheme would be wholly unsatisfactory, and the applicant is unwilling to agree to these, **viability will not be relevant, and applications will be refused.** These types of costs will have already been demonstrated to be viable (by the Local Plan viability assessment) to ensure that the physical development is of an appropriate standard.

Approach to negotiating Planning Obligations

3.9 Applicants will be expected to enter into pre-application discussions prior to submitting planning applications. The provision of infrastructure, affordable housing and the mechanisms to secure these will be part of the pre-application discussions. These pre-application discussions should help to identify any issues and assist in ensuring that the Council can determine applications without unnecessary delays.

3.10 Where pre-application discussions have identified that developer contributions will be required, applicants should submit draft heads of terms with their planning application. It will be essential that this be submitted as part of the application, and as part of the validation process. Please be aware that failure to submit this will result in a delay in the planning application, as the application will not be validated.

3.11 Details of the process for engaging with the LPA at pre-application stage can be found on the council's web page at <https://www.sthelens.gov.uk/article/3481/Get-advice-before-you-apply> or by contacting the Development Control department on 01744 676219. Pre-application forms and charging schedule can also be found on the above Council webpage.

3.12 We encourage developers to discuss their proposals with the local community, local councillors and the

relevant town or parish council and to engage with utility providers and stakeholders.

Cross-Boundary Developments

3.13 Where an application site lies immediately adjacent to or partially within a neighbouring local authority area, St Helens Borough Council will work closely with the relevant authority to ensure that infrastructure provided meets the needs of all authorities affected by the development.

How will contributions be secured?

3.14 Likely conditions that deal with matters relating to contributions will be discussed with applicants before a decision is made. For pre-commencement conditions, legislation now requires formal notification to applicants.²⁰

3.15 s106 agreements will normally be expected to be signed before the grant of planning permission and issue of Decision Notice. This is to ensure that impacts can properly be assessed, and the development approved can actually be delivered and done so in a satisfactory manner.

3.16 Although legally such agreements can be signed after the grant of planning permission by the use of a negatively worded condition attached to the planning permission e.g. requiring an agreement to be signed before development commences; this route is less satisfactory as it makes the delivery of the development less certain and this

²⁰ Notice under Section 100ZA of the Town and Country Planning Act 1990, provides that planning permission for the development of land may not be granted subject to a pre-commencement

condition (as defined in section 100ZA (8) of the 1990 Act) without the written agreement of the applicant to the terms of the condition.

can be critical in for example maintaining a 5-year housing land supply. Therefore, negatively worded conditions requiring s106 agreements to be signed after development commences e.g. before occupation, will not normally be allowed²¹ as failure to subsequently sign or agree on terms could result in uncompleted or unsaleable developments.

3.17 Agreements will specify the particular projects they are intended to fund, and the monies will be `ring fenced` for this purpose.

3.18 Any payments due will normally be commuted until after commencement or completion of specific phases or units within the development. Agreements will include clauses stating when the LPA should be notified of specific relevant milestones e.g., commencement or completion, and when the funds should be paid.

Drafting s106 Agreements

3.19 s106 agreements will normally be drafted by the Council's Legal Services team, or by external solicitors acting on behalf of the Council.

Applicants will be required to pay the Council's reasonable costs incurred in drafting and completing the agreement or the costs of external solicitors acting on behalf of the Council, where relevant.

3.20 In all circumstances where a legal agreement is required, the applicant will be expected to provide details of land ownership at the beginning of the application process. These should be copies of the Title document and plan obtained within the preceding three months from the Land Registry, or if the land is unregistered, copies of the most recent conveyance being at least 15 years previous.

Legal and Administration Fees

3.21 Applicants will be required to pay the Borough Council's legal costs incurred in drafting and completing any s106 legal agreement. The Council's legal costs will be charged in-line with the Council's scale of charges that are prevalent at the time and will become payable upon completion of the agreement. The Council's legal department will require an undertaking from the solicitor acting on behalf of the applicant to pay the Council's legal costs, whether or not the agreement is completed.

3.22 Unilateral undertakings will be subject to an administration charge to

²¹ There may be instances where this could be considered e.g. retrospective applications, or changes of use.

cover legal costs in reviewing the proposed undertaking and the transfer of money to third parties where necessary.

3.23 Key stakeholders e.g. health providers (ICB) may be required to sign an indemnity agreement and ensure contributions are spent in accordance with the s106 Agreement.

Timing / Phasing of Payments

3.24 The Council will require financial contributions to be paid prior to the implementation of the planning permission or as otherwise agreed as part of a programme of staged payments. Legal costs and administration charges will need to be paid prior to the completion of the agreement unless otherwise agreed in writing by the Council.

3.25 The Council will calculate the total financial contribution payable including interest and/ or indexation which will be made available to the developer. This calculation will be valid for 14 days from the date of issue unless otherwise agreed in writing.

3.26 On receipt, financial contributions will be transferred to the relevant internal department or third party such as a parish council who will be responsible for spending the contribution.

Indexation

3.27 It is appropriate for financial contributions secured through a planning obligation to be indexed so they retain their original value. The base date and index (normally index-linked to inflation) will be detailed within the legal agreement. Payments

will be subject to an inflation factor (normally RPI or CPI or BCIS all in tender price index) which will be adjusted according to the fluctuations between the date of the obligation and the quarter period in which payment is due to the Council.

Interest on late payments

3.28 At least 21 days prior to reaching a payment/trigger date as specified in the agreement, the developer should notify the Council of their intention to pay the financial contribution. After the payment/trigger date has elapsed, interest may be charged at a rate of 4% above the standard base rate, unless otherwise stated in the planning obligation. The developer may also be liable to additional monitoring and enforcement costs as a result of late payment.

3.29 The Council will calculate the total financial contribution payable including interest and/ or indexation which will be made available to the developer. This calculation will be valid for 14 days from the date of issue unless otherwise agreed in writing. If this has not been paid within the agreed time period and the calculations are shown to be correct following the resolution of any dispute, then late payment interest will be charged at rate of 4% above the standard base rate.

Renegotiating a planning obligation

3.30 Planning obligations can be renegotiated at any point where the LPA and persons against whom the obligation is enforceable agree to do so²². In 2020 the government issued guidance in response to the coronavirus pandemic urging local authorities to consider deeds of variation to allow for the deferral of payments to remove barriers and minimize the stalling of sites.

3.31 Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the LPA to modify or discharge the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way.

3.32 An appeal may be made against any refusal or non-determination of an application to discharge or modify (Section 106B).

²² 106A of the Town and Country Planning Act 1990

4. MONITORING AND IMPLEMENTATION

Financial Contributions

4.1 Where a financial obligation is necessary, payment would normally be required on commencement or on first occupation of a development. However, in the case of a large-scale development, it may be that the payments would be phased to meet the proportional impact of each phase. Trigger points for payments will be included in the legal agreement, as will the period in which any contribution will have to be spent.

Monitoring and Enforcement of Obligations

4.2 Monitoring of developer contributions will be undertaken by the Council's Section 106 Officer (Development Control, Enforcement team), to ensure that financial contributions and non-financial obligations are delivered on-time. Once an agreement has been signed, administrative costs are incurred on tasks such as ensuring on-site measures are provided, financial contributions are received, and contributions are spent in accordance with the terms of the obligation. This requires compliance checks (by both the developer and the Council), monitoring, project management and implementation by the Council.

4.3 In cases where developers have difficulty making payments at the appropriate times as required by the legal agreement, the Council will work with the developer to find a solution. This may involve the payment of an obligation at a later stage in the development, or payment by instalments. However, where it is imperative that the relevant measure is in place prior to a development being occupied, the obligation to fund it will always become payable on commencement.

4.4 Where there is evidence of non-compliance with a planning obligation, the Council will instruct the Council's Legal Team to take appropriate action

to secure compliance. The Council will aim to recover all reasonable administration costs incurred which may include administration, correspondence and site visits. Non-compliance with a planning obligation could include failure to comply with the obligation, failure to notify the Council of a due payment and non-payment.

4.5 Where it is clear that matters within a planning obligation are not being complied with, the Council's Legal Team will be instructed to take appropriate action to secure compliance, which may include seeking a court injunction where appropriate, and the party in breach will be liable for any legal costs incurred by the Council.

Dispute resolution

4.6 The Town and Country Planning Act 1990 (as amended) gives the Secretary of State the power to appoint someone to resolve issues that are holding up the completion of a planning obligation.

Monitoring Fees

4.7 Therefore, the Council considers that a reasonable and fair monitoring fee be applied to all legal agreements that incorporate monetary or non-monetary planning obligations to be paid to St Helens Borough Council and non-signatory organisations. This will be based on the estimated time and resources needed to properly monitor and administer the contributions within each individual s106 agreement and will be calculated on a case-by-case basis recognising their diverse nature. The trigger point is intended to be 'prior to the commencement of the development' particularly as monitoring occurs from the date that the s106 agreement is signed.

4.8 The cost may be higher if the contributions require the Council to communicate with third parties adding to the administrative process required for transferring funds and monitoring implementation.

4.9 The Council will use the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 Part 10A²³ to inform the costs of the monitoring contribution.

23

<https://www.legislation.gov.uk/ukxi/2019/1103/regulation/10/made>

APPENDIX 1

Policy LPA07: Infrastructure Delivery and Funding wording

Policy LPA07: Infrastructure Delivery and Funding Protection, improvement and provision

1. The Council will seek to ensure satisfactory provision of all forms of infrastructure that are required to serve the needs of the local community by:

- a) Protecting existing infrastructure from being lost where there is an identified need for it;
- b) Supporting the improvement of existing infrastructure where there is an identified need for such improvement;
- c) Safeguarding land for planned new or improved infrastructure where there is an identified need for it;
- d) Seeking developer contributions in accordance with paragraphs 2 to 7 of this Policy; and
- e) Requiring new community facilities and other social infrastructure to be located where they would be accessible by a choice of sustainable modes of transport and, where possible, clustered with other such facilities.

Developer Contributions

2. Subject to compliance with relevant legislation and national policy, development proposals will be expected to include or contribute to the provision, improvement or replacement of infrastructure that is required to meet needs arising from the development proposal. This may include direct provision of on-site or off-site infrastructure and / or financial contributions that will be secured by:

- a) Section 106 planning obligations (or other legally binding agreements);
and / or
- b) A tariff based system such as the Community Infrastructure Levy.

3. Where the suitability of development depends upon the provision of additional or improved infrastructure or service capacity, that development should be phased to coincide with the provision of such infrastructure or capacity.

4. In applying this Policy, regard will be had to relevant evidence including the latest version of the St Helens Infrastructure Delivery Plan.

Economic Viability

5. When assessing planning proposals, the Council and other decision makers will pay due regard to any impact that developer contributions towards infrastructure provision or other policy requirements may have on the economic viability of new development. In this context, consideration will be given to economic viability evidence including any site specific development appraisal that may have been submitted to determine the ability of the development scheme to support the required level of contributions. In light of the viability evidence, where a developer can demonstrate that meeting all policy requirements would not be viable, a pragmatic approach will be taken to s106 contributions on sites within zone 1.

Hierarchy of Developer Contributions

6. Decision makers will, as a general rule, apply the following hierarchy for developer contributions in cases where viability constraints can be demonstrated (with i) being the highest priority):

- i) contributions that are essential for public safety (for example essential highway works or flood risk mitigation) or to achieve a minimum acceptable level of design quality;
- ii) contributions that are necessary to provide affordable housing or to address a local infrastructure requirement or deficiency that would be caused or exacerbated by the development, depending on site surroundings and the level of existing infrastructure, for example education needs or green space provision in areas of deficit; and
- iii) contributions that would not fall into categories i) or ii) as set out above.

7. Decisions on planning applications may deviate from the above hierarchy where a specific need to do so has been identified. The Council will provide further guidance in a future Developer Contributions Supplementary Planning Document and in the Infrastructure Delivery Plan (including any future updates to this).

Policy LPC02: Affordable Housing wording

Policy LPC02: Affordable Housing

1. The Council will support the delivery of affordable housing by encouraging new provision by Registered Providers of Social Housing.

2. Proposals for new open market housing developments of 10 units or more, or when the number of units is not known, sites of 0.5ha or more, will be required to contribute as follows:

- i) at least 30% of new dwellings provided on greenfield sites in Affordable Housing Zones 2 and 3 must fall within the definition of 'affordable housing'; or
- ii) at least 10% of new dwellings provided on brownfield sites in Affordable Housing Zone 3 must fall within the definition of 'affordable housing'.

3. The types of affordable housing to be provided on any site must be informed by the latest evidence concerning need. Where an affordable housing requirement is triggered in line with paragraph 2 of this Policy:

- a) at least 10% of the overall number of homes to be provided should be available for affordable home ownership⁴⁴ (unless this would significantly prejudice the ability to meet the identified needs of specific groups); and
- b) any remaining proportion of the affordable housing to be provided should be for affordable rented accommodation.

4. The provision of affordable housing may vary on a site-by-site basis taking into account evidence of local need and where appropriate, the economic viability of the development. Any relaxation of the affordable housing requirements set out in paragraphs 2 or 3 of this Policy will only be supported if:

- a) it is fully justified by an independent site-specific viability appraisal; and
- b) the benefits of proceeding with the development outweigh the failure to provide the full affordable housing contribution.

5. Any affordable housing provision must be within the application site unless the applicant has demonstrated either that:

- a) insufficient local need exists to justify on-site provision; or
- b) there would be overriding benefits by making alternative provision 'off site' in which case a commuted sum in lieu of on-site provision will be required. The level of any such commuted sum should be in accordance with guidance set out in the Affordable Housing Supplementary Planning Document.

6. Where affordable housing is to be provided on site, adequate provisions must be made, for example through conditions and / or a Section 106 agreement, to ensure that such housing is made available in perpetuity for occupation by persons who are in affordable housing need, or for any subsidy to be recycled to support affordable housing provision elsewhere.