

Revised Developer Contributions Supplementary Planning Document



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Executive Summary

The Developer Contributions Supplementary Planning Document (SPD) sets out Epsom & Ewell Borough Council's ('The Council') policy and procedures for securing developer contributions (also referred to as Section 106 Planning Obligations) from new developments that require planning permission.

The SPD together with the documentation relating to the Council's Community Infrastructure Levy (CIL) Charging Schedule, provides clear guidance to developers, landowners and stakeholders on the scope and scale of Section 106 planning obligations likely to be applicable to different scales and types of development.

From 1 July 2014 onwards the Council uses CIL as the principle mechanism for securing planning contributions towards wider community infrastructure improvements that are required across the borough. The Council uses S106 planning obligations to secure necessary site- specific infrastructure and affordable housing.

The principle is that all eligible development must pay CIL, as well as contribute to any direct site- specific infrastructure that is required to make a development acceptable in planning terms and is directly linked to the development.

Part 1: Overview

1 *Introduction*

- 1.1 This **Supplementary Planning Document (SPD)** has been prepared to make developers, landowners and others aware, at an early stage, of likely developer contributions so that they can take them into account when negotiating for land and formulating development proposals. In this way there will be a transparent basis for the negotiation of developer contributions.
- 1.2 Recent revisions to legislation have resulted in significant changes to the way that the Council can secure funding from developers towards infrastructure.
- 1.3 The SPD is a revision of the existing 'Developer Contributions SPD (2010)'. It provides additional detail on the Council's approach and procedures for securing contributions from developers. It takes into account the Community Infrastructure Levy (CIL) Regulations and the National Planning Policy Framework (NPPF). It sets out what will be required as part of Section 106 planning obligations and identifies the types of infrastructure for which obligations will be sought, depending on the scale of development.
- 1.4 The SPD must be read alongside the CIL charging scale, adopted for implementation on 1 July 2014, and CIL supporting documents on the Council's website.¹

¹ Available at <http://www.epsom-ewell.gov.uk/EEBC/Planning/Community+Infrastructure+Levy+%28CIL%29.htm>

2 *What are “Developer Contributions”?*

- 2.1 In order to create sustainable communities the Council wants to ensure that the necessary infrastructure is put in place to meet local community needs. This includes not only the physical infrastructure such as roads and utilities that enable development to proceed, but also the community facilities and environmental improvements which will ensure occupiers of those developments have adequate access to services such as education, healthcare and leisure activities which will improve their quality of life.
- 2.2 In the past, the Council has secured ‘developer contributions’ towards essential community infrastructure through ‘planning obligations’ through a tariff system set out under Core Strategy Policy CS 12 and expanded within the original versions of this SPD. However, the subsequent publication of the Community Infrastructure Levy (CIL) Regulations, in April 2010, has had a significant impact on the way the Council seeks developer contributions, and how they will be used. As a consequence, and following the adoption of CIL, we have prepared a revised version of the SPD.

3 *What are “Planning Obligations”?*

- 3.1 Planning obligations, also known as section 106 agreements, are legal agreements negotiated between Local Planning Authorities and developers, or unilateral undertakings made by developers, usually in the context of the grant of planning permission. They provide a means of ensuring that the proposed development contributes to the creation of sustainable communities, and to secure works, meet costs, provide benefits or impose restrictions in connection with a development to enable it to become acceptable in planning terms. These are a proper and recognised part of the national planning system and are normally entered into under Section 106 of the Town and Country Planning Act 1990 (as amended). Where contributions relate to necessary highway works, they may be secured under Section 278 of the Highways Act 1980.
- 3.2 The Council will now use the CIL as the principle mechanism to secure planning contributions towards wider community infrastructure improvements that are required to help facilitate growth across the Borough. The Council will continue to use S106 planning obligations to secure necessary site-specific infrastructure improvements and affordable housing.

4 *Legislative and Policy Context*

National Planning policy

- 4.1 The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the Planning and Compensation Act 1991; Part 11 of the Planning Act 2008; and Section 7 of the Growth and Infrastructure Act 2013. The Community infrastructure Levy was enacted on 6 April 2010 by the Community Infrastructure Levy Regulations 2010 (Amendments April 2011, November 2012, April 2013), made under Section 206 of the Planning Act 2008. Government policy on planning obligations is set out at Paragraphs 203-205 of the National Planning Policy Framework (NPPF) 2012.
- 4.2 Under Section 106 of the Town and County Planning Act 1990 (as amended), the planning authority can legally enter into an agreement (“Section 106 agreement”) with developers in relation to planning applications to make development acceptable in planning terms. These agreements can be in the form of unilateral undertakings which are solely signed by owners of the land interests in the applications and can be in cash or kind.
- 4.3 The NPPF was published in March 2012. It sets out government policy on the use of obligations and replaces Circular 05/05 “Planning Obligations”. The NPPF defines a planning obligation as “a legally enforceable obligation entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal
- 4.4 Paragraph 203 of the NPPF also states that planning obligations should be used to make unacceptable development acceptable in planning terms. They should only be used where it is not possible to address the unacceptable impacts through planning conditions. Paragraph 204 sets out the three statutory tests all obligations should meet:
- i. necessary to make the development acceptable in planning terms;
 - ii. directly related to the development; and
 - iii. fairly and reasonably related in scale and kind to the development.

- 4.5 Paragraph 205 of the NPPF also provides that local planning authorities should take account of changes in market conditions over time and should be as flexible as possible to prevent planned development being stalled. Further guidance on the range of planning obligation types available and under what circumstances it is appropriate for them to be used is found in “Planning Obligations: Practice Guidance, 2006”, available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/7770/151363.pdf.

The Community Infrastructure Levy

- 4.6 The CIL Regulations came into force in April 2010 and have a significant impact on the way the Council seeks developer contributions, and how they will be used.
- 4.7 The CIL Regulations scale-back the way that planning obligations work and place limitations on the use of planning obligations in three ways:
- the Government’s policy tests on the use of planning obligations set out in Circular 5/05 “Planning Obligations” are put on a statutory basis for developments that are capable of being charged the levy;
 - the local use of the community infrastructure levy and planning obligations must not overlap; and
 - pooled contributions from planning obligations towards infrastructure that may be funded by the levy are limited.
- 4.8 In order to ensure that the local use of the Levy and planning obligations do not overlap (also known as double-dipping), the Regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and CIL. Under the Regulations 2010, charging authorities are required to set out a schedule of those projects or types of infrastructure that they intend to fund through the Levy in a ‘Regulation 123 List’. S106 obligations can only address those infrastructure matters which are directly related to a specific site and which are not set out in the Regulation 123 List.
- 4.9 Upon the local adoption of the Levy, or nationally after a transitional period of five years (6 April 2015), the Regulations restrict the local use of planning obligations for pooled contributions – after which they may only be sought from up to five separate planning obligations for an item of infrastructure that will not be funded by CIL. The limit of five obligations also applies to types of general infrastructure contributions e.g. education and transport.
- 4.10 The Epsom & Ewell CIL charging schedule and Regulation 123 List were submitted for independent Examination in December 2013. The Examination was held on 6 March 2014 and approved for

implementation in April 2014. The Council will begin to charge CIL on all qualifying decisions made after 1 July 2014.

- 4.11 The Council have produced a draft Regulation 123 List, which sets out the categories of community infrastructure project that we intend to fund through CIL. The list specifies which site specific matters Levy receipts will not be spent on – namely site specific community infrastructure improvements that we will seek to deliver through S106 planning obligations.

5 *Epsom and Ewell Borough Council Policy*

Planning Policy

- 5.1 The Council has an adopted *Core Strategy* (July 2007), which contains several key policies on developer contributions. The overarching *Policy CS12* aims to ensure that developments make adequate provision for the infrastructure necessary to serve them. *Policy CS9* governs the provision of affordable housing in residential developments. Other policies in the *Core Strategy* seek to protect the quality of the environment of the Borough, protect and enhance community services and facilities, achieve high quality design for all new development and secure sustainable forms of development which reduce the reliance upon the private car.
- 5.2 The key *Core Strategy* policies are reproduced in **Appendix A**.

Community Strategy

- 5.3 The Council's *Local Development Framework* will help deliver the physical and spatial aspects of the *Sustainable Community Strategy*. The two planning processes are closely linked and the CIL can contribute directly to the achievement of the aims and priorities of the community planning process.

Corporate Plan

- 5.4 The SPD will also support the key priorities of the Council's adopted *Corporate Plan 2012-2016*, which are listed below:
- Economic Vitality
 - Sustainability
 - Visual appearance
 - Quality of life
 - Safer and stronger communities
 - Managing resources

6 *The relationship between the Community Infrastructure Levy and Section 106*

- 6.1 Previously financial contributions from new development were obtained through legal agreements, known as Section 106 agreements. From 1 July 2014, it will no longer be possible to raise financial contributions through legal agreements as CIL is to be the primary mechanism through which such contributions are sought. However, developers will still be expected to pay, through a section 106 agreement, for the provision of site specific infrastructure necessary for the development to take place (such as access to the highway network), and for affordable housing. Developers will not be double charged for infrastructure as CIL monies cannot be spent on site specific infrastructure or affordable housing.
- 6.2 The Council has produced a Regulation 123 List which sets out the infrastructure ‘types’ which are proposed to be funded from CIL. This list also identifies specific examples of site specific infrastructure which the Council will seek to secure through Section 106 agreements.
- 6.3 The principle is that all eligible development must pay CIL, as well as contribute to any direct on-site infrastructure that is required to make a development acceptable in planning terms and is directly linked to the development. Further details on the Levy charge can be found in the CIL Charging schedule and should be read in conjunction with this document.
- 6.4 In summary, the methods of developers contributing towards infrastructure provision will be:
- Section 106 for affordable housing
 - Section 106 for general direct on-site mitigation
 - CIL for wider infrastructure projects

7 *Viability of Development and Priority for Contributions*

- 7.1 The Community Infrastructure Levy, affordable housing and site specific contributions are a necessary cost of development and developers *must* factor them into proposals from the earliest stage and take them into account when purchasing land.
- 7.2 Where a developer considers that the value generated by a scheme is insufficient to support the Affordable Housing contributions they should discuss this before submitting an application. The Council will require details of constraints, costs (including any abnormal costs) and projected income and these should accompany any application as supporting information. Further details are set out in **Appendix B**. The Council will then undertake its own assessment of viability. Where there is a need to obtain independent professional advice (for example in relation to valuation) the cost will be met by the developer. The financial appraisal will be treated confidentially, subject to legal advice regarding Freedom of Information legislation.
- 7.3 For the avoidance of doubt, standard design and construction measures needed to enable any housing scheme to function effectively (such as demolitions, foundations, design quality appropriate to the site, landscaping, flood prevention etc) will not be considered as abnormal development costs. Nor will the costs of achieving progressively higher standards of energy efficiency likely to be required in the future.

8 *Implementing the Developer Contribution Process*

Pre-application discussions

- 8.1 The Council offers a chargeable pre-application advice service for site specific queries. Developers are advised to enter into discussions about planning obligation requirements as soon as possible, prior to an application (full or outline) being submitted. Discussions will normally be undertaken by a planning case officer, assisted as necessary by officers representing the various service areas. A Strategic Housing officer should be contacted to seek advice regarding affordable housing.

Application submission

- 8.2 It is hoped the SPD will provide developers, the public and the Council with a clear guide as to the potential need for contributions, where they are appropriate.
- 8.3 Unilateral undertakings are the preferred mechanisms to secure the site specific and affordable housing contributions following discussions with the Council. The Council will expect all relevant planning applications to include a draft unilateral undertaking in relation to Affordable Housing and site-specific infrastructure unless it has been agreed with the Council that there is no requirement for contributions.

Processing the application

- 8.4 It is the Council's intention that by the time a proposal is considered by Planning Committee, or a decision made under delegated authority, the matters which will be included in the obligation should be known and agreed with the applicant. If the matters are not agreed in final form before a decision on the application is made, there is a presumption that the application will be refused or recommended for refusal.
- 8.5 Where insufficient information is available to identify appropriate contributions at an Outline Application stage, the most accurately estimated amount will be sought (in negotiation with the applicant and based on the likely occupancy). This will be reviewed at the Reserved Matters Application stage to ensure the estimated contribution reflects the actual required contribution. To correct any deviation, a Deed of Variation will be sought from the applicant to accompany that application.
- 8.6 The Community Infrastructure Levy will be dealt with separately. Detailed guidance on this can be found at <http://www.epsom-ewell.gov.uk/EEBC/Planning/Community+Infrastructure+Levy+%28CIL%29.htm>

Model S106 Obligation and Model Unilateral Undertaking

- 8.6 A standard unilateral undertaking has been prepared by the Council for use in connection with developer contributions, and is available on the Council's website. This should be used as a template and should be adapted for submission with the application.
- 8.7 Should applicants wish to materially change the standardised template, the Council reserves the right to charge additional legal costs.

Officer reports

- 8.8 The developer contributions (including the timing of when those contributions will be required), where they are appropriate, will be set out as part of any Planning Committee report, or as part of an officer's delegated report. This will assist the speedy conclusion of the agreement or undertaking following Committee resolution, or officer decision. Once again the CIL will be dealt with separately.
- 8.9 Any valid application that includes a draft unilateral undertaking has demonstrated an early commitment to planning contributions which may be necessary to make a proposal acceptable in planning terms. In view of this, the Council will operate a practice of using dual recommendations to Committee where developer contributions are involved. If an applicant has not completed the necessary work on the requirement for contributions by the eight or thirteen week target decision date, the Council will refuse the application.
- 8.10 Model wording for Committee Report Dual Recommendations is shown below:

Recommendation A

Subject to the applicant first entering into an appropriate legal agreement for/to secure ..., by no later than (date - 8 or 13 week target), permission will be granted subject to the following conditions;

Recommendation B

In the event that the requirements of recommendation A are not met by (date - 8 or 13 week target), the Head of Planning be authorized to refuse planning permission on the following grounds:

1) In the absence of a completed legal agreement under section 106 of the Town and Country Planning Act, 1990 (as amended), the applicant has failed to comply with Policies, CS9 (Affordable Housing) and CS12 (Community Infrastructure) of the 2007 Core Strategy in relation to... (issues).

We will need to rethink what the recommendations will be should an agreement not be reached by the 8 or 13 week deadline,

Monitoring and management of planning obligations

- 8.11 Once development is commenced it is important that undertakings given are complied with and that contributions are provided on time. This will normally be on commencement of the development unless an alternative phasing has been agreed. The developer will be expected to inform the Council when the development is about to commence. This will trigger the necessary steps to be undertaken to comply with the terms of the agreement, and will be the basis for monitoring later stages in the process.
- 8.12 The Council will monitor and track compliance with each provision contained in a legal agreement as a development proceeds. The Council will publish annually the schedule of commuted sums received/ or committed and the progress towards securing the affordable housing units.

Part 2 Affordable Housing

1 *Introduction*

- 1.1 The affordability of housing is one of the biggest challenges facing the Borough.
- 1.2 Recent research and evidence confirm that the high cost of housing is one of the most serious problems facing the area. Many first time buyers, key workers and lower income households find it difficult to gain a foothold in the local housing market. For many years the Council has sought to secure affordable housing in the Borough, in order to widen the opportunities for home ownership and to provide greater choice and flexibility to those who rent. The provision of affordable homes is key to achieving mixed and sustainable communities in Epsom and Ewell.
- 1.3 The Council has adopted its Local Development Framework *Core Strategy* (July 2007) following examination by an independent Inspector. As part of the examination process, the Council has demonstrated that significant levels of housing need exist within the Borough, and has justified how these could be alleviated by the provision of affordable housing within new developments. Government policy is set out in the National Planning Policy Framework.
- 1.4 The Council's Core Strategy *Policy CS9* sets out the planning policy that will apply to new housing developments in the Borough. This Supplementary Planning Document explains more fully how the affordable housing policy will be applied, and how needs should be addressed on sites where the policy requires an element of housing to be affordable. It establishes a set of clear guiding principles as well as practical advice for those involved in the provision of affordable housing in Epsom and Ewell.
- 1.5 *Policy CS9* applies to all housing developments of five dwellings and above (and sites over 0.15ha), and irrespective of whether public subsidy will be involved in the provision of affordable housing. The policy is reproduced at **Appendix A**. In view of the scale of housing needs in Epsom and Ewell Borough, and the difficulties of finding suitable land, it is essential that all eligible sites provide on-site, affordable housing. This includes sites which owners or developers propose to use for sheltered or other specialist housing.

2 *Housing Needs in Epsom and Ewell*

- 2.1 The cost of buying or renting a home in the South East region is second only to London. Epsom and Ewell, similar to other areas in the

South East, is an area of high housing demand and high levels of owner occupation. The cost of housing locally is a potential barrier to economic growth and can have serious social consequences. The Council has therefore taken steps to assess the level of housing need in the Borough - looking at both the backlog of unmet need and the needs of future households that will not be able to afford market housing.

- 2.2 The Council commissioned a Borough Housing Needs Survey in 2004 which highlighted the nature and extent of the need for affordable housing locally. This survey was updated in 2006 by the same independent consultant (DCA Ltd). These surveys provide the comprehensive basis for the more detailed guidance the Council will provide on the needs for particular dwelling sizes, types and tenure, and the needs of particular groups within the community.
- 2.3 The situation is regularly reviewed and the Council participating with neighbouring local councils published an *East Surrey Strategic Housing Market Assessment* (SHMA) in 2008 and a further update study in 2009 to take account of the effects of the economic downturn. A further update will be carried out during 2014/ 2015. The SHMA amongst other things has provided more up to date details of housing need in the Borough and provided further evidence that there is an annual affordable housing shortfall of **470 units** in the Borough.
- 2.4 This scale of need is significantly greater than the current delivery level from acquisitions, new units or conversions, resulting in substantial levels of unmet housing need each year.
- 2.5 The Core Strategy recognises that the provision of this number of units is clearly not deliverable or sustainable in the context of previous and planned future construction rates, and the environmental constraints of the Borough. However it serves to illustrate vividly the importance of delivering the maximum reasonable number of affordable dwellings from the new housing development that will take place over the next 15-20 years.
- 2.6 Supplementary information on housing needs comes from the Council's *Housing Needs Register*. This provides up to date information on households seeking affordable housing. By the end of March 2013 there were around 2,170 households on the register, having risen from around 380 in 2004 and representing an increase of households in housing need of over 470%.
- 2.7 A further indicator of housing need is the level of homelessness in the Borough. Despite the Council having adopted a proactive approach to preventing homelessness before it occurs through a range of measures including securing private rented accommodation and negotiating with landlords, homelessness continues to increase, and has risen in the South East by over 28% in the past two years alone. Between 2007/08

and 2012/2013 Epsom and Ewell Borough Council prevented over 1,000 households from becoming homeless and together with other statutory and voluntary sector partners are approached by several hundred families each year either experiencing or under threat of homelessness.

- 2.8 The delivery of affordable housing is essential to ensure that a supply of affordable rented accommodation remains available to those households unable to meet their own housing needs through the open market. A recent report Home Truths South East 2014, sites Epsom and Ewell as one of the least affordable areas in the UK to buy or rent a home, private rents having risen by 41% in the past four years with further rises amounting to 38% predicted to 2020. This combined with above average house prices (the current income to house price ratio standards at 11.9) mean that the pressure on existing social housing demand and the importance of future supply is amplified.

3 *Planning Policy Background - Affordable Housing*

Government Planning Policy

- 3.1 Government policy on affordable housing is set out in the National Planning Policy Framework (NPPF).
- 3.2 The NPPF emphasizes the key role of the planning system in delivering new affordable housing. The Council's Core Strategy was examined against the background provided by PPS3, which has subsequently been replaced by the NPPF. A recent self-assessment of the Epsom & Ewell Local Plan has shown that it's approach towards the provision of affordable housing remains compliant with the national planning policy.
- 3.3 The NPPF reflects the Government's aims to improve the affordability and supply of housing and to promote mixed sustainable communities.

Affordable Housing Definitions

- 3.4 PPS 3 provides a definition of affordable housing which has been incorporated into the NPPF and adopted by Epsom and Ewell Borough Council and is used throughout this SPD.

Affordable housing is:

Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing.

Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the

Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as “low cost market” housing, may not be considered as affordable housing for planning purposes.

Epsom and Ewell Planning Policy

- 3.5 In seeking developer contributions to facilitate the provision of affordable housing, the presumption in the NPPF and in Policy CS9 of the Core Strategy is that affordable housing will be provided on the application site so that it contributes towards creating a mix of housing. However, where it can be robustly justified, off-site provision or a financial contribution in lieu of on-site provision (of broadly equivalent value) may be accepted as long as the agreed approach contributes to the creation of mixed communities in Epsom and Ewell.
- 3.6 The Council has adopted an overall target in its Core Strategy to ensure that at least 35% of all new housing completions in Epsom and Ewell are affordable homes. This equates to the provision of **950** new affordable homes over the period 2007-2022. Based on an assessment of local needs, the Council’s target is that these should comprise a tenure mix of **70% affordable** (formerly referred to as ‘social’) **rented**, and **30% intermediate affordable housing**.
- 3.7 The Council recognises that the adoption of these thresholds and the application of the affordable housing requirement to developments as low as five dwellings (and 0.15ha) will mean that the resultant affordable homes may be delivered as single dwellings or as pairs. The practicalities of managing the resultant distribution of affordable homes were considered in detail at the examination into the Core Strategy. Evidence was provided by the major local Registered Provider (RP) that in a compact and generally sustainable urban area such as Epsom and Ewell, no insurmountable management problems should arise, particularly if an RP manages other property in the locality.

4 How the range, type and mix of affordable housing will be calculated

- 4.1 The starting point in determining the level of affordable housing to be provided is the number of dwellings (gross) proposed on a development site.
- 4.2 However in order to prevent the under-utilisation of suitable residential land (for example by encouraging development proposals for numbers of dwellings just *below* the thresholds), or on sites where local

considerations may require a particularly low density of development, *Policy CS9* also refers to the use of *site-areas* to calculate the number of units to be provided. Reference to them is therefore made in the policy to ensure that sites of between 0.15 - 0.49ha which are developed at a lower density also contribute to affordable housing provision, and that proposals are not made which represent an underdevelopment of a site.

- 4.3 The Council will need to be satisfied that proposals which are submitted just below the thresholds for affordable housing do not represent an underdevelopment of the site. It will also need to be satisfied that developers are not bringing sites forward in phases in order to avoid the thresholds. If this is the case, the Council will apply the affordable housing target to all subsequent phases, based on the capacity of all phases, including those already built.
- 4.4 Site-areas are therefore not an *alternative* way of calculating the affordable housing contribution on any site, but are a subsidiary consideration. *Policy CS9* makes it clear that developments of between 5-14 dwellings will be expected to provide at least 20% affordable housing, and sites of 15 or more dwellings to provide at least 40% affordable housing. This approach is in accordance with national planning policy.

5 *Provision of Affordable Housing on Site*

5.1 **In land use terms if a site is suitable for housing, it is suitable for affordable housing.**

5.2 The Council is committed to the achievement of sustainable and balanced communities and in accordance with Government policy expects the affordable housing units to be provided on the individual housing development sites. This is because of the significant scale of housing need existing in the Borough, and the scarcity and cost of alternative developable land in Epsom and Ewell. Affordable housing should therefore be provided on site, except in the three very limited circumstances set out below.

(i) Payment in lieu of “part-dwellings”

5.3 Where the proportion of affordable housing sought would result in “part” of a dwelling being required (e.g. if the result of applying the % requirement was “1.4 dwellings”), a financial contribution will be required in lieu of that part (in this example, equivalent to “0.4” of a dwelling) and based on the formula set out in this SPD. As an alternative a developer may choose to ‘round up’ the fraction by the provision of an additional affordable dwelling.

(ii) Off-site provision on another site in the Borough

5.4 On site provision will always be sought in the first instance. However where it is mutually accepted that there are specific and overriding site constraints or where development specific issues inhibit the provision of affordable housing, off-site provision by the developer may be acceptable. These situations will be very limited. Each case will need to be considered according to its own particular circumstances.

5.5 Where an applicant wishes to displace all or part of the affordable requirement to another site within the Borough, this will only be permitted where the alternative provision would allow priority housing needs to be better met and would not lead to an unacceptable concentration of social housing in an area. The developer must provide the alternative site and the Council will need to be assured that it is suitable and available for development within an appropriate timescale. This means that the affordable housing should be provided at the same time as the facilitating development and prior to its effective completion. This requirement may be secured by legal agreement. Where an off-site contribution is accepted, a developer should make a contribution of clean serviced land with the necessary planning permission, at nil cost.

5.6 The Council will not normally accept offers by an applicant to buy into the existing housing stock in the Borough.

(iii) Off-site provision by financial payment in lieu

- 5.7 In very exceptional circumstances, where it has been agreed that on site provision is not appropriate, and no suitable alternative site is available in the Borough, financial provision in lieu will be considered by the Council.
- 5.8 The principle of the approach taken by the Council means that for every affordable home not provided on site, the developer's contribution should be the same as the financial support that would be required (not covered by rental income and borrowings available from it) to enable an RP to fund a similar property, on another site in the Borough. The calculation of the finance in lieu payment will involve the use of the Affordable Housing Commuted Sum Calculator, which is available on the Council's website.
- 5.9 Payments received from financial contributions in lieu will be held in the Council's affordable housing fund and will be used for the capital funding of development elsewhere in the Borough which meets the requirements of the Section 106 Obligation, current affordable housing policies and Government guidance.

6 *Implementing Off-Site Provision*

- 6.1 In those exceptional cases where the Council considers that an off-site approach or cash in lieu contribution is appropriate, account will be taken of the fact that the facilitating site will be developed for 100% private market housing.
- 6.2 This means that the starting point for the calculation of the off-site provision of affordable housing is the number of market dwellings to be provided **on** the facilitating site. In order to meet *Policy CS9*, this number will represent 60% (or 80% in the case of developments between 5 and 14 units) of the total provision. The remaining 40% (or 20% in the case of smaller sites) will be provided on an alternative site or through equivalent cash in-lieu contributions. This way the affordability ratio is maintained and Core Strategy *Policy CS9* will be met.
- 6.3 The example in **Table 1** shows how the approach would work using the target of 40% affordable dwellings on a site with a capacity for 100 dwellings:

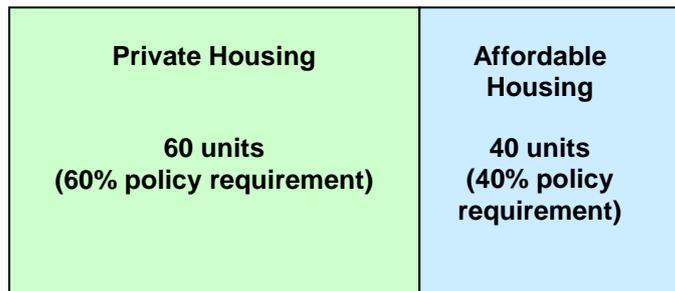
Table 1 Example of approach to off-site provision of affordable housing

	Total units on facilitating site	Private Open Market	Affordable	Total number of units	Affordable housing ratio
On-site affordable housing provision	100	60 dwellings on-site	40 dwellings on-site	100	40%
Off-site affordable housing provision	100	100 dwellings on-site	67 dwellings off-site	167	40%

6.4 This example can be illustrated in a diagrammatic form:

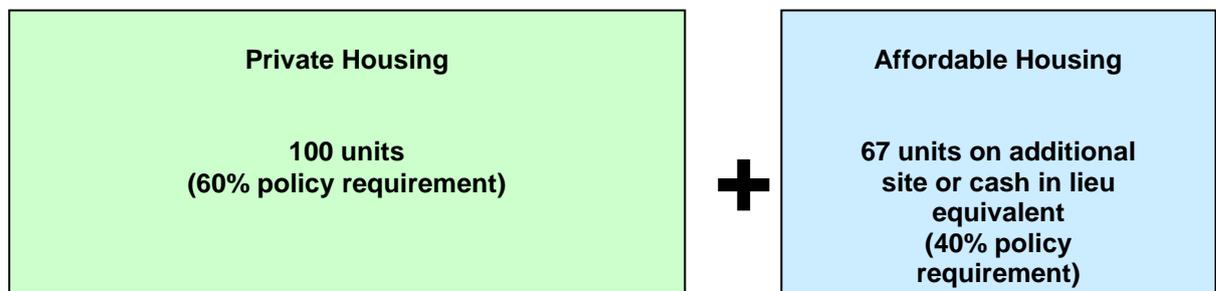
On-Site Provision:

Development site which can accommodate 100 units



Off-Site Provision:

Development site which can accommodate 100 units + off-site contribution



- 6.5 In this example the facilitating site (100 dwellings) would actually represent 60% of the *total* number of dwellings to be provided for, and the off-site contribution will need to provide the *remaining* 40% affordable element (67 dwellings). This will ensure that the 40% affordable housing ratio in *Policy CS9* is maintained.
- 6.6 In order to simplify the assessment, a formula to calculate how many dwellings are required off-site is set out in **Appendix C**. This may also be used to calculate the contribution to be made off-site if a partial provision of affordable housing is made on site.

7 *Financial Development Appraisal*

- 7.1 Prospective developers should regard the need to provide affordable housing and other infrastructure as key drivers in determining how, and for what, a site will be developed. They should therefore take into account these requirements in negotiating a land value with site owners.
- 7.2 Where a developer considers that there are significant and relevant economic constraints affecting a development and that these are sufficient to jeopardise the developer meeting the affordable housing requirements of *Policy CS9*, the developer will need to submit details of scheme costs and a financial appraisal of scheme viability, as set out in **Part 1** of this SPD and described in **Appendix B**.
- 7.3 Following the appraisal process, if genuine and significant economic constraints exist, the Council will discuss with the developer the options available to achieve economic viability. These will include assessing housing grant on a “gap” funding basis, adjusting the balance of affordable housing provision, or redesigning the scheme.

8 *Type and Size of Affordable Dwellings to be Provided*

- 8.1 The Council expects a variety of affordable dwelling types to be provided to meet the wide range of housing needs identified. The precise mix of dwelling type for the affordable element will change as needs vary over time and from location to location. The Council’s Housing Division will advise developers of the most appropriate housing mix for each individual site in respect of size, type and tenure. It is also important that the developer engages in pre application discussions with the Council’s planning officers to establish what may be an acceptable scheme. The Housing Division will also seek to facilitate early consultation between the applicant and a Registered Provider or Housing Association regarding the specification and eventual transfer of the affordable housing units.

- 8.2 The detailed mix of affordable housing types should be determined by a realistic and up to date assessment of local needs. The primary sources of information are the Council's *Housing Needs Study*, the *East Surrey Strategic Housing Market Assessment 2008* and the details of housing need contained within the Council's *Housing Needs Register*.
- 8.3 Equally important indicators of housing needs, which will be considered by Housing Services when advising developers, include the composition of the existing social housing stock, homelessness statistics and trends, the needs of vulnerable sectors of the community (as indicated by the *Surrey Supporting People* team) and local knowledge regarding the turnover and likely "waiting time" for social rented housing in the Borough. **Appendix D** provides an indication of the dwelling types and sizes likely to be preferred.
- 8.4 The mix of housing required on individual sites will be determined by the Council taking account of local housing needs and the character of the remainder of the development and of the neighbourhood. If particular groups in the community are shown to be in specific need, the mix and type of affordable housing provided should reflect this. Larger developments will be expected to provide a range of housing sizes and/or types.

Tenure of Affordable Dwellings

- 8.5 The vast majority of households on the Housing Needs Register can only realistically afford social rented housing. The Core Strategy target is for 70% of the total of all new affordable homes in the Borough to be provided for rent, and 30% for intermediate housing. The Council will usually expect these homes to be provided on a Shared Ownership basis. These are overall targets and the Council will not necessarily expect each residential site to comply with that ratio; although it may be used as a starting point in negotiations.

Sheltered Housing

- 8.6 The Council will apply *Policy CS9* to open market sheltered or extra care housing. The Government has confirmed that there is no distinction between these sorts of proposal and any other open market housing. Planning applications for such proposals will be considered on a case by case basis, and early discussions should be held with the Council's housing officers to establish whether the priority need is for affordable sheltered accommodation or mainstream housing.

Student Accommodation

- 8.7 Student housing does not fall within the adopted Core Strategy definition of "affordable housing". Purpose built student accommodation will not be required to make a contribution towards affordable housing.

9 *Affordable Housing Design Requirements*

- 9.1 The Council expects affordable housing to be well integrated with market housing. The site layout and detailed design should allow for different kinds of housing to be in close proximity to one another. Large groupings of single- tenure / single-type dwellings should be avoided.
- 9.2 In designing a housing scheme the aim must be to achieve high quality affordable housing which integrates visually with open market housing. Affordable housing should not be distinguishable from market housing in terms of location, appearance, build quality or materials. There will be no visible differentiation between the two housing types. The layout should take account of the value of residents' informal interaction in creating and maintaining sustainable mixed communities, and should achieve equitable access to car parking, informal open space, play areas etc.
- 9.3 Affordable housing should meet the Homes and Communities Agency's (HCA) *Design* and Quality Standards. These address the internal environment (regarding size, layout and service provision), sustainability and the external environment. These Standards form the basis of Council's emerging Development Management Policy DM12 for Housing Standards. Regard should also be given to Government guidance provided in "By Design", and in the CABI's "Urban Design Compendium". In order to ensure that new affordable housing meets with all of the current design guidance and requirements, the Council expects developers to engage in early dialogue with a Registered Provider – the Council's Housing Division are able to advise on those actively developing in the Borough.

10 *Providing the Affordable Housing - Negotiation, Procurement and the Role of Registered Providers*

- 10.1 The Council expects that the provision of affordable housing should be by a partner Registered Provider (RP), although an alternative provider may be agreed with the Council. The list of current partners is set out below, or the Housing Division will advise on any changes or updates should a developer require further information.
- 10.2 The Council will normally expect that the affordable housing element will be achieved without social housing grant. However the Council recognizes that the use of subsidy may be needed in order to achieve housing which is affordable to those in need. Where subsidised affordable housing is provided, the Council would expect long-term affordability to be secured through a housing association, i.e. as an ongoing resource available for present and future occupants rather than as a one-off discounted dwelling. Preferably it should be provided from the Council's approved list of providers set out below.
- 10.3 The Council is currently reviewing the range of preferred partners it works with. The range of RP's that the Council currently own and manage stock in the Borough or who the Council has received Committee approval to work with are the following RPs:
- *A2 Dominion*
 - *L&Q Housing Association*
 - *Mount Green Housing Association*
 - *Orbit Housing Association*
 - *Rosebery Housing Association*
 - *Raven Housing Trust*
 - *Transform Housing and Support (formerly Surrey Community Development Trust)*
 - *Thames Valley Housing*

These selected partners have demonstrated an ability to meet the highest standards across the range of housing services.

- 10.4 Should subsidy be necessary the Council may use its enabling role to support requests for funding from the Homes and Communities Agency. If provided, such grant will normally be directed to preferred partner housing associations. Developers should therefore identify the preferred provider at an early stage so they can be involved in the design process. The Housing Division will advise on which partner RP is best placed to become involved in a scheme and will encourage an early partnership to be created, prior to the submission of a planning application. Where public subsidy is involved the Council will expect an acceptable scheme with funding and nomination agreements with the RP provider to be in place before planning permission is sought.

- 10.5 Working through already-established partnerships is considered the best means of achieving affordable housing. Such partnerships may encourage partner RPs to consider forward funding schemes in anticipation of grant being received. Whilst recognising the clear advantages of such an approach, the Council also accepts that this is a matter primarily for the RP to determine and will be based on its own funding and investment strategies.
- 10.6 Where subsidy is required, the aim will be to ensure that it can be demonstrated that the subsidy would allow for either more affordable housing or a more appropriate mix. Subsidy received via the Homes and Communities Agency is in the form of Social Housing Grant. Bids will be made in conjunction with the Council in relation to agreed partnership schemes meeting the Council's and the HCA's objectives. The HCA is very selective about the location and distribution of Social Housing Grant and bid approval will be based on the support of the Local Authority, value for money and other design and construction criteria. Further information is available from the HCA.
- 10.7 If the development has communal parts e.g. it is of flats or apartments, service charges are likely to apply for the maintenance of such areas. An appropriate proportion of these is likely to be met by the developing housing association, and may be recharged to the occupants. The sums involved and the appropriateness of the charges will be subject to negotiation and agreement between the developer and the association approved for the development.
- 10.8 Alternative providers (for example non-partner RP or developers) will be accepted provided they agree to the Council's nomination requirements to the affordable housing as an ongoing resource, can demonstrate satisfactorily their long term management capabilities, community development and involvement arrangements, and have been approved by the Homes and Communities Agency, Tenant Services Authority (or any appropriate successor body) as an accredited landlord. Affordable housing provided in this way must also be available in perpetuity and met the NPPF definition of affordable housing. Its provision must also comply with the Borough's Tenancy Strategy.

11 Transferring the Land

- 11.1 Land owners will be required to transfer to the Registered Provider at nil cost, clean, serviced land that is sufficient to accommodate the required affordable housing and is ready for development. Land should be serviced to the site boundary and have full rights of access. Normally, this land will not be provided as a vacant site however; its value should be reflected in the price paid by the RP to the developer for completed homes which will then be constructed by the developer within and as part of their overall scheme. In exceptional circumstances

it may be agreed to transfer the land that will accommodate the affordable housing to a RP so that the affordable housing construction can be procured independently. In all cases, the Council will expect those homes to be transferred to an affordable housing provider at a price which reflects free (nil cost) cost serviced land. This means that the developer will be reimbursed for the reasonable build cost of the affordable homes.

- 11.2 In each case the Council will seek to secure that its future development is for affordable housing only. Land for housing should be transferred freehold. In the case of flats, a lease of a minimum of 125 years would normally be required.
- 11.3 Where the developer is to construct the affordable housing element, prior approval of a programme and timetable for implementation will need to be obtained from the Council, and this will be secured as part of the legal agreement.

12 Securing Affordable Housing Through Section 106 Obligations

- 12.1 In order to secure the provision of affordable housing, the Council will require developers to enter into a legal agreement with the Council under S106 of the Town and Country Planning Act. These S106 obligations run with the land and apply to successive owners.
- 12.2 The Council will be preparing a standard model obligation for affordable housing. The standard clauses may need to be adapted to suit the particular site circumstances, but it is intended to assist the drafting of agreements at an early stage in the development process. A draft 106 obligation must be submitted with the development application (whether full or outline).

Part 3 Site-Specific Infrastructure Obligations

1 *Introduction*

- 1.1 This section sets out the types of infrastructure contributions that will be dealt with under a Section 106 agreement. Developers will be expected to deliver or contribute towards the provision of site-specific infrastructure necessary for the development to take place, through a Section 106 agreement.

2 *Site Specific Matters*

- 2.1 The exact type and range of 'site-specific' planning obligations, which may be sought for an individual site, will depend upon the particular circumstances, the nature of the proposed development and its impact upon the local environment, local services and facilities.
- 1.2 Typical site-specific matters can include but are not limited to:
- Transport improvements such as; highway crossovers to access the site and local road junctions, deceleration and turning lanes, measures to facilitate pedestrian and cyclist access, and lighting and street furniture. This may also include additional mitigation measures remote from the development site where the need for such work is identified and supported in a Transport Impact Assessment.
 - Green Infrastructure such as; site specific landscaping, flood mitigation/ Sustainable Drainage Systems (SuDS), sustainable design features such as green/ brown roofs, water efficiency measures such as water butts, and site specific biodiversity enhancements such as bird/ bat bricks and/ or green and brown roofs.
- 1.3 This is not intended to be an exhaustive list and it is envisaged that Section 106 agreements and conditions will be needed to address a number of issues that arise in relation to the mitigation or impact of a particular development. The improvements required to mitigate a development will be dealt with in a case by case basis.
- 1.4 Examples of scenarios where 'site-specific obligations' would be required could include:
- Funding of a pedestrian crossing where a residential development is proposed on the opposite side of a heavily trafficked road to local shops and play facilities
 - Funding towards the costs incurred in setting up a Car Club, where a residential development that proposed little or no off street

parking is located in an area where there is limited on-street availability

- 1.5 Only those site specific requirements that cannot be provided as part of the design of the scheme will be secured through a Section 106 planning obligation.

Appendices

Appendix A

Key LDF Core Strategy policies

Policy CS 4

Emphasis will continue to be placed on protecting and enhancing the two strategic open spaces of Nonsuch Park and the Hogsmill River, shown on the key diagram. These areas provide a particularly important recreational, amenity and wildlife source.

Provision of the amount and type of open space within the Borough will have regard to the standards identified in the most recent Audit of Open Space, Sport and Recreational Facilities and Assessment of Local Needs. The required quantity and range of open spaces will be rigorously maintained, and focus will be given to the creation and maintenance of an accessible network of green spaces within the built up area of the Borough.

The Council will endeavour to address any shortfalls in provision of defined open space types and will seek opportunities to enhance the quality of existing open spaces where necessary, and improve access to them.

Development which results in a deficit of open space provision will not be permitted.

On all new residential developments there will be a requirement for open space and recreational provision in accordance with the details set out in the Developer Contributions Supplementary Planning Document. This policy will apply to all new residential developments within the Borough where a quantitative or qualitative deficiency of open space or recreational provision exists, or where the development would lead to such a deficiency.

Where it is impractical or inappropriate to provide the open space within the housing scheme, the Council will expect a financial contribution from the developer to allow an alternative means of provision or enhancement. The nature and extent of that contribution will be governed by the formulae set out in the SPD, the identification of needs in the Audit of Open Space, and other evidence as appropriate.

Policy CS 9

The Council has a target that overall, 35% of new dwellings should be affordable. This equates to the provision of 950 new affordable homes over the period 2007 to 2022.

New housing developments should include a mix of dwelling types, sizes and tenures which help meet identified local housing needs and contribute to the development of mixed and sustainable communities.

Taking into account the viability of the development proposed and other planning objectives, the Council will negotiate to achieve the provision of affordable housing as set out below:

Residential developments of between five and fourteen dwellings gross (or on sites between 0.15ha and 0.49ha - irrespective of the number of dwellings proposed) should include at least 20% of dwellings as affordable.

Residential development of 15 or more dwellings gross (or on sites of 0.5ha or above) should include at least 40% of dwellings as affordable.

The Council will seek to ensure that the affordable housing remains affordable to successive as well as initial occupiers through the use of planning conditions or a planning obligation.

Advice on the detailed operation of this policy, the definition and nature of the local housing needs to be met, the tariff system to be used, and the mechanisms for delivery of the affordable housing, will be set out in the Developer Contributions SPD.

Policy CS 12

Developers must be able to demonstrate that the service and community infrastructure necessary to serve the development is available. Where implementation of a development would create the need to provide additional or improved community facilities and infrastructure, or would exacerbate an existing deficiency in their provision, developers will be expected to make the necessary provision.

Where the developer is unable to provide the required facility directly (preferably on site), the Council may require a proportionate financial contribution from the developer, normally secured by means of a legal planning obligation, towards its provision elsewhere.

Appendix B

Financial Development Appraisal - Information required from the Developer

A financial development appraisal should include **as a minimum** the information as set out below. **The list is not exhaustive and further information may be needed.** The appraisal must be of a professional standard.

Item	Information required	Supporting evidence/source
Full appraisal	<ul style="list-style-type: none"> • A properly worked appraisal in a format which can be fully interrogated 	<ul style="list-style-type: none"> • Circle programme • HCA Toolkit • GLA Toolkit • Other
Date of valuation (DOV)	<ul style="list-style-type: none"> • The date the valuation/appraisal was carried out 	<ul style="list-style-type: none"> • This will usually be the planning application date or the date of submission of plans to the Council
Land acquisition	<ul style="list-style-type: none"> • Date land purchased • If under option agreement type and terms • Price paid 	<ul style="list-style-type: none"> • Copy of land registry entry etc • Contract • Note this information is used as contextual only.
Current use value	<ul style="list-style-type: none"> • Current use value of the land and/or buildings 	<ul style="list-style-type: none"> • What was on the site previously? Details. • Valuation in an RICS approved format
Sale value at DOV	<ul style="list-style-type: none"> • Residential: Sale price or capitalised rental value (including ground rents) broken down by dwelling type and size • Affordable housing offer or capitalised rental value incl yield. • Commercial: Sale value or rental value and yield 	<ul style="list-style-type: none"> • RICS valuer's report • Internet data • Local agent's opinion letter or report • Details of comparable developments
Site and contract programme	<ul style="list-style-type: none"> • Site area • Planning assumptions • Development programme, including start and completion dates and details of any phasing • Details of construction procurement route, especially if in-house resources are to be 	<ul style="list-style-type: none"> • Copies of all drawings and plans • Contract programme • Contract documentation if available.

	used	
Construction costs	<ul style="list-style-type: none"> Proposed specification for each building type Base-build costs for each building type Site abnormalities itemized and costed individually Infrastructure costs (roads, sewers etc) 	<ul style="list-style-type: none"> BCIS Spons QS cost plan Wessex
Fees and site development costs	<ul style="list-style-type: none"> Acquisition fees (legal, agents, stamp duty, other) Project fees (design, engineering, planning, building control etc) surveying, warranties, legal fees, marketing, sales costs and interest charges. Nature, duration and extent of any marketing Funding costs, including arrangement and exit fees as well as interest rate and bank monitoring costs. Any other relevant detailed costs 	<ul style="list-style-type: none"> Copy quotations Other (eg contract details) Note : Funding Costs on land holding prior to planning application will not be considered as a development cost.
Grants and funding	<ul style="list-style-type: none"> Details of HCA or other grant funding 	<ul style="list-style-type: none"> Correspondence with registered provider, HCA investment team etc.
Cashflow	<ul style="list-style-type: none"> Expected dates of sales or rental receipts and cost expenditure Profit Margin on GDV after allowing Finance and Marketing Costs. 	<ul style="list-style-type: none"> Developer's budget Identified industry norms and profit targets Agent's advice
Other Information	<ul style="list-style-type: none"> Other contributions or payments associated with the development including other infrastructure Contributions as described in the SPD Receipts attributable to providing affordable housing Sec106/CIL details and costs. 	

Appendix C

Formula for calculating the number of affordable housing units to be provided off-site

To ensure the applicable private / affordable ratio is maintained, the following formula should be used to calculate the number of affordable units the development is required to deliver (subject to an appropriate density of dwellings on the site).

$$C = \left[\frac{A}{100 - B} \right] B$$

Where:

A = the number of private housing units on site

B = the affordable % as required by *Policy CS9* (B will equal either '20' or '40')

C = the number of affordable units to be provided (this may be either on site / off site / a basis for payment in lieu or a combination of all three)

Worked example on a development where 25 private units are being provided. Affordable housing requirement is 40%:

$$C = (25 / (100 - 40)) \times 40$$

$$C = (25 / 60) \times 40$$

$$C = 0.42 \times 40$$

$$C = 16.8$$

Therefore, if 25 private units are being provided on site, 16.8 affordable units would be required to maintain the 60/40 ratio

Appendix D

Indication of Type and Size of Affordable Dwellings to be provided (based on the position at March 2014)

Housing Needs Register (HNR)

The principal categories of need represented in a breakdown of the Council's HNR are set out below:

Size of unit	Sheltered	1 Bed	2 Bed	3 Bed	4 Bed
No. on Housing Needs Register	153	991	774	315	79

There are currently 549 Shared Ownership properties in our Borough and a further 511 applicants registered with our *HomeBuy* (shared equity) agent.

Affordable housing priorities

Family-sized Accommodation

- Family housing can help families currently living in overcrowded conditions in smaller accommodation move to more suitable accommodation, and thereby free up a smaller home for a single person or couple.
- The Housing Needs Study indicated that there was a need for all types of affordable accommodation, but the majority of the *gross* affordable housing need in the Borough is likely to be smaller units (1 and 2 bedrooms). However, given the preponderance of small schemes that have come forward since the Study was conducted, and because families with children will often be in priority need, the Council will place a high priority on achieving family-sized accommodation.
- Currently the Council's priority is for three and four bedroom social rented housing. Although the total number of applicants to the HNR may require one and two bedroom properties, in terms of *priority* needs there is a far greater need for larger units because the existing supply of this unit type is limited and becomes available for re-letting very infrequently.
- With the implementation of the Welfare Reform and the affect it has on residents who are on benefits, we must ensure that all new developments with Affordable Housing must be able to accommodate the maximum number of occupants e.g. 2 bedroom properties should be able to house four persons and 3 bedroom properties should be able to house six persons.

Supported Accommodation

- The *Surrey Supporting People Strategy Review* - The Housing-Related Support service works closely with partners to commission these services including borough and district councils, Probation Service, Children, Schools and Families and Public Health and the Borough Council's Housing and Homelessness Strategies, indicate that the Borough suffers from a lack of specialist supported accommodation for vulnerable sectors of the community. Provision of supported housing for young people is a strategic housing priority for the Council, as is the need to provide supported accommodation for residents with learning and mental health difficulties.
<http://www.surreycc.gov.uk/social-care-and-health/adult-social-care/accommodation-and-residential-and-nursing-home-care/housing-related-support-in-surrey>

Extra Care Housing

- The provision of affordable 'Extra Care' housing is a County-wide priority reflecting the needs of an increasingly frail elderly population in the Borough. Schemes containing an element of 'Extra Care' provision will be given a high priority.