



# Walsall Council

## **Customer Guide to Completing Planning Obligations**

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# 1. Introduction

This guide has been produced by Walsall Council to assist its Development Management customers in completing Planning Obligations (Section 106 Agreements and Unilateral Undertakings).

Planning Obligations under the Town and Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) are normally required alongside planning applications for major developments but can sometimes be required for minor applications (please see table in section 8.1 of this document). Major development is defined in the Development Management Procedure Order 2015 (as amended) as:

*“(a) the winning and working of minerals or the use of land for mineral working deposits;*

*(b) waste development;*

*(c) the provision of dwellinghouses where —*

*(i) the number of dwellinghouses to be provided is 10 or more; or*

*(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);*

*(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or*

*(e) development carried out on a site having an area of 1 hectare or more;”*

The purpose of a planning obligation is to secure community infrastructure to meet the needs of residents in new developments and/or to mitigate the impact of new developments upon existing community facilities for matters that cannot be secured through the normal planning process but is required in order for the development to be deemed acceptable in planning terms which would otherwise be refused. Planning Obligations **must** meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended):

- Necessary to make the proposed development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

## 2. What are Planning Obligations?

Planning Obligations are obligations relating to a person's land which bind the land and whoever owns it to undertake various requirements that are set out within the terms of the agreement. They are made by deed under Section 106 of the Town & Country Planning Act 1990 (as substituted by the Planning and Compensation Act 1991) and can:-

- Restrict the development or use of the land in a specified way;
- Require specified operations or activities to be carried out on the land;
- Require the land to be used in any specified way;
- Require a sum or sums to be paid to the authority on a specified date or dates or periodically.

Planning Obligations provide a means of ensuring that developers contribute towards the infrastructure and services that Walsall Metropolitan Borough Council deem necessary to facilitate proposed developments in accordance with local and national planning policy. Contributions required through planning obligations are mainly required by policies in the Development Plan and are explained in more detail in Supplementary Planning Documents. They may comprise commuted sums or provision in-kind and some of the most frequent requirements are explained in, and controlled by our Development Plan and adopted Supplementary Planning Document's (set out at section 8 of this document below).

The main topic areas are Affordable Housing, Primary and Secondary Education, Urban Open Space and Highways Improvements. Planning Obligations can also be used for many other things including:

- To ensure agricultural dwellings are not sold separately from the land they serve;
- To ensure residential annexes do not become separate independent dwellings;
- To require infrastructure (roads, drains) to be provided;
- To control the use or operations of land;
- To secure and monitor full Travel Plans;
- To secure the implementation or non-implementation of certain works or permissions.

A Section 111 Agreement (of the Local Government Act 1972) is usually entered into with an LPA to agree to enter into a necessary Section 106 Agreement upon completion of the transfer of Council owned land which is necessary to facilitate the associated development. This is because a Council cannot enter into a Section 106 Agreement 'with itself'.

### **3. Who may enter into a Planning Obligation?**

Planning Obligations are legally enforceable against the owner(s) (including their successors in title) of the land to which they relate. This means that generally only owners can enter into obligations even if a prospective purchaser/developer of the land has applied for the planning permission (although it is possible for prospective purchasers to be party to the obligations where they have exchanged contracts to purchase).

Because planning obligations run with the land (meaning any outstanding obligations will be transferred with the land), all owners, lessees and mortgagees must be signatories. Planning obligations can have significant effects on the use and therefore the value of land. Before anyone enters into a planning obligation we strongly advise that they take independent legal advice or contact our Development Management Team on 01922 652677 for details of our pre-application advice services. Further information is available on the Council's website at [www.walsall.gov.uk](http://www.walsall.gov.uk)

### **4. How are Planning Obligations secured?**

Planning obligations are secured by a formal deed, usually in the form of an Agreement which is entered into, and signed by all parties with an interest in the land. The Agreement is sealed by Walsall Council and will contain covenants (the planning obligations) covering the things each party agrees to do and / or agrees not to do.

The planning obligation will detail the circumstances and timescales within which these obligations will occur. It will also contain a plan showing the land to which it relates.

The Council will only usually accept a Unilateral Undertaking (UU) to secure Cannock Chase SAC Mitigation Payments and in relation to necessary obligations in relation to an appeal. This is because a UU does not provide the Council with the ability to require ongoing monitoring or compliance with requirements. A Unilateral Undertaking can sometimes provide an effective solution in a limited number of simpler circumstances and you are advised to seek pre-application advice for further consideration.

## **5. How are Planning Obligations enforced?**

Planning Obligations are enforceable by Walsall Council:

- In the courts by application for an injunction or recovering contributions payable;
- By carrying out any operations required by the Planning Obligation and recovering the cost from the person(s) against whom the obligation is enforceable.

## **6. How are Planning Obligations recorded?**

As a Planning Obligation runs with the land to which it relates, it is registered as a Local Land Charge on the Land Charges Register and will be revealed in any search submitted on behalf of a potential purchaser of an individual plot or an entire development site. It is therefore important that all obligations are complied with as non-compliance may be revealed in a search which is likely to put off, or delay, potential purchasers.

## **7. Cost of Planning Obligations**

There are a number of costs that will be incurred upon completion of a Planning Obligation (which are payable before the s106 agreement is completed), and for any request submitted to the Council seeking confirmation of compliance. These costs are set out in the LPAs schedule of chargeable services which may be updated from time to time and is available to view on the Council's website at [www.walsall.gov.uk](http://www.walsall.gov.uk)

The Council's Planning Solicitor will provide their cost estimate to you upon receipt of a formal instruction from the LPA to commence the drafting of a new Planning Obligation. A set cost is published in the charging schedule for a Unilateral Undertaking specifically in relation to providing a Cannock Chase SAC Mitigation Payment.

Please note that the Council would usually seek compliance with the obligations from the developer/landowner or their successor in title and it is unlikely that the Council would pursue enforcement of any non-compliance against individual homeowners or occupiers.

We will negotiate a S106 throughout the life of an application and prior to determination subject to solicitor undertaking to pay the Council's associated costs regardless of the final decision.

## 8. Key Development Plan Policies and S106 Thresholds

The Development Plan policies that most frequently require S106 contributions are set out in table 1 below. Other contributions can still be sought by the Council on a case-by-case basis where there is an identified need, where it can be supported by local policy and meets the three legal tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Please refer to SPD's for up to date and comprehensive information on the Council's website at [www.walsall.gov.uk](http://www.walsall.gov.uk)

**Table 1 – Key S106 Thresholds:**

<b>Affordable Housing</b>	
<b>Key Policy Requirements</b>	<p>BCCS Policy HOU3 – 25% affordable housing required on housing development sites falling within the threshold</p> <p>UDP “saved” Policy H4 (g - j) -covers on-site provision developer to pay commuted sums where provision is to be made off-site</p> <p>SAD Policy HC3 – in line with BCCS HOU3</p>
<b>Policy Threshold</b>	<p>BCCS Policy HOU3 – requirement applies to housing sites of 15 dwellings or more</p> <p>SAD Policy HC3 - requirement applies to housing sites of 15 dwellings or more</p>
<b>Other Relevant SPD Guidance</b>	<p>Affordable Housing SPD:*</p> <p>AH2 - sets standards for type, tenure and size of affordable housing (West – 75% ownership, East – 100% social rented).</p> <p>AH3 - provides guidance on application of the “viability test” i.e. evidence needed to demonstrate abnormal development costs.</p> <p>AH4 and AH5 – provide guidance on location of affordable housing and circumstances where off-site provision is acceptable.</p> <p>* SPD is currently under review; the Council will continue to apply the adopted SPD until the revisions are adopted, although once draft revisions are published they may become a “material consideration.”</p>
<b>Urban Open Space</b>	
<b>Key Policy Requirements</b>	<p>BCCS Policies CSP3 and ENV6 – development proposals required to improve the quality and quantity of environmental infrastructure, but open space standards and requirements delegated to each authority.</p>

	<p>UDP “saved” Policy LC1 – development resulting in loss of urban open space will be resisted (compensatory provision will be taken into account), residential developments required to make financial or other contributions towards new or improved urban open space.</p> <p>SAD Policy OS1 – development affecting existing open space to be assessed against other Development Plan policies and encourages increased value of the open space network including through use of Planning Obligations.</p> <p>AAP Policy AAPLV8 – seeks protection and enhancement of existing open space network including through use of Planning Obligations.</p>
<b>Policy Threshold</b>	<p>UDP “saved” Policy LC1 – no specified threshold</p> <p>Urban Open Space SPD OS1 and OS2 – provide guidance clarifying that the requirement applies to all types of residential developments of 10 dwellings or more.</p>
<b>Other Relevant SPD Guidance</b>	<p>Urban Open Space SPD:</p> <p>OS1 – includes guidance on “viability test” i.e. justification needed to waive requirement</p> <p>OS3 and Annex C – sets scale of contributions to be sought including allowance for on-site provision</p> <p>OS4 – sets local standards for different types of open space per 1,000 population</p> <p>OS5 – provides guidance on hierarchy/ types of sites where off-site contributions will be used</p>
<b>Education</b>	
<b>Key Policy Requirements</b>	<p>BCCS Policy DEL1 – all developments must be supported by necessary on- and off-site infrastructure.</p> <p>BCCS Policies HOU2 and HOU6 – set accessibility standards and other standards for provision of education facilities.</p> <p>UDP “saved” Strategic Policy Statement 8.8 – housing development only permitted where adequate school capacity exists or can be provided.</p>
<b>Policy Threshold</b>	<p>UDP “saved” Strategic Policy Statement 8.8 - no threshold set, applies to all housing developments.</p>

<b>Other Relevant SPD Guidance</b>	N/A – former Education SPD has been revoked by the Secretary of State (08.02.12).
<b>Healthcare</b>	
<b>Key Policy Requirements</b>	<p>BCCS Policy DEL1 – all developments must be supported by necessary on- and off-site infrastructure.</p> <p>BCCS Policies HOU2 and HOU6 – set accessibility standards and other standards for provision of healthcare facilities.</p> <p>UDP “saved” Strategic Policy Statement 8.9 – housing development within the threshold must ensure adequate provision exists for accessible community healthcare facilities.</p>
<b>Policy Threshold</b>	UDP “saved” Strategic Policy Statement 8.9 – requirement applies to housing sites of 1ha or 30 dwellings or more.
<b>Other Relevant SPD Guidance</b>	N/A – former Healthcare SPD has been revoked by the Secretary of State (08.02.12).



## **9. Level of developer contributions/provision**

The level of contribution or in-kind provision likely to be sought in connection with a new development would usually be calculated and provided to an applicant during the processing of a planning application once the relevant Council service area has provided the information in response to the consultation. Some detail on this may also be provided at an early stage during pre-application advice.

In cases where the number of dwellings are not known i.e. outline applications, a S106 will still be secured and will include a formula to calculate any necessary level of contribution at a future time when numbers are known.

For development proposals that put forward a 100% affordable scheme the policy compliant level of 25% (of a tenure required by the Council), or an off-site contribution, will be secured within a S106 unless it can be demonstrated that it would render the development unviable. A claw-back clause may also be included to review future viability aligned with staged development.

To calculate the likely required level of contribution for open space please refer to the published ready reckoner on the Council's website at [www.walsall.gov.uk](http://www.walsall.gov.uk)

## **10. Planning Obligation Terms**

The early submission of the necessary information can help to prevent delays in the planning application process and help to avoid the possible refusal of planning permission. You are therefore strongly advised to contact our Development Management Team on 01922 652677 to seek detail on our pre-application advice services.

Please note that a planning decision notice cannot be issued until a satisfactory obligation is in place where it is necessary to meet policy requirements.

It is also important that you carry out due diligence prior to submitting a planning application to ensure that you can provide the Council with full details of all parties with an interest in each land parcel forming the application site itself, and in relation to other land subject of any off-site works required within the Agreement. Failure to do so can significantly delay the completion of the Agreement and the issuing of any planning decision.

For relevant terms of reference please see Table 2 below.

**Table 2: Terms of Reference:**

<b>Instructions</b>	The Planning Officer instructs the Council's Solicitors to draft a Planning Obligation on behalf of the Council. The requirements of the Planning Obligation are determined by the Local Planning Authority, having regard to adopted policy.
<b>Developer's Solicitor</b>	The Developer will need to provide the Planning Officer with the details of their Solicitor. Once appointed, the Council's Solicitor will liaise with the Developer's Solicitor and not directly with the Developer.
<b>Title</b>	The Developer's Solicitor will have to deduce title to the Council's solicitor. This means providing up to date Official Copies of the registered title(s) held at HM Land Registry. It may also include leases and any unregistered deeds. If the matter is protracted, you may need to provide up to date Official Copies again later in the process.
<b>Parties</b>	Any person with an interest in the land will be party to the s106. This will include all landowners, mortgagees, chargees, lessees, option and conditional contract holders etc. It will also include the Developer as the party who intends to build out the development and who may have applied for planning permission, regardless of whether they hold an interest in the land.
<b>Financial Contributions</b>	Where a financial contribution is sought by s106 agreement, the document will specify when the contribution is to be paid and stipulate what it may be used for. The decision as to what the contribution is used for is made by ward councillors. The party who pays the financial contribution may ask for it to be repaid if all or any of it is unspent or uncommitted after a period of 7 years from the date of payment.
<b>Deed</b>	A s106 agreement is entered into as a Deed, meaning that once it has been completed, it cannot be amended otherwise than by a new Deed. The final document is printed in a number of parts and all parties sign each part, so that each party has an original part to keep after completion. They are signed in the presence of witnesses and the plans are also signed.

## 11. Financial Viability Procedure

Some Development Plan policies allow viability to be taken into account. Should you require the LPA to consider the viability of your development proposal you will be required to follow the procedure set out below:

- a) You will be required to submit a Financial Viability Assessment in accordance with National Planning Policy Framework (NPPF) and Planning Practice Guidance Note on Viability (PPGV) to include:
  - Executive summary
  - Contents outline
  - Introduction and background
  - Description of site location
  - Planning policy context
  - Description of scheme
  - Market information summary
  - Build cost and programme
  - Methodology and approach
  - Outputs and results
  - Sensitivity analysis
  - Concluding statement
  - Gross Development Value
  - Benchmark Land Value – based on EUV plus approach or Alternative Use Value as endorsed by NPPF/PPG Viability Guidance
  - Viability Development Appraisal
- b) You are liable for the costs of an independent financial appraisal as this is not provided in-house by the Council. Costs can vary depending on the length of time it takes to complete the financial appraisal and the complexity of each case. Your case officer will obtain a quote from an independent assessor on your behalf upon receipt of the necessary details.
- c) It normally takes up to around **3-4 weeks** to assess and report back to the planning case officer on financial appraisals. You should therefore ensure that you submit the necessary information to your planning case officer at the earliest opportunity to avoid potential delays in the determination of your planning application.
- d) The submitted financial appraisal information will form part of the public planning file and will be published in line with national planning guidance.
- e) Please note that the planning case officer will not instruct the independent assessor to commence the review until you have agreed in writing to cover the necessary costs.
- f) Your planning case officer will notify you of the conclusions reached by the independent assessor which will inform any resulting Section 106 requirements. You will be responsible to cover any additional costs associated with any additional information required by the independent assessor at any time throughout the assessment.
- g) The planning case officer will consult with Ward Members and relevant service area/s etc on the potential areas of spend of any Section 106 Contributions before instructing the Council's Planning Solicitor to commence drafting of the Agreement.

- h) You will be issued with an invoice to pay the costs of the final financial appraisal report. Failure to settle the balance may result in referral for further recovery action which may be by a Debt Collection Agency, or legal proceedings in the County Court to recover the amount(s) due, together with costs, for which you may also be liable. Interest may also be claimed in accordance with Section 69 of the County Courts Act (1984).

For relevant terms of reference see Table 3 below.

**Table 3 – Terms of Reference:**

<p><b>Viability Review (Claw-Back Clause)</b></p>	<p>To be submitted by Owner to Council between 70% and 80% Occupation of the dwellings on site to ascertain if there is a Surplus from which to pay financial contributions towards infrastructure as required in line with adopted policy</p>
<p><b>Surplus</b></p>	<p>Surplus = (A + B) - (C + D) - E</p> <p>Where:  A = Actual GDV  B = Estimated GDV  C = Actual Build Costs  D = Estimated Build Costs  E = Developer Profit</p>
<p><b>Payment provisions</b></p>	<ul style="list-style-type: none"> <li>• If there is no Surplus, no contributions are payable</li> <li>• If there is sufficient Surplus to pay contributions in full, they are payable in full before 80% of dwellings are occupied</li> <li>• If there is a Surplus but it is less than the amount of contributions, the whole Surplus is payable before 80% of dwellings are occupied</li> </ul>
<p><b>Escrow Account</b></p>	<p>If the owner wishes to avoid being prevented from continuing occupation beyond 80% of the dwellings until the Independent Valuer's Review is received and the Surplus determined, the full amount of the contributions can be paid into an escrow account either as a lump sum or in set instalments and the funds are drawn down following the Independent Valuer's Review.</p> <p>Instalments:</p> <ul style="list-style-type: none"> <li>• Full amount deposited prior to 25% occupation of dwellings, OR</li> <li>• 33% of contributions deposited prior to 25% occupation</li> <li>• Additional 33% of contributions deposited prior to 50% occupation</li> <li>• Additional 34% of contributions deposited prior to 75% occupation</li> </ul> <p>depending on the type of development</p>
<p><b>Gross Development Value (GDV)</b></p>	<p>Includes all gross receipts or revenue received or to be received (supported by evidence):</p> <ul style="list-style-type: none"> <li>• Extracts from the company accounting system detailing all Disposals</li> <li>• Certified sales contracts or completion certificates detailing the purchase price for each sale</li> <li>• Land Registry records showing sale price information</li> <li>• Other receipts such as income from hoardings</li> <li>• Unsold/unlet components of the Development at the point of review using detailed comparable information taking into account: <ul style="list-style-type: none"> <li>○ Any Disposals that have taken place on the Development</li> <li>○ Income from any other sources</li> </ul> </li> </ul> <p>All income from projected Disposals shall be based upon house type rather than pro rata values across the Site. Grants are not to be treated as a receipt as part of the Gross Development Value</p>

<b>Costs</b>	<p>Means the sum of:</p> <ul style="list-style-type: none"> <li>• Existing Use Value (which will not take account of historic values OR any purchase price paid / Option which is above the land value);</li> <li>• all build costs</li> <li>• all payments made or agreed to be paid in the relevant building contract including receipted invoices or costs certified by the Owner's quantity surveyor costs consultant or employer's agent;</li> <li>• infrastructure costs incurred or to be incurred as a result of the Development, including drainage works, highway works, adoption fees, completion of landscaping recreation, green infrastructure and open space provision, connection to utilities and decentralised energy;</li> <li>• removal of all works associated with the construction of the dwellings and site compound;</li> <li>• the Owner's legal and professional fees save that this shall not include the fees and costs payable to the Council;</li> <li>• general finance costs including those incurred through loans;</li> <li>• any non-recoverable taxes; and</li> <li>• professional, project management, sales, marketing and legal costs incorporating organisational overheads associated with the Development</li> </ul> <p>PROVIDED ALWAYS that this should be net of any Grant.</p>
<b>Developer Profit</b>	<p>Means a percentage of the GDV and which the Owner is entitled to retain before payment of the Contributions.</p>

## 12. Supplemental Deed Procedure (variation of a completed Planning Obligation)

The process to vary a planning obligation by way of a supplemental deed is set out in points a) to f) below:

- a) You must apply in writing on company headed paper (signed by Company Treasurer) and should include:
  - Associated planning reference number;
  - Associated site address (in addition this may be outlined in red on a location plan);
  - Nature of your interest in the land e.g. owner, lessee or occupier;
  - Describe the part/s of original planning obligation you would like to vary;
  - Describe how you would like the original planning obligation to be varied;
  - Agree to cover the necessary Council costs;
  - Where the proposed variation would reduce or have a significant negative impact on the level of contribution/provision as agreed within the original planning obligation you must also submit your own independent financial appraisal or agree to cover the necessary costs incurred by the Council in testing the proposed variations by an independent assessor.
- b) Where a financial appraisal is required you should follow the financial appraisal procedure set out in this document;
- c) Where the proposed variation does not reduce or have a significant negative impact on the level of provision as agreed within the original planning obligation a financial appraisal will not normally be required;
- d) On receipt of your request to vary a planning obligation, the planning case officer will arrange consultation with the necessary service areas, Ward Members and stakeholders/external partners;
- e) The outcome of the consultations and other considerations (including outcome of financial appraisals where necessary) will form the basis of a report which may need to be presented to a Planning Committee at which time the Committee Members can approve, refuse, defer or amend the proposed variation;
- f) If your request to vary a planning obligation is approved you should liaise with your planning case officer to progress through to completion of a supplemental deed.

### **13. Payment of contributions due under a completed Planning Obligation**

Where a planning obligation includes the Council's 'payment trigger form' you must complete and submit the form along with payment of contributions due. Where this form has not been included in a planning obligation you can make a payment in the following ways. Make sure you provide details of the type of payment you are making e.g. S106 contribution or costs along with the application number and site address at the time of making a payment so we can match the payment up with the relevant planning obligation to record compliance on our back office system:

- a) BACS transfer using account details - **Account Number – 00075795 and Sort Code – 20 90 08;**
- b) Payment line via telephone - **01922 652620.**



## 14. Mortgagee in Possession Clause

Some lenders require a Mortgage in Possession (MIP) Clause. The Council's standard MIP clause is provided below

1. The provisions of this Schedule 2 shall not be binding or enforceable against:
  - a. a Chargee of an individual Affordable Housing Unit PROVIDED THAT:
    - i. such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used **reasonable endeavours** over a **period of six months** from the date of the written notice **to complete** a disposal of the Affordable Housing Units to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
    - ii. if such disposal **has not completed within the six month** period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the affordable housing obligations in Schedule 2 of this Deed
  - b. any Protected Tenant and their successors in title

### FIRST HOMES PRECEDENT S106 PROVISION:

First Homes are not a requirement of the current Development Plan, but where they are offered they should be in addition to affordable housing provided in accordance with BCCS policy HOU3.

### **MORTGAGEE EXCLUSION**

***The obligations in paragraphs 1-7 of this Deed in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:***

- 8.1 such Mortgagee or Receiver shall **first give written notice** to the Council of its intention to Dispose of the relevant First Home; and
- 8.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be **free to sell that First Home at its full Market Value** and **subject only to** paragraph 8.3
- 8.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall **following the deduction of the amount due and outstanding under the relevant security documentation**

**including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution.**

8.4 following receipt of notification of the Disposal of the relevant First Home the Council shall:

**8.4.1 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 6.5; and**

**8.4.2 apply all such monies received towards the provision of Affordable Housing**

## 15. Affordable Housing Requirements

Section 106 agreements relating to affordable housing should require the affordable housing provision to be in accordance with the following requirements.

<b>All Affordable Housing</b>		
Number	25% of the proposed dwellings, including houses flats and maisonettes	Policy
Location	Either: <ul style="list-style-type: none"> <li>• submit a plan for approval; or</li> <li>• 6 monthly progress report identifying stage, plots, locations, size, housetype, tenure and occupation date; or</li> <li>• both</li> </ul>	To secure peppercotting and acceptability of AH locations
Occupation	<25% OM prior to 33% AH; <50% OM prior to 66% AH; <85% OM prior to 100% AH	To ensure AH is provided in timely manner and secured against developer profit.
Qualifying Person	has a 'Local Connection';	
Enforceability	NOT against: <ul style="list-style-type: none"> <li>• chargee, subject to 6months reasonable endeavours to sell to an AHP or the Council;</li> <li>• Right to acquire tenant;</li> <li>• Right to buy tenant;</li> <li>• Staircased tenant.</li> </ul>	The latter 3 are legal exclusions. The chargee is industry led.
<b>Discounted Sale Units</b>	new tenure with new provisions	
Tenure	Sold on Open Market at not more than 70% of the Open Market value.	
Occupation	<p>Limited to a Qualifying Person (or Secondary Qualifying Person) who will occupy as their sole residence, along with their dependents.</p> <p>Requirement to take lowest income if more than one QP (or SQP) makes application.</p> <p>Requirement to:</p> <ul style="list-style-type: none"> <li>• market as a DSU</li> <li>• provide notice to Council when disposing</li> <li>• provide 2 valuations to Council</li> </ul>	

	<ul style="list-style-type: none"> <li>• provide evidence that applicant is QP.</li> </ul> <p>If no application to purchase after 3months marketing, Council may authorise purchase by SQP, subject to:</p> <ul style="list-style-type: none"> <li>• provide notice to Council</li> <li>• evidence of marketing</li> <li>• Estate Agent statement that no applications from QP for 3months</li> </ul>
Qualifying Person	<ul style="list-style-type: none"> <li>• has a right of residence in the UK;</li> <li>• is 'In Need of Housing';</li> <li>• has a 'Local Connection';</li> <li>• is a first time buyer;</li> <li>• no Interest in any other property;</li> <li>• use the Discounted Sale Unit as sole residence; and gross annual household income at the date of the application not exceeding 27.5% of the Discounted Price</li> </ul>
Secondary Qualifying Person	<ul style="list-style-type: none"> <li>• has a right of residence in the UK;</li> <li>• is 'In Need of Housing';</li> <li>• no Interest in any other property;</li> <li>• use the Discounted Sale Unit as sole residence; and gross annual household income at the date of the application not exceeding 27.5% of the Discounted Price</li> </ul>
Perpetuity	Hold as Discounted Sale Units, secured by covenant on title to dwelling (meaning each occupier can obtain equity in property but must always sell on for not more than 70% of the open market value)
<b>Shared Ownership Units</b>	
Tenure	Sale of 25-75% share with rent on balance. Could be freehold or leasehold.
Occupation	Limited to a person 'In Need Of Housing' who will occupy as their sole residence, along with their dependents.
In Need Of Housing	Means a person who has applied and is eligible for housing, and who is not able to afford to buy or rent on the open market
Terms	<p>Cannot be sold to anyone other than an AHP or an occupier who has staircased to 100% ownership.</p> <p>Hold as Shared Ownership Units in perpetuity (other than when an occupier has staircased), secured by covenant on title.</p> <p>Occupier can acquire additional shares in 5% increments, up to 15% on any one occasion and the rent reduces accordingly.</p>

	After staircasing to 100% the proceeds are put into a reserve fund by the AHP for use for AH in Walsall and the AHP to keep and produce details to the Council on request.
<b>Social Rented Units</b>	
Tenure	Lease/tenancy at low cost rent set against national rent regime
Occupation	Limited to a person 'In Need Of Housing' who will occupy as their sole residence, along with their dependents.
In Need Of Housing	Means a person who has applied and is eligible for housing, and who is not able to afford to buy or rent on the open market
Perpetuity	Hold as Social Rented Units, by an Affordable Housing Provider and never sold on open market or otherwise.
<b>First Homes</b>	
Eligibility Criteria (Local)	Has a 'Local Connection'

## 16. Affordable Housing Tenures & Glossary of Terms

### TYPES OF AFFORDABLE HOUSING TENURES

(Glossary of terms at end. Defined Terms in bold)

<b>Discounted Sale Units</b>	
Tenure	Sold on <b>Open Market</b> at not more than 70% of the <b>Open Market</b> value.
Occupation	<p>Limited to a <b>Qualifying Person</b> (or <b>Secondary Qualifying Person</b>) who will occupy as their sole residence, along with their <b>Dependents</b>.</p> <p>Requirement to take lowest income if more than one <b>Qualifying Person</b> (or <b>Secondary Qualifying Person</b>) makes application.</p> <p>Requirement to:</p> <ul style="list-style-type: none"> <li>• market as a <b>Discounted Sale Unit</b></li> <li>• provide notice to Council when disposing</li> <li>• provide 2 valuations to Council</li> <li>• provide evidence that applicant is <b>Qualifying Person</b>.</li> </ul> <p>If no application to purchase after 3months marketing, Council may authorise purchase by <b>Secondary Qualifying Person</b>, subject to:</p> <ul style="list-style-type: none"> <li>• provide notice to Council</li> <li>• evidence of marketing</li> <li>• Estate Agent statement that no applications from <b>Qualifying Person</b> for 3months</li> </ul>
Qualifying Person	<ul style="list-style-type: none"> <li>• has a right of residence in the UK;</li> <li>• is '<b>In Need of Housing</b>';</li> <li>• has a '<b>Local Connection</b>';</li> <li>• is a first time buyer;</li> <li>• no <b>Interest</b> in any other property;</li> <li>• use the <b>Discounted Sale Unit</b> as sole residence; and</li> <li>• gross annual household income at the date of the application not exceeding 27.5% of the <b>Discounted Price</b></li> </ul>
Secondary Qualifying Person	<ul style="list-style-type: none"> <li>• has a right of residence in the UK;</li> <li>• is '<b>In Need of Housing</b>';</li> <li>• no <b>Interest</b> in any other property;</li> <li>• use the <b>Discounted Sale Unit</b> as sole residence; and</li> </ul>

	<ul style="list-style-type: none"> <li>gross annual household income at the date of the application not exceeding 27.5% of the <b>Discounted Price</b></li> </ul>
Perpetuity	Hold as <b>Discounted Sale Units</b> , secured by covenant on title to dwelling (meaning each occupier can obtain equity in property but must always sell on for not more than 70% of the open market value)
<b>Shared Ownership Units</b>	
Tenure	Sale of 25-75% share with rent on balance. Could be freehold or leasehold.
Occupation	Limited to a person ' <b>In Need Of Housing</b> ' who will occupy as their sole residence, along with their <b>Dependents</b> .
Terms	<p>Cannot be sold to anyone other than an <b>Affordable Housing Provider</b> or an occupier who has staircased to 100% ownership.</p> <p>Hold as <b>Shared Ownership Units</b> in perpetuity (other than when an occupier has staircased), secured by covenant on title.</p> <p>Occupier can acquire additional shares in 5% increments, up to 15% on any one occasion and the rent reduces accordingly.</p> <p>After staircasing to 100% the proceeds are put into a reserve fund by the <b>Affordable Housing Provider</b> for use for <b>Affordable Housing</b> in Walsall and the <b>Affordable Housing Provider</b> to keep and produce details to the Council on request.</p>
<b>Social Rented Units</b>	
Tenure	Lease/tenancy at low cost rent set against national rent regime
Occupation	Limited to a person ' <b>In Need Of Housing</b> ' who will occupy as their sole residence, along with their <b>Dependents</b> .
Perpetuity	Hold as <b>Social Rented Units</b> , by an <b>Affordable Housing Provider</b> and never sold on <b>open market</b> or otherwise.

## **AFFORDABLE HOUSING GLOSSARY OF TERMS**

<b>“Affordable Housing”</b>	Means subsidised housing available to persons who cannot afford to rent or buy houses generally available on the Open Market
<b>“Affordable Housing Provider”</b>	Means a provider of Affordable Housing who is registered with the Regulator or such successor authority
<b>“Affordable Housing Units”</b>	Means 25% of the proposed Dwellings (NO. of the NO. Dwellings) to be constructed as part of the Development on the Site and of which NO.% (NO. Dwellings) shall be [AHU type] and the remaining NO.% (NO. Dwellings) shall be [AHU type] (but no more than NO. Dwellings shall be [AHU type]) in accordance with the obligations in Schedule 2 and "Affordable Housing Unit" shall be any one of them
<b>“Chargee”</b>	Means any legal person exercising a power of sale in respect of a mortgage or charge and shall include a mortgagee or chargee (or a receiver (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or an administrator (each a Receiver)) exercising a power of sale in respect of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver.
<b>“Chargee Disposal”</b>	Means the sale or lease of a whole individual Affordable Housing Unit by a Chargee who has entered into possession of the Affordable Housing Unit to a party who may not be a Householder
<b>“Dependent”</b>	Means a spouse or civil partner, child, parent or any other person who lives in the same household as the Qualifying Person or Secondary Qualifying Person but excluding tenants lodgers and boarders or persons employed by the Qualifying Person or Secondary Qualifying Person
<b>“Dependent”</b>	Means a spouse or civil partner, child, parent or any other person who lives in the same household as the person In Need of Housing but excluding tenants lodgers and boarders or persons employed by the person In Need of Housing
<b>“Dependent”</b>	Means a spouse or civil partner, child, parent or any other person who lives in the same household as the person In Need of Housing but excluding tenants lodgers and boarders or persons employed by the person In Need of Housing



<b>“Discounted Price”</b>	Means not more than 70% of the value of a Discounted Sale Unit on the Open Market
<b>“Discounted Sale”</b>	Means the sale of 100% of a Discounted Sale Unit to a Qualifying Person or a Secondary Qualifying Person on an Open Market basis at a Discounted Price
<b>“Discounted Sale Units”</b>	Means the Affordable Housing Units which are to be provided to Qualifying Persons or to Secondary Qualifying Persons on a Discounted Sale basis for their Occupation on a Householder basis
<b>“Disposal”</b>	Means the sale or lease of a whole Affordable Housing Unit and Dispose shall be construed accordingly
<b>“Dwellings”</b>	Means the dwellings (including houses flats and maisonettes) to be constructed on the Site pursuant to the Planning Permission and Dwelling shall be construed accordingly.
<b>“Estate Agent”</b>	Means an agency or company which provides services for the selling renting or management of residential property appointed by the Owner to sell the Discounted Sale Unit or such other qualified RICS chartered surveyor who may be appointed by the Owner for the purposes of selling the Discounted Sale Unit
<b>“Householder”</b>	Means a person Occupying an Affordable Housing Unit as their sole or main residence under the provisions of this Deed
<b>“In Need Of Housing”</b>	Means a person who has applied for housing and is eligible and who is not able to afford to buy or rent housing on the Open Market
<b>“Interest”</b>	Means any interest legal or equitable in any land or property
<b>“Local Connection”</b>	Households will be deemed to have a local connection where an applicant or a member of their household currently resides in the area in either temporary or permanent accommodation (if temporary the Homelessness duty has to be owed by Walsall Council) and: <ul style="list-style-type: none"> <li>i. has lived in Walsall by choice for a certain time (usually for six months out of the last 12 months or for three years out of the last five years); or</li> <li>ii. has close family living in Walsall, who have lived in the area for at least the previous five years; or</li> <li>iii. has settled employment in the Walsall Council area; or</li> <li>iv. has special circumstances that give rise to a local connection, for example persons who are exempt from any local connection criteria</li> </ul>

	<p>as set out in the Armed Forces statutory guidance that took effect from 20.06.20 and is set out below:</p> <ol style="list-style-type: none"> <li>a) Those who are currently serving in the Regular Armed Forces or who were serving in the Regular Forces at any time in the 5 years preceding their application for an allocation of social housing.</li> <li>b) Bereaved spouses or civil partners of those serving in the Regular Forces where (i) the bereaved spouse or civil partner has recently ceased, or will cease, to be entitled to reside in Ministry of Defence accommodation following the death of their Service spouse or civil partner, and (ii) the death was wholly or partly attributable to their service.</li> <li>c) Serving or former members of the Reserve Armed Forces who are suffering from a serious injury, illness or disability which is wholly or partly attributable to their service.</li> </ol>
<b>“Occupation”</b>	Means occupation for the purposes permitted by the Planning Permission but does not include occupation for the purposes of fitting out decoration marketing staff training or site security and Occupy and Occupying shall be construed accordingly
<b>“Open Market”</b>	Means the value that a Dwelling may be expected to achieve when sold or rented free from any encumbrance from a willing seller to a willing buyer and free from the terms of this Deed
<b>“Open Market Dwelling”</b>	Means any Dwelling for sale lease or other disposal on the Open Market constructed as part of the Development which is not an Affordable Housing Unit
<b>“Progress Report”</b>	Means a report on the progress of the Development including the number location and type of Dwellings where works have commenced completed and been Occupied pursuant to Schedule 2 of this Deed
<b>"Protected Tenant"</b>	<p>Means any tenant who:</p> <ol style="list-style-type: none"> <li>(a) Has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>(b) Has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</li> <li>(c) Has been granted a shared ownership lease by an Affordable Housing Provider (or similar arrangement where a share of the</li> </ol>

	Affordable Housing Unit is owned by the tenant and a share is owned by the Affordable Housing Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Affordable Housing Provider all remaining shares so that the tenant owns the entire Affordable Housing Unit.
<b>“Purchaser”</b>	Means a freehold owner or leasehold owner of an individual Dwelling on the Site or the whole or any part of the Site and who shall be a successor to the Owner or who shall derive title from the Owner whether directly or indirectly
<b>“Qualifying Person”</b>	Means a person who meets the following criteria: <ul style="list-style-type: none"> <li>- has a right of residence in the United Kingdom;</li> <li>- is In Need of Housing;</li> <li>- has a Local Connection;</li> <li>- is a first time buyer;</li> <li>- does not have any Interest in any other property;</li> <li>- shall use the Discounted Sale Unit as their sole residence; and</li> <li>- has a gross annual household income at the date of the application for the purchase of the Discounted Sale Unit not exceeding 27.5% of the Discounted Price of the Discounted Sale Unit</li> </ul>
<b>“Regulator”</b>	Means the Regulator of Social Housing established pursuant to the Legislative Reform (Regulator of Social Housing) (England) Order 2018 (LRO) or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions
<b>“Shared Ownership”</b>	Means the initial sale to a Householder In Need Of Housing of between a 25% and a 75% share of an Affordable Housing Unit on an Open Market basis with rent being payable on the remaining share to the Affordable Housing Provider
<b>“Secondary Qualifying Person”</b>	Means a person who meets the following criteria: <ul style="list-style-type: none"> <li>- has a right of residence in the United Kingdom;</li> <li>- is In Need of Housing;</li> <li>- does not have any Interest in any other property at the date of completion of the purchase of the Discounted Sale Unit;</li> <li>- shall use the Discounted Sale Unit as their sole residence; and</li> <li>- has a gross annual household income at the date of the application for the purchase of the Discounted Sale Unit not exceeding 27.5% of the Discounted Price of the Discounted Sale Unit</li> </ul>

<b>“Shared Ownership Units”</b>	Means the Affordable Housing Units which are to be provided to a person who is In Need Of Housing on a Shared Ownership basis for their Occupation on a Householder basis
<b>“Social Rent”</b>	Means the lease or tenancy to a Householder In Need Of Housing of an Affordable Housing Unit by the Affordable Housing Provider subject to a low cost rent set at targets in line with the national rent regime
<b>“Social Rented Units”</b>	Means the Affordable Housing Units which are to be provided to a person who is In Need Of Housing on a Social Rent basis for their Occupation on a Householder basis

## 17. Landscape Management Requirements

<b>Management Company</b>	<p>To be set up by the Owner prior to carrying out any development. To be responsible for the maintenance and management of the Landscaped Areas in accordance with the Management Plan for the lifetime of the Development.</p> <p>Owner is a member of Management Company and each purchaser becomes member of Management Company (i.e. shareholder), secured via restriction on title with Deed of Covenant for future owners</p>
<b>Landscaped Areas</b>	<p>Shown on a Plan Specifying type of landscape(s) to be specified eg Grassland, Shrubs/Bushes, Hedgerows, Trees, Wetland, Marginal/Bog, Prairie, Rooftop, hard surfaces, furniture etc and Management Plan to be tailored to refer to each</p>
<b>Management Plan</b>	<p>Submitted to LPA for approval. Approved Management Plan implemented prior to construction of development To include:</p> <ul style="list-style-type: none"> <li>• mechanism to ensure that each Purchaser shall join the Management Company;</li> <li>• mechanism to ensure that each Purchaser shall contribute financially to the Management Company so as to cover the whole cost of maintaining and managing the Landscaped Areas;</li> <li>• provision that the Management Company shall discharge the maintenance and management obligations contained in the Management Plan on behalf of the Owner(s);</li> <li>• detailed plans of the Landscaped Areas; and</li> <li>• a detailed schedule of: <ul style="list-style-type: none"> <li>○ the Landscaped Areas;</li> <li>○ the maintenance of the Landscaped Areas;</li> <li>○ the strategies for management and maintenance of grasslands, wetlands, pools and habitats and any other relevant landscape type; and</li> <li>○ planting plans specifying species and genus to be planted and ongoing maintenance and management of the planting for the lifetime of the Development</li> </ul> </li> </ul>
<b>Membership</b>	<p>Owner is a member of Management Company and each purchaser becomes member of Management Company (i.e. shareholder), secured via restriction on title with Deed of Covenant for future owners This encourages a community cohesion in the owners of the site and provides them with the responsibility for maintenance and the power to act where issues arise</p>
<b>Review</b>	<p>Annually for 5 years, thereafter ad hoc</p>
<b>Step In</b>	<p>Where there is a breach of the approved Management Plan, the Council may enter the site and carry out works, then recover the costs of doing so from the management company.</p>

## 18. Travel Plan Requirements

Where a Travel Plan requires ongoing monitoring and linked to an increase in performance it will need to be secured by a S106.

<b>Interim Travel Plan Coordinator</b>	Appointed to carry out responsibilities and duties in Framework Travel Plan prior to occupation of any part of the development
<b>Framework Travel Plan</b>	Appended to s106 To be implemented before occupation of any part of the development
<b>Travel Plan Coordinator</b>	Appointed prior to first Performance Report to carry out responsibilities and duties in Full Travel Plan
<b>Full Travel Plan</b>	To be submitted to LPA prior to first anniversary of first occupation. Full Travel Plan and Action Plan should clearly demonstrate how the Targets are to be achieved, including by Incentives
<b>Performance Reports:</b>	1 <sup>st</sup> , 3 <sup>rd</sup> and 5 <sup>th</sup> anniversary of occupation If Targets not achieved within 5 years following occupation, annual performance reports continue until the end of 9 years, or the Targets are achieved whichever is sooner.
<b>Objectives:</b>	<p>Minimise amount of vehicular traffic generated by</p> <p>Minimise and improve safety issues</p> <p>Reduce single car occupancy</p> <p>Supporting walking and cycling</p> <p>Promote public transport</p> <p>Reduce noise pollution by vehicular traffic</p> <p>Improve air quality</p> <p>Protect vulnerable road users</p> <p>Encourage active travel</p>
<b>Targets:</b>	<p>The means of achieving the Objectives and allowing progress to be measured:</p> <ul style="list-style-type: none"> <li>• Set 5yrs from occupation</li> <li>• Interim targets set at 1<sup>st</sup> and 3<sup>rd</sup> year from occupation</li> <li>• SMART</li> <li>• All journeys within assessment (no exclusions)</li> <li>• Focused on reducing single occupancy vehicles</li> <li>• Promoting modal shift and sustainable and safe travel</li> </ul> <p>If not achieved within 5 years following occupation, annual performance reports continue until the end of 9 years, or the Targets are achieved.</p>

<b>Action Plan:</b>	<p>Defines the measures to achieve the Targets, tailored to the specific requirements of the development. These may include:</p> <ul style="list-style-type: none"> <li>• Timescales for Targets</li> <li>• Incentives</li> <li>• CCTV Modal Surveys (over 2-day period)</li> <li>• Occupier questionnaire</li> <li>• Vehicle counts (dates/times/frequency)</li> <li>• Method of collection of baseline travel data</li> <li>• Measuring of travel data against mode share targets</li> <li>• Ascertain overall modal split</li> <li>• Ascertain and exploit potential for sustainable travel</li> <li>• Travel Packs to new occupiers</li> <li>• Modal Choice Targets table*</li> </ul>
<b>Incentives:</b>	<p>Dependent upon the type of development but may include:</p> <ul style="list-style-type: none"> <li>• Public transport discount tickets</li> <li>• Personalised travel planning for occupiers</li> <li>• Notice boards with timetables, walking/jogging/cycling routes, car share schemes</li> </ul>
<b>Modal Survey:</b>	<p>To be submitted with each Performance Report and which:</p> <ul style="list-style-type: none"> <li>• logs the travel patterns on Site</li> <li>• establishes the proportion of the occupiers of the Site using different modes of travel and</li> <li>• compares the information with the Travel Plan Targets.</li> </ul>

\*Modal Choice Targets Table:

Target	First Action Plan (%)	End of Year 1 (%)	End of Year 3 (%)	End of Year 5 (%)
Percentage of occupiers travelling in single occupied vehicles				
Percentage of occupiers travelling in vehicles with 2 or more occupants				
Percentage of occupiers using public transport				
Percentage of occupiers traveling by foot				
Percentage of occupiers cycling.				
Percentage of occupiers travelling by Metro or Rail				
Percentage of occupiers travelling by Hybrid or electric vehicle				
Total	100	100	100	100

## 19. Cannock Chase SAC Requirements

Background information and guidance is available on the Council's website at [www.walsall.gov.uk](http://www.walsall.gov.uk)

### **Cannock Chase SAC Mitigation Payments in Walsall**

Due to the evidence provided by the Cannock Chase SAC Partnership the zone of influence of potential negative impact on the protected site has been increased from 8km to 15km from the 1st April 2022.

Walsall council has joined the Cannock Chase SAC Partnership to allow mitigation for the negative impact to take the form of developmental contributions / payment for all developments that meet the below criteria. This figure will be subject to an annual increase which will apply each 1st April from 2023 onwards, in line with the All Items Group (item reference CHAW) of the Retail Prices Index published by HM Government Office for National Statistics.

Certain other types of development falling within the 15km of Cannock Chase SAC are also required to provide appropriate mitigation, usually:

- Net increase in the number of dwellings (including conversions through Prior Approvals)
- Care homes falling within Use Class C3
- C2 Residential institutions (depending on the level of care / support provided)
- Gypsy and Traveller pitches
- Hotels, holiday lets, and camping & caravan sites
- New Stables, Trekking Centres and Equine Apparatus
- Houses in Multiple Occupation (HMO)

Upon receipt of any relevant planning application submission you will be asked to complete and submit the necessary Cannock Chase SAC Habitat Regulation Assessment form. This form will be issued to you by the LPA.

The LPA will subsequently screen your application under the Habitat Regulations and your planning case officer will advise you of the outcome of this screening exercise along with providing you with a Unilateral Undertaking template for you to complete and return in order to secure any necessary mitigation contribution.

However, where other Planning obligations are necessary as part of the same development the SAC contribution can be incorporated into a single S106 Agreement. You are advised to take your own independent legal advice before entering into such an agreement.

In order to meet the requirements of the Habitats Regulations, any Undertaking or Legal Agreement must ensure that the SAC mitigation contribution is paid prior to implementation of any part of the approved development.



**Development Management**

Walsall Council  
2<sup>nd</sup> Floor Civic Centre  
Darwall Street  
Walsall  
West Midlands  
WS1 1DG

Tel: 01922 652677

Email: [Planningservices@walsall.gov.uk](mailto:Planningservices@walsall.gov.uk)

Website: [www.walsall.gov.uk](http://www.walsall.gov.uk)