



Developer Contributions:

Supplementary Planning Document (SPD)

December 2020

Policy & Environment Team
Economy and Growth
Town Hall
Burnley
BB11 9SA

E-mail: localplan@burnley.gov.uk

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1. Introduction

1.1 The Purpose and Scope of the SPD

1.1.1 This Supplementary Planning Document (SPD) has been prepared by Burnley Council as part of its planning policy framework. It supplements the policies of the Burnley's Local Plan 2012-2032 which was adopted on 31 July 2018. The text of the most relevant policies can be seen in Appendix A.

1.1.2 SPDs elaborate upon the policy and proposals in Local Plans but do not have their formal statutory 'Development Plan' status. They are, however, material considerations in the consideration of relevant development proposals. This SPD provides detailed guidance on the application of the Local Plan policies in respect of developer contributions.

1.1.3 The SPD was adopted by the Council on 8 December 2020.

1.1.4 Policy IC4 of the Local Plan sets out the policy for seeking planning contributions and this SPD is intended to provide information on how this policy and other policies requiring affordable housing or specific infrastructure will be interpreted and applied.

1.1.5 The SPD covers contributions towards:

- Infrastructure;
- Affordable Housing; and
- Other matters.

1.1.6 The Local Plan in Policy IC4 lists a number of matters for which contributions may be sought; but makes clear that the list is not exhaustive (See Appendix 1):

1.2 What is Infrastructure?

1.2.1 Section 216 of the Planning Act 2008 describes the types of infrastructure that can be supported through the Community Infrastructure Levy and this description can be used as a basis for the definition of infrastructure generally.

1.2.2 Affordable housing is not considered to be 'infrastructure' within this statutory definition and the CIL levy cannot be used to fund affordable housing. For the ease of reference, however, the term 'infrastructure' used in the SPD (unless stated otherwise) to include all matters for which contributions may be sought, including affordable housing.

1.3 What are Planning Contributions?

1.3.1 This term refers to any form of contribution made by a developer to directly deliver or pay towards (via sums of money or contributions in kind) new or improved affordable housing, infrastructure or services. There are several mechanisms that a Council can use to secure planning contributions from developers and these fall into three broad categories:

- Conditions
- Obligations
- CIL

1.3.2 The most common mechanisms is via [conditions](#) attached to a planning permission.

1.3.3 [Planning Obligations](#) are a specific type of planning contribution secured via a legally enforceable agreement such as a [Section 106 Agreement](#)¹, a Unilateral Undertaking, [S.111 Agreement](#)² or [Section 278 highway Agreement](#)³.

1.3.4 Contributions can also be secured by way of the [Community Infrastructure Levy](#) (CIL) - a legally binding tariff-style set of standardised charges. Burnley Council has not yet resolved to pursue CIL.

1.3.5 The Council will use the most suitable mechanism for each type of contribution, which may vary depending on the specifics of each planning application.

1.3.6 For further explanation see Section 4.

2. Policy Context Overview

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

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

2.3 New development as set out and supported by the Local Plan can place a strain on existing infrastructure, but also has the potential to provide or help provide new infrastructure or improve existing infrastructure and services.

2.4 Where appropriate (i.e. where it is necessary to make the development acceptable in planning terms - including by mitigating impacts), the Local Plan policies state that developers will be required to provide the necessary infrastructure or contribute to its provision through Section 106 contributions and/or the Community Infrastructure Levy (CIL) should the Council introduce it.

2.5 The Local Plan sets out that planning contributions will be sought where development creates a requirement for additional or improved services and infrastructure and/or to address the off-site impact of development so as to satisfy other policy requirements.

2.6 Infrastructure can be provided directly by developers or via financial sums paid to other bodies to pay for or contribute towards the cost of new or improved infrastructure.

2.7 Contributions may be sought to fund a single item of infrastructure or to fund part of an infrastructure item or service, and contributions may be sought for the initial provision and/or ongoing running and maintenance costs of services and facilities.

Planning Reform

2.8 This SPD does not take account of the proposals for the reform of the current system of development contributions set out in the White Paper 'Planning for the Future' issued for consultation in August 2020 or the changes to the government's affordable housing policy set out in the consultation document 'changes to the current planning system' also issued in August 2020.

¹ Town and Country Planning Act 1990

² Local Government Act 1972

³ Highways Act 1980

3. Infrastructure Requirements

3.1 Identifying Infrastructure Requirements

3.1.1 The known infrastructure requirements to support the specific allocations in the adopted Local Plan (at the time of its preparation) are identified both within the individual site allocation policies and in other policies which set out specific provision standards e.g. public open space requirements for new housing developments. Revised infrastructure requirements may result as the detail of schemes is developed over time.

3.1.2 For windfall developments that are supported by the Local Plan, infrastructure requirements and any associated contributions required will need to be assessed as schemes are drawn up on a site-by-site basis.

3.1.3 There are a number of strategies and studies that identify and inform infrastructure requirements and standards in relation to planning contributions. The key documents are outlined below.

3.2 The Infrastructure Delivery Plan (IDP)

3.2.1 An IDP was prepared to support the Local Plan. The IDP reviews and evaluates the social, environmental and economic infrastructure that will be required to support the development and growth set out in the Plan. The IDP is a 'living document' which will be updated from time to time. The most recent version is Version 2 of July 2017.⁴ The IDP is currently being updated and a new version will be issued in late 2020.

3.3 Lancashire County Council's 'Infrastructure and Planning' document

3.3.1 Burnley Borough has a two-tier local authority structure. Lancashire County Council provides services such as highway maintenance, education, minerals and waste planning and social care. Burnley Borough Council provides services such as local planning and building control, environmental health and domestic waste collection.

3.3.2 Lancashire County Council (LCC) has produced a non-statutory [Infrastructure and Planning](#) policy document setting out and its approach to seeking planning contributions and how it will engage with the planning process to ensure the impacts of proposed developments on the infrastructure and services that it provides are recognised.

3.3.3 The current document of September 2017 can be downloaded from LCC's website: <https://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers/>

[Planning and infrastructure](#)

[Annex 1 Highways](#)

[Annex 2 Education contribution methodology Revision September 2020](#)

[Annex 3 Drainage and Flood Risk Management](#)

⁴ <https://www.burnley.gov.uk/residents/planning/planning-policy/burnleys-local-plan/burnleys-infrastructure-delivery-plan>

3.3.4 Further information to support Annex 2 setting out how Lancashire County Council calculates its pupil projections, please see the [pupil forecast methodology](#).

3.3.5 The County Council provides the borough Council with a full response to any relevant planning application relating to the impact of the development and with any consequential requirement for developer contributions; but acknowledges that it for the Borough Council to consider the site viability and the overall benefits brought by the proposed development in reaching a decision and the requirement for or amount of any contribution.

3.4 Burnley Green Spaces Strategy

3.4.1 Burnley Borough Council's [Green Spaces Strategy 2015-2025](#) recommends standards for open space provision. These informed the development of the Local Plan and in particular Policy HS4. It also identifies priorities for improvements for:

- Parks and Gardens;
- Natural and Semi-Natural Greenspaces;
- Amenity Green Spaces;
- Provision for children and young people;
- Outdoor sport;
- Allotments;
- Cemeteries, and;
- Greenways.

3.4.2 The Council, where appropriate, may seek contributions from developers towards the provision, maintenance or enhancement of green spaces in line Policy HS4 of the Local Plan and the Green Spaces Strategy. This is discussed further in section 8 of this SPD.

4. Types of Contribution Explained

4.1 Conditions

4.1.1 Planning conditions are the most commonly used and simplest mechanism for securing the provision of on-site infrastructure e.g. roads, sewers, play areas; and ensuring a site is well-designed and appropriate for its intended use. They can also be used to secure the delivery of on or off-site affordable housing.

4.1.2 The long-term maintenance of on-site infrastructure is usually secured through adoption agreements between the developer and a suitable organisation; for example roads and street lighting with the highway authority (LCC); sewers with the utility provider (United Utilities); communal areas and open spaces with a residents' management company or the local council (Burnley Borough Council).

4.1.3 [Section 70\(1\)\(a\) of the Town and Country Planning Act 1990](#) enables the local planning authority in granting planning permission to impose "such conditions as they think fit". [Paragraph 54](#) of the National Planning Policy Framework states "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions".

4.1.4 [Paragraph 55](#) of the National Planning Policy Framework states that planning conditions should only be imposed where they are:

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

4.1.5 No payment of money or other consideration can be positively required by a condition when granting planning permission. However, where the 6 tests above are met, it may be possible use a [negatively worded](#) condition to prohibit development or occupation until a specified action has been taken, for example, the entering into an agreement to secure a financial contribution towards the provision of supporting infrastructure or the delivery of a specify infrastructure project.

4.1.6 Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body will normally fail the tests of reasonableness and enforceability, unless the land or specified action in question is within the control of a local authority and there is clear evidence that it is enforceable within the time-limit imposed by the permission.

4.2 Obligations

4.2.1 Planning obligations can be secured through a Section 106 Unilateral Undertaking or Agreement. For more complex applications, an Agreement is normally required.⁵

⁵ Section 106 of The Town and Country Planning Act 1990 and Section 111 of the Local Government Act 1972

Section 106 Agreements

4.2.2 S106 Agreements are made under the provisions of [Section 106 \(S106\)](#) of the Town and Country Planning Act 1990.

4.2.3 The NPPF and the NPPG set out national planning policy and guidance and define planning obligations as being “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.”

4.2.4 S106 Agreements can require a developer to provide affordable housing or other specific item(s) of infrastructure or on or off-site e.g. a new school or road improvement; or they can secure ‘tariff style’ contributions towards the provision of affordable housing or other infrastructure off-site by others. The latter is normally done by ‘pooling’ contributions from a number of developments intended to provide common types of infrastructure for the wider area.

4.2.5 Section 106 Agreements or Unilateral Undertaking are normally signed before the grant of planning permission and are legally binding. They can be signed afterwards where a negatively-worded condition requiring them to be signed e.g. “before development commences” forms part of the planning permission.

4.2.6 Planning contributions can only be sought where they are necessary to make a development acceptable in planning terms. A local planning authority must ensure that the obligation meets the relevant tests for planning obligations, i.e. they are:

- necessary to make the development acceptable in planning terms;
- directly related to the development, and;
- fairly and reasonably related in scale and kind to the development.

4.2.7 Planning obligations may only constitute a reason for granting planning permission if they meet the above tests.⁶

4.2.8 The NPPG states that policy for seeking planning obligations should be grounded in an understanding of development [viability](#) through the plan making process. Local Plan Policy IC4 relates to infrastructure and planning contributions. A Viability Assessment was commissioned to inform the production of the Local Plan and this should be used as a starting point when determining viability.

4.2.9 Applicants do not have to agree to a proposed planning obligation. However, this may lead to a refusal of planning permission. An appeal may be made against the refusal or non-determination or of an application.

4.2.10 The Act provides that a planning obligation may:

- Be unconditional or subject to conditions;
- Impose any restriction or requirement for an indefinite or specified period; and
- Provide for payments of money to be made, either of a specific amount or by reference to a formula, and require periodical payments to be paid indefinitely or for a specified period.

4.2.11 Legal agreements and any planning contributions they require run with the land in the same way that a planning permission does. This means that, once the permission is implemented, they are enforceable against the developer who originally entered into the agreement and any subsequent person acquiring an interest in that land. These legal agreements must be registered as a land charge

⁶ These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 (reg 122(2)) and as policy tests in the National Planning Policy Framework, paragraph 56.

and will form part of the planning register, available for public inspection. Where a planning permission expires, the planning obligation can be removed.

4.3 Section 278 Highway Agreements

4.3.1 Lancashire County Council (LCC) as the local highway authority may, if it is satisfied it will be of benefit to the public, enter into a legal agreement with a developer under [Section 278 of the Highways Act 1980](#) where a development requires works to be carried out on or to the highway.

4.3.2 This agreement can be either for the County Council to carry out the works at the developer's expense, or allow the developer to provide the works directly, subject to an approval and inspection process. A condition would be attached to the planning permission requiring the works to be agreed and carried out.

4.3.3 These agreements will normally be prepared separately from any Section 106 Agreement and the funding arrangements agreed directly between the developer and LCC.

4.3.4 Works associated with any planning proposal are not permitted within the limits of the publicly maintained highway until the agreement is completed and the bond (if applicable) is secured.

4.3.5 Highways England has similar powers in relation to the Strategic Road Network.

4.3.6 See Section 9 for further information.

5. How will contributions be determined?

5.1 Are contributions required?

5.1.1 Where appropriate i.e. where it is necessary to make the development acceptable in planning terms, including by mitigating impacts, the Local Plan policies state that developers will be required to provide the necessary infrastructure or contribute to its provision through Section 106 contributions and/or the Community Infrastructure Levy (CIL) should the Council introduce it.

5.1.2 For contributions secured through conditions, the conditions must pass tests of being:

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

5.1.3 Conditions will normally relate to affordable housing or other infrastructure provision by the developer on-site.

5.1.4 However, for contributions towards off-site affordable housing or other infrastructure, and in complex cases; a Section 106 Agreement will normally be required.

5.1.5 Section 106 Agreements must meet the three tests that are set out as statutory tests in the [Community Infrastructure Levy Regulations 2010](#) and as policy tests in the [National Planning Policy Framework](#) i.e. Contributions must be:

- necessary to make the development acceptable in planning terms,
- directly related to the development, and
- fairly and reasonably related in scale and kind to the development

5.1.6 Contributions will be negotiated on a site-by-site basis and the Council will only seek contributions where a genuine need arising from the proposed development is generated.

5.2 How will contributions be determined and prioritised?

Prioritisation

5.2.1 All contributions required by or to achieve compliance with local or national policies will be assessed during the consideration of the application. There may be instances where due to viability considerations, all contributions sought cannot be afforded if the otherwise plan-compliant development is to go ahead. For certain matters, the adopted Plan specifically allows flexibility in its requirements to recognise viability challenges. In such cases, contributions may be prioritised and/or waived. The waiving of certain contributions on viability grounds would not necessarily be considered to make the development unacceptable.

5.2.2 However, where contributions are considered entirely necessary to make the scheme acceptable in planning terms such that its absence the scheme would be wholly unsatisfactory, and the applicants is unwilling to agree to these, **viability will not be relevant and applications will be refused**. In this SPD, such infrastructure is described as '**necessary and critical**' e.g. infrastructure to secure highway and pedestrian safety. These types of costs will have already been demonstrated to be

viable (by the Local Plan viability assessment) to ensure that the physical development is of an appropriate standard.

5.2.3 In cases of ‘**necessary and important**’ on and off-site other infrastructure required by local or national policy, viability can be factored in and failure to provide or contribute to certain infrastructure may or may not result in the refusal of the scheme based on the consideration of the scheme against the Local Plan read as whole; and whether material considerations indicate otherwise.

5.2.4 In recognition of the known viability constraints⁷ and to aid the interpretation of Local Plan policies HS2 and IC5 in decision making, a prioritising of different types of contributions is proposed.

Table 1: Prioritisation Categories

Priority Category	Category Description	Subject to Viability Considerations?	Examples
Priority 1	Necessary and Critical on and off-site infrastructure	No	On Site = Roads, sewers, recreational open space required by HS4, playing pitches Off Site = Junction/highway safety measures, pedestrian crossings, mitigation or compensatory habitat for protected species
Priority 2a	Necessary and Important on or off-site Affordable Housing (mainstream market residential developments only)	Yes	Affordable housing
Priority 2b	Necessary and Important on and off-site infrastructure (mainstream market and affordable residential developments only)	Yes	Necessary contributions for education provision
Priority 2c	Necessary and Important on and off-site infrastructure	Yes, insofar as it does not compromise achieving an acceptable form of development	On Site = Other Green Infrastructure Off Site = Contributions for pedestrian and cycleway provision/improvement, other open space, biodiversity offsetting, heritage assets
Priority 3	Desirable on and off-site infrastructure	Yes	Other specialist housing or infrastructure not specifically required by the Local Plan but reasonably requested by and infrastructure provider/consultee

Please note - the examples set out above are illustrative not definite or exhaustive, as in each case a piece of infrastructure may not be relevant to the scheme or may be more or less important to its acceptability. These are described in more detail in the themed sections 7-11.

⁷ See Section 5.3 of this SPD

Negotiation

5.2.5 Discussions about contributions and their prioritisation will take place as early as possible in the planning process, including at the [pre-application stage](#), and where relevant will involve infrastructure providers such as Lancashire County Council in its role as highways and education authority.

5.2.6 Where prioritisation has to take place due to likely impacts on viability, there may be a proportioning of the contributions across priorities 2a b and c with weighting in favour of 'a', 'b', then then 'c'. Priority 3 will only be relevant where Priorities 1-2 have been satisfied.

5.2.7 The adopted Local Plan and accompanying Infrastructure Delivery Plan (IDP) identifies a number of infrastructure requirements and standards and these will form the starting point in determining and prioritising the infrastructure required.

5.3 How will viability be assessed?

5.3.1 In order to inform the Local Plan, a Viability Assessment was undertaken.⁸ The purpose of the assessment was to ensure that the cumulative impact of the plan policies together with affordable housing and other planning obligation requirements would not compromise the viability of a typical scheme. It assessed viability across the borough using a number of development typologies. For housing schemes it assumed a 20% developer profit and assessed all costs i.e. land acquisition, site works and on-site infrastructure, construction costs, fees, abnormals (eg for miming legacy) and contingencies, interest and the sales values for each site type.

5.3.2 Not all of the emerging requirements tested in the Assessment were ultimately included in the adopted Local Plan.

Housing Development

5.3.3 For residential schemes, the Assessment concluded that whilst the delivery of affordable housing was likely to be challenging, the cumulative impact of the policies would not put development at serious risk. It noted that when considering brownfield sites, the Council should continue to work with developers to have the best possible understanding of activity on the ground and specific sites, and as appropriate, continue their flexible approach to the specific policy requirements.

5.3.4 It further noted that the Assessment was based on then current values and costs and whilst it would have been inappropriate (and contrary to national planning practice guidance) to take a different approach, it was notable that the borough of Burnley was a relatively low value area lying amongst some rather higher value areas and was well located in relation to Manchester and Preston. The price evidence used was informed by then recent sales, many of which were from sites that are distinctly different to those that are now identified for development in the 2018 Local Plan. The Assessment noted that if the Council can facilitate development that is of a high quality and different to the then currently available housing stock, this would be likely to generate higher values and thus improve viability. It recommended that viability be kept under review.

5.3.5 The Viability Assessment included in its residential base appraisals an assumed £500 contribution for each housing unit to allow for limited education contributions and other infrastructure. It did not factor in large-scale pooled contributions towards education provision in excess of this amount, partly in view of the limitations imposed by the pooling restrictions in place at the time, and the fact that this position will fluctuate across the plan period and can suddenly change,

⁸ www.burnley.gov.uk/sites/default/files/Burnley%20Local%20Plan%20Viability%20Assessment%20FINAL%202016.3.17.pdf

for example, with the closure of a Hameldon Community College – a secondary school with spare capacity - and of course with the exercise of parental choice. It is not therefore possible to predict with any certainty in advance at the plan-making stage, precisely where and how much education contributions would be sought or expected for each scheme, and thus the impact on viability.

5.3.6 The outputs of the Local Plan Viability Assessment have been used to set the thresholds, formulas, contribution ceilings and wider approach of this SPD and it will be used to inform any viability discussions with applicants. Where an applicant wishes to challenge these on the grounds of viability, either on an allocated or windfall site, Policy IC4 of the Local Plan requires applicants to provide viability evidence through an ‘open book’ approach to allow for the proper review of the evidence submitted and for reasons of transparency. Where this is done and relied upon, the indicative ceilings set out in Table 2 will not apply.

5.3.7 Each planning application is determined on its merits, and there may therefore be some variation to contributions required for similar developments taking into account the specifics of the site and the situation at the time the planning application is considered.

Non-residential schemes

5.3.8 The same principles and prioritisation will apply to non-residential schemes and specialist housing schemes, but contributions towards affordable housing, education contributions and the contributions ceilings will not be relevant.

5.3.9 The Local Plan Viability Assessment noted that “It is clear that non-residential development is challenging in the current market, but it is improving. We would urge caution in relation to setting policy requirements for employment uses that would unduly impact on viability.” (para 12.32) and that “Whilst some non-residential uses are not viable, they are not rendered unviable by the cumulative impact of the Council’s policies, rather by the general market conditions. The employment uses (office and industrial), town centre retail and hotel uses are unlikely to be able to bear additional developer contributions, however retail development is generally able to make significant contributions.” (Para 12.42)

5.3.10 Schemes would still have to fund any **necessary and critical infrastructure – priority 1**, but for **necessary and important infrastructure – priority 2c**, where the viability of otherwise plan-complaint development is in question, applicants should provide their own open book viability assessment to enable the Council to determine the upper limit of any contributions.

Contribution Ceilings

5.3.11 The results of the Viability Assessment have been used (indexed to 2020 using CIL indexation⁹) to determine both the affordable housing percentages (see also section 7.3) and contribution ceilings for mainstream housing developments, so that developers in designing schemes can be aware in advance of the likely maximum level of contributions that could be requested.

5.3.12 The ceilings are not a CIL-type levy that is automatically payable. The ceilings will only be triggered where the cumulative requests for contributions would exceed the ceiling amount. In many cases, contributions will be significantly less than the ceiling amounts.

5.3.13 The ceilings draw their assumptions of costs and values from the Plan Viability Assessment and have been calculated based on a set of ‘finer grained’ standardised assumptions about policy compliant housing sites, mixes and densities, sales values and affordable housing tenure mixes. Individual sites and schemes will of course vary from these the standard mixes and values etc and

⁹see Section 6.2 for further explanation

viability can be improved through policy compliant adjustments to the housing mix or changes to affordable housing tenure mix e.g. to add a greater proportion of intermediate tenure or discounted sales.

5.3.14 The ceilings are supplementary guidance not development plan policy and as such there may be instances where the circumstances of a particular site or development are such that a lower ceiling or higher ceiling should apply. All 'necessary and critical' infrastructure must be funded in full.

5.3.15 Where contribution requests include priority 2 necessary and important infrastructure and the cumulative requests would be above the viability ceiling, plan-compliant adjustments to the scheme may be negotiated to improve viability and thus allow a higher ceiling. This could be achieved in a number of ways e.g. where affordable housing is required, by allowing this to be off-site or if on-site by adjusting the affordable housing tenure; or by allowing an appropriate increase in the number of units. (See also paragraph 7.3.23.)

5.3.16 In order to agree a lower ceiling, in the first instance the applicant will be expected to explain why the assumptions used to set the ceiling would not apply in their case and where there is no agreement on this, undertake their own open book viability assessment - which any applicant is entitled to do in any event.

Table 2: Indicative Contribution Ceilings and Affordable Housing %

SPD Site code	Site Type	Location*	Value per m2 (2016 Prices)	Assumed Gross Density - dph	Allocations (where applicable)	Site Size Category	Affordable Housing % assuming standard tenure split (See Section 7)	Affordable Housing on or offsite	Contribution Ceilings at 2020 prices (£ per unit)
A1	Greenfield Type 1	Village/Urban fringe	2250	25	n/a	200 or more units	5%	On-site	2000
A2								Off-site	6500
B	Greenfield Type 1	Within Development Boundary B&P	2150	30	HS1/1	200 or more units	0%	n/a	2000
C1	Greenfield Type 1	Village/Urban fringe (higher value area)	2310	25	HS1/8	100 to 199 units	10%	On-site	500
C2								Off-site	9500
D1	Greenfield Type 1	Village/Urban fringe allocation	2250	25	HS1/2 HS1/4 HS1/9	100 to 199 units	10%	On-site	500
D2								Off-site	6000
E	Greenfield Type 1	Within Development Boundary B&P	2150	30	n/a	100 to 199 units	0%	n/a	1500
F1	Greenfield Type 1	Village/Urban fringe	2250	25	n/a	50 to 99 units	10%	On-site	500
F2								Off-site	6500
G	Greenfield Type 1	Within Development Boundary B&P	2150	30	n/a	50 to 99 units	0%	n/a	2500
H1	Greenfield Type 1	Village/Urban fringe	2250	30	HS1/23 HS1/25 HS1/30	11 to 49 units	15%	On-site	3000
H2								Off-site	17000
I1	Greenfield Type 1	Within Development Boundary B&P	2150	35	HS1/15 HS1/20 HS1/21 HS1/27	11 to 49 units	10%	On-site	3000
I2								Off-site	12500
J	Greenfield Type 1	Anywhere	2310	32		1 to 10 units	0%	n/a	23500

K1	Greenfield Type 2	Village/Urban fringe allocation	2250	25	n/a	200 or more units	5%	On-site	500
K2								Off-site	3000
L	Greenfield Type 2	Within Development Boundary B&P	2150	30	n/a	200 or more units	0%	Off-site	500
M1	Greenfield Type 2	Village/Urban fringe allocation	2250	25	n/a	100 to 199 units	5%	On-site	500
M2								Off-site	3000
N	Greenfield Type 2	Within Development Boundary B&P	2150	30	n/a	100 to 199 units	0%	N/A	500
O1	Greenfield Type 2	Village/Urban fringe allocation	2250	25		50 to 99 units	5%	On-site	500
O2								Off-site	3000
P	Greenfield Type 2	Within Development Boundary B&P	2150	30		50 to 99 units	0%	N/A	500
Q1	Greenfield Type 2	Village/Urban fringe allocation	2250	30	HS1/12	11 to 49 units	10%	On-site	3500
Q2								Off-site	13500
R1	Greenfield Type 2	Within Development Boundary B&P	2150	35	HS1/7	11 to 49 units	5%	On-site	4500
R2								Off-site	9000
S	Greenfield Type 2	Anywhere	2310	32	N/A	Up to 10	0%	n/a	19500
T1	Brownfield	Village/Urban fringe allocation	2250	40	HS1/3 HS1/5	200 or more units	5% (subject to the vacant building credit)	On-site	500
T2								Off-site	3500
U	Brownfield	Within Development Boundary B&P	1850	45	n/a	200 or more units	0%	Off-site	Not viable for housing without subsidy/mix of uses**
V1	Brownfield	Village/Urban fringe allocation	2250	40		100 to 199 units	5% (subject to the vacant building credit)	On-site	500
V2								Off-site	4000
W	Brownfield	Within Development Boundary B&P	1850	45	HS1/28 HS1/6	100 to 199 units	0%	N/A	Not viable for housing without subsidy/mix of uses**

X1	Brownfield	Village/Urban fringe allocation	2250	40	HS1/29 HS1/31	11 to 99 units	5% (subject to the vacant building credit)	On-site	500
X2								Off-site	4000
Y	Brownfield	Within Development Boundary B&P	1850	45	HS1/10 HS1/11 HS1/13 HS1/14 HS1/17 HS1/18 HS1/19 HS1/22 HS1/24	11 to 99 units	0%	N/A	Not viable for housing without subsidy/mix of uses**
Z	Brownfield	Anywhere	1900	45		Up to 10	0%	n/a	250

*Note: Village/Urban fringe in this context means a windfall site within and close to any development boundary and also includes allocations HS1/2, HS1/3, HS1/4, HS1/5, HS1/8, HS1/9, HS1/12, HS1/16, HS1/23, HS1/25, HS1/26, HS1/29, HS1/30, HS1/31 and HS1/32

** See para 5.3.10 – a bespoke viability assessment may be required

For the purposes of the proposed % and ceilings set out in Table 2, the definition of the site types is based on the predominant character/use of the site and is:

- Greenfield Type 1 – As per the NPPF Definition
- Greenfield Type 2 - As per the NPPF Definition but where it can be clearly shown that the site is partly developed for or was previously developed in the past for a non-domestic or non-agricultural use and the nature of the past use affects a large proportion of the site and is likely increase development costs and risks as for brownfield sites e.g. tipping, quarrying, mining.
- Brownfield – Previously developed land as per the NPPF definition

Sites HS1/16 HS1/26 and HS1/32 are party brownfield with the brownfield part being non-residential nature and will be apportioned accordingly between site types H and X

5.4 How will contributions be secured?

5.4.1 Likely conditions that deal with matters relating to contributions will be discussed with applicants before a decision is made. For pre-commencement type conditions, legislation now requires formal notification to applicants.¹⁰

5.4.2 S106 Agreements will normally be expected to signed before the grant of planning permission. This is to ensure that impacts can properly be assessed and the development approved can actually be delivered and done so in a satisfactory manner.

5.4.3 Although legally such agreements can be signed after the grant of planning permission by the use of a negatively-worded condition attached to the planning permission e.g. requiring an agreement to be signed before development commences; this route is less satisfactory as it makes the delivery of the development less certain and this can be critical in for example maintaining a 5-year housing land supply.

5.4.4 For Section 106 Agreements, negatively-worded conditions requiring agreements to be signed after development commences e.g. before occupation, will not normally be allowed¹¹ as failure to subsequently sign or agree on terms could result in uncompleted or unsealable developments.

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

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

5.4.7 Where the proposed development triggers a County Council requirement in terms of infrastructure, the County Council will likely request and will normally be allowed to be a signatory to the agreement so that relevant obligations on the developer are directly enforceable by the County Council and similarly, obligations on the County Council are directly enforceable by the signatories of the agreement.

5.5 Can an agreed planning obligation be changed?

5.5.1 Planning obligations can be renegotiated at any point where the local planning authority and persons against whom the obligation is enforceable agree to do so.¹² In 2020 the government issued guidance in response to the coronavirus pandemic urging local authorities to consider deeds of variation to allow for the deferral of payments to remove barriers and minimize the stalling of sites.

5.5.2 Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to modify or discharge the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way.¹³

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

¹⁰ Notice under Town and Country Planning (Pre-Commencement Conditions) Regulations 2018

¹¹ There be instances where this could be considered e.g. retrospective applications, or changes of use where occupation is the start of development

¹² 106A of the Town and Country Planning Act 1990

¹³ 106A of the Town and Country Planning Act 1990

6. Spending and Monitoring

6.1 Is information on planning contributions publicly available?

6.1.1 Regulations introduced from 1 September 2019¹⁴ require that from December 2020 information on planning contributions received and spent by the Borough and County Council be published through an annual ‘infrastructure funding statement’. The data specifications for the proposed statements are still under development. The information required will be included and/or cross referenced in future Authority Monitoring Reports (AMRs).

6.1.2 Local planning authorities are already required to keep a copy of any planning obligation together with details of any modification or discharge of the planning obligation and make these publicly available on their [planning register](#). Copies of Section 106 Agreements are made available the Council’s website.

6.2 Indexation

6.2.1 Whilst Section 106 contribution amounts are not governed by the CIL Regulations, the indexation that will be used where necessary to calculate the initial agreement amounts and any post-agreement changes prior to payment will reflect the approach contained within the CIL regulations to ensure that obligations provide for the actual costs of the infrastructure for which they are levied.

6.2.2 Regulation 40 of the Community Infrastructure Regulations 2010 required Local Authorities to obtain the All-in-Tender Price Index, as published by the Building Cost Information Service (BCIS) of the Royal Chartered Surveyors (RICS) on the 1st November each year to calculate the proportionate increase in contribution rates for the following year starting 1st January.

6.2.3 In 2019 a new ‘RICS CIL index’, a bespoke index for the Levy based on the Building Cost Information Service’s (BCIS) All-in Tender Prices Index was introduced to be used for planning permissions granted on or after that date. The current¹⁵ 2020 figure will apply from 1st January 2020 and is based on building prices in 2019.¹⁶

6.2.4 The index will be published on the fourth Monday in October each year. The Index, once published, will not normally be subject to revision. Should RICS feel it necessary to amend a published Index this will only be done with the agreement of MHCLG.

Matters that will be CIL Indexed

6.2.5 The CIL indexing described above will be used as follows:

6.2.6 The **contribution ceilings**¹⁷ set out in Table 2 will be:

- Index linked for inflation/deflation between 2020 (the year of adoption of this SPD) and the year an agreement relating to an application granted planning permission is signed; and then

¹⁴ The Community Infrastructure Levy (Amendment) (England)(No2) Regulations 2019

¹⁵ At the date of drafting this SPD

¹⁶ <https://www.rics.org/uk/products/data-products/rics-community-infrastructure-levy-index/>

¹⁷ CIL indexing has been used to calculate the ceilings to 2020. These draw their data from the 2017 Viability Assessment’s 2016 costs and values and have been indexed to 2020 using the formula ‘ceiling x 334/286’ i.e. ceiling x CIL Index for 2017/CIL Index for 2020

- Index linked for inflation/deflation between the date the agreement is signed and payment is made towards the actual delivery of the service or facility.

6.2.7 For **open space** contributions, the amounts set out in this SPD will be:

- Index linked for inflation/deflation between 2020 (the year of adoption of this SPD) and the year an agreement relating to an application granted planning permission is signed; and then
- Index linked for inflation/deflation between the date the agreement is signed and payment is made towards the actual delivery the service or facility.

6.2.8 Off-site contributions for **affordable housing** will be determined using the affordable housing calculator at the date of approval of the planning application based the latest information on rents (published October) and values and the agreement will specify that these amounts will be:

- Index linked for inflation/deflation between the date the agreement is signed and payment is made towards the actual delivery.

6.2.9 For **other** types of infrastructure where there is no rate or amount pre-set in this SPD, contribution amounts will be set out in the Agreement and clauses will be included to the effect that these will be:

- Index linked for inflation/deflation between the date the agreement is signed and payment is made towards the actual delivery of the service or facility.

Legal Fees

6.2.10 The Council will recharge the developer its reasonable legal costs incurred in agreeing planning obligations. The legal fee costs are payable for work done regardless of whether agreements are ultimately completed. These are reviewed annually and are currently set at:

- Legal Fee (minimum) = £550
- Sealing Fee = £65

6.2.11 Agreements with or which include the County Council will also incur separate costs to cover any legal costs the County Council incurs entering into the agreement.

6.2.12 These costs can be counted against the ceilings set out in Table 2.

Monitoring and Monitoring Fees

6.2.13 As stated earlier, local planning authorities are already required to keep a copy of any planning obligation on their planning register.

6.2.14 From 31 December 2020 Burnley Council and Lancashire County Council will have to produce their first annual infrastructure funding statement which will set out specific information on contributions. To help fund these new areas of work, local authorities will be able to use section 106 contributions to monitor and report on the planning obligations contained within those agreements. The Government proposes provide detailed guidance on this issue but the relevant regulation states that the sums must fairly and reasonable relate in scale and kind to the development and not exceed the estimated cost of said monitoring.¹⁸

¹⁸ Regulation 121A

6.2.15 These are proposed to be set at **0.25%** of the total sum agreed. These costs can be counted against the ceilings set out in Table 2. This sum will be paid alongside payment of the contribution, or where this is done in phases, the initial payment.

6.3 Payment of monies

6.3.1 By agreement, funds payable in relation to the County Council's requirements can be paid directly by the developers to the County Council. In other cases, the sums will be forwarded by the Borough Council to the County Council.

6.3.2 In certain cases, in particular relating to education contributions, there may be occasions where S106 monies will need to be transferred to other bodies.

Do local planning authorities have to pay back unspent planning obligations?

6.3.3 Local planning authorities are expected to use all of the funding received by way of planning obligation within a reasonable time frame. Agreements will normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time where they are not. This period is usually five years but may be longer or shorter if deemed appropriate. If the money is not spent within the agreed period, the developer will be reimbursed with the outstanding amount, together with any interest accrued; unless the agreement is varied.

7. Affordable Housing

7.1 Types of Affordable Housing

7.1.1 A revised version of the NPPF which amended national planning policy in respect of affordable housing provision and widened its definition, was issued shortly before the adoption of the Local Plan in July 2018.

7.1.2 The NPPF¹⁹ now defines affordable housing widely as being housing for sale or rent for those whose needs are not met by the market. Other than where marked*, it includes provisions for the housing to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision.

7.1.3 Affordable housing now includes: (See Appendix B for full definition)

Social Rent	From a Registered Provider (RP) e.g. Council or Housing Association
Affordable Rent	From a RP at least 20% below local market value
Discounted market sales housing	Sold at a discount of at least 20% below local market value
Starter Homes	As per any statutory definition to be introduced
Build to Rent	By anyone, at least 20% below local market value
Shared ownership	Part ownership/part rent
Shared equity	Ownership with third party loan for a deposit in addition to your mortgage e.g. Help to Buy
Other low cost homes for sale	At a price equivalent to at least 20% below local market value*
Rent to buy	Which includes a period of intermediate rent

7.1.4 Clearly, a 20% discount on market sale or rents may not actually be affordable to those whose needs are not met by the market who may instead rely on Social or Affordable Rented housing.

7.2 National policy for Affordable Housing

7.2.1 The NPPF paras 62-64 states that:

“62. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required and expect it to be met on-site unless:

a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and

b) the agreed approach contributes to the objective of creating mixed and balanced communities.

¹⁹ Both the 2018 and current 2019 versions

63. Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.

64. Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

- a) provides solely for Build to Rent homes;
- b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);
- c) is proposed to be developed by people who wish to build or commission their own homes; or
- d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.”

7.2.2 The NPPF approach assumes that sites are generally viable and sufficiently profitable to enable developers to provide affordable housing in addition to market housing and at a greater rate than 10%; and that securing affordable housing through the development of market housing is the sole or main method for its provision. This is not necessarily the case and is not the case in Burnley.

7.2.3 The NPPF does not now support requiring affordable housing through residential development schemes that are not major i.e. schemes of less than 10 (up to 9) units²⁰. Policy HS2 of the adopted Local Plan does not require affordable housing for schemes of up to and including 10 units. It is the Local Plan higher threshold that will be used by the Council. The Local Plan policy was written before the revised NPPF was introduced and was consistent the then national policy set out in the [written ministerial statement](#) of 28 November 2014 which stated that contributions should not be sought from developments of 10-units or less and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area).

7.2.4 Local Plan Policy HS2 still supports provision for smaller sites, and any provision or contribution unilaterally proposed could weigh in favour of a scheme where a need for affordable housing or a specific type of affordable housing exists.

7.2.5 The national policy restriction on seeking planning obligations contributions does not apply to development on ‘Rural Exception Sites’.²¹

Starter Homes and First Homes

7.2.6 ‘Starter Homes’ were introduced in the Housing and Planning Act of May 2016, although the relevant provisions of the act are not yet in force. Starter Homes are ‘affordable housing’ according to

²⁰ NPPF Para 63 - [major development is defined in Article 2 of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#)

²¹ Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority’s discretion, for example where essential to enable the delivery of affordable units without grant funding.

the revised NPPF; and are, according to the Act text, homes for purchase for first time buyers, 23-39 years old, and sold at a 20% discounted rate - subject to a £250,000 price cap.

7.2.7 Whilst the Council's Local Plan Viability Study concluded that starter home provision in lieu of more traditional types of affordable housing would generally aid viability, it also concluded this could still be an issue on brownfield sites.

7.2.8 First Homes are a further discounted sales product (a 30% discount). The government consulted on its first homes proposals in February 2020 and published a response to this consultation in August 2020 and indicated an intention to pursue this through changes to the national planning policy framework. Consultation on some detailed aspects of the scheme were set out in 'Changes to the current planning system' published in August 2020.²²

7.3 Local Plan Policy HS2

Background

7.3.1 Influenced by the types of sites that were allocated in and supported by the 2006 Local Plan and by the concentration of housing market renewal activity, the NPPF approach of requiring private sector developers to provide a proportion of affordable housing on site or contribute monies through a section 106 Agreement for off-site provision was rarely successful in Burnley without public sector subsidy.

7.3.2 An alternative and successful approach for the delivery of affordable housing in Burnley has been to work directly with Registered Providers to build houses on sites made available by the Council from its landholdings, or through compulsory purchase. Affordable housing can also be acquired by Registered Providers (funded from central government via Homes England) to be upgraded or adapted and this method of provision has made a significant contribution to affordable housing delivery in the borough in recent years.

7.3.3 The 2017 Local Plan Viability Assessment demonstrates that a number of sites of the types allocated and supported by the 2018 Local Plan could now viably support modest affordable housing delivery/contributions without compromising other important policy requirements.

7.3.4 The 2016 Strategic Housing Market Assessment (SHMA) suggested an affordable housing split by tenure of: 80% Affordable Rent or Social Rent, and 20% Intermediate tenure. This reflected the national definition of affordable housing at that time. The recommendations on the split of affordable housing by type and size are discussed in Policy HS3.

General Interpretation of Policy HS2

7.3.5 Local Plan Policy HS2: Affordable Housing Provision, sets out the development plan policy in relation to seeking and supporting affordable housing. Policy HS2 is therefore the starting point for determining the requirement for affordable housing.

7.3.6 It requires that any housing development of over 10 units (i.e. 11 units or more) provides for affordable housing, unless it could be demonstrated that the site, which would otherwise be supported by the policies in the Local Plan and meets the requirements of policies SP4 and SP5, would not be viable with affordable housing provision on-site or off-site by way of a contribution.

7.3.7 Local Plan Policy HS2 clauses 1) to 5) were drafted to be sufficiently flexible to apply with or without the then planned change in the government's definition of affordable housing. Clause 5)

²² <https://www.gov.uk/government/consultations/changes-to-the-current-planning-system>

however, needs to be read alongside the now confirmed (and any future) changes to national policy or legislation.

7.3.8 Burnley's circumstances are such that flexibility continues to be required in terms of the overall requirements, the requirement for on or off-site provision and the types and tenure of affordable housing provided. Policy HS2 therefore allows for affordable housing provision to be waived/varied where justified. This approach is consistent with the then and current national policy.

7.3.9 The NPPF sets an expectation that at least 10% of housing on major sites should be to be to its definition of 'affordable home ownership'. This appears to equate to the definition of affordable housing at in the revised NPPF glossary at d) which includes shared ownership and discounted homes for sale at 20% below market value.²³

7.3.10 Whilst the NPPF sees this minimum as part of the overall affordable housing %, in Burnley in most cases, 'affordable home ownership' provision could preclude the delivery of any affordable housing to rent or part rent/part buy. The NPPF does state that this policy applies unless amongst other things it would "significantly prejudice the ability to meet the identified affordable housing needs of specific groups." Specific groups are not defined but could arguably include those unable to purchase housing by virtue of their restricted income or the lack of mortgage availability.

7.3.11 As set out earlier at paragraph 7.2.8 National policy on affordable and discounted market sale housing is current under review with a new variant 'first homes' being proposed.²⁴

7.3.12 Local Plan Policy HS2 deliberately seeks to avoid a rigid approach to the provision of affordable housing, in part due to the stage of flux of national policy at its time of drafting, but also as such an approach would not recognise the viability challenges present and could be at odds both with efforts to prioritise the development of brownfield sites and efforts to ensure the delivery of modern adaptable affordable homes to rent.

7.3.13 Provision of and contributions towards affordable housing will be prioritised as **priority 2a – necessary and important**.

Findings of the Plan Viability Assessment

7.3.14 The Local Plan Viability Assessment modelled a number of scenarios with variable % of on-site affordable housing. It first modelled the affordable housing to be provided split at 80% Social Rent and 20% Intermediate to part rent/part buy. When the affordable housing type is Affordable Rent rather than Social Rent, viability reduces (See table 10.6 of Viability Study). The delivery of a greater proportion of intermediate housing or starter homes as all or part of the required mix, improves viability.

7.3.15 The Assessment appraisals also assumed certain mixes of housing types, which if adjusted, can improve or reduce viability significantly.

7.3.16 All the brownfield sites types modelled were in low value 'industrial urban areas' and were shown to be unlikely to support any affordable housing provision without public sector support - such as direct provision by registered providers or through other government funding initiatives. However, the low density medium and larger brownfield sites were found to remain profitable, although not to a level above the viability threshold which took into account a £400,000 per hectare alternative use value.

²³ NPPT 2019 Para 64

²⁴ <https://www.gov.uk/government/consultations/first-homes>

7.3.17 Not all brownfield sites are in low value industrial urban areas and given the ability of the housing mix to be varied to improve viability, it is considered that larger brownfield sites, which can create their own sense of place and thus attract good sales values, can and should make a modest contribution to affordable housing provision with or without public sector support. These sites may also be able to take account of the vacant building credit (see section overleaf).

7.3.18 A number of other (then emerging) plan requirements were also costed in the 2017 Viability Assessment, but e.g. the policy clauses requiring higher environmental and/or design standards on certain greenfield sites were removed by the Examination Inspector. Higher design standards are now clearly supported by the revised NPPF and where schemes propose very high quality standards or higher levels of energy efficiency (above the high quality expectation of the Local Plan), the negative effect on viability can be considered in the planning balance.

7.3.19 The government is also proposing staged uplifts to the Building Regulations which will increase construction costs and once these changes are confirmed and take effect, the ceilings will need to be revisited.

7.3.20 Given the guide tenure split set out in Policy HS2 and the delivery model/record for affordable housing providers in Burnley, an assumed split of 70% Affordable Rent, 10% Social Rent and 20% Intermediate is used in the SPD to calculate the affordable housing %, off-site affordable housing contributions and contribution ceilings. This does not necessarily mean this will be the required split on any given site.

Proposed Affordable Housing Percentages

7.3.21 To satisfy the requirements of Policy HS2 Clause 1) c) it is expected that the housing sites types set out earlier in Table 2 (page 17) will provide at least the indicated minimum percentage of units.

7.3.22 The units shall either:

- be constructed by the developer on-site; or
- be constructed by the developer off-site (where agreed to appropriate under Policy HS2 clause 3) ii); or
- be provided for by an equivalent commuted sum towards off-site provision where agreed to appropriate under Policy HS2 clause 3) ii).

Flexibility

7.3.23 In accordance with Policy HS2 clause 1) c) and 2) the required provision/contribution will only be waived or reduced in the following circumstances:

- A. Where requests for other contributions in addition to affordable housing (on or off site as applicable) exceed the ceilings set out in Table 2 of this SPD the Council:
 - i) Will determine the proportioning of contributions as set out in section 5.2 in discussion with the applicant.
 - ii) May, in addition to considering off-site affordable housing provision, ask the applicant to consider plan-compliant adjustments to the scheme or on-site affordable housing tenure, in order to improve viability; and
- B. Where, as set out in paragraph 5.3.16. the applicant wishes to agree a lower ceiling they must first explain why the assumptions used to set the ceilings and affordable housing percentages

would not apply in their particular case and when there is no agreement on this they would be expected to:

i) Submit their own national policy compliant Viability Assessment via an 'open book' approach clearly shows the scheme, which meets other policy requirements e.g. design and provides for all priority 1 contributions, to be unviable with the required affordable housing contributions or other priority 2 contributions;

7.3.24 Where affordable housing is required by policy HS2 the approach to its provision, including any reasons for provision off site as opposed to on site under the provisions of Policy HS2 clause 3) should be set out in an Affordable Housing Statement to accompany any relevant planning application. An affordable housing statement is a local validation requirement for all major housing applications. This statement can be incorporated into a more generalised planning statement where one is prepared.²⁵

Off-Site Contributions

7.3.25 Where the provision of affordable housing is proposed or required and a contribution towards off-site provision in lieu is agreed to be appropriate under Policy HS2, the amount of contribution will be calculated using the Off-site Affordable Housing Calculator (example overleaf).

7.3.26 The calculator assumes the following standard tenure split:

- 70% Affordable Rent
- 20% Intermediate
- 10% Social Rent

7.3.27 It uses the estimated open market value (OMV) of a typical three bedroomed house on site of the size and specification required for a typical Affordable Rent product. As this may not be actually provided on site, this figure will need to be agreed.

7.3.28 In respect of the rents, the Calculator uses data from the 'private sector registered provider social housing stock in England: statistical data return dataset' published in October each year. The Council will publish an updated version of the Calculator on its website following the issue of updated releases.

7.3.29 The type and tenure or the actual units subsequently provided or supported through acquisition and refurbishment by the off-site contribution, unless specified in the Agreement, will be determined by the Council in discussion with relevant Registered Providers having regard to the matters set below and the Council's Housing and or Empty Homes Strategy.

Location, Type and Tenure Mix

On-Site Provision

7.3.30 Where on-site provision of affordable housing is proposed or required, (or off-site direct provision by the developer is proposed), the mix of units will be assessed as part of:

- the overall mix sought across the plan area and plan period as set out in Policy HS3;
- any specific requirements set out in any relevant site allocation policy;

²⁵ <https://www.burnley.gov.uk/residents/planning/how-make-application/what-makes-valid-application>

- the policy set out in HS3 clause 4) including its location;
- the policy set out in HS2 clauses 2 and 3); and
- it will also informed by the affordable housing suggested mix set out in the 2016 SHMA (repeated as Table 3, page 85 of the Local Plan) and ongoing monitoring of types and tenures as set out in the AMR.

The vacant building credit

7.3.31 National policy states that where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.²⁶ The accompanying planning practice guidance states that where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought.

7.3.32 This will apply in calculating either the number of affordable housing units to be provided within the development or equivalent financial contribution where off-site provision is proposed.

7.3.33 The vacant building credit applies where the building still exists and its use has not been 'abandoned'.²⁷

7.3.34 The policy is intended to incentivize brownfield development, including the reuse or redevelopment of empty and redundant buildings. In considering how the vacant building credit should apply to a particular development, local planning authorities are advised to have regard to the intention of national policy.

7.3.35 In doing so, it may be appropriate for authorities to consider:

- Whether the building has been made vacant for the sole purposes of re-development.
- Whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.

²⁶ NPPF 2019 Para 63

²⁷ <https://www.gov.uk/guidance/planning-obligations>

Table 3: Off-site Affordable Housing Contributions Calculator

Site Name	Example		Date		
Number of Units	140	Percentage of Affordable Housing	10%	Number of Affordable Units	14

Affordable Housing Type	Mix	Units	Onsite Units Provided	Offsite Units Required
Affordable Rented	70%	9.80	0	9.80
Social Rented	10%	1.40	0	1.40
Intermediate	20%	2.80	0	2.80
Check:	100%	14.00	0	14.00

Off-site Contribution Calculations

Affordable Rented									
Housing Mix/Type	Number of Units	OMV if on site (£)	Profit (%)	Net Total Cost (£)	Weekly Rent (£)	Mgt Charge	Yield	Capitalised Rent (£)	Contribution (£)
			20.00%			10.00%	6.00%		
1 Bed Flat			0	0		0	6.00%	0	0
2 Bed Flat			0	0		0	6.00%	0	0
3 Bed Flat			0	0		0	6.00%	0	0
2 Bed Hse			0	0		0	6.00%	0	0
3 Bed Hse	10	180,000	36,000	144,000	99.34	517	6.00%	77,485	665,148
4 Bed Hse			0	0		0	6.00%	0	0
5 Bed Hse			0	0		0	6.00%	0	0
Total	10							Total	665,148

Social Rented									
Housing Mix/Type	Number of Units	OMV if on site (£)	Profit (%)	Net Total Cost (£)	Weekly Rent (£)	Mgt Charge	Yield	Capitalised Rent (£)	Contribution (£)
			20.00%			10.00%	5.50%		
1 Bed Flat			0	0		0	5.50%	0	0
2 Bed Flat			0	0		0	5.50%	0	0
3 Bed Flat			0	0		0	5.50%	0	0
2 Bed Hse			0	0		0	5.50%	0	0
3 Bed Hse	1	180,000	36,000	144,000	87.39	454	5.50%	74,361	69,639
4 Bed Hse			0	0		0	5.50%	0	0
5 Bed Hse			0	0		0	5.50%	0	0
Total	1							Total	69,639

Intermediate - Shared Ownership										
Housing Mix/Type	Number of Units	OMV if on site (£)	Profit (%)	Net Total Cost (£)	Equity Rent	Mgt Charge	Yield	Capitalised Rent (£)	1st Tranche	Contribution (£)
			20.00%		2.75%	10.00%	5.00%		50.00%	
1 Bed Flat			0	0	0	0	5.00%	0	0	0
2 Bed Flat			0	0	0	0	5.00%	0	0	0
3 Bed Flat			0	0	0	0	5.00%	0	0	0
2 Bed Hse			0	0	0	0	5.00%	0	0	0
3 Bed Hse	3	180,000	36,000	144,000	2,475	248	5.00%	44,550	90,000	28,350
4 Bed Hse			0	0	0	0	5.00%	0	0	0
5 Bed Hse			0	0	0	0	5.00%	0	0	0
Total	3								Total	28,350

Total Units	14	Total Contributions	763,137
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Table 4: Table 10.5 from Local Plan Viability Study of March 2017

Table showing various affordable housing contributions (plus £500 S106 contributions, all open space requirements of Policy HS4) and 1.5% construction costs uplift for energy efficiency above the building regs, based on the affordable housing being made up of 80% social rent and 20% intermediate			Alternative Use Value	Viability Threshold	Residual Value						
				Affordable %	0%	5%	10%	15%	20%	25%	30%
Site 1	Large Green 200	Urban Fringe	20,000	274,000	284,247	205,390	126,514	47,624	-34,359	-117,136	-200,451
Site 2	Large Green 100B&P	Urban Fringe	20,000	274,000	283,664	201,240	118,816	35,081	-51,403	-137,888	-225,622
Site 3	LD Large Green 100B&P	Urban Fringe	20,000	274,000	414,127	337,501	260,876	184,251	107,626	29,941	-50,459
Site 4	Large Green 100e	Urban Fringe	20,000	274,000	539,609	445,754	351,898	258,043	164,187	70,197	-27,786
Site 5	Large Green 50B&P	Urban Fringe	20,000	274,000	274,548	192,287	108,868	22,927	-63,386	-149,698	-237,215
Site 6	LD Large Green 50B&P	Urban Fringe	20,000	274,000	447,382	369,152	290,922	212,693	134,463	53,831	-28,252
Site 7	Large Green 50e	Elsewhere	20,000	274,000	536,858	442,982	349,107	255,231	161,356	64,597	-33,903
Site 8	Medium Green 24B&P	Urban Fringe	20,000	274,000	712,576	613,814	515,052	416,289	317,527	216,047	112,982
Site 9	Medium Green 24e	Urban Fringe	20,000	274,000	712,576	613,814	515,052	416,289	317,527	216,047	112,982
Site 10	Medium Green 12B&P	Urban Fringe	20,000	274,000	582,195	491,720	401,244	309,503	217,245	124,987	32,728
Site 11	Medium Green 12e	Urban Fringe	20,000	274,000	606,350	515,874	425,399	334,134	241,875	149,617	57,359
Site 12	Large Brown 100	Urban Area	400,000	480,000	-476,433	-575,902	-675,476	-776,304	-877,132	-978,184	-1,080,429
Site 13	LD Large Brown 100	Urban Area	400,000	480,000	290,536	173,346	54,785	-68,178	-191,141	-315,845	-442,041
Site 14	Medium Brown 60	Urban Area	400,000	480,000	-443,653	-540,106	-636,559	-733,112	-830,912	-928,711	-1,026,511
Site 15	Medium Brown 60	Urban Area	400,000	480,000	427,154	308,211	189,268	66,893	-57,909	-182,711	-309,418
Site16	Medium Brown 20	Urban Area	400,000	480,000	-252,900	-361,099	-470,677	-580,255	-689,833	-799,411	-908,989
Site 17	Medium Brown 14	Urban Area	400,000	480,000	-248,859	-336,329	-425,609	-514,889	-604,169	-693,449	-782,908
Site 18	Urban Flats 35	Urban Area	400,000	480,000	-1,313,414	-1,457,005	-1,600,596	-1,744,186	-1,887,777	-2,031,368	-2,174,959
Site 19	Small Green 7	Generally	50,000	310,000	792,153	792,153	792,153	792,153	792,153	792,153	792,153
Site 20	Small Green 4	Generally	50,000	310,000	859,972	859,972	859,972	859,972	859,972	859,972	859,972
Site 21	Green Plot	Generally	50,000	310,000	-75,398	-75,398	-75,398	-75,398	-75,398	-75,398	-75,398

Site 22	Small Brown 6	Generally	400,000	480,000	-448,742	-448,742	-448,742	-448,742	-448,742	-448,742	-448,742
Site 23	Small Brown Flats 5	Generally	400,000	480,000	-1,347,505	-1,347,505	-1,347,505	-1,347,505	-1,347,505	-1,347,505	-1,347,505
Site 24	Small Brown 3	Generally	400,000	480,000	-891,195	-891,195	-891,195	-891,195	-891,195	-891,195	-891,195
Site 25	Brown Plot	Generally	400,000	480,000	-2,349,106	-2,349,106	-2,349,106	-2,349,106	-2,349,106	-2,349,106	-234,910

Colour Key:

Green = Viable – where the Residual Value per hectare exceeds the indicative Viability Threshold Value per hectare (being the Existing Use Value plus the appropriate uplift to provide a competitive return for the landowner).

Amber = Marginal – where the Residual Value per hectare exceeds the Existing Use Value or Alternative Use Value, but not Viability Threshold Value per hectare. These sites should not be considered as viable when measured against the test set out – however, depending on the nature of the site and the owner, they may come forward.

Red = Non-viable – where the Residual Value does not exceed the Existing Use Value or Alternative Use Value.

8. Open Space, GI and Social/Community Infrastructure

8.1 Green Infrastructure

8.1.1 Green Infrastructure (GI) refers to the network of multi-functional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities.

8.1.2 Burnley's Green Infrastructure and its importance in the borough is referenced throughout the Local Plan, but particularly in Policy SP6 which seeks to protect, enhance and extend the multifunctional green infrastructure network. The Council's Green Infrastructure Strategy (2013) informed the development of the policies within the Local Plan and will be used alongside the Local Plan and the Council's Green Spaces Strategy when determining the type of open space to be provided to meet the requirements of Policy HS4, and the requirements of Policies SP6 and IC5.

8.1.3 Contributions for GI required under Policy SP6 to will normally be prioritised as **priority 2c necessary and important** but may be **priority 1** e.g. where mitigation is required.

8.1.4 The Council's Green Space Strategy 2015–2025 identifies the Borough's public greens spaces, sets local quantity, quality and accessibility standards for each type of open space and use these local standards to identify surpluses or deficiencies and was used to inform the requirements for housing developments in Local Plan Policy HS4 and areas to be protected in situ under Policy NE2.

8.1.5 The [Burnley Play Area Strategy 2017-2026](#) (currently being updated) identifies the borough's existing play facilities, those to be maintained and where new provision may be required. This strategy will inform the requirement for and location of new or enhanced/safeguarded play space provision required under Policy HS4.

8.2 Open Space for housing developments

Policy HS4: Housing Developments

8.2.1 Policy HS4 of the Local Plan sets out the standards for open space provision in new housing developments, including equipped children's play space. The Policy also sets out when this should be provided on-site or when contributions towards off-site provision may or will be acceptable.

8.2.2 Whilst each scheme will be judged on its merits against the Local Plan as a whole, where contributions for open space are required under Policy HS4, this will normally be prioritised as being **necessary and critical** and thus **priority 1** such that lack of adequate provision will normally result in a scheme's refusal.

8.2.3 The cost of open space provision on site was partly factored into the Plan Viability Study's base appraisals (accounted for in the site density and in the £500 per dwelling base contribution).

8.2.4 All relevant greenfield site types were found to be viable with such contributions/provision and as such provision/contributions being 'necessary and critical' will not normally be waived on the grounds of viability.

8.2.5 Whilst the study found that such provision/contributions would be more challenging for brownfield sites, minimum provision/contributions will still be regarded as 'necessary and critical'.

8.2.6 Any new open space created in relation to Policy HS4 will, going forward, be protected under Policy NE2.

Off-site provision in lieu

8.2.7 Contributions for off-site provision in lieu, where agreed to be appropriate under Policy HS4, will be calculated as follows:

- **£350 per bedroom**

On-site provision and maintenance

8.2.8 Where open space is being provided on-site by a developer, the developer may wish to set up a management company to meet the ongoing costs of maintenance.

8.2.9 Alternatively, the Council will consider the adoption of suitable, well designed on-site open space for which contributions of commuted sums for maintenance will be calculated on a 15-year basis at guide cost of **£8 per m2**, which will be calculated and agreed for each development.

8.2.10 Sums will be index linked as set out in Section 6.

8.3 Social/Community Infrastructure

Policy IC5

8.3.1 Policy IC5 of the Local Plan identifies the importance of social and community infrastructure²⁸ and seeks to safeguard it where possible and appropriate and make new provision where a development would increase demand for it beyond its current capacity or generate a newly arising need. It is envisaged that any such requirements would be identified on a site-by-site basis and (other than education contributions – see section 10) will normally be prioritised for contributions as **priority 2c**, but may be **priority 1**.

Playing Pitches

8.3.2 The Rossendale, Pendle and Burnley Playing Pitch Strategy identifies where protection, enhancement and the provision of new sites for football (both adult and junior football), cricket, rugby union, rugby league, hockey, tennis, bowls and rounders should occur up to 2026. Full details of the recommendations can be found in the [Playing Pitch Strategy](#). Where Sport England raise an objection to the loss of any playing pitch of field or requires its provision and this is in accordance with its published policy/standards and national planning policy, this will be prioritised as being **necessary and critical** and thus **priority 1**.

Loss of Unprotected Open Space

8.3.3 Where a development proposal would result in the loss of existing unprotected open space.²⁹ The need for replacement provision will be assessed against the strategy and standards set out in the Green Spaces Strategy 2015 and the [Burnley Play Area Strategy 2017-2026](#) or [Playing Pitch Strategy](#). Contributions towards replacement provision may then be prioritised as **priority 1** or **priority 2c**.

²⁸ This includes public, private or community facilities including: community/meeting halls and rooms; health facilities; libraries; places of worship; bespoke premises for the voluntary sector; schools and other educational establishments; theatres, art galleries, museums, sport and leisure facilities; parks and other publicly accessible open spaces, public houses, cemeteries and youth facilities. This policy does not apply to specific sites or open spaces protected in situ by other policies e.g. NE1 and NE2.

²⁹ ie not including Policy NE1 2) 3) and 4) or NE2 which are required to remain in situ

9. Highways and Transport Infrastructure

9.1 Lancashire County Council's role

9.1.1 Management of the transport network in Burnley, including bus provision, is a function of Lancashire County Council in its role as Highway Authority. It is responsible for all adopted roads in Lancashire other than 'trunk roads' which are the responsibility of Highways England (these include most motorways). It is responsible for the safety, maintenance, management and development of the highway network, and determines whether to adopt a road (i.e. take responsibility for its ongoing maintenance).³⁰

9.1.2 Public funding for transport infrastructure comes from local and central government from various funding streams, including the Local Transport Plan capital programme and the Local Growth Fund. This funding will not usually address the specific impacts of new development on specific sites, but may address the wider borough impacts resulting from the overall growth set out in the Local Plan or specific large scale projects designed to deliver economic growth.

9.1.3 Other than for 'County Matters'³¹ and its own development on its own land, the County Council is not the determining authority for planning applications in the borough and its advice and any requests for contributions must be weighed as a material consideration by the borough Council in determining an application and any contributions to be made. The County Council cannot insist upon or enforce requests for contributions to its services where it is not the determining authority.

9.1.4 In order for the County Council to agree to adopt any new road, however, this will be required to be designed and constructed to its published standards.³²

9.2 Highways Contributions

9.2.1 The County Council can, where it deems necessary, request a Section 106 Agreement or Section 278 Agreement be put in place in respect of a planning application. These will apply to residential and non-residential schemes. In such instances, the County Council will need to provide Burnley Council with a reasoned and consistent response based on the adopted Local Plan. Responses will also be informed by the Local Transport Plan 2011-2021, the Highways and Transport Masterplan, 'Creating civilised streets' document and 'Specification for construction of estate roads'²¹ and will also have regard to the County Council's own non-statutory Infrastructure and Planning document (see Section 3.3).

Section 278 Agreements

9.2.2 The County Council normally requests S278 Agreements for works that are required to be carried out on or to a highway. These agreements can be either for the County Council to carry out the works at the developer's expense, or allow the developer to provide the works directly, subject to an approval and inspection process.

9.2.3 The requirement to enter such an agreement is normally secured by a condition attached to a planning permission granted by the borough Council which requires the agreement of the design of

³⁰ <https://www.lancashire.gov.uk/roads-parking-and-travel/roads/road-adoption/estate-road-adoption/>

³¹ 'County matters' are primarily defined within schedule 1 of the Town and Country Planning Act 1990 as being, amongst other things, those associated with mineral working and related development, and waste management and disposal developments.

³² <https://www.lancashire.gov.uk/roads-parking-and-travel/roads/road-adoption/estate-road-adoption/>

the works by the borough Council in consultation with the County Council, but also the signing of s278 Agreement setting out the funding arrangements directly between the County Council and developer. The condition will normally require the design of the works to be agreed and Agreement signed before any of the development approved commences. In any event, works associated with any planning proposal will not be permitted by the County Council within the limits of the publicly maintained highway until the Agreement is completed and the bond (if applicable) is secured.

9.2.4 The County Council sets its own fees for Section 278 Agreements.

9.2.5 Section 278 Agreements are also used to cover any developer-funded works to the Strategic Road Network (SRN), for which developers would enter a separate agreement with Highways England.³³

Section 106 Highways Contributions

9.2.6 Contributions towards other transport related projects and infrastructure and for Travel Plans would normally be requested to be included in a S106 Agreement to which the County Council would normally then be a co-signatory together with the Borough Council and developer.

Prioritisation

9.2.7 Contributions or measures necessary to achieve highway and pedestrian safety in the immediate vicinity of the site, including ensuring safe access and egress and the adoption of highways (where applicable) will be prioritised by Burnley Council as **necessary and critical - priority 1**.

9.2.8 Contributions necessary to achieve greater connectivity such as new or upgraded pedestrian or cycle routes or public transport access to services, or towards minimising development-related impacts such as traffic congestion³⁴ or providing or contributing towards capacity enhancement measures, will normally be prioritised for contributions as **priority 2c – necessary and important** but can be **priority 1** e.g. to avoid development-related impacts from new development which have the potential to contribute to the declaration of a new Air Quality Management Area (AQMA). Contributions for a number of schemes which impact on the same matter e.g. a particular road junction, may need to be ‘pooled’.

9.2.9 Where Travel Plans are required under Policy IC2, Lancashire County Council can provide advice and guidance on their development, promotion and monitoring. This is likely to be a charge for this assistance through a developer contribution or a through a normal service commissioning process.

³³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/461023/N150227_-_Highways_England_Planning_Document_FINAL-lo.pdf

³⁴ Both in terms of public health benefits and congestion reduction effects

10. Education Provision

10.1 Lancashire County Council's role

10.1.1 Lancashire County Council is the Education Authority (LEA) responsible for primary and secondary education provision in the borough.

10.1.2 Under Section 14 of the Education Act 1996, Lancashire County Council has a statutory obligation to ensure that every child living in Lancashire is able to access a mainstream school place in Lancashire if they want one.

10.1.3 Other than for 'County Matters' and its own development on its own land e.g. for a new school, the County Council is not the determining authority for planning applications in the borough and its advice on education provision matters and any request for contributions towards education provision must be weighed as a material consideration by Burnley Council in deciding on an application and determining any contributions to be made. The County Council cannot insist upon or enforce requests for contributions to its services other than where it is the determining authority.

10.2 Education Contributions

10.2.1 For housing developments of 10 or more dwellings, where there is a projected shortfall of primary or secondary places at existing schools to accommodate the pupils from the development, the County Council may request new education provision be made on site, or more likely, may look to the expansion of existing schools.³⁵

10.2.2 The number of school places required by a development ('the pupil yield') is calculated by the LCC according to its [pupil projection methodology](#).³⁶ Where there are insufficient spare places to accommodate the calculated pupil yield, LCC will request that a contribution be made to address the shortfall via the expansion of existing schools.

10.2.3 The costs per place are based on the construction of accommodation to provide for the additional pupils. These costs are updated on the 1st April each year. These are available at <https://www.lancashire.gov.uk/council/planning/planning-obligations-for-> with the latest update being from April 2020.³⁷

10.2.4 National planning practice guidance introduced in March 2019 made significant changes to the guidance in respect of education contributions. It confirms that central government funding for schools via the LEA will be reduced to take account of developer contributions. The guidance allows for viability to be taken into consideration to the effect that for otherwise acceptable schemes, education contributions that would prejudice viability can be reduced or waived as not being critical and necessary (being instead funded by the government – see para 10.2.6).

10.2.5 In April 2019 the DFE also issued further non statutory guidance "Securing developer contributions for education" aimed at local education authorities – in this case LCC. This document states that "We are working on a detailed methodology for calculating pupil yields from housing development, to be published in due course."

³⁵ The County Council currently uses a 2 mile radius for primary schools and a 3 mile radius for secondary schools

³⁶ <https://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers/>

³⁷ [developers/](#) https://www.lancashire.gov.uk/media/916775/annex_2_education_2020_update.pdf

10.2.6 Whilst it is clear that the required education provision will still be delivered in the absence of developer contributions, the places, at least in the short term may not be at a school within the reasonable distance and could be at a school where spare capacity exists further afield making the development less sustainable in the short-term. However, in the longer term, the County education strategy can re-focus provision where needs exist, and of course for allocated sites, the County Council is aware of these sites and their likely yields and the borough's housing trajectory is updated annually to enable the County Council to plan ahead.

10.2.7 Contextual information regarding Lancashire schools and the policy for expanding schools can be found within the County Council's 'School Place Provision Strategy' and 'Capital Strategy for Schools'. <https://www.lancashire.gov.uk/council/strategies-policies-plans/children-education-and-families/school-place-provision-strategy>

10.2.8 Any requirement for a new school (or school site) should have been identified at the Local Plan stage and no such requirement was identified, but this matter will need to be kept under review over the Plan period.

10.2.9 For all requests, the County Council will need to provide Burnley Council with a calculation and supporting justifying statement. The Borough and County Council have been unable to agree on a revised approach to secondary school provision to that set out in LCC's non-statutory Infrastructure and Planning document. Until such time as agreement is forthcoming, it is anticipated that requests from LCC will be will continue to be based on its own methodology and these requests will be dealt with as set out below:

Primary School Provision

10.2.10 Requests for primary school contributions will be accepted as per the LCC's current education contributions methodology. These will be treated as **priority 2b - necessary and important** but may be subject to viability considerations.

Secondary School Provision

10.2.11 LCCs current methodology in calculating its 'reasonable distances' is more restrictive than that recommended by the Department for Education, particularly at secondary school level. Given the viability challenges for development in Burnley, the closure a Burnley secondary school with significant capacity since the local plan was adopted and the fact that there is spare capacity at another Burnley secondary school, the borough Council intends to take a more flexible approach to the reasonable distance calculations in respect of secondary provision in Burnley.

10.2.12 Where a request for a secondary place contribution is received from LCC, the borough council will do its own assessment using aspects of the LCC methodology i.e. the pupil yield formula, cost per place, but using a revised 'reasonable distance' being the greater of the borough boundary or a 3 mile radius.

10.2.13 Where a contribution is determined to be appropriate, it will be treated as **priority 2b - necessary and important** but may be subject to viability considerations. LCC will be approached to confirm that they are willing to be a signatory to the Section 106 agreement.

10.2.14 If LCC does not provide, or officers are unable to obtain sufficient information to calculate the shortfall or payment, or if LCC refuse to be a signatory to the agreement, then the request for secondary education contributions will not be accepted as having been robustly made.

Spend

10.2.15 Whatever 'reasonable distance' is used by the Borough Council to calculate the projected shortfall, the Agreement will then require the contribution to be used to pay for additional places within the same reasonable distance used - and the contribution must be spent within a specified timeframe.

11. Other Matters

11.1 Drainage and Flood Risk Management

Flood Risk Assessment

11.1.1 The Council's Strategic Flood Risk Assessment (SFRA) 2017 draws on Environment Agency Flood Zone and Surface Water mapping data and data on local sources of flood risk supplied by the Council's Streetscene unit, Lancashire County Council and United Utilities.

11.1.2 The Level 1 SFRA assessed all the plan allocations and their reasonable alternatives against risks from all sources of flooding. A small number of sites that lie partly within Flood Zones 2 and 3 or identified as being at a significant risk of surface water flooding in the Level 1 SFRA were subject to a more detailed Level 2 SFRA. This provides advice as to how flood risk can be mitigated through design, layout and sustainable drainage and informs the overall assessment of the Sequential Test and where necessary, the Exception Test, required by national policy.

11.1.3 Applicants are required to undertake site specific Flood Risk Assessments (FRAs) for: proposals on sites of 1 hectare or greater in Flood Zone 1; all proposals for new development (including minor development and change of use) in Flood Zones 2 and 3 or in an area within Flood Zone 1 which has critical drainage problems (as notified to the local planning authority by the Environment Agency); and, where proposed development or a change of use to a more vulnerable class may be subject to other sources of flooding. These FRAs should, if necessary, apply the Sequential and Exception Tests. For minor development and for sites allocated in a Local Plan however, applicants do not need to apply the Sequential Test as, in effect, for the latter the Council has done this through its SFRA to support the allocation.

11.1.4 Local Plan Policy CC4: Development and Flood Risk requires that new development does not result in increased flood risk from any source, or other drainage problems, either on the development site or elsewhere; and that where mitigation is required to make any identified impacts acceptable, these will be secured through conditions and/or legal agreement, including where necessary through planning contributions.

11.1.5 Management of 'local' flood risk³⁸ and land drainage is a function of Lancashire County Council (LCC) in its role as Lead Local Flood Authority (LLFA). The LLFA investigates and publishes the results of incidents of significant flooding; it designates assets which have a significant effect on flood risk; it maintains a register of flood risk assets; it provides consent for works on ordinary watercourses and is a statutory consultee in the planning application process.

11.1.6 When consulted on planning applications, LCC will provide an assessment of the proposed development's potential impacts on the drainage network with regard to surface water discharge rates and volume, design standards and the continued safe operation and maintenance of the surface water drainage network - to ensure that flood risk is appropriately managed.

11.1.7 Central government funding for flood risk management comes from various sources, including DEFRA Support Grant, conventional capital settlements and the Local Growth Fund (Growth Deal). Typically, these funding sources do not address the specific impacts of individual new development. Instead, funds are directed at inherited drainage problems resulting from economic progress and previous development activity, or at large scale projects designed to deliver growth.

³⁸ Local flood risk refers to the risk of flooding from surface water, groundwater and flooding from ordinary watercourses

11.1.8 Conditions or developer contributions may therefore be requested by LCC or exceptionally the Environment Agency or United Utilities, to address flooding, drainage or water quality issues. Further information is set out in LCCs non-statutory policy on [Planning and Infrastructure](#) in particular, [Annex 3 Drainage and Flood Risk Management](#).

11.1.9 It is envisaged that any such requirements would be identified on a site-by-site and scheme-specific basis and works critical to the principle of the scheme being granted consent will be categorised as **necessary and critical - priority 1**. Other **necessary and important** contributions where these reflect the more generalised policy requirements of the Local Plan will be prioritised as **priority 2c**.

11.1.10 For schemes where major on or off-site flood defence works are required, requirements would normally have been factored in the Plan making stage e.g. HS1/5 Former Baxi Site, and contributions for schemes reliant on such works may need to be pooled.

11.2 Biodiversity Matters

11.2.1 To meet the requirements of legislation and the Local Plan, in particular Policy NE1, many of the impacts of development on biodiversity can be addressed through scheme design and by conditions attached to a planning permission. Occasionally, contributions to off-site mitigations (e.g. providing land for off-setting or funding enhancement works or the translocation of species) may be required via a Section 106 Agreement.

11.2.2 Works critical to the principle of the scheme being granted consent e.g. to address impacts on protected sites or species will be categorised as **necessary and critical - priority 1**. Other **necessary and important** contributions where these reflect the more generalised policy requirements of the Local Plan will be prioritised as **priority 2c**.

11.3 Heritage Matters

11.3.1 Many of the potential impacts of development on heritage assets can be addressed through scheme design and by conditions attached to a planning permission, for example the need to carry out surveys or excavation and recording.

11.3.2 In circumstances where the objectives of heritage protection may not be satisfactorily controlled by a condition, for example where impacts or public benefits are off-site or involve a particularly sensitive or complex programme of phased works, the Council may require implementation of these measures through a Section 106 Agreement. These could include, but would not be limited to:

- securing the investigation and protection of archaeological remains in advance of development;
- measures for preservation or investigation, recovery and interpretation of archaeological remains and sites.
- recording, removing, storing, displaying and maintaining specifically identified artefacts or remnants from demolition as part of a new development or in another location;
- drawing up of a conservation management plan;
- providing and implementing a restoration scheme for historic buildings and features to a set timescale and an agreed specification;

- reinstating and/or repairing historic features in the public realm (such as streetlights, bollards and surfaces) directly affected by the development and its construction impacts;
- undertaking and completing specified works to a heritage asset at risk prior to the construction or occupation of any 'enabling development' to secure the repair, restoration and maintenance of a heritage asset;
- repairing, restoring or maintaining a heritage asset identified as being at risk ;
- increased public access and improved signage;

11.3.3 Works critical to the principle of the scheme being granted consent e.g. securing the investigation and protection of archaeological remains, securing the public benefits which justify harm or in the case of enabling development works, securing the repair, restoration and maintenance of a heritage asset, will be categorised as **priority 1**. Other **necessary and important** contributions where these reflect the more generalised policy requirements of the Local Plan will be prioritised as **priority 2c**.

11.4 Health Infrastructure

11.4.1 The East Lancashire Clinical Commissioning Group (CCG) commissions local health services for Burnley, Hyndburn, Pendle, Ribbles Valley (excluding Longridge) and Rossendale. CCG's are responsible for commissioning planned hospital care, rehabilitative care, urgent and emergency care, most community health services, and mental health and learning disability services. The CCG do not manage local NHS hospitals, however they commission many of the services they offer.

11.4.2 The East Lancashire CCG is split into five distinct localities, one of which is Burnley, and within Burnley there are two Primary Care Networks; Burnley East and Burnley West which are made up of approximately 30,000-50,000 patients each.

11.4.3 The East Lancashire Hospitals NHS Trust (ELHT) was established in 2003 and provides acute secondary healthcare for the people of East Lancashire and Blackburn with Darwen across five hospital sites and various community sites; including Burnley General Teaching Hospital.

11.4.4 In drawing up the Local Plan, consultation took place with the NHS, ELHT and CCG at all stages. Specific discussions were held with the CCG about the planned level of growth and proposed housing allocations and the likely impacts on the health services the CCG provide and its capacity to accommodate the sites and growth planned. The CCG accepted that the Borough cannot stand still and that the development of better-quality homes would have a positive health impact on residents. In addition, the CCG felt that the development of more attractive aspirational homes might assist in workforce recruitment within the health sector.

11.4.5 At that time, the CCG estimated that the growth proposed in the Local Plan may require an additional four whole-time equivalent GPs, with associated nursing and administrative staff. It was anticipated that this growth could be accommodated within existing practices and would not be required until later in the plan period.

11.4.6 The East Lancashire Hospitals Trust (ELHT) and the East Lancashire Clinic Commissioning Group were understood to both be looking at developing a policy for requesting developer contributions towards the cost of necessary additional health infrastructure, including the expansion of primary care (GP) services. Although the ELHT did comment on a planning application with a request for a contribution towards hospital funding³⁹, this request was not based on a published policy

³⁹ FUL/2020/0028

and was not considered by the Council to be lawful. The ELHT was invited to comment on the SPD and officers offered to discuss a draft ELHT/CCG policy but to date no response has been received. Should a robust and lawful policy be developed by the ELHT or the CCG, any requests would be considered **priority 2 – necessary and important**. Whether these would be priority 2b or 2c would depend on the policy ultimately developed and the availability of alternative funding.

12. Monitoring and Review

12.1.1 A monitoring framework has been established to assess the performance of the policies in the Local Plan to see if they are performing as intended towards delivering the Vision and Objectives set out and to trigger the need for a local plan review, new or updated SPDs, or other interventions. The monitoring framework is reported on in the Council's annual Monitoring Report (AMR). A number of these monitoring indicators are relevant to this SPD e.g. population projections, overall housing delivery, house prices, affordable housing completions by tenure, housing completions by type and the amount of contributions received and spent.

12.1.2 Monitoring may also indicate a need to update the Local Plan evidence base and the Infrastructure Delivery Plan (IDP).

12.1.3 New evidence or changes to national policy may also signal the need for a review of this SPD. For example, as noted in paragraph 5.3.4, the 2017 Local Plan Viability Assessment upon which this SPD draws, was based on then current values and costs and these and in particular the relationship between them, needs to be kept under review - particularly to reflect any significant changes to the building regulations or national affordable housing policy. Paragraph 10.2.8 also notes that the requirement for any new schools needs to be kept under review.

12.1.4 As noted in paragraph 11.4.6, the East Lancashire CCG and ELHT are both looking at developing a policy on developer contributions for health infrastructure and this work may trigger a need for this SPD to be updated.

12.1.5 This SPD does not take account of the proposals for reform of the current system of development contributions set out in the White Paper 'Planning for the Future' or the accompanying consultation document 'Changes to the current planning system' both issued for consultation in August 2020. Should the changes set out in the white paper be implemented then this SPD would need to be comprehensively reviewed or withdrawn.

12.1.6 As set out in Section 6.1, from December 2020 Burnley Council and Lancashire County Council will also have to produce their first annual 'infrastructure funding statements' which will set out in a prescribed form, information on contributions.

Appendices

Appendix A: Key Local Plan Policies

Policy IC4: Infrastructure and Planning Contributions

- 1) Development will be required to provide or contribute towards the provision of the infrastructure needed to support it.
- 2) The Council will seek planning contributions where development creates a requirement for additional or improved services and infrastructure and/or to address the off-site impact of development so as to satisfy other policy requirements. Planning contributions may be sought to fund a single item of infrastructure or to fund part of an infrastructure item or service.
- 3) Where new infrastructure is needed to support development, the infrastructure must be operational no later than the appropriate phase of development for which it is needed.
- 4) Contributions may be sought for the initial provision and/or ongoing running and maintenance costs of services and facilities.
- 5) Contributions will be negotiated on a site-by-site basis and will only be sought where these are:
 - a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
- 6) Appropriate matters to be funded by planning contributions include, but are not limited to:
 - Affordable housing
 - Public realm improvements and creation, including public art
 - Improvements to Heritage Assets
 - Flood defence and alleviation schemes, including SuDS
 - Biodiversity enhancements
 - Open space, including green infrastructure and allotments
 - Transport improvements, including walking and cycling facilities
 - Police infrastructure
 - Education provision
 - Utilities
 - Waste management
 - Health infrastructure
 - Sport, leisure, recreational, cultural and other social and community facilities
- 7) Where contributions are requested or unilaterally proposed and the viability of development proposals is in question, applicants should provide viability evidence through an 'open book' approach to allow for the proper review of evidence submitted and for reasons of transparency.

Policy HS2: Affordable Housing Provision

- 1) The Council will work with public and private sector partners to seek to ensure that there is a sufficient supply of good quality affordable housing, particularly in the areas of highest need by:
 - a) Supporting and facilitating the acquisition and adaptation of existing housing by registered providers;
 - b) Working proactively with registered providers to identify sites and deliver schemes to provide affordable housing; and
 - c) Requiring the provision of affordable housing through all housing developments of over 10 units, unless the applicant can demonstrate that a site, which would otherwise be supported by the policies in the Plan and meets the requirements of Policies SP4 and SP5, would not be viable with affordable housing provision on-site or off-site by way of a contribution.
- 2) The exact amount of financial contribution/number and tenure of affordable units will be determined by economic viability having regard to individual site and market conditions.
- 3) Any affordable housing required should be provided:
 - i) on-site where this can be achieved without compromising other important policy considerations⁴² or viability; or
 - ii) off-site where on-site provision has been satisfactorily demonstrated not to be justified under i) and where it can be demonstrated that the contribution would facilitate the delivery of affordable housing of an appropriate type at a suitable policy-compliant site.
- 4) All new affordable housing should be designed to minimise indications of its tenure in order to facilitate inclusive communities.
- 5) Where affordable housing is being delivered, the Council will seek to ensure an appropriate tenure mix using the following percentages as a guide (and sizes and types as set out in Policy HS3).
 - Affordable Rent or Social Rent: 80%
 - Intermediate tenure: 20%

Appendix B: NPPF Definition of Affordable Housing

NPPF 2019:

Affordable housing: housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions:

a) **Affordable housing for rent:** meets all of the following conditions: (a) the rent is set in accordance with the Government's rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable); (b) the landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider); and (c) it includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).

b) **Starter homes:** is as specified in Sections 2 and 3 of the Housing and Planning Act 2016 and any secondary legislation made under these sections. The definition of a starter home should reflect the meaning set out in statute and any such secondary legislation at the time of plan-preparation or decision-making. Where secondary legislation has the effect of limiting a household's eligibility to purchase a starter home to those with a particular maximum level of household income, those restrictions should be used.

c) **Discounted market sales housing:** is that sold at a discount of at least 20% below local market value. Eligibility is determined with regard to local incomes and local house prices. Provisions should be in place to ensure housing remains at a discount for future eligible households.

d) **Other affordable routes to home ownership:** is housing provided for sale that provides a route to ownership for those who could not achieve home ownership through the market. It includes shared ownership, relevant equity loans, other low cost homes for sale (at a price equivalent to at least 20% below local market value) and rent to buy (which includes a period of intermediate rent). Where public grant funding is provided, there should be provisions for the homes to remain at an affordable price for future eligible households, or for any receipts to be recycled for alternative affordable housing provision, or refunded to Government or the relevant authority specified in the funding agreement.

Appendix C: References

Legislation

Available at: <http://legislation.gov.uk>

National Planning Policy

National Planning Policy Framework:

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

National Planning Practice Guidance

<https://www.gov.uk/government/collections/planning-practice-guidance>

Infrastructure

The Burnley Infrastructure Delivery Plan (IDP):

<https://www.burnley.gov.uk/residents/planning/planning-policy/burnleys-local-plan/burnleys-infrastructure-delivery-plan>

Lancashire County Council non-statutory policy on planning obligations:

<https://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers/>

Lancashire County Council Infrastructure and Planning – including

Annex 1: Highways

Annex 2: Education

Annex 3: Drainage and Flood Risk Management

<https://www.lancashire.gov.uk/media/909459/combined-document.pdf>

Viability

Burnley's Local Plan Viability Assessment 2017:

<https://www.burnley.gov.uk/residents/planning/planning-policy/burnleys-local-plan/evidence-base/local-plan-viability-assessment>

Green Spaces, Sport and other Community Facilities

Burnley's Green Space Strategy 2015 – 2025 and Appendices:

<https://www.burnley.gov.uk/sites/default/files/Green%20Spaces%20Strategy%20%202015%20-%202025.pdf>

<https://www.burnley.gov.uk/sites/default/files/Appendices%20for%20GSS%20Exec%20Report%2015.09.14.pdf>

Burnley Play Area Strategy 2017 – 2026:

<https://www.burnley.gov.uk/sites/default/files/Burnley%27s%20Play%20Provision%20Strategy%20%202017%20-%202026.pdf>

Rossendale, Pendle and Burnley Playing Pitch Strategy 2016 – 2026:

<https://www.burnley.gov.uk/sites/default/files/Rossendale%20Burnley%20Pendle%20Playing%20Pitch%20Strategy%202016%20-%202026%28published%29.pdf>

Burnley Green Infrastructure Strategy:

<https://www.burnley.gov.uk/residents/planning/planning-policy/burnleys-local-plan/evidence-base/burnley-green-infrastructure-strategy>

Indoor Sports Facility Review (2015) Burnley Borough Council:

<http://www.burnley.gov.uk/residents/planning/planning-policy/burnleys-emerging-local-plan/evidence-base/sports-studies>

Playing Fields Policy and Guidance (2018) Sport England

<https://www.sportengland.org/media/12940/final-playing-fields-policy-and-guidance-document.pdf>

Transport

Lancashire County Council Local Transport Plan 2011 – 2021

https://www.lancashire.gov.uk/media/191267/LTP3_through_full_council.pdf

East Lancashire Highways and Transport Masterplan (2014) Lancashire County Council and Blackburn with Darwen Borough Council:

<http://www.lancashire.gov.uk/council/strategies-policies-plans/roads-parking-and-travel/highways-and-transport-masterplans/east-lancashire-highways-and-transport-masterplan>

Burnley Highways Impact Assessment Jacobs for Lancashire County Council and Burnley Borough Council March 2017

www.burnley.gov.uk/residents/planning/planning-policies/burnleys-emerging-local-plan/evidence-base/transport-studies

Flood Risk

Strategic Flood Risk Assessment

<https://www.burnley.gov.uk/residents/planning/planning-policy/burnleys-local-plan/evidence-base/strategic-flood-risk-assessment>



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