

Meeting the need for sporting provision that may be generated from new development

This document is based on Sport England's current understanding of the use of the Community Infrastructure Levy (CIL) and planning obligations. The document will be updated following any amendments to the relevant planning legislation and guidance, as additional relevant examples and case law emerges and as any feedback is received on the advice it contains¹.

Overall Approach - Top Tips

Below are some top tips regarding an overall approach a Local Authority (LA) could take to using CIL and planning obligations to help meet the needs that may be generated by new development for sporting provision. Detail behind the approach is provided in this document.

1. Develop and maintain a robust and up to date evidence base for sporting provision.
2. Use the evidence base to:
 - estimate the nature and level of needs that may be generated from new development(s) for sporting provision;
 - establish clear deliverable actions (with associated costs) that have the potential to help meet the needs that will be generated from new development in the area.
3. Based on the nature of the actions, the level of new development in an area, and the realistic ability to secure investment into sport through CIL or planning obligations, decide how best to use CIL and planning obligations alongside one another to deliver sporting infrastructure and to support development.
4. Where CIL is in place ensure any sporting provision to be placed on the Reg 123 list is:
 - project specific so it does not unnecessarily restrict the use of planning obligations;
 - focused on high level priority projects of a strategic nature that CIL has potential to deliver rather than a long list of projects that CIL will never be able to fund. This will allow the potential for other projects to be funded by planning obligations;
 - backed by strong high level officer and political support within the LA so that there is some confidence that CIL funds will be directed to the sporting provision.
5. Where CIL is not in place, or where the wording of a Reg 123 list allows for the use of planning obligations, ensure that:
 - any obligations sought are based on a tailored approach to each development, using the robust evidence base to help with clearly justifying the needs arising and how they are to be met;
 - a proactive approach is taken to planning for the use of planning obligations in the context of the current pooling restrictions (i.e. as far as is practical matching specific developments to identified projects). This could be through the use of a Planning Obligations SPD which identifies potential projects from a playing pitch strategy or sports facility strategy that could help meet the need arising from planned developments in a Local Plan.

Note: For illustrative purposes, a hypothetical example is provided in Appendix 2 of an approach to meeting the needs from a development by way of planning obligations. This example includes the use of Sport England's calculator tools (see Question 2 on page 4).

¹ Feedback can be sent to planningforsport@sportengland.org

CIL Review - An independent review of CIL was commissioned by the Government in 2015. Sport England inputted to the review including meeting with the review panel. The panel report was published in February 2017². The Government responded to the panel report in the November 2017 Autumn Budget and consulted on proposals to reform the system of developer contributions (including CIL and planning obligations) in May 2018³ to which Sport England replied. The Government published a response to the consultation in October 2018³ proposing several changes including the relaxation of the pooling restrictions on the use of planning obligations.

Legislation will be required to implement changes proposed by the Government and consultation on the draft regulations is expected later this year or in early 2019. This document should therefore be regarded as providing interim advice until the Government's proposed changes are made. Once this is the case Sport England will review and update this document.

Introduction

This document provides advice on meeting the need for sporting provision that may be generated from new development. It does so by presenting four questions that should be worked through and by providing advice on how each question could be answered. The questions focus on how the needs from an individual development can be determined and met. Recommendations are then presented as to the overall approach that could be taken by a Local Authority (LA).

If a LA has a robust and up to date evidence base in place for sporting provision (such as assessments of need and related strategies developed in line with Sport England guidance⁴), then they will already have a significant amount of the information required to answer the questions. This will place the LA in a good position to ensure the needs can be met.

It is recognised that conventional local quantitative standards of provision are included in some adopted Local Plans and Supplementary Planning Documents (SPDs). However, this document highlights limitations with their use in answering the questions and therefore in determining and securing appropriate provision.

The advice provided has been primarily informed by:

- (i) legal advice sought by Sport England on the use of the CIL and planning obligations, in relation to the application of the [CIL Regulations](#), notably Part 11 - Regulations (Regs) 122 and 123.
- (ii) advice from the Planning Officers Society (POS) within their 'Section 106 Obligations and CIL' [advice note](#) (2015). This includes advice from the Planning Inspectorate to Planning Inspectors on the evidence required to secure obligations (see Appendix 1).

The above advice and this document particularly relates to CIL [Reg 122](#). This states that a planning obligation may only constitute a reason for granting planning permission for development if the obligation is:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development;
- (c) fairly and reasonably related in scale and kind to the development.

Reg 122 puts the need for a planning obligation to meet all three tests into law and not just policy as set out in the [National Planning Policy Framework](#) (NPPF, paragraph 56). The effect being that when assessing proposed obligations against the tests, case law indicates that Planning Inspectors are now seeking firm evidence that all three tests are met, regardless of whether a LA and applicant have agreed the obligation (see Appendix 1). The questions and advice in this document seek to highlight the evidence required.

² A new approach to developer contributions: a report by the CIL review team ([link to report on MHCLG website](#))

³ Supporting housing delivery through developer contributions ([link to the consultation paper and Government response on the MHCLG website](#))

⁴ Assessing Needs and Opportunities Guide and Playing Pitch Strategy Guidance
www.sportengland.org/planningtoolsandguidance

Q1. Can planning obligations be used to secure the need for sporting provision?

To answer this question the following action will be required:

- If an adopted CIL charging schedule is in place for the area, establish whether the Reg 123 list limits the use of planning obligations for sporting provision.

If a LA does not have an adopted CIL charging schedule in place then planning obligations can be used to meet the needs generated from a development. However, if a LA has an adopted CIL in place then the wording of its Reg 123 list will need to be looked at to establish if planning obligations can be used.

Planning obligations will not be able to be used for any infrastructure types or projects that are included within the Reg 123 list (unless this is to mitigate the loss of existing sporting facilities in line with the requirements of Paragraph 97 of the NPPF). This includes any facility types that may fall under a generic infrastructure heading included in a Reg 123 list (e.g. outdoor sports facilities). In this situation, by including the provision in the Reg123 list the LA has taken the decision that the needs generated from new development for the relevant sports facilities will be met through their CIL. However, there is no requirement on a LA to ensure that the infrastructure listed in the Reg 123 list is delivered as it will be their decision which facility types/projects on the list are funded with CIL receipts. In addition, there are likely to be a number of competing infrastructure priorities on the list. Advocacy is therefore important with, and within, a LA to help ensure that CIL funds are directed to appropriate sporting provision to meet the needs generated by new development.

If sports facilities are not included in a Reg 123 list, or a particular facility type/project is not included and does not fall under a generic title, then planning obligations can be used to meet the needs generated from a development for the facility type(s)/project. A LA may also state in their Reg 123 list that specific facility types or developments are excluded from the list therefore enabling planning obligations to be used, e.g. strategic scale developments such as urban extensions.

Limitations with using standards of provision

Standards will not help in answering this question but by answering it some of the limitations of using standards are exposed. For example:

- i. Where CIL is in place and an obligation cannot be secured, unless provision is to be provided on site, standards do not have a role to play in determining the needs generated by a development and how it can be met. This will be addressed through the payment and spending of CIL funds.
- ii. In this situation, to stand a chance of CIL funds being spent on sporting provision specific priority sports facility projects should be identified in the LA's Infrastructure Delivery Plan (IDP), and subsequently on its Reg 123 list. These projects should be derived from a LA's robust and up to date evidence base e.g. sports facility and playing pitch strategies. The projects should also have significant high level LA officer and political support to ensure that CIL funds will be directed to them to help ensure their delivery. If a LA uses standards as their approach to addressing identified needs, and as a basis for Local Plan policies, rather than using their evidence base to set out specific projects and actions to meet the needs generated from new development, there is a danger that the necessary evidence will not be in place to justify appropriate provision for sport being included in an IDP and subsequently a Reg 123 list.

Q2. If planning obligations can be used, is meeting the need necessary to make the development acceptable in planning terms?

To answer this question the following actions will be required:

- **Identify the policy framework.**
The relevant NPPF policies, along with Local Plan policies and other development plan documents (e.g. any Supplementary Planning Document or Guidance), which set out the requirement to provide for the needs generated by new development for sporting provision, and/or wider community infrastructure, should be identified.
- **Establish for which facility type(s) needs may be generated.**
This should be a local decision depending on the population profile of the proposed development. In the vast majority of cases it can be assumed the population, and therefore sporting profile, of a development will be similar to the LA area. Relevant Local Plan policies or other development plan documents may identify certain facility types. Relevant evidence base documents (e.g. Facility and/or Playing Pitch Strategies) may also help with establishing the facility types.
- **Quantify the need for the facility types.**
Quantified evidence is required of the additional need for facilities or infrastructure which are likely to arise from a proposed development. This evidence should first of all demonstrate the potential increase in usage of a facility type (e.g. matches and training sessions of a type of playing pitch, or visits to a swimming pool). If appropriate (see Question 3), the potential increase in usage should then be converted into the relevant level of new provision for the specific facility type (e.g. x number of new adult football pitches or x sqm of new swimming pool space, as opposed to something generic that is not linked to the evidence base such as x hectares of outdoor sports provision). Although the population of a single development (e.g. on a small site or an individual stage of a larger site) may not in itself generate the needs for a full facility it will still generate additional demand which should be quantified and met.

Sport England's strategic planning guidance and tools can help with quantifying the need for sporting provision. For example, its sports facility calculator (SFC)⁵ can help to indicate how much additional demand may be generated for key facility types (e.g. swimming pools and sports halls) from the population of a proposed development. It also provides an indication of the cost of meeting this demand through new build provision should this be the best way forward (see Questions 3 and 4).

Sport England has also developed a draft playing pitch calculator which performs the same function as the SFC but for playing pitches. However, the draft pitch calculator requires information from an up to date assessment of playing pitches for a local area. It will therefore primarily be of benefit to LAs who have recently developed, or are in the process of developing, a playing pitch strategy. If such LAs are interested in the draft pitch calculator then they should contact their relevant Sport England Planning Manager⁶ to discuss its potential use.

See Appendix 2 for a hypothetical example of how the above calculators can be used.

- **Identify whether the need for the facility types can be met by existing facilities.**

⁵ The SFC can be found within Sport England's [Active Places Power](#) website. Further guidance on its use is also available via the www.sportengland.org/planningtoolsandguidance page of the Sport England website.

⁶ Planning team contact emails: [North](#) (North West, North East, Yorkshire), [Central](#) (West Midlands, East Midlands, East), [South](#) (London, South East, South West).

Quantifying the need in terms of the potential increase in usage of a facility type (see above) will allow for an evaluation of whether existing provision, within an appropriate catchment of a development, is able to meet the additional need. If a LA has a robust evidence base in place for the relevant facility type(s) then this should enable such an evaluation to be undertaken. However, without being able to demonstrate that the need cannot be met by existing provision, without exacerbating existing deficiencies and/or adversely affecting existing users, it will be difficult to make a case that meeting the need for the facility type is necessary.

Limitations with using standards of provision

Standards are sometimes used to help quantify the need that may be generated from a development. However, as set out below there are some risks and weaknesses with their use that should be highlighted:

- i. The NPPF does not advocate the use of local standards for assessing the needs or providing for sporting provision (unlike PPG17 (2002) which it replaced). In terms of planning for sport and recreation it advises that information gained from robust and up-to-date assessments of need for sport and recreation facilities should be used to determine what provision is needed, which plans should seek to accommodate ([NPPF paragraph 96](#)). The Government's [Planning Practice Guidance](#) (PPG) points to Sport England's guidance on assessing needs for sporting provision. Rather than advocating the development of standards this guidance (see footnote 4 to the Introduction above), takes the requirements of paragraph 96 of the NPPF and helps the user develop this more specific evidence.
- ii. The existence of a local standard in a Local Plan, or other development plan document, does not necessarily in itself justify the requirement to seek provision for a specific facility type from an individual development. It would need to be underpinned by a robust assessment of need and developed further to provide a specific local requirement (e.g. an identified project or contribution to an identified project) informed by appropriate feasibility studies, costings etc.
- iii. If the underlying evidence base, and how the standard has been developed, is not robust and up to date then it may be difficult to justify its use.
- iv. Standards propose a certain amount of new provision for a given population. This level of new provision may not be necessary and may not relate to identified needs and actions as set out in a supporting evidence base document. For example, improving the quality or accessibility of existing provision to increase its capacity may be a more appropriate way to meet the need generated by a development.
- v. Standards do not provide details of the needs that may be generated for the actual use of a facility. Standards therefore have limitations when seeking to improve existing provision to increase its capacity.
- vi. Standards can be too generic with a single standard covering a number of facility types (e.g. x hectares for outdoor sport as opposed to a local assessment that may identify a shortfall of cricket and youth football pitches but adequate provision of adult football pitches). Such standards do not reflect the range of needs for different facility types that fall under a generic heading, or provide any certainty as to what specific needs will be generated from a development and therefore what provision is necessary;
- vii. Applying a standard without robust evidence that existing provision, within a reasonable catchment of the individual development and in its current condition, is unable to meet the additional need will fail to demonstrate that the provision sought is necessary.

Q3. If meeting the need is necessary, how can it best be met?

To answer this question the following actions will be required:

- **Establish for the facility types whether the need is most appropriately met by on or off-site provision.**

A LA's Local Plan, and/or its evidence base for sporting provision, may help a local decision to be taken on the most appropriate way of meeting the need (i.e. on and/or off-site) based on the size of the development, the resulting level of need for a facility type and the nature and proximity of existing provision. Where there are a number of small developments proposed in an area, or individual stages of a larger development, which are unlikely by themselves to generate additional need for a full facility, a LA should take a proactive approach to deciding the most appropriate way to meet their combined and cumulative needs.

When making any such decisions long term management, maintenance and sports development considerations should be taken into account. For example, rather than providing a single playing pitch on site to meet the need from a small development, or from an individual stage of a larger development, it would be more efficient and effective from a management, maintenance and sports development perspective to provide the new pitch as an extension to an existing or proposed off-site multiple pitch site, to improve the quality of an existing or already proposed off-site multiple pitch site to enhance its capacity, or to meet the combined needs from a number of developments by providing a new off-site multi-pitch site.

There may be occasions when the applicant proposing a development is able to provide payment 'in kind' to meet (fully or in part) the identified need arising from their development e.g. provision of land at no cost to the LA either on or off-site. Where this is an option care should be taken to ensure that it is an appropriate and effective way of meeting the need (e.g. taking into account the location and nature of the land, feasibility and cost of providing the necessary facilities and long-term management and maintenance).

- **If off-site, decide whether the best approach would be to increase the capacity of existing or proposed facilities or provide new provision.**

This decision should be based on i) the potential to improve existing facilities within an appropriate catchment of a development to create additional capacity, and ii) how realistic it is given the nature of the local area to provide new provision. For example, there may be some poor quality playing fields that could potentially be improved with additional drainage and long term maintenance works, along with enhanced changing provision, to enable their use to be increased, thereby creating additional capacity to meet the needs generated. If there are no potential options to improve existing, or already proposed, provision to create additional capacity then new provision will be required. If the LA has a robust evidence base in place, then the necessary information should exist on existing facilities for an initial view to be taken on their potential to be improved, and therefore the additional use they could accommodate.

- **Be aware of how the restrictions on pooling planning obligations may affect how the needs can be met.**

If planning obligations can be used, regardless of whether or not a LA has an adopted CIL in place, there are current restrictions on the pooling of obligations. An obligation cannot currently be secured if there has already been five obligations secured for a specific project (e.g. x swimming pool or x playing field improvements), or for a generic infrastructure type (e.g. outdoor sport) that it is proposed the obligation will be put to. This restriction applies to obligations secured from April 2010. Therefore, if the LA's Reg 123 list allows obligations to be used, it will be useful to have an understanding of what obligations have already been secured since April 2010 towards sporting provision, and on which projects and/or generic infrastructure types they have been spent/pooled towards. In cases where LA's have been pooling contributions towards generic infrastructure types, the pooling limits are likely to have been reached by now so continuing this may not be possible. Being aware of the restrictions,

and the use of obligations to date in the area, will help with identifying specific works to meet the needs generated from an individual development (see Question 4).

Limitations with using standards of provision

Standards could be used to help quantify the level of new provision that may be required. However, in addition to the points under Question 2:

- i. They do not alone provide a robust justification that new provision is necessary or provide informed assistance with deciding how best to meet the needs generated.
- ii. Where standards are used they should be supported by robust and up to date evidence justifying applying the standard to the individual development and therefore seeking new provision.
- iii. Without also quantifying the need in terms of the increased potential usage of a facility, applying a standard to a number of developments, and for a number of facility types, tends to result in a suggested need for a proportion of a new facility. This may be unrealistic to provide if no wider project has been identified to which an appropriate financial contribution can be secured, and/or any contribution fails to meet with the pooling restrictions for planning obligations.
- iv. In the past a significant number of LA's have converted quantitative standards into standardised developer contributions e.g. £x per dwelling towards outdoor sport. These contributions have been secured through planning obligations. These have been pooled under a generic sports facility infrastructure heading to be spent at a later date on unidentified projects, rather than being pooled to deliver specific projects which have been clearly identified to meet the needs of the specific developments they have been secured from. If there is a lack of additional evidence relating to specific projects then there would be difficulties with maintaining this approach given requirements of the Reg 122 tests. In addition, the current pooling restrictions introduced by Regulation 123 would limit the scope for this in the future, in relation to generic infrastructure types, as the pooling limit is likely to be reached very quickly if it has not been reached already.
- v. The current pooling restriction can be addressed by identifying appropriate contributions from individual developments towards relevant specific projects. However, there needs to be a robust evidence base in place which includes appropriate prioritised projects which can meet the needs generated by new developments in the area. Without this level of evidence standards by themselves may be of limited use in informing the identification of projects, or justifying them in the context of demonstrating that the CIL Regulation 122 tests have been met.

Q4. How can it be ensured a planning obligation is directly related, and is fairly and reasonably related in scale and kind, to the development?

To answer this question the following actions will be required:

- **Identify specific works that can be undertaken to meet the needs identified and the nature of the obligation required.**

The existing provision to be enhanced or site(s) for new provision should be identified. When doing so the distance of the provision or site(s) from the development site should take into account how the relevant sports are played in the area, along with the time (by appropriate travel modes) it can reasonably be expected for users of a specific facility type to travel. This will vary by facility type e.g. it may be reasonable to meet the need for swimming pool provision further from the development site than for other provision such as youth playing pitches.

Discussions should be held with relevant parties (e.g. landowners, facility operators and user groups), and any further necessary evidence gathered (e.g. a feasibility study), to help identify the specific works that are required, and to ensure they will provide the necessary additional capacity to meet the needs. It will also be important to demonstrate that the specific works can be delivered within an appropriate timescale in relation to the occupation of the development site.

If there is some uncertainty about the deliverability of the works it would be prudent to agree a degree of flexibility within the obligation. This could be done by identifying contingency works that meet the Reg122 tests which have more certainty of delivery, or by including a clause which enables provision for alternative works which meet the Reg 122 tests to be agreed in writing between the relevant parties.

When deciding on the specific works care should be taken to avoid the pooling restrictions on the use of planning obligations (see Question 3). If the works themselves do not represent a single separate project (i.e. the obligation will help to fund a wider project) then no more than four previous obligations can have already been pooled towards that project.

Any works should be informed by a robust evidence base for the area (i.e. as set out in the action plan of a sports facility or playing pitch strategy) to ensure they will fit with the wider strategic provision and context for the facility type(s). If they do not already exist then it is essential that any obligation also secures appropriate ancillary facilities (e.g. changing rooms) to support and enable the use of the new or enhanced provision.

- **Highlight the direct relationship between the needs the development will generate and the specific works the obligation will enable.**

By working through the above questions and taking into account the advice provided, a clear relationship should be able to be established between the development and the specific works any obligation will secure. This should present a clear rationale and justification for the obligation covering the facility type(s) included, the level of need that will arise for the facility type(s) as a direct result of the development and why the needs cannot be met by existing provision. It should also justify why the specific works have been proposed, the appropriateness of their location and how they will meet the identified needs. In doing so it will be important to be able to demonstrate that the works, and associated costs (see below) are proportionate to the scale of the development and the need it generates.

- **Provide clarity as to how any financial contribution to secure the specific works has been calculated?**

A clear and transparent methodology for calculating up to date costs for the specific works, including appropriate ancillary provision, should be presented. Where appropriate, depending on how the needs are to be met, the cost of any required land purchase should be included in the financial contribution. If an obligation will be directed to a wider project it should be ensured the costs are proportionate and limited to meet the needs of the individual development.

Along with any capital costs for the works, an obligation should ensure an appropriate level of lifecycle costs towards the new or enhanced provision. This is required to cover the day to day maintenance for an agreed long-term period and to help ensure a sinking fund exists for any major replacement work, e.g. the future resurfacing of an Artificial Grass Pitch.

Wherever possible specific local costs should be used, especially if the works are to improve the existing quality of a site to increase capacity as there may be a number of site specifics to take into account. Sport England does provide indicative costs for new provision ([Cost Guidance](#)) and its sports facility calculator and draft playing pitch calculator (see Question 2) can provide costs for the proportionate element of new provision that may be required to meet the needs from an individual development.

Limitations with using standards of provision

The limitations raised above with the use of standards under questions 2 and 3 would also be applicable when assessing whether a planning obligation is directly related, and is fairly and reasonably related in scale and kind, to the development. Limitations of particular relevance to this question include:

- i. The robustness of the underlying evidence base;
- ii. The relationship with the identified needs and actions in a supporting evidence base, especially where improving the quality or accessibility of existing provision to increase its capacity is a priority for meeting the needs generated by a development.
- iii. The application of standards in scenarios where there is no robust evidence that existing provision, within a reasonable catchment of the individual development and in its current condition, is unable to meet the additional need.
- iv. The limited value standards provide in informing how best to meet the needs generated by a development.
- v. The application of standards in scenarios where a need for only a proportion of a facility is generated, and no project has been identified to which an appropriate financial contribution can be secured.
- vi. The pooling of contributions towards unidentified projects.

Conclusions and Recommendations

A LA's approach to the CIL will have a major influence on the ability to meet the needs arising from a development for sporting provision in an area. The nature and precise wording of a Reg 123 list is key to understanding how the needs can be met. For CIL to provide for sporting provision there needs to be high level LA officer and political commitment to any sporting infrastructure and projects on a Reg 123 list.

Where CIL is not in place, or a Reg 123 list allows for planning obligations to be used for sporting provision, then a tailored approach to each individual development is most appropriate to provide the evidence that the Reg 122 tests have been met, especially in scenarios where applications are considered by Planning Inspectors. Unless provision is to be provided entirely on site then relying on a generic policy approach and/or the application of quantitative local standards are unlikely meet the tests. Evidence is required of the specific needs that will be generated by an individual development and why they cannot be met by existing provision. Where any works are proposed to meet the needs they should be identified, justified and proportionate to the development. As far as is practically possible it should be demonstrated that the identified works are deliverable within a set timeframe.

Further to the advice in this document, below are some top tips regarding the overall approach a LA could take to using CIL and planning obligations to help meet the needs that may be generated by new development for sporting provision.

Overall Approach – Top Tips

1. Develop and maintain a robust and up to date evidence base for sporting provision;
2. Use the evidence base to:
 - estimate the nature and level of needs that may be generated from new development(s) for sporting provision;
 - establish clear deliverable actions (with associated costs) that have the potential to help meet the needs that will be generated from new development in the area;
3. Based on the nature of the actions, the level of new development in an area, and the realistic ability to secure investment into sport through CIL or planning obligations, decide how best to use the CIL and planning obligations alongside one another to deliver sporting infrastructure and to support development.
4. Where CIL is in place ensure that any sporting provision to be placed on the Reg 123 list is:
 - project specific so it does not unnecessarily restrict the use of planning obligations,
 - focused on high level priority projects of a strategic nature that CIL has potential to deliver rather than a long list of projects that CIL will never be able to fund. This will allow the potential for other projects to be funded by planning obligations;
 - backed by strong high level officer and political support within the LA so that there is some confidence that CIL funds will be directed to the sporting provision.
5. Where CIL is not in place, or where the wording of a Reg 123 allows for the use of planning obligations, ensure that:
 - any obligations sought are based on a tailored approach to each development, using the robust evidence base to help with clearly justifying the needs arising and how they are to be met;
 - a proactive approach is taken to planning for the use of planning obligations in the context of the current pooling restrictions (i.e. as far as is practical matching specific

developments to identified projects). This could be through the use of a Planning Obligations SPD which identifies potential projects from a playing pitch strategy or sports facility strategy that could help meet the need arising from planned developments in a Local Plan.

Note: For illustrative purposes, a hypothetical example is provided in Appendix 2 of an approach to meeting the needs from a development by way of planning obligations. This example includes the use of Sport England’s calculator tools (see Question 2 on page 4).

Note: As set out above a LA’s CIL Regulation 123 list should be project specific and therefore enable the continued use of planning obligations for provision that is not listed. However, for clarity it is recommended that a list includes text which explicitly excludes the provision of infrastructure that is required to mitigate, where necessary, the loss of existing provision and which meets the legal tests of Regulation 122 of the CIL Regulations.

This text will enable a LA to retain its discretion to negotiate planning conditions and obligations (section 106 agreements) to secure necessary infrastructure to meet relevant policy requirements, e.g. to meet the need for replacement sporting provision in line with the requirements of paragraph 97 of the NPPF.

Disclaimer: The purpose of this document is to help all parties engaged in the planning system, and the system as a whole, plan positively for sport. The contents are based on Sport England’s understanding and interpretation of relevant policy, guidance and legislation at the time the document was produced. Whilst care has been taken to ensure the accuracy of the content Sport England cannot guarantee that the contents are up to date or reflect all relevant policy, guidance and legislation.

Any reliance placed on the contents are at the readers’ own risk. Neither Sport England, nor any contributor to the content of the document, shall be responsible for any outcomes arising from decisions or action taken as a result of a readers’ use of or reliance on the document. Sport England recommends that a reader obtains their own planning and where appropriate legal advice before taking, or refraining from, any action on the basis of the contents of this document.

Appendix 1

Planning Officers Society 'Section 106 Obligations and the Community Infrastructure Levy' advice note (2015) - [Extract – Paragraphs 16-18](#)

16. If an obligation does not meet all of the tests it cannot in law be taken into account in granting planning permission. While these tests are a consolidation of the 05/05 advice, they are now a legal requirement giving them much greater force. Whereas previously there was a view among LPAs and developers that if a S106 had been signed voluntarily (or if a unilateral undertaking had been freely offered) it would not be scrutinised too closely, the statutory status of the tests brings a much greater need to demonstrate that the terms are lawful. There is clear evidence that the Planning Inspectorate and the Secretary of State are taking a much more forensic interest in S106 agreements to ensure the statutory tests are met.

S106 Financial Contributions failing to meet the statutory tests - examples from Secretary of State and PINS decisions.

Mersea Homes CBRE, Land at Westerfield Rd, Ipswich: The Secretary of State gave no weight to a number of financial contributions for education, playing fields and a Country park on the grounds that they did not meet the statutory tests. The site was considered to already make a good contribution to open space, the country park was not directly related to the development and there was sufficient capacity within existing schools. The Contributions were not fair and reasonable.

Doepark Ltd, American Wharf Southampton: The Secretary of State gave no weight to financial contributions for public open space, play space, sports pitches and transport infrastructure on the basis that there was insufficient information to decide whether they met the tests of being necessary to make the development acceptable in planning terms, directly related to the development and reasonable in scale and kind.

Tesco Springfields Retail Park, Stoke on Trent: The Secretary of State found that contributions to environmental improvements related to off-site work not directly related to the development and employment contributions were not necessary in planning terms to make the development acceptable.

Scott Bailey, Raglan Rd, Plymouth: City wide formula based standard charges were not supported by any specific evidence on the needs arising directly as a result of the development. Found to fail all three of the statutory tests, and inspector awarded costs against the authority.

Yap, Knoll Drive, Barnet: Inspector found insufficient evidence to substantiate the local need for contributions or the specific use to which they would be put to mitigate impact of the development and awarded costs against the authority.

Shahidi, Queens Avenue, Barnet: The Inspector found that the tariffs were not directly related to the local and particular circumstances of the appeal and awarded costs against the authority.

17. For the LPA to take account of a S106 in granting a permission it needs to be convinced that without the obligation permission should be refused. **It is not sufficient to rely on a generic LDF policy or adopted SPD.** This is particularly relevant where there is an authority wide tariff scheme. The LPA should be able to provide evidence of the specific impact of the particular development, the proposals in place to mitigate that impact and the mechanisms for implementation.

18. PINS advises Inspectors that for obligations in the form of financial contributions to meet the Reg 122 tests (now also set out in the NPPF para 204) evidence will be needed in respect of:

- The relevant development plan policy or policies, and the relevant section of any SPD or SPG

- Quantified evidence of the additional demand on facilities or infrastructure which are likely to arise from the proposed development
- Details of existing facilities or infrastructure, and up to date, quantified evidence of the extent to which they are able or unable to meet those additional demands
- The methodology for calculating any financial contribution which is shown to be necessary to improve existing facilities or infrastructure, or provide new facilities or infrastructure, to meet additional demand
- Details of the facilities or infrastructure on which any financial contribution will be spent.

Appendix 2

For illustrative purposes a hypothetical example is provided below of an approach to meeting the needs that may be generated from a development by way of planning obligations. The example seeks to demonstrate the information required to meet the Reg 122 tests and uses Sport England's sports facility calculator and draft playing pitch calculator.

Example: A development proposing 700 new homes

The Local Authority (LA) has an up to date Sport Facility Strategy (SFS) and Playing Pitch Strategy (PPS) and no sporting provision is included in the LA's CIL Reg 123 list. Information in the strategies indicates that in terms of meeting the needs from the new development the priorities are swimming pool provision and youth football pitches. This is due to the pressures on existing provision for these facility types within the catchment of the development. The LA has discussed use of the draft playing pitch calculator with Sport England and it has been agreed that it is appropriate for it to be used.

1. Estimate the population of a new development using development specific figures or the average household size for the area.

700 new homes in the LA area is estimated to generate a population of 1,694 people (using the average household size for the area of 2.42).

2. Estimate the need that may be generated from the population of the new development.

Swimming: Selecting the area of interest within the sports facility calculator and entering the population of 1,694 suggests the development will generate a need for 113 visits to a swimming pool per week in the peak period (vpwpp). This equates to a need for 19 square metres (sqm) of water space. The findings of the SFS suggest that participation in swimming is estimated to remain stable in the foreseeable future so no increase in demand is factored in.

Youth football: The total number of 10-15yrs olds in the LA area (the youth football age groups), along with the number of 10-15yr olds that it takes to generate one youth team in the area (the team generation rate) is entered into the draft playing pitch calculator. This information is taken from the LA's PPS. The specific LA is then selected in the draft calculator and the total population for the LA area is entered. Then, by entering the population of 1,694, the draft calculator uses the PPS information to suggest that the development will generate a need for 1.8 match equivalent sessions for youth football.

The PPS indicates that participation in youth football is forecasted to increase by 7% by the time the development is complete. A 7% increase in demand is entered into the draft calculator which increases the number of projected match equivalent session to 1.95. The PPS suggests this play would need to be accommodated during the peak period for junior play therefore suggesting the development would generate a need for 2 youth pitches.

3. Determine whether the need identified can be met by existing provision

Swimming: The LA's SFS suggests that there is little spare capacity at publicly available swimming pools within the LA area. What little spare capacity does exist is outside of a reasonable catchment of the proposed development.

Youth football: The LA's PPS is clear that the current youth football pitches that are available to the community within the catchment of the development are already being overplayed. There are a couple of adult pitch sites with a small amount of spare capacity but it is not practical for them to accommodate the projected additional youth play.

4. Establish the best way of meeting the identified need and the specific works required.

Swimming: A key action in the LA's SFS is replacing the current main swimming pool in the town where the development is located with a new pool with greater capacity. The pool requires replacing due to its age and the need to cater for increased demand in the area, including from housing growth. The strategy provides a clear timescale for the delivery of the replacement pool.

Youth football: Rather than developing any new playing pitch sites in the area the recommendations in the PPS focus on enhancing existing provision to maximise its capacity. The PPS indicates that part of an existing nearby playing field site is rarely used due to it being of poor quality and prone to waterlogging. The PPS includes an action to undertake drainage works to this land which has the potential to accommodate four new youth football pitches.

5. Establish the associated cost of undertaking the specific works

Swimming: Based on Sport England's latest costings the sports facility calculator estimates that the cost of providing for the identified need of 19sqm of water space is £362,995.

Youth football: Sport England's draft pitch calculator provides an indication of the capital costs of providing for the two new youth pitches along with per annum lifecycle costs. However, due to the particular nature of the area of land proposed for drainage works the LA has sought locally specific costings. As the new development is estimated to generate a need for two pitches, half of the estimated local costs for the work to develop the four new pitches, and appropriate long-term maintenance, are apportioned to the new development.

6. Outcome

The LA seeks to secure, by way of planning obligations, off-site contributions for:

- a. Swimming pool provision of £362,995 towards the cost of the replacement pool.
- b. Youth football pitches of £X [half of the cost of the drainage works to the named site] and a per annum maintenance contribution of £X for X years.

The LA have put forward realistic plans for how they anticipate securing the remaining funds for the proposed playing pitch works and a timescale for delivery. However, to cater for any unforeseen circumstances a clause is proposed to enable provision for alternative playing pitch works which meet the Reg 122 tests to be agreed in writing between the relevant parties. No such clause is proposed for the swimming pool provision due to the lack of alternative options for meeting the identified need.