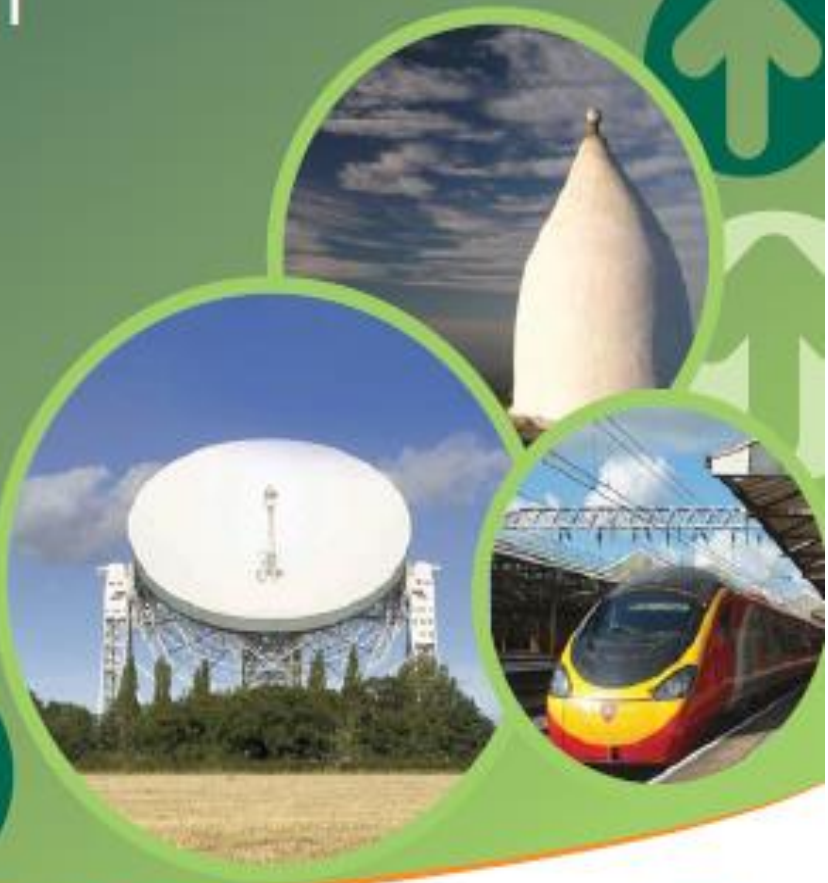


Cheshire East Local Plan

# Recovery of Forward Funded Infrastructure Costs Supplementary Planning Document

October 2021



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# 1. Introduction

- 1.1 Infrastructure is essential to the sustainable and integrated delivery of growth and development. Toward delivering the aims of the Local Plan, Cheshire East Council has one of the largest infrastructure investment programmes outside of any metropolitan area. As well as securing investment in a range of physical, green and social infrastructure through existing budgets and contributions levied through the development process, the council has directly invested in over £400million in highways infrastructure across the borough to address existing needs and enable plan led development to come forward.
- 1.2 Some of this infrastructure has been invested in upfront by the council and brought forward ahead of the development that will ultimately rely on and pay for it. Some £70million has been invested in this way, which the council will seek to recover from developers. It is essential that this funding is recovered in order for the council to continue to invest in the future infrastructure needs of the borough. This Supplementary Planning Document (“SPD”) provides guidance on how the council will seek to recover this funding.
- 1.3 Whilst the current forward funding of infrastructure relates entirely to highways projects, this SPD provides guidance on the principles that the council will use to recover costs related to other forms of infrastructure, should the need for this arise. Where infrastructure projects are forward funded by the Council, they will be identified in the Medium-Term Financial Strategy. The Council will seek to recover investment in such projects, on a proportional basis, from develop that relies on the forward funded infrastructure.
- 1.4 SPDs add further detail to policies contained within the development plan and are used to provide guidance on specific sites or particular issues. SPDs do not form part of the adopted development plan but they are a material planning consideration in decision taking.
- 1.5 This SPD is designed to assist prospective developers and applicants by providing guidance on policy GEN4 of the Site Allocations and Development Policies Document (SADPD). By providing this information upfront Cheshire East Council aims to minimise uncertainty in the development process and ensure negotiating obligations is based on a clear and consistent approach.
- 1.6 Policy GEN4 of the SADPD sets out the circumstances when the Council will seek to recover costs associated with forward funded infrastructure and this SPD provides further detailed guidance on:
  - i) The overall amount to be recovered
  - ii) The individual sites, areas or types of development that will be required to contribute; and
  - iii) The mechanism to be used for proportionately calculating the cost of contributions.

## Current Schemes

- 1.7 The current schemes that will be subject to Policy GEN4 and this guidance, are detailed in this SPD. The schemes listed are identified in the [Infrastructure Delivery Plan](#) and listed within the Local Plan Strategy (LPS). The LPS identifies the sites that are reliant on the specified infrastructure, and it is these sites that are will be subject to the requirements of Policy GEN4.
- 1.8 Currently these projects are all highways schemes however the application of policy GEN4 is not limited to highways schemes and may be applied to any infrastructure that is forward funded by the Council, or it's partners.

## Future Schemes

- 1.9 Over time the council will introduce new forwarded funded infrastructure, fully recover its investment in some schemes, and at any given point may have part recovered its investment in some. The status of each scheme will be reported annually via the councils [Medium Term Financial Strategy](#) which will also be the mechanism to identify future schemes that will be subject to policy GEN4 and this SPD.
- 1.10 The MTFS is an annual budget report and therefore affords the opportunity to provide a status update on existing schemes and introduce new schemes that may be subject to forward funding. Where schemes are subject to forward funding they will be specified as such in the MTFS. Therefore, the MTFS will be used to identify when future schemes are subject to policy GEN4 and the guidance set out in this SPD.
- 1.11 The requirements of policy GEN4 are additional to the Community Infrastructure Levy ("CIL") payments towards the broader infrastructure payments of the area. CIL is a charge that, subject to viability considerations, can be applied to most types of development to fund additional infrastructure to support the development of an area. However, only two types of development in Cheshire East are liable to pay a CIL charge. These are housing (excluding affordable housing and apartments) and retail development at two specific locations (the Crewe Grand Junction and Handforth Dean retail parks). All other development has a zero CIL charge for economic viability reasons. Further details on CIL are available on the Councils [website here](#).

## Status of the SPD

- 1.12 The SPD has been prepared in accordance with the Planning Act 2004 and the associated Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).
- 1.13 Once finalised and published, this document should be read alongside requirements set out in the Macclesfield Borough Council Supplementary Planning Guidance on s106 (Planning) Agreements (2004); and Congleton Borough Local Development Framework Interim Policy Note - Public Open Space Provision for New Residential Development (2008).

## 2. Draft SPD Consultation

- 2.1 Consultation on the draft SPD will take place between 18<sup>th</sup> October 2021 and 29<sup>th</sup> November 2021. Comments must be received by the Council **no later than 12 midnight on 29<sup>th</sup> November 2021**.
- 2.2 The consultation documents can be viewed online at:  
<https://cheshireeast-consult.objective.co.uk/portal/planning/spd/>  
and at:  
public libraries in Cheshire East during opening hours (for information about opening hours see [www.cheshireeast.gov.uk/libraries](http://www.cheshireeast.gov.uk/libraries) or telephone 0300 123 7739).
- 2.3 There is no legal requirement for Supplementary Planning Documents to be accompanied by Sustainability Appraisal, and this is reinforced in national planning guidance. However, “in exceptional circumstances” there may be a requirement for SPDs to be subject to Strategic Environmental Assessment (SEA) where it is considered likely that they may have a significant effect on the environment that has not already been assessed within the SEA of the Local Plan. A screening assessment has been undertaken and concludes that further such assessment is not necessary.
- 2.4 A screening exercise has been carried out to determine whether the document gives rise to the need for Appropriate Assessment (under the Habitats Regulations). This similarly concludes that further such assessment is not necessary. These screening assessments have been published (Appendix 1) and you can give your views on their findings too.

### Submitting your views

- 2.5 The council's online consultation portal is our preferred method for submitted responses, but you can also respond by e-mail or in writing using a comment form available online and at the locations listed above. You can respond:
- **Online:** Via the consultation portal at: <https://cheshireeast-consult.objective.co.uk/portal/planning/spd/>
  - **By e-mail:** To [planningpolicy@cheshireeast.gov.uk](mailto:planningpolicy@cheshireeast.gov.uk)
  - **By post:** Strategic Planning (Westfields), C/O Municipal Buildings, Earle Street, Crewe CW1 2BJ
- 2.6 Please make sure that your comments reach us by **12 midnight on the 29<sup>th</sup> November 2021**. We are not able to accept anonymous comments and you must provide us with your name and contact details. Your personal data will be processed in line with our Spatial Planning Privacy Notice, which is available on the council's website ([www.cheshireeast.gov.uk](http://www.cheshireeast.gov.uk)). Your name and comments

will be published and made available to view on the council's online consultation portal.

### **What happens after the consultation?**

- 2.7 Following consultation, the council will carefully consider all representations received before deciding whether any amendments to the draft SPD are needed. The final version of the SPD alongside a Consultation Statement summarising the feedback and changes to the SPD will then be published for further comment before the SPD is proposed for adoption by the Council.
- 2.8 Once adopted the SPD will be formal planning guidance and will be considered as a material consideration when assessing planning applications in Cheshire East.

## 3. Planning Policy Framework

### Legislation Context

- 3.1 The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended. Regulation 122 and 123 of the Community Infrastructure Levy (“CIL”) Regulations 2010 (as amended) and paragraph 54 to 57 of the National Planning Policy Framework (February 2019) set out the Government’s policy on planning obligations.
- 3.2 Section 106 of the Town and Country Planning Act 1990 provides the mechanism for planning obligations to be secured from development. Section 106 allows anyone interested in land in the area of the planning authority to enter into planning obligations. Section 106 (1) allows a planning obligation to:
- Restrict development or use of land in a specified way.
  - Require specified operations or activities to be carried on, in or over the land.
  - Require the land to be used in any specified date or dates periodically.
  - Require a sum or sums of money to be paid to the local planning authority on a specified date or dates.
- 3.3 Regulation 122 of the CIL Regulations defines that for a planning obligation to be taken into consideration in granting planning permission, it must meet the following three tests:
- 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.
- 3.4 Regulation 123 of the CIL Regulations previously placed limitations on the pooling of planning obligations. However, it was deleted by amendment regulations that came into force on 1 September 2019, and there are now no limits on pooling planning obligations.

### National Policy Context

- 3.5 The national planning policy framework (“NPPF”) identifies that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. It highlights that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition (paragraph 54). The NPPF also restates the previous three statutory tests for planning obligations which are defined in CIL Regulations (paragraph 56).
- 3.6 The NPPF sets a presumption that up-to-date policies on planning obligations should apply and says that it is up to the applicant to demonstrate whether specific circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision-maker, and such assessments should reflect the approach in national guidance and be made publicly available (paragraph 57).

- 3.7 The national planning practice guidance (“PPG”) provides further advice on planning obligations and viability<sup>1</sup>. It sets out a clear expectation that viability assessments should be made publicly available other than in exceptional circumstances. It also states that an “existing use value plus” (“EUVP”) approach should be taken to land value assumptions in viability assessments, which is based in the existing use value of the land plus a suitable premium for the landowner.
- 3.8 The National Planning Policy Framework (NPPF) sets out the government’s economic, environmental and social planning policies for England and how these should be applied. The policies set out in the NPPF apply to the preparation of local and neighbourhood plans and it is a material consideration in planning decisions.
- 3.9 Paragraph 56 states that planning obligations must only be sought where they meet all of the tests as set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. These tests are whether the obligation can be found to be:
- i) Necessary to make the development acceptable in planning terms;
  - ii) Directly related to the development; and
  - iii) Fairly and reasonably related in scale and kind to the development.
- 3.10 The requirement on a development site to make a financial contribution will need to meet the CIL tests and this remains a question of planning judgement that will be taken at the time of planning application and the negotiations into planning obligations.
- 3.11 Seeking a planning obligation to provide funding that has already been invested, is directly related to the scheme for which funds are being recovered against, although it is acknowledged that these funds will be used to replace funding diverted from other sources and therefore may be used to support delivery of other infrastructure and elsewhere in the borough (through the council’s capital programme as set out by the Medium Term Financial Strategy).
- 3.12 If the use of planning obligations is taken forward, the planning obligations sought must be fair and reasonable in scale and kind to the development. This RFFIC strategy enables the Council to apply a reasonable approach consistently and fairly by setting out relevant mechanisms to justify the contribution being sought in these specific circumstances.

## Local planning policy

- 3.13 Relevant local planning policies are set out in the development plan for the area. The development plan for Cheshire East currently comprises of the Cheshire East Local Plan Strategy and ‘saved’ policies within previous local plans which remain

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<sup>1</sup> Planning Practice Guidance, available at:  
<https://www.gov.uk/government/collections/planning-practice-guidance>



in effect until such time as they are replaced by the emerging Site Allocations and Development Policies Document (“SADPD”). Neighbourhood Development Plans that have been successful at referendum and have subsequently been ‘made’ also form part of the statutory development plan.

- 3.14 Development plan policies of relevance to planning contributions are summarised below. Consideration will also be given to other relevant planning policies within each plan, where appropriate to the planning application proposals.

### Cheshire East Local Plan Strategy

- 3.15 The Cheshire East Local Plan Strategy (CELPS), adopted in July 2017, is part one of the local plan sets out a strategic framework for the borough including, housing and employment requirements, core site allocations and key infrastructure. Within the CELPS there are two policies that support the application of a recovery strategy.

3.16 **Policy IN 1: Infrastructure:**

- 3.17 IN1 sets out that broad approach to provision of infrastructure in the borough and the mechanisms that may be used to fund and deliver infrastructure.

3.18 **Policy IN2: Developer Contributions**

- 3.19 IN2 states that developer contributions will be sought to make the necessary physical, social, public realm, economic and green infatuate in in place to deliver development.

### Saved Policies

- 3.8 The following Local Plans contain ‘saved policies’ that remain part of the development plan. These policies will continue to be used in determining planning applications until they are replaced by the adoption of the SADPD. Therefore, this SPD does not relate to saved policies of the local plan.

### Cheshire East Council Site Allocations and Development Policies Document

- 3.9 The SADPD will form the second part of the Local Plan. It will set non-strategic and detailed planning policies to guide planning decisions and allocate additional sites for development to assist in meeting the overall development requirements set out in the LPS.
- 3.10 A revised publication draft version of the SADPD was published for a period of public representations between the 26<sup>th</sup> October and the 23<sup>rd</sup> December 2020 and Cheshire East Council voted to submit the plan to the Secretary of State for examination in public on April 19<sup>th</sup> 2021.
- 3.11 Although the submission version of the SADPD is not yet adopted and must proceed through public examination and adoption, this draft Recovery of Infrastructure Funding SPD has been prepared to be consistent with emerging planning policies in the SADPD. Whilst this is not a legal or national planning

policy requirement, this approach provides opportunity for this SPD to complement and support the implementation of future development plan policies however to ensure the SPD may be implemented, its adoption will not be completed until the after the SADPD has been adopted.

- 3.12 The SADPD sets out further detail on matters related to provision of infrastructure, building on policy IN1 and IN2 of the CELPS to establish the approach that will be taken to recovering infrastructure funding for projects that have been publicly funded and without which development would not have been acceptable in planning terms and/or could not have been achieved. This SPD relates to SADPD policies:
- 3.13 **GEN 4: Recovery of forward-funded infrastructure costs.** This policy seeks to recover costs associated with forward funded infrastructure from applicants that rely on this infrastructure to mitigate the effects of their development and make it acceptable in planning terms.

### Local Transport Plan (2015 – 2031)

- 3.14 [The Local Transport Plan \(LTP\)](#) for Cheshire East is divided into two parts. The first part, the Local Transport Plan, sets out the long-term transport strategy for Cheshire East with a focus on the period 2019-24. The second part of the plan is comprised of a series of [Town Delivery Plans](#) (TDP).
- 3.15 The LTP and the TDPs support delivery of adopted council-based strategy and plans, as well as maximising the opportunity and ability of CEC to successfully negotiate with developers to secure infrastructure associated with emerging development, and infrastructure that is specific to each community in Cheshire East.
- 3.16 Where infrastructure set out in the LTP or TDPs is forward funded, the guidance and approach set out in this SPD will apply.

### Neighbourhood Plans

- 3.17 There 36 made neighbourhood plans in Cheshire East. Many plans include locally specific requirements in regard to the natural environment and Biodiversity, including detailed habit map that identify biodiversity assets and wildlife corridors. These should be consulted and, where relevant, worked with in establishing an approach.
- 3.18 Relevant neighbourhood plan policies are mapped and available to view on the Councils GIS network. All neighbourhood plans can be [accessed here](#).

## 4. Planning Obligations

### What are Planning Obligations?

- 4.1 The recovery of forward funded infrastructure will be secured through the application of planning obligations.
- 4.2 Planning obligations, also known as Section 106 Agreements (“s106 agreements”), are legally binding agreements entered into between a local authority and a developer. They provide the mechanism by which measures are secured to mitigate the impact of development on the local area.
- 4.3 Unless it is stated otherwise, planning obligations run with the land in perpetuity and may be enforced against the owners, mortgagees and their successors. Planning obligations form part of the title deeds of the property and only be secured through the following type of Deed:
- Section 106 agreements with mutual obligations between the Council and owners with interest in the application site;
  - Unilateral planning obligations, sometimes called unilateral undertakings signed solely by owners with interests in the application site which can impose no obligations on the local planning authority.
- 4.4 A planning obligation will be sought where a development would otherwise be unacceptable and the objections cannot be overcome by conditions. They will be negotiated on a site by site basis. They will typically address, but are not limited to, issues such as:
- Affordable housing
  - Public Open Space
  - Transport
  - Social infrastructure, including education and healthcare.

### What is a Community Infrastructure Levy?

- 4.5 The Community Infrastructure Levy (“CIL”) is a charge which is levied by local authorities on new development in their area. Cheshire East Council adopted a CIL charging schedule in February 2019. It is an important tool for local authorities to use to help them deliver the infrastructure needed to support development in their area.
- 4.6 Further details can be seen on the Councils website: [https://www.cheshireeast.gov.uk/planning/view\\_a\\_planning\\_application/making\\_a\\_planning\\_application/community-infrastructure-levy.aspx](https://www.cheshireeast.gov.uk/planning/view_a_planning_application/making_a_planning_application/community-infrastructure-levy.aspx)

### Relationship between CIL and Planning Obligations

- 4.7 On 1<sup>st</sup> September 2019, changes came into effect in relation to the preparation of the Community Infrastructure Charging Schedule as well as relating to the process of securing developer contributions as part of the planning application process

- 4.8 Prior to the CIL Regulation changes coming in on the 1<sup>st</sup> September 2019, s106 Obligations requiring payments were limited to site specific development impacts and not related to projects or types of infrastructure that will be funded by CIL. The CIL regulations required Councils to avoid “double dipping” and produce clear guidance of infrastructure needs and projects funded through s106 Obligations and CIL Regulation 123 List. From December 2020, local authorities have been required to publish an Infrastructure Funding Statement, which should identify infrastructure needs, the total cost of this infrastructure, anticipated funding from developer contributions, and the choices the authority has made about how these contributions will be used.
- 4.9 The [Council's Infrastructure Funding Statement](#) is an important report that helps inform investment decisions set out in the Council's Medium Term Financial Strategy (MTFS).

## Section 278 Agreements

- 4.10 A Section 278 agreement allows developers to enter into a legal agreement with the Highway Authority to fund alterations or improvements to the public adopted highway network, having regard to the needs of the development. Examples of such works could include the construction of a new access; junction improvements on the highway; or safety related works such as traffic calming or improved facilities for pedestrians or cyclists.
- 4.11 Requirements for s278 agreements will be negotiated separately, although an obligation will be imposed as part of the s106 agreement to enter into a s278 agreement.

## Planning Conditions

- 4.12 Planning conditions are the most commonly used and simplest mechanism for securing the provision of on-site infrastructure e.g. roads, sewers, play areas. They can also be used to secure the delivery of on-site affordable housing.
- 4.13 Planning conditions are imposed by the Council when granting planning permission to ensure that certain actions or elements related to the development proposal are carried out. Paragraph 55 of the National Planning Policy Framework states that planning conditions should only be imposed where they are:
- Necessary;
  - Relevant to planning and
  - To the development to be permitted;
  - Enforceable;
  - Precise; and
  - Reasonable in all other aspects.
- 4.14 No payment of money or other consideration can be positively required by a condition when granting planning permission. However, where the 6 tests are met, it may be possible to use a negatively worded condition to prohibit development or occupation until a specified action has been taken.

## 5. The Overall Amount to be Recovered

- 5.1 The overall amount of infrastructure investment that the council will seek to recover is based on its upfront investment. The council will seek to recover the full extent of its investment, proportionate to a development's reliance on that infrastructure. The method to establish a proportionate contribution is set out at section 6.
- 5.2 The overall amount to be recovered for each scheme will be updated annually through the MTFs and a report produced. This will be the source from which contributions toward forward funded infrastructure are calculated.
- 5.3 The council may invest in and forward fund a range of infrastructure that is potentially subject to the requirements of policy GEN4. Whilst the application of the policy is not related to highways matters alone, much of the council's current investment is in regard to a capital programme that supports delivery of highways infrastructure. Therefore, when determining whether a development proposal is subject to the requirements of GEN4, and the guidance in this SPD, it is necessary to consult the MTFs to identify which schemes have been identified as forward funded infrastructure.
- 5.4 Whilst highways infrastructure is a significant investment related to the LPS, any infrastructure scheme may be eligible for the policy to apply to.
- 5.5 The table below is a summary of infrastructure that has been forward funded by the Council or its partners and the allocated development sites that are reliant on the infrastructure identified. The recovery of Forward Funded Infrastructure Costs is not limited to sites in this table and may be levied on other sites that come forward where a reliance on the infrastructure can be demonstrated.

<b>Forward Funded Infrastructure</b>	<b>Associated LPS Sites</b>	<b>CEC Forward Funded Contribution 21/22</b>
Congleton Link Road	LPS26 Back Lane / Radnor Park; LPS27 Congleton Business Park; LPS28 Gianstwood Lane South; LPS29 Gianstwood Lane to Manchester Road; LPS30 Manchester Road to Macclesfield Road; LPS31 Tall Ash Farm	£18,998,126
Poynton Relief Road	LPS48 Land Adjacent to Hazelbadge Road; LPS49 Land at Spink Farm; LPS50 Land south of Chester Road; LPS51 Adlington Business Park Extension; Handforth Garden Village	£6,200,000
A500 Dualling	LPS2 Basford East; LPS3 Basford West; LPS7 Sydney Road; LPS8 South Cheshire Growth Village;	£5,100,000

Flowerpot Junction	LPS does not specify sites related to Flowerpot Junction but cites a future transport study that will identify such sites.	£1,200,000
Crewe Green Roundabout	LPS6 Crewe Green; LPS7 Sydney Road;	£2,132,494
Sydney Road Bridge	LPS7 Sydney Road	£4,472,505
North West Crewe Package	LPS4 Leighton West; LPS5 Leighton	£10,330,001
Middlewich Eastern Bypass	LPS42 Glebe Farm; LPS43 Brooks Lane; LPS44 Midpoint 18; LPS45 Land off Warmingham Lane	£14,243,000

## 6. Sites, Areas and Types of Development Required to Contribute

### Future Schemes

- 6.1 Future schemes that are not identified as forward funded infrastructure in this SPD but come forward through the MTFS will be funded by sites that are directly and demonstrably reliant on the infrastructure provided.
- 6.2 For example, if a new road is invested in, all schemes that use this road to access their sites, or who benefit significantly from traffic relief on other local developments to make their access arrangements acceptable, will be required to make retrospective contributions on a proportional basis. Sites that are reliant on forward funded infrastructure will be identified in the MTFS and / or set out through the plan making process.

### Existing Schemes

- 6.3 Existing Infrastructure schemes, and the sites that are reliant on them, are identified in the Local Plan Strategy.
- 6.4 All sites, as identified in the LPS, that are reliant on specifically forward funded infrastructure will be required to contribute, proportionately, to the recovery of these costs.
- 6.5 There are currently no broad areas that are identified as being eligible to the recovery of forwarded funded infrastructure costs, currently the development sites that are eligible are specifically identified in the LPS. However where wider areas are identified in future Local Plans, they will be subject to the policy.
- 6.6 All types of development will be required to contribute. Further information on this is set out in section 7 regarding the recovery methodology.
- 6.7 **Congleton Link Road**
- 6.8 The Congleton Link Road runs to the north of the town connecting the A534 Sandbach Road to the A536 Macclesfield Road. It directly unlocks significant development opportunities for employment and residential development and was necessary to enable the allocation of development land here. The scheme was subject to planning approval in June 2016 (under application reference 15/4480C) and has been funded from multiple sources including the council's own forwarded funded investment. The scheme enables delivery of five local plan sites providing a total of 2,502 homes and 20.1 hectares of employment land.
- 6.9 Anticipated Total Cost: £90,000,000
- 6.10 Forward funded contribution: £18,998,126
- 6.11 **Poynton Relief Road**
- 6.12 The Poynton Relief Road is a 3.5km long two-way single carriage road which forms a component of the South East Manchester Multi Modal Strategy to relieve

traffic and improve connectivity between Macclesfield, Stockport, Manchester Airport and the surrounding area. The Poynton Relief Road supports and enables the delivery of LPS 50 and LPS51 pending 150 new homes and 10ha of employment land respectively.

6.13 Anticipated Total cost: £51,000,000

6.14 Forward funded contribution: £6,200,000

#### 6.15 **A500 Dualling**

6.16 The proposals are to widen the A500 immediately to the south of the existing carriageway to create a dual carriageway. Meremoor Moss roundabout will be enlarged to create additional capacity. Where local roads cross the A500, at Barthomley Road and Radway Green Road, the bridges will be replaced and lengthened to accommodate the wider road beneath.

6.17 The [planning application \(reference 20/1709N\)](#) was approved on 26 August 2020 with conditions. The current programme (subject to final funding approvals) is for the main works to start in 2022, with an estimated 24 to 27 month construction period.

6.18 Anticipated Total cost: £69,000,000

6.19 Forward funded contribution: £5,100,000

#### 6.20 **Flowerpot Junction**

6.21 The improvements will increase capacity at the junction to ease existing levels of congestion and in anticipation of planned developments around the town.

6.22 The proposed improvements will introduce:

- i) A new dedicated right turn lane for vehicles turning out of Ivy Lane into Congleton Road.
- ii) A new dedicated left turn lane for vehicles turning out of Park Lane into Congleton Road.
- iii) A new dedicated left turn lane for vehicles turning out of Oxford Road into Park Lane.

6.23 The new dedicated lanes will separate vehicles making these manoeuvres from those heading straight across the junction or making the opposite turn, which will provide the opportunity for more vehicles to travel through the junction during each cycle of the lights. The new lanes will also provide additional queuing space on the approach to the junction.

6.24 It is proposed to reconfigure the layout of the existing pedestrian and cycle crossing facilities at the junction, install Toucan crossings on the Ivy Lane and Congleton Road arms of the junction and widen the footpath along the south side of Park Lane leading onto Congleton Road. The crossing facilities on Oxford Road and Park Lane are proposed as Puffin crossings, with a new island on the corner of Oxford Road and Park Lane.



6.25 Anticipated Total cost: £5,500,000

6.26 Forward funded contribution: £1,200,000

**6.27 Crewe Green Roundabout**

6.28 The project was completed in 2018 and established a new road layout, removal of traffic lights and created wider junctions created so that traffic can merge from different directions. Shared cycleways/footways, with crossing points for cyclists and pedestrians, are also included in the scheme. Additional street lighting, kerbs and more than 470m of drainage, as well as new pedestrian crossings and footpaths and asphalt surfacing have been installed.

6.29 The roundabout has improved network capacity enabling development of strategic sites allocated in the LPS.

6.30 Anticipated Total cost: £8,000,000

~~6.31~~ Forward funded contribution: £2,132,494

**6.32 Sydney Road Bridge**

6.33 The bridge was improved to alleviate a major traffic ‘pinch point’ on a route serving Leighton Hospital and the Bentley factory. The project includes a shared cycleway and footway over the bridge, a signal-controlled pedestrian crossing and improved cycle provision along Sydney Road. The improved bridge was opened in 2019.

6.34 Anticipated Total cost: £11,000,000

6.35 Forward funded contribution: £4,472,505

**6.36 North West Crewe Package**

6.37 The North West Crewe scheme aims to improve transport links in Crewe – easing congestion and improve access to Leighton Hospital, bringing opportunities for local businesses to expand and improving the access to new and existing housing developments.

6.38 The project involves a series of highways and junction improvements around Leighton including the construction of a new road linking Smithy Lane, Minshull New Road and Middlewich Road (A530). The programme includes the realignment of Smithy Lane, Flowers Lane and improvement to other road junctions associated with the scheme. It is also proposed to close a section of Minshull New Road located outside of Leighton Academy to traffic.

6.39 A planning application for the North West Crewe scheme was submitted to the Local Planning Authority in December 2018 and went before the Planning Committee in March 2019. A decision notice approving the scheme was received in July 2019, [planning application details](#).

6.40 The Local Planning Authority resolved to approve outline applications from the housing developers at the Council’s Strategic Planning Board in November 2020.

6.41 [Development application for land off Minshull New Road and Flowers Lane](#)

6.42 [Development application for land off Minshull New Road](#)

6.43 Anticipated Total cost: £37,000,000

6.44 Forward funded contribution: £10,330,001

6.45 **Middlewich Eastern Bypass**

6.46 Middlewich town centre currently suffers from severe traffic congestion due to its location at the junction of two major roads; the A54 which links to the M6, Winsford and Chester, and the A533 to Sandbach and Northwich. Cheshire East Council has been working since 2015 to develop options for a bypass which will reduce traffic congestion in the town centre whilst supporting employment and housing growth in the area as a whole.

6.47 The current programme (subject to planning and final funding approvals) is for the main works to start late 2022, with an estimated 22 month construction period.

6.48 The scheme has full planning consent with conditions. Planning Permission [20/2064C](#) amended the original permission [18/5833C](#), and [20/2162C](#) formed a new permission extending the boundaries of the scheme for revised ecological mitigations and other minor changes to the design.

6.49 Two applications for minor material amendments to the permissions are currently awaiting determination. These are [21/2044C](#) and [21/2073C](#).

6.50 Anticipated Total cost: £71,000,000

6.51 Forward funded contribution: £14,243,000

## 7. Calculating the Cost of Contributions

- 7.1 The Recovery of Forward Funded Infrastructure Costs will seek to maximise the recovery of funds from sites that benefit from publicly funded infrastructure as set out in the MTFS. The MTFS is updated on an annual basis and will identify the level of investment the council has made toward any given scheme and the amount of funding that will be recovered through the application of proportionate obligations.

### **The Role of the Medium-Term Financial Strategy**

- 7.2 This SPD identifies the current schemes that will be subject to policy GEN4 and the guidance set out here, but the council may invest in additional infrastructure in the future. Future schemes will be identified through the plan making process and /or through the [Medium Term Financial Strategy](#) (MTFS) and applicants will be required to consider whether their proposals rely on such infrastructure in planning terms.
- 7.3 Whilst the MTFS is not a planning policy matter in itself, the Councils budget setting cycle will be used as the mechanism to make decisions on investment in infrastructure. SADPD Policy GEN4 may be applied to infrastructure identified in the MTFS.
- 7.4 Through the application of SADPD Policy GEN4, the council (and on behalf of partner organisations) will seek to recover infrastructure costs where it has approved investment in infrastructure through the MTFS process. The Council will seek to recover investment where schemes have been enabled through borrowing; use of reserves; or diversion of funding from other budgets in the short term to help bring forward development on the understanding that it will be repaid.
- 7.5 These decisions will be set out in the MTFS and identify the infrastructure to be invested in, and the costs expected to be recovered from development that relies upon the infrastructure identified.
- 7.6 The schemes set out at section 6 have been included in the MTFS, alongside the forward funding that the council has invested. Development that is reliant on these schemes in planning terms will be expected to make contributions, on a proportionate basis as set out at 7.11 – 7.28, toward the recovery of this investment.
- 7.7 The recoverable contribution will be sought via planning obligations made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended), or other agreed methods during the planning process.
- 7.8 The Recovery of Forward Funded Infrastructure Costs will be applicable to housing and non-residential use classes as specified in the Town and Country Planning (Use Classes) Order 1987 (as amended) and implemented on a site-by-site basis.
- 7.9 Recovered monies will be retained in perpetuity by CEC. Recovered funding will be used repay finances borrowed or diverted from reserves or other budgets and may be recycled to enable the delivery of infrastructure elsewhere in the borough.

7.10 Where a site is reliant on forward funded infrastructure to demonstrate it is acceptable in planning terms a recovery fund cap calculation (necessary to apportion benefit) and financial viability assessment (to ascertain surplus or loss) will be undertaken through engagement between CEC and applicants and/or other relevant third parties, during the site-specific planning application stage.

#### 7.11 **Recovering Fund Cap**

7.12 The level of funds to be recovered on any individual development site will be capped by taking a proportionate approach that requires developers to pay for the share of infrastructure investment they are reliant on. For example, if the council were to forward fund a new spine road that would enable delivery of three equally sized residential sites, with equal levels of viability, then the Council would seek one third of its forward funding investment from each development.

7.13 The recovery fund will be capped in this way and calculated by undertaking a dependent development analysis of an individual development site(s) to calculate the number of dwellings and level of non-residential use class land that is dependent on the publicly funded infrastructure.

7.14 When applications are received, an evidence base will be compiled to calculate the level of demand for the infrastructure scheme that can be linked to the dependent development. This will allow the calculation of recovery estimates that comply with state aid rules from the development site. This evidence base will utilise a variety of tools including council traffic model(s) and identify a suitable forecast year to be tested.

7.15 For highways schemes, the proportion of trips travelling to/from the development site using the improvement scheme will be calculated. The proportion will then be applied to the total cost of publicly funded infrastructure with the 'cap' being the monies to be recovered.

#### 7.16 **Financial viability**

7.17 The council will seek to secure a fair and reasonable developer contribution without adversely affecting the ability for new developments to take place. The NPPF (paragraph 57) states that it is up to the applicant to demonstrate whether circumstances justify the need for a viability assessment at the application stage. The weight given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.

7.18 As outlined in the Publication Draft SADPD Policy GEN7, the Council will recover contributions where, since consent was originally granted, market circumstances change and render a scheme viable at a later point in time.

7.19 Unless the developer accepts the recovery sum sought by CEC as part of the s106 contributions an assessment of the financial viability of the proposed development will need to be undertaken, at the planning application stage, by the developer for review by the Local Planning Authority to assess whether a scheme generates a sufficient surplus to make the contributions sought.

- 7.20 Government issued [National Planning Guidance on Viability](#) sets out the methodology of testing the financial viability of the site, taking into account, but not limited to, site specific costs, s106/CIL, grant funding etc. This guidance is supported by publications from the Royal Institution of Chartered Surveyors (RICS) which guide Chartered Surveyors on what must be included in a Financial Viability Assessment and how the process must be conducted. Planning applications will be assessed by reference to the relevant published guidance.
- 7.21 The Recovery of Forward Funded Infrastructure Costs (RFFIC) methodology will therefore follow these steps (the steps are not exhaustive):
- 7.22 Step 1: The publicly funded infrastructure benefit for each infrastructure scheme is calculated (See Recovery Fund cap section above)
- 7.23 Step 2: Financial Viability Assessment will by default assess the following:
- i) Value of the Completed Development (GDV) Less the:
  - ii) Benchmark Land Value (the minimum price a landowner would be willing to see their land for)
  - iii) Development costs (including Policy costs)
  - iv) Developer Profit (residual viability).
- 7.24 **Financial Viability Result:**
- 7.25 If the calculation results in a surplus then viability is proven and the development is capable of paying the funds sought (up to the level of the surplus) through the RFFIC. However, should the surplus exceed the value of the recovery cap, only the value of the cap will be sought. If the calculation results in a loss, no recovery will be sought.
- 7.26 The RFFIC is a standalone document and is closely aligned to existing adopted CEC documents and policies, primarily Policy GEN4 of the SADPD.
- 7.27 **RFFIC Process**
- 7.28 The approach set out in this section identifies the broad approach and key principles that must be considered when establishing a proportionate financial contribution towards forward funded infrastructure. A flexible approach will be taken when establishing the required level of contributions, responding to the particular viability issues and circumstances relevant to each case.
- 7.29 It is important to stress that all developers will be treated equitably and fairly. Irrespective of the mechanism used for capturing funding (which may vary), no development is expected to contribute, proportionally, more than another, towards infrastructure it relies on, once in-kind contributions have been factored in.
- 7.30 The following is therefore an indicative example of how the approach could be applied but is not prescriptive:
- 7.31 Stage 1: Establish total cost of forward funded infrastructure to be recovered

- 7.32 Stage 2: Identify sites reliant on forward funded infrastructure
- 7.33 Stage 3: Establish viability of sites (viability appraisal, see 7.23)
- 7.34 Stage 4: Establish residual viability of sites (including assessment of other S.106 contributions)
- 7.35 Stage 5: Establish proportional reliance on forward funded infrastructure for all sites. This becomes the percentage of Gross Development Value to be levied across all sites (GDV levy)
- 7.36 Stage 6: Adjust GDV Levy in response to individual site-specific issues (which may include site viability considerations or site reliance on the identified forward funded infrastructure, defined, for example, by mix of use)
- 7.37 Stage 7: Establish RFFIC site levy

**Worked Example**

- 7.38 The following is a simplistic example, assuming high viability and based on seeking recover £10,000,000 of forward funded infrastructure costs.
- 7.39 The example assumes development of five, premium, greenfield sites, each consisting of 300 homes at a density of 30 dwellings per hectare (each site is therefore 10 hectares).
- 7.40 Example calculation:
  - i) Gross development value is assumed to be £5,000,000 per hectare.
  - ii) Benchmark Land Value is assumed to be £1,000,000 per hectare.
  - iii) Development costs (land, construction, policy requirements) are assumed to be £3,000,000 per hectare.
  - iv) Developer profit is assumed to be £1,000,000 per hectare.
  - v) Residual viability (GDV – (BLV +costs + profit)) is assumed to be £1,000,000 per hectare.

Establish total cost of forward funded infrastructure to be recovered	£10,000,000
Identify sites reliant on forward funded infrastructure	5 sites, 10 hectares each, 300 homes each
Establish residual viability of sites (viability appraisal, see 7.23)	£1,000,000 per hectare / £10,000,000 per site
Establish proportional reliance on forward funded infrastructure for all sites. This becomes the percentage of Gross Development Value to be levied across all sites (GDV levy)	Proportional reliance = £2,000,000 per site GDV Levy = 20%

Adjust GDV Levy in response to individual site-specific issues (which may include site viability considerations or site reliance on the identified forward funded infrastructure, defined, for example, by mix of use)	No site-specific viability problems, therefore no adjustment
Establish RFFIC site levy	£2,000,000 per site

## 8. Implementation

- 8.1 Planning and Highways Development Management officers will raise awareness of the RFFIC SPD during development pre-application discussions and the planning application viability appraisal.
- 8.2 The RFFIC is a mechanism to be used by CEC officers and appropriately chosen partners to seek appropriate contributions from developers of sites that benefit from infrastructure improvements forward funded by the Council, and from promoters of development that would be likely to have an impact on travel patterns in the vicinity of the infrastructure, whether or not such proposals are already identified in the Local Plan and linked specifically to the relevant infrastructure. CEC officers will work with developers through the planning application process to secure recovery monies in a timely manner, proportionate to their impact and reliance on the identified infrastructure.
- 8.3 The RFFIC sets out the methodology to follow when calculating a recoverable figure. The means of achieving the figure and any associated trigger points will be negotiated during the application stage but will be based upon the methodology set out in the adopted RFFIC.
- 8.4 Each planning application will agree a payment profile based upon the cash-flow specific to that planning application. Recovery fund trigger points could be agreed by house sales, occupations, and prior to occupation or post occupation or any other agreed trigger. However, these are to be negotiated during the planning application process for a particular development site.
- 8.5 The RFFIC will be monitored by relevant CEC officers and recovered funds will be held by CEC in perpetuity and used to support further infrastructure which will unlock or accelerate additional growth.
- 8.6 CEC have sought legal advice into the use of planning obligations as a means of securing funds from development sites which benefit from public forward funding. In order to use planning obligations to secure funds the planning obligation will need to meet the test set out in Regulation 122 of the CIL Regulations 2010.
- 8.7 The use of planning obligations to secure funding from developments is preferable to CEC because of the enforcement powers and security afforded by a planning obligation agreement. Planning obligations run with the land and therefore offer CEC greater security as the obligation to pay a financial contribution would be enforceable against future occupiers of the land bound by the agreement.
- 8.8 However, CEC is aware that there are limitations on what constitutes a planning obligation and that to enforce the planning obligation, it will need to meet the CIL tests set out above. In the event that it is determined that the proposed obligation does not meet the CIL tests, CEC intends to use other general powers available to it to secure funds from development sites for this purpose. Those obligations would be contractual obligations, contained within a planning agreement but not themselves planning obligations, and would be enforceable by CEC against the person giving the covenant as a contractual obligation.



## 9. Procedures

### Pre-Application Discussions

- 9.1 The Council recommends that pre-application advice is sought before making a planning application. This provides an opportunity to enter discussions regarding planning obligation requirements with Council officers so that the nature of planning obligations that are likely to be required for a particular development are made known to the developer as early as possible in the decision-making process. Pre-application discussions can help to resolve potential problems and issues which may otherwise delay the determination of a planning application once validated.
- 9.2 Where pre-application discussions have identified that developer contributions will be required, applicants should submit draft heads of terms with their planning application. It will be essential that this be submitted as part of the application, and as part of the validation process. Please be aware that failure to submit this will result in a delay in the planning application, as the application will not be validated.
- 9.3 Details of the process for engaging with the Local Planning Authority at pre-application stage can be found on the council's web page or by contacting the Development Management service.
- 9.4 Standard templates for the legal agreements and Unilateral Undertakings can be found on the Council's webpage at:

[https://www.cheshireeast.gov.uk/planning/view\\_a\\_planning\\_application/making\\_a\\_planning\\_application/s106\\_agreements\\_planning.aspx](https://www.cheshireeast.gov.uk/planning/view_a_planning_application/making_a_planning_application/s106_agreements_planning.aspx)

### Cross Boundary Applications

- 9.5 In the case of development applications close to the borough boundary which may have implications for service delivery in adjoining authority areas, these authorities will be consulted and requests for contributions to services provided by those authorities will be duly considered. Similarly, if adjoining authorities receive applications which will have an impact on the delivery of services in Cheshire East, the council will seek contributions.

### Security and Timing of Payment

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

## **Index Linking**

- 9.7 All financial contributions will be subject to indexation from the date of adoption of this SPD. The indexation period will therefore start with the date of adoption and end with the date when each payment becomes due.

## **Legal Fees**

- 9.8 Applicants will be required to pay the Council's legal costs as well as their own for drafting and checking legal agreements and will need to provide a solicitor's undertaking to do so. Applicants should also be aware that a solicitor's undertaking and proof of title will be required by Cheshire East Council where applicable.

## **Monitoring and Enforcement**

- 9.1 Monitoring of obligations will be undertaken by the Council's Planning Contributions Officer to ensure that all obligations entered into are complied with by both the developer and the Council.
- 9.2 The amended Community Infrastructure Levy Regulations 2019 permit Local Planning Authorities to charge fees in respect of the cost of monitoring (including reporting under the CIL Regulations) in relation to the delivery of planning obligations.
- 9.3 All monitoring fees will be subject to indexation and payable on commencement of the development.

## 10. Glossary

Community Infrastructure Levy	A levy allowing local authorities to raise funds from owners or developers of land undertaking new building projects in their area.
Development	Defined by the Town and Country Planning Act 1990 as “the carrying out of building, engineering, mining or other operation in, on, over or under land, or the making of any material change of use of any building or other land.” Most forms of development require planning permission, unless expressly granted planning permission via a development order.
Development Plan	This includes adopted Local Plans and Neighbourhood Plans and is defined in Section 38 of the Planning and Compulsory Planning Act 2004
Local Plan	<p>The plan for the development of the local area, drawn up by the local planning authority in consultation with the community.</p> <p>In law this is described as the Development Plan Documents adopted under the Planning and Compulsory Purchase Act 2004.</p> <p>Current core strategies or other planning policies, which under the regulations would be considered to be Development Plan Documents, form part of the Local Plan. This term includes old policies which have been saved under the 2004 Act.</p>
Local Plan Strategy	Development Plan Document setting out the spatial vision and strategic objectives of the planning framework for an area, having regard to the Community Strategy.
Local Planning Authority	The local authority or council that is empowered by law to exercise planning functions. In the case of this SPD, the Local Planning Authority is Cheshire East Council.
Neighbourhood Plan	A plan prepared by a parish council or neighbourhood forum for a particular neighbourhood area (made under the Planning & Compulsory Purchase Act 2004).
Site Allocations and Development Policies Document	Part of the Local Plan which will contain land allocations and detailed policies and proposals to deliver and guide the future use of that land.

Supplementary Planning Document	A Local Development Document that may cover a range of issues, thematic or site specific, and provides further detail of policies and proposals in a 'parent' Development Plan Documents.
Sustainability Appraisal	An appraisal of the economic, environmental and social effects of a plan from the outset of the preparation process to allow decisions to be made that accord with sustainable development.
Strategic Environmental Appraisal	SEA is a process and a tool for evaluating the effects of proposed policies, plans and programmes on natural resources, social, cultural and economic conditions and the institutional environment in which decisions are made.
Viability Study	A report, including a financial appraisal, to establish the profit or loss arising from a proposed development. It will usually provide an analysis of both the figures inputted and output results together with other matters of relevance. An assessment will normally provide a judgement as to the profitability, or loss, of a development.



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