

**Surrey Planning Collaboration Project  
Surrey Heath Borough Council  
Planning Obligations and Infrastructure Provision**

**Code of Practice**

This Code of Practice explains how Surrey Heath Borough Council (in common with most other district councils in Surrey) will implement Planning Obligations under section 106 of the Town and Country Planning Act 1990. Such obligations are a recognised delivery mechanism for matters that are necessary to make a development acceptable. They have become increasingly important to the provision of many public services including highways and recreational facilities.

**It contains:**

- 1 Status of this Code of Practice**
- 2 Background Guidance about Planning Obligations**
- 3 Specific guidance about how Planning Obligations will be implemented by Surrey Heath Borough Council**
- 4 Formulae and Standard Charges**
- 5 Procedure Flow Chart**

A separate document is available setting out in more detail the basis on which the formulae and standard charges have been calculated and the rationale behind them.

See '**Planning Obligations and Infrastructure Provision Code of Practice - Basis for Calculating Formulae and Standard Charges**'

## **1 Status**

- 1.1 Government advice in Circular 05/05 'Planning Obligations' (*Office of the Deputy Prime Minister July 2005*) is that local planning authorities should include general policies about the principles and use of planning obligations in their new-style Development Plan Documents. It adds that more detailed policies applying these principles ought then to be included in Supplementary Planning Documents.
- 1.2 This will allow developers to predict as accurately as possible the likely contributions they will be asked to make through planning obligations, and therefore to anticipate the financial implications for development projects.
- 1.3 The advice goes on to state that even where a local planning authority does not have a 'high level' policy specifically relating to planning obligations in its adopted local plan, it should set out detailed implications of other policies for planning obligations in a Supplementary Planning Document, based on the policies set out in Circular 05/05. This arrangement should only be followed in the transitional period before the general policies referred to in 1.1 above are adopted.
- 1.4 This Code Of Practice was initially prepared as part of a collaboration project among all 11 Surrey Districts and the County Council. It does not seek to change previously adopted or 'saved' policies. Its purpose is to set out common practice and procedures for capturing infrastructure contributions across the Surrey Districts in accordance with adopted policies and nationally recommended best practice. Each district will use it as an interim administrative measure and will eventually incorporate the work into an appropriate Supplementary Planning Document.
- 1.5 The principal innovation is the codifying of certain infrastructure contributions for smaller 'windfall' schemes. In Surrey, S106 contributions have normally only been made for large schemes, resulting in a significant shortfall in funds to provide public services, compared to other areas. The Code extends infrastructure contributions on a standard basis to every scheme involving any additional dwelling or commercial space. Each application will need to include a unilateral obligation to make the contribution.
- 1.6 If national legislative changes, such as the proposed Community Infrastructure Levy, are enacted the Council would need to review the future of this tariff scheme.
- 1.7 Although it is a primarily administrative measure, the Code of Practice was nevertheless the subject of consultation before formulation as a draft interim Supplementary Planning Document. The views of stakeholders have been taken into account and appropriate amendments made.

## **2 Background Guidance about Planning Obligations**

### **Legal Context**

- 2.1 The power of a local planning authority to enter into a Planning Obligation with anyone having an interest in land in their area is contained in section 106 of the Town and Country Planning Act 1990 (as amended by Section 12 of the Planning and Compensation Act 1991). Planning Obligations made under section 106 comprise both obligations and unilateral undertakings. Government advice on the use of section 106 is contained within Circular 5/05 'Planning Obligations' (Office of the Deputy Prime Minister, July 2005).
- 2.2 A Planning Obligation may only be created by a person with an interest in the relevant land, and may be created either by means of an agreement with the local planning authority or by means of a unilateral undertaking. An Obligation may restrict development or the use of land, need specific works to take place or need a financial contribution towards a work or service of public benefit (for example a new community building or play area).
- 2.3 The main features of a Planning Obligation are:
- It applies to the land, so enforcement of it would be against the person who agreed it (normally the applicant) or their successor in title.
  - It can also be enforced by a legal injunction. Where a person has defaulted on a requirement to carry out works on the land, the local planning authority may also enter onto the land to enforce the terms of the Obligation and to claim back its reasonable costs arising from this action.
  - It can contain a restriction on use of the land or a requirement for works to be undertaken thereon, that can be for an indefinite period, a stated period, or a period defined by reference to some future event, e.g. the completion of specified works.
  - Contribution(s) may be expressed as being due:
    - (a) Singly, on a specified date, or one that can be derived from defined future event(s),
    - (b) In instalments, the amounts of which can be stated or derived from a formula, that are payable on specified dates or on dates based on future events, e.g. stages of the development, and
    - (c) Singly or in instalments, the amounts of which can be stated or derived from a formula, that are payable on specified date(s), or at defined times after, the completion of the development, e.g. to contribute to maintenance needs.
  - Under the Local Land Charges Act 1975, it must be registered as a local land charge in the register kept by the Council and open to public inspection; this being of special importance to a prospective purchaser of the land.
  - It can be varied with the agreement of the local planning authority; there is also a formal application and appeals process in certain circumstances.

### **What can be included in Planning Obligations?**

- 2.4 The planning system works on the principle that planning permissions cannot be bought from or sold by a local planning authority. Negotiations to gain benefits from development proposals must take place in a way which is seen to be fair and reasonable. By working in this way, Planning Obligations can improve the quality of development proposals which might otherwise have to be refused.

2.5 Planning Obligations must be related to the scale and nature of the development being proposed. Circular 5/05 requires Planning Obligations to meet the following tests. They have to be:

- Necessary to make a proposal acceptable in planning terms,
- Relevant to planning;
- Directly related to the proposed development;
- Fairly and reasonably related in size and type to the proposed development; and
- Reasonable in all other respects.

2.6 It follows that the Council acting as local planning authority cannot allow unacceptable developments because of unnecessary or unrelated benefits that the applicant may be offering. Equally applicants cannot be expected to pay for facilities which are only needed to deal with existing shortfalls in the area.

### **Current Best Practice**

2.7 In recent recommendations the Audit Commission (Securing Community Benefits Through The Planning Process - August 2006) describes three different policy approaches to Planning Obligations dealing with community benefits:

- The detailed service based policy, described in Circular 05/05. The basis of the approach is to develop detailed supplementary planning guidance (now Supplementary Planning Document). This would determine contributions based on formulae and standard charges that would vary according to the type of development and its location.
- A discretionary case-by-case approach based on Local and Structure Plan policies, with no detailed supplementary policy in place.
- Fixed tariffs and formulae similar to the service-based policy above, but in aggregate form (as pioneered at Milton Keynes). The total contribution is based on the impact of all the proposed developments in the area, and is shared between them.

2.8 The Commission's advice is that the first approach is preferred to the second, as experience has shown that it is more successful in delivering benefits. In respect of the third approach they comment that it has potential advantages of clarity, transparency and simplicity of operation, but is still at an early stage of development.

2.9 Also relevant is the Department of Communities and Local Government's Best Practice Guidance, also published in August 2006. This guidance brings together a range of case study examples illustrating how local planning authorities (LPAs), developers and others are working together to deliver Planning Obligations effectively. The aim of the guidance is to provide LPAs and anyone carrying out development with practical tools and methods to help improve the development, negotiation and implementation of Planning Obligations.

### **Obligations and Planning Policies**

2.10 The implementation of Planning Obligations by Surrey Heath Borough Council is supported by policies contained in the Surrey Structure Plan 2004 as saved (Policy DN1) and the Surrey Heath Local Plan 2000 as saved (Policy G3).

### **Structure Plan Policy DN11 explains:**

*Local planning authorities will not permit development unless the infrastructure that is required to service the development is available or will be provided within a timescale determined by the local authorities.*

*In assessing infrastructure requirements local planning authorities will have regard to the cumulative impact of development.*

*The developer will be expected to provide or contribute to the infrastructure improvements related to new development including any requirements emerging out of Local Development Frameworks*

### **The explanatory text notes that:**

- By seeking to accommodate most of the additional development within settlements, existing infrastructure can be used more efficiently by utilising spare capacity and the provision of major new infrastructure can be kept to a minimum.
- LDFs should include an assessment of infrastructure capacity and opportunities for expansion. This will inform the scale and location of development opportunities. Where such a local assessment has been undertaken, it will justify a standard approach to developer contributions for all proposed developments within the relevant area.
- There is established good practice guidance in Surrey: Infrastructure and Amenity Requirements to Support New Development. This aims to set out a consistent and coordinated approach to securing infrastructure contributions throughout the county.

### **Local Plan Policy G3 states:**

*Where appropriate, planning benefits that are fairly and reasonably related in scale and kind to the proposed development will be sought from the developer, to achieve the objectives of the Local Plan*

### **The explanatory text notes that:**

- Planning benefits may be either in the form of the provision of the facility required by the development or where there is a clear opportunity to provide such a facility elsewhere, a financial contribution towards this provision in the near future.

### **The Approach in this Code of Practice**

- 2.11 In the collaboration work that developed the initial draft of this document it was acknowledged that the existing situation in Surrey is unsatisfactory, and does not follow current best practice. Very few authorities have any formal guidance on handling S106 contributions, and those that do relate mainly to larger developments. There are a vast number of smaller schemes that escape any contributions, despite cumulatively adding significantly to the population and the infrastructure burden. The established Surrey Infrastructure Guide referred to above was a worthy attempt to address the problem but was not followed through to implementation.
- 2.12 The situation cannot be resolved fully until each district has completed the necessary work on the Local Development Framework. Only during that process will formal

detailed assessments be made of infrastructure capacity, allowing the kind of location-specific contributions advocated in the best practice guidance to be developed, should that be appropriate.

- 2.13 However, in carrying this through it is important to consider the advantages of achieving some degree of common approach across all the districts in the county. There are many examples where general problems resulting from the increase in population are encountered countywide. Transport, education, open space and community facilities are all functions that are administered by local authorities and where experience has shown that there is a general under-provision of facilities. There is already much evidence about the level of infrastructure capacity.
- 2.14 To this end a good degree of co-ordination will be encouraged in the emerging development plan documents. This will aim to establish standard charges and contributions for the same type of infrastructure. It is also evident that the 'fixed tariff approach (the third approach referred to by the Audit Commission) has much to commend it for some of these types of contribution throughout Surrey, delivering clarity and simplicity. It is particularly appropriate for the smaller 'windfall' schemes that characterise much of the housing delivery in the county.
- 2.15 This Code of Practice aims to do two main things in advance of the main LDF process. First, to standardise the administrative procedures and monitoring across the districts, to improve delivery, clarity and transparency. Second, to set out tariffs for those types of infrastructure contributions already collected on an ad hoc basis and which are suited to that approach. Again, this would improve delivery of finance and at the same time make the system more predictable for users.
- 2.16 What it cannot do is to include tariffs on those types of infrastructure where each district already has very specific policies, for example affordable housing. These will have to continue to be addressed on a case-by-case or district-by-district basis as at present, until the LDF process has moved further forward. Further details are set out below.

### **3 How Planning Obligations are Implemented by Surrey Heath Borough Council**

3.1 In the interests of providing a transparent process minimising uncertainty for applicants and unnecessary delays, the Council implements the Planning Obligations Code of Practice set out below. This incorporates

- the use of formulae and standard charges,
- model section 106 agreement (and model clauses),
- model wording for Committee reports, and
- a scheme for monitoring obligations.

#### Overview of Process

**3.2 The process is shown in summary form on the attached 'Planning Obligations Flowchart'. The key components of the process are:**

#### Formulae and Standard Charges

**3.3 The formulae and standard charges which are expected to be built into a Planning Obligation, to meet the provision of infrastructure that is necessitated by a development proposal, are set out in the attached 'Formulae and Standard Charges' document.**

3.4 Circular 5/05 recognises that the use of formulae and standard charges can help to speed up negotiations and to ensure predictability, by indicating in advance the likely size and type of contributions in advance. They are particularly suited to smaller 'windfall' sites where individual case-by-case negotiations would be time consuming and potentially expensive, yet would result in a very similar outcome.

3.5 In some cases it is better to provide the infrastructure itself, rather than a standard contribution towards it. This is more frequently the case on larger sites, where some of the infrastructure necessary to accommodate the new population would be provided directly on site. A good example would be children's play space, and in these circumstances the relevant standard tariff would be waived. See 'Formulae and Standard Charges' document. Where standard charges are applicable, they have been calculated using the cost of new provision per additional person. These will normally be reviewed annually and updated as necessary.

#### Pre-Application Discussions

3.6 Prior to the submission of a planning application for a major development, the applicant is recommended to contact the Council, with a view to seeking pre-application advice. The applicant will be expected to have familiarised him or herself with the details of this Code of Practice and the Formulae and Standard Charges Document. Pre-application discussions should aim to provide an early opportunity to obtain the local planning authority's view of proposals and also to clarify the likely content of a Planning Obligation. The Formulae and Standard Charges Section below may assist in pre-application discussions.

#### Application Submission

3.7 Whether pre-application discussions have taken place or not, applicants should include with their applications a draft unilateral undertaking, or, where appropriate, a section 106 agreement. Applicants should ensure that the requirements of the

Formulae and Standard Charges document have been reflected in their submitted application. If the application does not include the required draft agreement or unilateral undertaking, the Council will ask for these details to be supplied. If it is not received in a final form before a decision on the application is made there is a presumption that the application may have to be refused (see 3.10 and 3.11 below).

#### Model section 106 Agreement

- 3.8 A **draft model agreement is attached** and should be used as a template, appropriately adapted for submission with the application. This is based on the Law Society's model agreement. Relevant parts of the agreement should be used to suit the circumstances of the proposal.

#### Application processed

- 3.9 The Council will aim to process, within the nationally set target time for determining planning applications, any valid application that includes a draft S106 agreement.

#### Officer Report

- 3.10 This Code of Practice is front loaded to achieve the necessary early commitment to Planning Obligations that may be necessary to make a proposal acceptable in planning terms. Provided the code is followed, and necessary work is undertaken on the requirements of the Planning Obligation at an early stage, determination should be relatively quick. In view of this the Council will operate a practice of using dual recommendations where Planning Obligations are involved, and if the applicant has not completed the necessary work on the Obligation, the Council will refuse the application.

- 3.11 Model Wording for Committee Report Dual Recommendations:

#### Recommendation A

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

#### Recommendation B

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

1. In the absence of a completed legal agreement under section 106 of the Town and Country Planning Act, 1990 (as amended), the applicant has failed to comply with Policies ..... of the..... Local Plan in relation to .....issues."

#### Register as a Local Land Charge

- 3.12 Once completed the legal agreement is entered in the Local Land Charges Register that is available for inspection by the public.

### Implementation and Monitoring of Planning Obligations

- 3.13 Once development is commenced it is important that the undertakings given are complied with and that any contributions are provided on time or as otherwise required by the Council or other benefiting stakeholder. The developer will be expected to inform the local planning authority when any development is about to commence. This will trigger the necessary steps to be undertaken to comply with the terms of the agreement, or will be the reference point for any future milestones in the process.
- 3.14 Surrey Heath will develop a monitoring database and will chase up contributions etc. as they fall due. Failure to comply may result in warning letters being sent and ultimately injunctive action to halt development on site until the undertakings have been met.
- 3.15 Variation and discharge of undertakings will only be considered formally, whether by a deed of agreement or an application following the necessary publicity. If specific obligations are time limited and cannot be met within the prescribed period then arrangements will be made for any unspent financial contributions to be returned where appropriate. Note that this would not normally apply to tariff payments.
- 3.16 Annual reports will be produced to highlight the various benefits resulting from undertakings implemented throughout the year and to show how such improvements have contributed, or are yet to contribute, to the infrastructure and essential public services of the area.
- 3.17 Due to the level of new monitoring work that will result from the scheme a monitoring charge of 5% will be added to the total contributions calculated for each S106 document. This would be available to fund officer time to ensure that money is collected and is allocated to and spent by the appropriate beneficiaries, as well as the collating and publishing of the periodic reports highlighted in 3.16 above.

#### **4 SURREY HEATH BOROUGH COUNCIL S106 PLANNING INFRASTRUCTURE CONTRIBUTIONS FORMULAE AND STANDARD CHARGES**

- 4.1 The Audit Commission has identified the following functions where community benefits are secured through the planning process. In the following lists they have been grouped together to identify those that should be negotiated individually and those that are subject to a standard charge.

##### **Individual Assessment or On-Site Provision**

**Generally applicable on larger housing or commercial sites, or large mixed use town centre regeneration schemes.**

Affordable Housing  
Flood Defence  
Healthcare  
Fire and Rescue  
Town Centre Improvements  
Archaeology and Conservation

##### **Standard Tariff to Surrey County Council (see over for details)**

Highways, Transport and Travel Schemes  
Education (Not required by Surrey Heath)  
Libraries

##### **Standard Tariff to Surrey Heath Borough Council (see over for details)**

Recreation  
Community Centres  
Recycling  
Crime and Disorder Prevention  
Open Space  
Environmental Improvements- Camberley Town Centre  
Town Centre Management – Camberley Town Centre

- 4.2 For larger sites applicants should always contact the Council first, as there may be circumstances where site-specific provision is more appropriate than payment of a standard charge.
- 4.3 More detail about the basis on which the formulae and standard charges have been calculated and the rationale behind them is set out in the separate document 'Planning Obligations and Infrastructure Provision Code of Practice - Basis for Calculating Formulae and Standard Charges'.
- 4.4 The standard charges specified in the standard charges sheets below are set at a level to cover the new infrastructure needed by the estimated standard numbers of additional occupants or workers that would be generated by the development.
- 4.5 No charge is levied on the development of affordable housing (as defined in PPS3 and confirmed in the S106 obligation). This normally amounts to some 20-40% of total housing delivery in any particular district, so the resulting income from the code is correspondingly below that which would otherwise be received. This both acts as an encouragement to the delivery of affordable housing and avoids criticism that any charges for such may be too high. If a developer chooses to provide 100% affordable housing the tariff payable under this code would be zero.

- 4.6 Similarly no charge for certain functions is made for elderly persons dwellings (so long as the S106 obligation limits occupancy to the elderly).
- 4.7 No charge is levied on 'householder' extensions to existing dwellings, nor to very small commercial developments (where the size is below the threshold for generating one extra worker - see table on charge sheet).
- 4.8 Where demolition is involved the figures for the existing development (or previous development if it was demolished in the preceding 3 years) should be subtracted from the new development.
- 4.9 For changes of use the tariff is calculated by comparing the resulting development to the existing lawful use.
- 4.10 For the purposes of clarity when calculating the number of bedrooms for the purposes of calculation of the contribution, additional habitable rooms capable of realistic conversion to bedrooms will be included. Habitable rooms capable of future conversion into a bedroom will include, for a dwelling house with more than one storey, any room at first floor level and above with an external window (excluding bathrooms and the like), with a floor area greater than 6.5 sqm.
- 4.11 The tariff will be sought for all appropriate Full Planning Applications and Outline Planning applications. Where insufficient information is available to calculate the tariff at the Outline Application stage the most accurately estimated amount, in negotiation with the applicant and based on the predicted likely occupancy, will be sought. Should this estimated amount fail to reflect the actual necessary tariff, when reviewed at the Reserved Matters Application stage, to correct this a Deed of Variation will be sought from the applicant to accompany that application.
- 4.12 For a mixed residential and commercial development the charges sheets for both types of development should be completed and the totals added together.
- 4.13 In all cases a 5% monitoring fee should be added to the final figure.
- 4.14 Once calculated, the total figure should be entered on the standard charges sheet and included with the application. It will become payable on commencement of the development unless the Council agrees that an alternative timetable is appropriate (for example on a larger phased development), in which case the alternative agreed timetable should be specified in the obligation.

## S106 Standard Charges Sheet - Residential Development

These charges are applicable to all planning applications for houses or flats (except affordable housing and elderly persons housing where indicated)

See separate Formulae and standard charges document for more detail

### Stage One

Calculate the number of occupants in the development by completing the following table:

Dwelling Size	Number of Dwellings Proposed	Subtract Number of Dwellings Replaced	Standard Occupancy Rate	Number of Standard Occupants
1 bedroom			1.31	
2 bedroom			1.76	
3 bedroom			2.51	
4 bedroom			2.86	
5 bedroom or more			3.73	
			TOTAL	

### Stage Two

Identify whether the site is within a defined town centre boundary (refer to the inset maps: in the Borough Local Plan): Yes/No (please delete)

### Stage Three

Complete the following table:

Benefit	Charge Per Standard Occupant	Total payments
<b>Surrey County Council:</b>		
Libraries	£92	
Transport (Within Town Centre)	£718 or	
or		
Transport (Outside Town Centre)	£1333	
<b>Surrey Heath Borough Council:</b>		
Equipped Playspace	£576*	
Community Facilities	£150	
Recycling	£33	
Environmental Improvements	£500	
	TOTAL	

\* No charge for elderly persons housing

**Stage Four**

Multiply the total per Stage 1 by the total per Stage 3      £ \_\_\_\_\_

**Stage Five**

Add 5% monitoring charge:    £ \_\_\_\_\_

TOTAL PAYABLE:    £

## S106 Standard Charges Sheet - Commercial Development

These charges are applicable to all planning applications for additional commercial floor space

See separate Formulae and standard charges document for more detail

### Stage One

Calculate the number of standard full-time equivalent workers in the development by completing the following table:

Prime Land Use	Sqm Proposed (gross)	Subtract Sqm Replaced (gross)	Sqm per Standard Worker	Number of Standard Workers
Retailing			34.4	
Financial/professional services			15	
Restaurant or Pub			31.6	
Offices			16.4	
Research and Development			67	
Light Industrial			37.5	
Manufacturing			33.1	
Storage and Distribution			46.2	
Community Services			14.6	
Leisure			25.4	
			TOTAL	

### Stage Two

Identify whether the site is within a defined town centre boundary (refer to the inset maps: in the Borough Local Plan): Yes/No (please delete)

### Stage Three

Complete the following table:

Benefit	Charge Per Worker	Total payments
<b>Surrey County Council:</b>		
Libraries	£92	
Transport (Within Town Centre)	£718 or	
or		
Transport (Outside Town Centre)	£1333	
<b>Surrey Heath Borough Council:</b>		
Recycling	£33	
Environmental Improvements	£500	
Town Centre Management	£250	
	TOTAL	

**Stage Four**

Multiply the total per Stage 1 by the total per Stage 3      £ \_\_\_\_\_

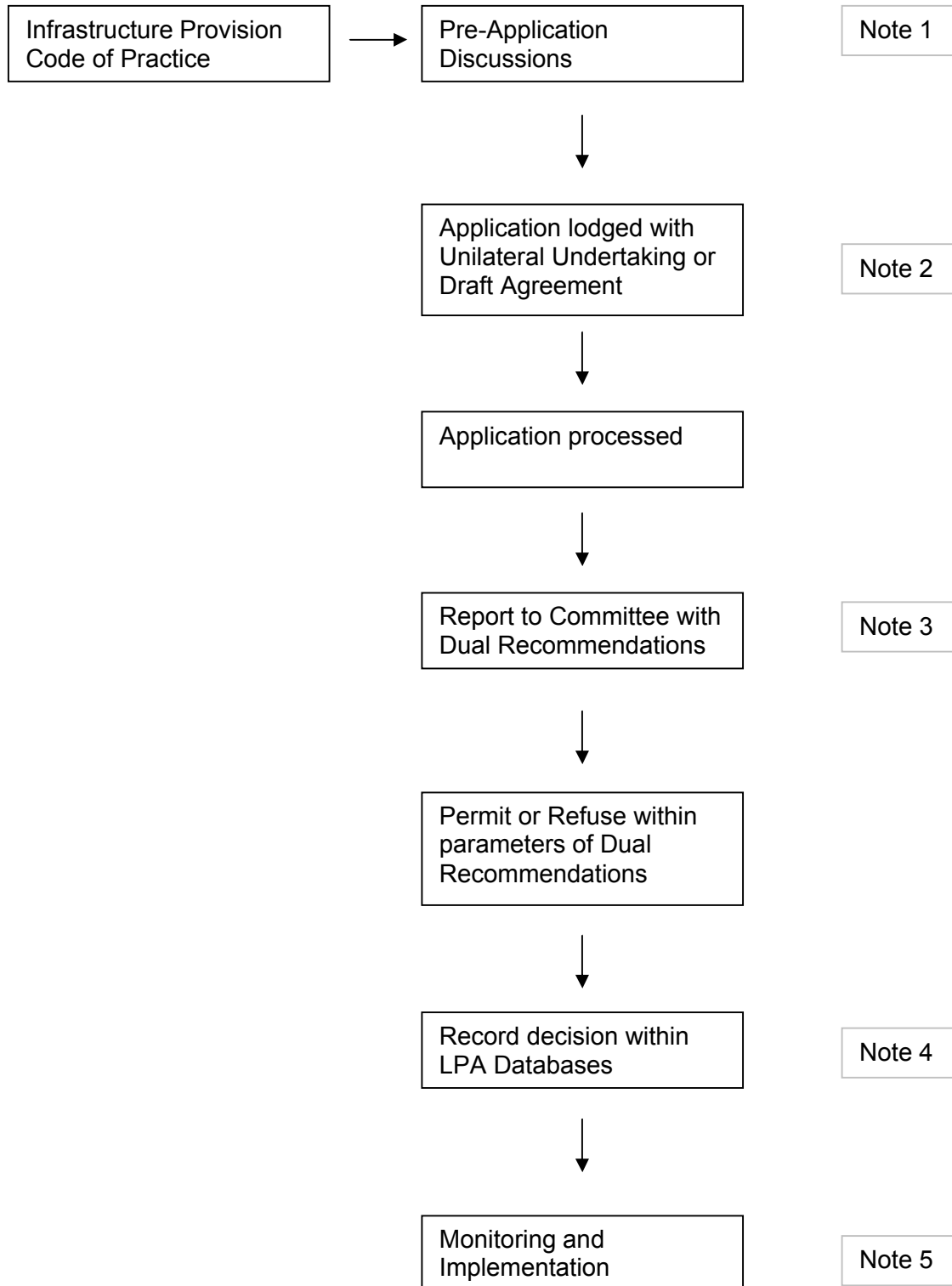
**Stage Five**

Add 5% monitoring charge: £ \_\_\_\_\_

TOTAL PAYABLE: £

Add totals from both tables to calculate total contribution:      £ \_\_\_\_\_

## 5. Planning Obligations Flow Chart



## Notes

- 1 For minor applications advised tariff applies; for major applications advised tariff used as basis for negotiations
- 2 See Model Unilateral Undertaking and Model Agreement
- 3 Committee report dual recommendations:  
RECOMMENDATION A: SUBJECT TO THE APPLICANT FIRST ENTERING INTO AN APPROPRIATE LEGAL AGREEMENT OR DEED OF VARIATION OR UNILATERAL UNDERTAKING FOR THE PROVISION OF (I) £XXXX FOR *[INSERT NAME OF INFRASTRUCTURE PROVISION]* AND (II) £XXXX FOR *[INSERT NAME OF INFRASTRUCTURE PROVISION]* IMPROVEMENTS, BY NO LATER THAN *[INSERT DATE]* PERMISSION BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS: Recommendation B: In the event that the requirements of recommendation A are not met by *[insert date]*, the *[insert title of officer delegated to refuse application]* be authorised to refuse planning permission on the following grounds:
  - i. In the absence of a completed legal agreement under section 106 of the Town and Country Planning Act 1990, the applicant has failed to comply with Policy *[insert policy reference from adopted development plan]* in relation to provision of *[insert name of infrastructure provision]* and Policy *[insert policy reference from adopted development plan]* in relation to *[insert name of infrastructure provision]* infrastructure of the *[insert name of the adopted development plan]*.
- 4 Record in Parts I and II of the Planning Register, as a local land charge, and within the Planning Obligations monitoring system
- 5 Regular reports made to an appropriate committee as to monetary receipts and progress with implementation