

# HARLOW & GILSTON GARDEN TOWN

Guidance Note: 01/20190417

A Harlow & Gilston Garden Town 'How To' Guide for ...

## Planning Obligations, Land Value Capture and Development Viability

### Harlow and Gilston Garden Town

Harlow District Council (**HDC**), East Hertfordshire District Council (**EHDC**), Epping Forest District Council (**EFDC**), Hertfordshire County Council (**HCC**) and Essex County Council (**ECC**) are working together to bring forward transformational growth in and around Harlow through the promotion of the Harlow and Gilston Garden Town (**the Garden Town**) as [designated](#) by the Ministry for Homes, Communities and Local Government in January 2017.

The Garden Town will comprise existing neighbourhoods in Harlow together with new communities to the east, west and south and new villages to the north all set in attractive countryside, with transformative investment in transport and community infrastructure to create a long term sustainable place in accordance with a shared [Harlow and Gilston Garden Town Vision](#)<sup>1</sup>, as follows:-

*“The pioneering New Town of Gibberd and Kao will grow into a Garden Town of enterprise, health and sculpture at the heart of the UK Innovation Corridor. Harlow and Gilston will be a joyful place to live with sociable streets and green spaces; high quality homes connected to fibre optic broadband; local centres accessible by walking and cycling; and innovative, affordable public transport. It will set the agenda for sustainable living. It will be adaptable, healthy, sustainable, innovative.”*

### 1. Introduction

- 1.1. This Guide sets out how the Councils intend to ensure that a consistent approach is adopted to support growth and deliver the necessary infrastructure to ensure the sustainability and long term stewardship of the Garden Town as a whole in line with the [Garden City Principles](#) and [Harlow and Gilston Garden Town Vision](#). This will include the capture of development land value through the use of planning obligations.

---

<sup>1</sup> Adopted by the Garden Town (November 2018)

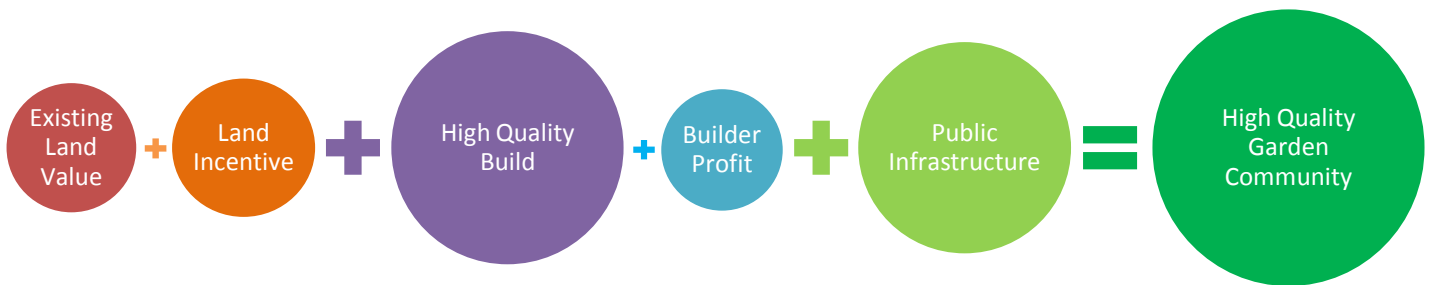
## 2. Garden City Principles

- 2.1. The Garden Town is being planned, delivered and regenerated in accordance with [Garden City Principles](#). These include:-
- I. Land value capture for the benefit of the community.
  - II. Strong vision, leadership and community engagement.
  - III. Community ownership of land and long-term stewardship of assets.
  - IV. Mixed-tenure homes and housing types that are genuinely affordable.
  - V. A wide range of local jobs within easy commuting distance of homes.
  - VI. Beautifully and imaginatively designed homes with gardens, combining the best of town and country to create healthy communities, and including opportunities to grow food.
  - VII. Development that enhances the natural environment, providing a comprehensive green infrastructure network and net biodiversity gains, and that uses zero-carbon and energy-positive technology to ensure climate resilience.
  - VIII. Strong cultural, recreational and shopping facilities in walkable, vibrant, sociable neighbourhoods.
  - IX. Integrated and accessible transport systems, with walking, cycling and public transport designed to be the most attractive forms of local transport.



## 3. Land Value Capture

- 3.1. When the use of land changes, for example from agricultural to residential, the value of that land changes. [National Planning Practice Guidance \(PPG\) on Viability](#) sets out how the value of land should be considered (Reference ID: 10-013-20180724 and 10-019-20180724). Provided that the value generated by a development is more than the cost of developing it and that a sufficient incentive exists to provide the land and build the development, then the scheme is viable. The aim is to ensure an approach that balances reasonable landowner incentive and developer profit with appropriate benefits to the public through high quality development and infrastructure.
- 3.2. Provision of these benefits is what is referred to as Land Value Capture. In the Garden Town the Councils will ensure that any increases in land value that arise from the granting of planning consents are used to ensure that high quality development proposals are delivered that are supported by necessary infrastructure. Illustrated simply:-



- 3.3. The form that this equitable Land Value Capture may take is varied and will include a combination of the following:-
- I. Achieving high quality design – through collaborative engagement on masterplans and planning applications between Councils, developers, stakeholders and the community on the appearance and form development takes in response to its surroundings. Investment in high quality design by the developer enhances the overall value of the development;
  - II. Delivering infrastructure on-site – through approval of design details via applications, planning conditions and planning obligations in **Section 106** agreements (see below) including affordable housing and education, health and community facilities. These are necessary to make development acceptable and are funded by the developer and landowners;
  - III. Contributing to Garden Town infrastructure – through planning obligations in Section 106 agreements including public transport and highway improvements. Contributions to Garden Town infrastructure may come from more than one development and there is also the possibility of additional funding from external sources (see below);
  - IV. Providing services, endowments/assets and governance arrangements to support on-going stewardship – through planning obligations in Section 106 agreements and planning conditions including measures to support active healthy sustainable transport such as subsidised public transport and cycle hire, provision of assets or funds into a management body for the long-term stewardship of the development and its buildings and spaces. Garden City Principles state that Stewardship should include community ownership.



#### 4. Joint Working

- 4.1. The successful delivery of the Garden Town growth needs to be underpinned by a comprehensive package of infrastructure delivered in a coordinated way. The Councils are supporting this in a number of ways. This includes:-
- I. Garden Town Board and officer working groups, which are the forums for co-operation in the preparation of guidance and the sharing of evidence and which also facilitate the collective consideration of matters to support the delivery of the Garden Town;
  - II. Co-ordination of Local Plan policies underpinning the delivery of the Garden Town and seeking to promote cross-boundary policy guidance where appropriate;
  - III. Garden Town Infrastructure Delivery Plan (**IDP**) identifying the package of key infrastructure necessary to achieve the Garden Town growth and Vision and the phased delivery approach to support sustainable growth and healthy communities. This is supported by a viability study which provides a high-level viability assessment for each of the new Garden Communities ensuring that the growth and the infrastructure package required is deliverable (see below);
  - IV. Garden Town Transport Strategy supporting the delivery of a network of Sustainable Transport Corridors (**STC**) that encourage safe, convenient and healthy walking, cycling and public transport as the most attractive choice. These STC are a key element of the infrastructure required to integrate the new Garden Communities with the existing neighbourhoods and surrounding villages, including a revitalised Town Centre, and are required to achieve the necessary targets of 60% of all journeys within and to/from the new Garden Communities being undertaken by active healthy sustainable options and 50% for all journeys within the Garden Town;
  - V. Strategic masterplans for each of the new Garden Communities of East Harlow, Latton Priory and the Water Lane Area, village masterplans for the Gilston Area and an Area Action Plan for the Town Centre. This will establish in more detail the high quality design and specific infrastructure that will be required to support their growth;
  - VI. Seeking additional funding from external sources such as the [Road Investment Strategy \(RIS\)](#) funding that has been secured to deliver the new M11 Junction 7A and the [Housing Infrastructure Fund \(HIF\)](#) for which a bid has been submitted to support the early stages of development in the Garden Town, including commencing delivery of the STC and mitigate impacts on the highway network. The Councils will continue to seek out opportunities to secure external funding where this will benefit the Garden Town.
- 4.2. Funding from external sources can enable forward-funding of infrastructure and/or address gaps in funding need but will not be a substitute for the funding captured from developments through the uplift in land value. Where external funding allows the early delivery of infrastructure, the Councils will still collect contributions from developments to reimburse the forward funding investment. This funding will in turn be put towards addressing the next priority for forward funding and/or address a funding gap through the creation of a 'rolling infrastructure fund' which will be used to deliver the next piece of prioritised infrastructure identified to support the Garden Town delivery.



## 5. Infrastructure Requirements and Local Planning Policy

- 5.1. All three District Councils benefit from Local Plan policies, which are either adopted or are currently being taken through the examination process, that support the delivery of the Garden Town. As indicated above the authorities have also commissioned a joint **IDP** that sets out the infrastructure that will be required to deliver the planned level of housing and employment growth in the Garden Town.
- 5.2. The IDP draws on previous work undertaken by the Councils; in particular, the District-level IDPs produced to support the Local Plans, and aligns and updates this information. The IDP will support further joint work with respect to the Garden Town area, and provide further evidence for the formulation of Section 106 agreements through ensuring an equitable division of responsibility for funding Garden Town infrastructure. The IDP will be updated periodically as a “live” document.
- 5.3. The District Councils set out Policies for Planning Obligations within their respective Development Plan Documents as follows:-
- I. [Harlow Local Development Plan \(Pre-Submission Publication May 2018\)](#)<sup>2</sup> Policy IN6;
  - II. [East Herts District Plan \(adopted 23 October 2018\)](#) Policy DEL2;
  - III. [Epping Forest District Plan \(Submission Version 2017\)](#)<sup>3</sup> Policy D1.
- 5.4. The Counties also provide guidance on Planning Obligation requirements as follows:-
- I. [Essex Planning Protocol \(May 2018\)](#);
  - II. [The ECC Developers’ Guide to Infrastructure Contributions \(Revised Edition 2016\)](#);
  - III. [Essex Local Viability Protocol \(June 2018\)](#);
  - IV. [Planning Obligations Guidance - Toolkit for Hertfordshire \(January 2008\)](#).<sup>4</sup>
- 5.5. The above set out the Councils’ respective requirements on the scope and range of contributions and costing information for infrastructure which may be sought to make development acceptable in planning terms.
- 5.6. This ‘How To’ Guide sets out a collective position in respect to the approach that will be taken for securing planning obligations in the Garden Town to ensure the obligations are secured in a co-ordinated and comprehensive manner.
- 5.7. It has been identified by the Councils that further Guidance in the form of a Joint Supplementary Planning Document (**SPD**) on Planning Obligations for the Garden Town may also be required.<sup>5</sup>

<sup>2</sup> The current development Plan is the Adopted Replacement Harlow Local Plan (July 2006).

<sup>3</sup> The current development Plan is the combined policies of Epping Forest District Local Plan (1998) and Alterations (2006).

<sup>4</sup> HCC is currently updating the Planning Obligations Toolkit with anticipated consultation in Summer 2019.

<sup>5</sup> The Councils may also prepare and adopt SPD independently to cover their respective District’s needs.





## 6. Use of Section 106 Agreements across the Garden Town.

- 6.1. The [PPG on Planning Obligations](#) states these assist in mitigating impact of development to make it acceptable in planning terms (Reference ID: 23b-002-20190315) entered into by landowners and developers (and others) through Section 106 agreements (Reference ID: 23b-001-20190315). Under [Section 106 of the Town and Country Planning Act \(1990\)](#) a planning obligation may:-
- I. Restrict the development or use of the land in any specified way;
  - II. Require specified operations or activities to be carried out in, on, under or over the land;
  - III. Require the land to be used in any specified way;
  - IV. Require a sum or sums to be paid to the authority on a specified date, dates or periodically.
- 6.2. The [National Planning Policy Framework \(NPPF\) \(February 2019\)](#) (Paragraph 56) and Regulation 122(2) of the [Community Infrastructure Levy \(CIL\) Regulations \(2010\)](#) stipulate that Planning Obligations must only be sought where they meet the following tests:-
- 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.
- 6.3. Where Planning Obligations are necessary, the Councils require applicants for major development within the Garden Town area to enter into appropriate agreements that capture the value of land for consented development to deliver required infrastructure on site and across the Garden Town. Applicants are required to support their applications at submission stage with:-
- I. Proposed draft Heads of Terms for a Section 106 agreement including itemised schedule of infrastructure, phasing, cost and responsibility for delivery based upon the Policy, the IDP<sup>6</sup> and as identified through engagement with the Councils. This should reflect requirements of the Template Section 106 Agreement (below) or, for smaller sites, such other agreed process;
  - II. A Statement of Delivery. This statement will confirm the Applicant's position in relation to the viability and deliverability of the development (see Section 8 below).

### Template Section 106 Agreement

- 6.4. In terms of the approach to the drafting of the Planning Obligations, the Councils have jointly appointed the Garden Town Legal Advisor to develop a standard format agreement (**the Template Agreement**) which will be used for all of the new Garden Communities and, at the Councils' discretion, for any development proposals in the Garden Town area. Whilst there may be some minor variations in agreements reflecting the particular requirements of individual developments, the aim will be to ensure a consistency of approach as far as practicable.

---

<sup>6</sup> An IDP represents a point in time and costs and provisions may change based upon new evidence.



- 6.5. Dependent upon any site-specific requirements and the nature and scale of the development, matters to be dealt with in the Template Section 106 agreement may include:-
- I. A delivery table identifying key infrastructure provision and delivery phasing;
  - II. Requirements for affordable housing including number of homes, tenure and how and when these will be provided;
  - III. Requirements for all other provisions including but not limited to education, health, community and leisure facilities including how and when these will be provided;
  - IV. The package of measures intended to achieve the 60% mode share target for active healthy sustainable travel and measures for monitoring and managing the 60% mode share target, including any interim phased targets (on the understanding that the general approach should be to establish this mode share from the outset in order to encourage and support behavioural change as new residents arrive). Provision should also be made for taking further measures should these be necessary to address any shortfall against these targets;
  - V. The approach to delivering high quality design and build where not specifically dealt with in the development proposals and any associated conditions;
  - VI. Triggers for delivery of on-site infrastructure and caps on the commencement/occupation of development until that has been agreed/delivered. This will include which infrastructure will be directly delivered and which will be funded through contributions in cash or in kind;
  - VII. Triggers for delivery of off-site infrastructure and caps on the commencement/occupation of development until that infrastructure has been agreed/delivered. This will include mechanisms to ensure infrastructure delivery where dependent upon contributions or actions from third parties;
  - VIII. Approach to stewardship and estate management including any provision of assets or funds into a management body to ensure its long-term financial health and viability and the mechanism for agreeing that such management body includes representation from the community and meets key principles for stewardship;
  - IX. Stages or circumstances in which viability may be re-appraised (see section 8 below);
  - X. The approach to monitoring generally (see section 7 below).
- 6.6. The intention is to promote a consistent approach to the negotiation of Section 106 agreements to provide certainty for those who are engaging with the Councils. Measures will include:-
- I. Drafting will be undertaken by the Garden Town Legal Advisor based upon the Template Section 106 agreement working with identified lead case officer(s) for the application. Developers will be required to meet the legal costs associated with drafting S106;
  - II. In the case of planning applications or off-site infrastructure that cross local authority boundaries, a single Section 106 agreement will be negotiated with an identified protocol for how each of the Councils will discharge its responsibilities under the agreement.



## 7. Monitoring

- 7.1. Given the scale of growth proposed across the Garden Town area, monitoring arrangements are important in order to ensure the appropriate delivery of housing, infrastructure and local services. To this end, it is expected that monitoring data will be collected and compiled of the rate and mix of housing, service and infrastructure delivery, in addition to data showing the annual level of contribution made through the Section 106 process. This will form part of a Monitoring Framework which will track how the requirements in the IDP are being addressed.
- 7.2. In accordance with the [PPG](#) (Reference ID: 10-023-20180724) a copy of any planning obligation together with any details of any modification or discharge of the planning obligation will be made publically available by the local authorities; and (Reference ID: 10-022-20180724) monitoring information will be regularly published so that communities are able to easily see where contributions towards infrastructure and affordable housing have been secured and spent. To achieve this the following steps will be undertaken:-
- I. A copy of any signed Section 106 Agreement will be published on the website of the Local Planning Authority that determined the application along with any modification to the Section 106 or statement confirming discharge of any of the planning obligations;
  - II. A Monitoring Framework will be published on the website of the District Councils, or on an equivalent Garden Town website established for this purpose, which will set out where contributions towards infrastructure and affordable housing have been secured and spent within the Garden Town;
  - III. This Monitoring Framework will be overseen by a Garden Town Infrastructure Officer Group reporting to the Garden Town Board, or equivalent body established for this purpose, to assist monitoring by the respective Councils;
  - IV. Subject to clarification with regard to monitoring fees for Section 106 as [proposed](#)<sup>7</sup> by the government, the Councils will seek proportionate and reasonable costs from developers through Section 106 agreements to support the ongoing monitoring of planning obligations.

---

<sup>7</sup>MHCLG technical consultation on draft regulations for reforming developer contributions (Dec 2018).



## 8. The Approach to Development Viability

- 8.1. All considerations and approaches to assessing Viability will be based upon the context of the guidance set out in the [PPG on Viability](#) and Paragraph 57 of the [NPPF \(February 2019\)](#).
- 8.2. The need to deliver strategic infrastructure items across the Garden Town including on a 'pooled' basis, through co-ordinated contributions of land and/or infrastructure costs, such as the STC, mean that it is important to adopt a consistent and transparent approach to viability assessment.
- 8.3. Alongside the Garden Town IDP and as a part of the respective District Plan-making processes, viability assessment for each of the new Garden Communities has been undertaken in order to determine the appropriate level of developer contributions to be sought given the need to deliver the necessary infrastructure whilst ensuring that the sites remain viable and deliverable.
- 8.4. For the new Garden Communities, or any major development (applications for 10 or more homes or 1,000m<sup>2</sup> for non-residential development) within the Garden Town, unless otherwise advised by the respective Local Planning Authority, applicants will be required to demonstrate that the application will meet requirements of policies and is considered viable and deliverable. This should be through the provision of a Statement of Delivery (see paragraph 6.3 above) comprising:-
- I. Gross Development Value for the application scheme\*;
  - II. Benchmark Land Value based upon existing use value (EUV) plus the assumed Landowner Premium (EUV+)\*;
  - III. Development Costs including build costs, site-specific infrastructure costs, total cost of meeting Policy requirements including contributions to Garden Town infrastructure set out in the IDP, General Finance Costs, Professional Fees, and any project contingency costs as well as any assumed provision of external funding\*;
  - IV. A comprehensive development programme indicating assumed phasing and/or timing associated with the delivery of infrastructure and, specifically, where such phasing and/or timing does not accord with policy, the IDP<sup>8</sup> or requirements identified as necessary through engagement with the Councils for reasons of viability this should be supported by a details of development cash flow;
  - V. List of Abnormal Costs that the applicant has identified which have been taken into account when defining the Benchmark Land Value;
  - VI. Financial return assumed by the Developer.

\* The Applicant will be required to include explicit agreement to the assumptions of the most recent viability assessment published for the District or Garden Town or, alternative assumptions where clear evidence is provided to demonstrate what has changed since that viability assessment was undertaken.

---

<sup>8</sup> An IDP represents a point in time and costs and provisions may change based upon new evidence.



- 8.5. The Statement of Delivery should reflect the requirements set out in Policy, the IDP and as otherwise agreed through engagement with the Councils and should, wherever appropriate, include explicit agreement to the assumptions within the most recent viability assessment published for the District or Garden Town. Where the applicant wishes to rely upon different assumptions these must be clearly evidenced so that they can be assessed by the Council.
- 8.6. The Councils recognise that delivery of growth in the new Garden Communities will extend over many years during which, from time to time, external factors could improve or reduce viability of development. The viability of development may also be affected by the accuracy of assumptions made at the stage of assessment which may vary during planning for outline or detailed/reserved matters stages and again at the commencement of, and during, the construction phase.
- 8.7. As set out in PPG (Reference ID: 10-009-20180724) the potential risk to developers is already accounted for in the assumptions for developer return in the viability assessment. Realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project. As a general rule, re-appraisal of policy compliant schemes in the Garden Town will not be entertained.
- 8.8. Where Applicants fail to demonstrate full compliance with policy requirements through reasons of viability they will be required to provide detailed information to support all assumptions made within the Statement of Delivery in order that the Council can assess the case. As set out in the PPG (Reference ID: 10-009-20180724), the applicant will also be required to commit to re-appraisal and agree a clear process and terms of engagement for how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. Circumstances where re-appraisal will be undertaken may include:-
- I. Detailed planning stage (if viability only assessed at plan-making or outline planning stage);
  - II. Change in scheme proposals, where the Council deem this to have a bearing upon viability;
  - III. Change in market conditions, where the Council deem this to have a bearing upon viability;
  - IV. Approximately every 3 to 5 years, or the occupation of 500 homes or completion of an agreed phase on the development since the last viability appraisal, whichever the Council deem to establish new market evidence to be considered;
  - V. Provision of any external funding contributions which may reduce the apportionment of infrastructure costs, or improve cash flow, for the development.
- 8.9. Mechanisms for re-appraisal will be written into Section 106 agreements where schemes are agreed to be unviable. If viability improves sufficiently, applicants will be required to rectify any short fall in later stages of the development.
- 8.10. Statements of Delivery, viability evidence and viability re-appraisal will be reviewed by the Councils supported by the jointly appointed Garden Town Viability Advisor.
- 8.11. In accordance with the PPG (Reference ID: 10-021-20180724) viability assessment will be made publicly available and should be prepared on that basis.



## Other Documents and Guidance that are relevant to this 'How To' Guide

- [Harlow and Gilston Garden Town Vision \(November 2018\)](#)
- [Harlow and Gilston Garden Town Design Guide \(November 2018\)](#)
- Harlow and Gilston Garden Town IDP (April 2019)
- Harlow and Gilston Garden Town Strategic Viability Assessment (April 2019)
- [National Planning Policy Framework \(NPPF\) \(February 2019\)](#)
- [National Planning Practice Guidance \(PPG\) Planning Obligations](#)
- [National Planning Practice Guidance \(PPG\) Viability](#)

## Engagement on this 'How To' Guide

This Guide has been prepared co-operatively with the Garden Town Officer Working Group including [Harlow](#), [East Herts](#) and [Epping Forest](#) District Councils and [Essex](#) and [Hertfordshire](#) County Councils and [Homes England](#).

## Endorsement of this 'How To' Guide

This Guide has been endorsed by the Garden Town Member Board including Councillors from [Harlow](#), [East Herts](#) and [Epping Forest](#) District Councils and [Essex](#) and [Hertfordshire](#) County Councils.

## Monitoring and Review of this 'How To' Guide

'How To' Guides may periodically be reviewed, please check the Council websites for the latest version of all Guides.

## Author(s) of this 'How To' Guide

Bob Pritchard, [Weightmans LLP](#) (Legal Advisor to the Garden Town);  
Simon Drummond-Hay, [HDH Planning & Development Ltd](#) (Strategic Viability Advisor to the Garden Town);  
Andrew Jones, [BPS Chartered Surveyors](#) (Development Viability Advisor to the Garden Town); and  
Adam Halford, [East Herts](#) Senior Planning Project Officer, on behalf of the Garden Town.

## For further details on this 'How To' Guide please contact the Councils

[planning.services@harlow.gov.uk](mailto:planning.services@harlow.gov.uk)

[planning@eastherts.gov.uk](mailto:planning@eastherts.gov.uk)

[contactus@eppingforestdc.gov.uk](mailto:contactus@eppingforestdc.gov.uk)

