MAYOR OF LONDONLONDONASSEMBLY

Securing Cultural Infrastructure and Workspace planning practice note

A practice guide for using Section 106 agreements and other planning tools

Key information

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Contents

1. Introduction - sets the scene

1.1 Status and purpose

The purpose of this Practice Guide is to provide guidance on the use of the planning process to successfully deliver cultural infrastructure and workspace. The guide sets out a checklist of issues to consider at various stages in the planning application process. It also provides advice on the use of planning conditions, planning obligations and the Community Infrastructure Levy (CIL).

This guide was published by Culture and Creative Industries Unit and does not constitute London Plan Guidance. At a later date, it is anticipated that the relevant aspects of this document will be reworked and

published as formal London Plan Guidance (LPG).

The guide sets out to reflect planning law, policy and procedures. However, it is not a substitute for obtaining professional planning or legal advice when preparing, submitting and negotiating planning applications.

1.2 Who is this practice guide for?

This guide is intended mainly for borough planning and regeneration officers and developers. However, it may be of help to others involved in creating cultural infrastructure or workspace.

1.3 How to use the practice guide

The guide does not set out formulaic answers or templates. Instead, it draws on case studies - generally from the review phase between Spring 2019 and Spring 2020 - and sets out good practice points that boroughs and developers may wish to consider. As such, it requires critical engagement from the reader in order to arrive at good solutions for a particular project.

1.4 What do we mean by cultural infrastructure?

Cultural infrastructure is the buildings, structures and places where culture is either consumed (cultural consumption spaces) or produced (cultural production spaces).

Cultural consumption spaces enable audiences to view, participate in and enjoy culture. They include galleries, museums, archives, music venues, dance performance spaces and theatres. They may also include multi-use venues such as community centres, school halls and pubs. These buildings are complex because they have to accommodate overlapping requirements to provide adequate space for both a presentation and an audience. They also need dressing rooms, wardrobe and other ‘back of house’ spaces for administration, support and deliveries.

There is a vital need for cultural production spaces to support London’s creative and cultural economy. These spaces range in scale from modest artists’ workspaces through to large-scale sound stages and rehearsal studios. All cultural disciplines depend on some form of production space before they are ready to engage with a wider audience.

1.5 What do we mean by workspace?

Workspace is a general term that means different things for different people. At its broadest, workspace encompasses any business space that falls within the B use classes and some E use classes. It also includes office and production space in civic buildings, arts centres and other settings that falls outside of these use classes. However, this guide is particularly aimed at situations where the planning system is seeking to secure workspace that performs a specific social, cultural or economic development purpose. What that purpose is, and what features the workspace will need, will depend on the specific aims and requirements of planning, regeneration

and economic development strategies and policies. It may include:

- Workspace that is provided at rents maintained below the market rate for that space (referred to as ‘affordable workspace’).
- Workspace specifically for micro, small and medium sized enterprises (SMEs).
- Co-working and flexible workspaces.
- Incubators and accelerators, where there is an element of business support and development opportunities.
- Workspace that is designed for use by specific types of businesses, such as artists’ workspace, rehearsal space or food production kitchens.
- Workspace for charities, voluntary and community organisations or social enterprises, which may also provide ancillary space that can be used by these organisations or community groups.
- Workspace that supports employment opportunities for people from specific backgrounds.

This list should not be seen as exhaustive, and workspace may be serving a number of these functions.

1.6 Key message

The most important message in this guide is that the desired outcomes and uses need to be embedded as early as possible in the planning application process to create successful cultural infrastructure and workspace.
This means applying relevant London Plan and Local Plan policies from early pre-application discussions through to monitoring and enforcing permissions. Planning conditions and planing obligations should be used to help secure fit for purpose cultural infrastructure to meet identified needs.

2. Creating successful cultural infrastructure and workspace

2.1 Why is it important to consider the needs of operators and tenants

To be successful, cultural infrastructure and workspace needs to be properly designed and managed to meet identified needs. For example, the requirements of live music venues generally include dressing rooms, a control room and storage space as well as a stage area, dance floor, bar and box office. Similarly, workspaces need to be carefully designed to the right dimensions with careful planning of utilities, servicing and access and ancillary space, as well as an awareness of any sector-specific fit out requirements. These are basic design principles that need to be addressed from the outset.

It is vitally important to take time to understand the local context, constraints need and proposed use, as well as ensuring buildings and spaces are appropriate for all potential users.

This guide will take you step by step through topics that need to be considered at all stages of the planning application process.

Following this will ensure that there are a number of checkpoints which build upon each other. Simply adding the term ‘culture space’, ‘workspace’ or ‘theatre’ to a planning application without taking full account of the issues referred to above will not achieve the desired outcome and should always be avoided.

2.2 Why location matters

When cultural infrastructure is delivered in different locations, there are differing priorities to consider.

High Streets and Town Centres

The Central Activities Zone (CAZ) and town centres in outer and inner London are the most accessible locations on the public transport system and provide a diverse range of activities, including retail, leisure, cultural consumption and office space as well as housing, social infrastructure and public open space.

High streets are characterised by individual components such as offices, shops, public buildings and open spaces, serving as places for both economic growth and social engagement. A greater diversity of workspaces and cultural uses can provide more robust town centres and high streets.

It is beneficial to look beyond the retail unit as the only form of employment space provision, and include offices, workshops, performance use, galleries and makers spaces.

Additionally, spaces located behind and above the immediate high street, which can often be closely interconnected, offer a great deal of opportunity for cultural production uses.

Their relatively low cost, flexibility, and previous fit-out make them ideal for small businesses. Some commercial creative practices, such as craft or fashion, will actively seek workspaces that also provide a shop-front. This can provide a space to sell products, or be used more formally as gallery space for both public and private clients. London's Night Time Commission reported that supporting a successful economy at night (between 6pm and 6am) can help to support the capital's high streets by making the most of shops and public buildings that are otherwise empty at night.

Industrial settings

The London Plan 2021 sets out a number of policy ambitions in relation to London's industrial land and industrial capacity. Industrial settings tend to house cultural production rather than consumption.

Some cultural production is industrial in its requirements; it requires spaces and services that can accommodate the materials, processes and access requirements that are necessary for large-scale or complex physical works. Additionally, some non-physical cultural production such as film or motion capture for games design also needs industrial scale space for extensive equipment rigs and lighting.

Mixed use settings

Many new cultural facilities and workspaces are provided as part of mixed-use buildings that include housing, often close to other mixed-use buildings. Such relationships raise particular challenges in terms of compatibility, operational requirements, and safeguarding residential amenity.

Figure 2.1

3. Three key planning tools

3.1 Introduction

This section provides an overview of planning conditions, planning obligations and the Community Infrastructure Levy (CIL).

3.2 Planning conditions

Conditions are generally aimed at ensuring the development is built as approved, to mitigate any potentially harmful impacts and to require the approval of additional details to ensure high quality development.

The NPPF encourages agreeing conditions early on in the process, and it is a statutory requirement to agree 'pre-commencement' conditions with the applicant prior to issuing a planning decision.

The NPPF makes clear that conditions should be kept to a minimum and should only be imposed where they are:

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

An applicant can apply to the borough or appeal to the Secretary of State to have a condition removed or varied.

3.3 Planning obligations

Planning obligations are legal obligations entered into under Section 106 of the Town and Country Planning Act 1990 to secure policy objectives, support the provision of infrastructure and mitigate any potentially harmful impacts. Planning Practice Guidance makes clear that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

There are two types of planning obligation:

- those included in planning agreements negotiated between the borough and the applicant (and entered into with the borough and everyone who has a legal interest in the land)
- those included in Unilateral Undertakings offered up by the applicant either at the application stage or at appeal. These are entered into just by those that have an interest in the land.

Section 106 of the 1990 Act makes clear that planning obligations can be used for the following:

- restricting the development or use of the land in any specified way
- requiring specified operations or activities to be carried out in, on, under or over the land
- requiring the land to be used in any specified way
- requiring a sum or sums to be paid.

Boroughs cannot enter into legal agreements with themselves. This means that proposals promoted by boroughs will generally need to be managed by way of conditions only or in combination with Unilateral Undertakings.

The obligations negotiated by the Mayor and boroughs to facilitate a proposed development include:

- in-kind contributions, including the provision of particular facilities within a development (such as cultural facilities and/or workspace) and/or
- financial contributions which fund works and initiatives as necessary to mitigate adverse impact of the development and/or secure policy objectives.

Planning obligations are subject to the statutory tests set out in Regulation 122(2) of CIL Regulations 2010 (as amended). This states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- necessary to make the development acceptable in planning terms

- directly related to the development
- fairly and reasonably related in scale and kind to the development.

3.4 The Community Infrastructure Levy (CIL)

Borough CIL can be used to fund a wide range of infrastructure (as justified by Infrastructure Delivery Plans), including the provision or improvement of cultural and community facilities and should not be used to remedy pre-existing deficiencies, unless they would be made more severe by the approved development. The 'neighbourhood portion' of Borough CIL (a minimum of 15 per cent, increasing to 25 per cent where there is a Neighbourhood Plan) can also be used to support cultural and community facilities.

Snapshot case study: Westminster City Council Infrastructure Funding Statement 2020-21

Westminster City Council's Infrastructure Funding Statement (2020-21) (5.2) makes clear that for strategic infrastructure projects, CIL and S106 receipts will be made available, in whole or in part, for (amongst other things) Community and Leisure Services – including "upgrade cultural, sports and leisure facilities; and support the availability of affordable workspace…"

Infrastructure Funding Statements

CIL Regulations (as amended in 2019) require boroughs to prepare Infrastructure Funding Statements (IFS). These must report the way in which revenues from developer contributions have been used and set out how future revenues from developer contributions may or will be applied in the future. When preparing their IFS, a borough can make clear any intention to use CIL to help fund cultural infrastructure.

Payment in-kind

CIL Regulations allow for land or infrastructure to be provided, instead of money. The infrastructure or land may not be necessary to make the proposed development itself acceptable in planning terms. However, there may be benefits associated with accepting land or completed infrastructure from a developer that is needed to support growth in the wider area. To enable this to happen, the borough must adopt a payment in-kind policy.

4. Planning Application Stages

4.1 Introduction

This section describes key stages in the planning application process and for each stage recommends good practice for securing successful cultural infrastructure and workspace.

4.2 Positive Development Management

All parties should engage in the application process in a positive way to help shape schemes and find solutions to problems.

Borough planning case officers should liaise effectively with colleagues (for example planning policy, economic development, regeneration, environmental health, licensing and inclusive design) and, where appropriate, proactively help to broker agreement with developers and third parties.

Developers should ensure that they have the expertise they need to design, operate and manage high quality cultural facilities and workspace and be open to positive comments from others. Statutory and non-statutory consultees, industry experts, workspace providers and other stakeholders should help identify ways of improving the scheme so that applications can be approved.

4.3 Pre-application Discussion

Boroughs/developers should:

4A. Use Planning Performance Agreements constructively to agree scheme-specific stakeholder engagement and planning application requirements.

4B. Engage in early discussion on the emerging scheme with:

1. Borough consultees (such as planning policy, economic development, regeneration, environmental health, licensing and inclusive design).

2. Statutory consultees and industry bodies (examples include Theatres Trust and Music Venue Trust).

3. Potential occupiers, operators and managers of proposed cultural facilities and workspace to ensure that they help inform proposed design, specification and management arrangements.

4C. Discuss the scope for ‘meanwhile’ (temporary) cultural facilities and workspace prior to development taking place, where appropriate, to test the concept and viability of these uses and to maintain activity in the area during redevelopment.

4D. Ensure that the GLA is involved in pre-application discussions for emerging strategic development proposals (referable schemes) involving cultural facilities or workspace.

4E. Take account of existing and proposed provision in the area to inform and justify the type and size of cultural facility or workspace.

4F. Wherever possible, identify an intended operator or preferred workspace provider and involve them in pre-application discussions. Where none is identified, a feasibility study should be carried out so that it is clear what sort of cultural facility or workspace is proposed.

4G. Agree the scope, methodology and technical detail of documents needed to support proposed cultural infrastructure and workspace. This could include the following:

- design and Access Statement section or feasibility study that explains how the proposed cultural facility or workspace has been designed to be fit for purpose, taking account of other Mayoral guidance
- cultural strategy for strategic development and how this relates to any area or borough-wide cultural strategy
- noise and other impact assessments (including location, timing and duration of background noise surveys)
- proposed s106 Heads of Terms and potential conditions.

4H. Use the design review process to help shape emerging schemes that include cultural facilities or workspace and ensure that panel members have the requisite skills and experience.

It is important that discussions take place with a wide range of borough and external consultees on the overall scheme as soon as possible, to ensure that cultural infrastructure and workspace elements are configured and managed efficiently and considered alongside other requirements (including affordable housing). All parties should proactively use the pre-application stage to help shape the emerging proposals.

Experience shows that successful schemes are most likely to be delivered where there is close collaborative working between, where appropriate, the prospective applicant, borough, GLA, statutory consultees and industry experts. This includes carefully considering the proposed design, specification and management arrangements and the likely effectiveness of proposed mitigation measures to ensure a joined-up approach to reducing potential negative impacts.

The GLA's Cultural Infrastructure Map and the London Open Workspaces Map can help in preparing an audit of existing and proposed cultural infrastructure and workspace in the area surrounding the site.

Where boroughs have undertaken a local needs assessment and/or produced a local cultural infrastructure plan or strategy these should also be referred to. Individual cultural organisations and workspace providers will have their own particular needs and preferences and it is always better to identify and engage with and intended operator or preferred provider at the pre-application stage, to help shape the scheme.

Boroughs should actively encourage prospective developers to partner with a suitable organisation. Where none is identified, a viability study should explore what type of cultural space should be included and what sort of operator or provider would be suited to it.

In many cases, the lead developer of a mixed-use scheme will specialise in housing design and delivery, and may need to supplement their knowledge with specialist expertise from those experienced in delivering or managing cultural facilities or workspace.

The involvement of cultural organisations, industry experts or a workspace provider early on in the process will help to avoid space being built that is unsuitable or needs substantial alteration to meet the needs of a tenant (for example floor to ceiling) height too low, unit sizes too big or small and columns/services intruding into space

making it less usable). The pre-application stage is also the best time to discuss the possible wider role of the borough, GLA or Creative Land Trust in helping to deliver workspace by way of innovative funding models or ownership.

4.4 Submission Stage

Boroughs/developers should:
4.I. Ensure the description of development sufficiently describes the proposed cultural infrastructure and/or workspace.
4.J. Ensure that the submitted drawings satisfactorily address and describe the three-dimensional spatial qualities needed for the proposed use(s) (taking account of other Mayoral guidance listed in Section 2.1).
4.K. Ensure that noise and other impact assessments are tailored to local circumstances and are fit for purpose, taking account of requirements in London Plan 2021 Policies D13 (Agent of Change) and D14 (Noise).
4.L. Ensure that submitted development specification, parameter plans and design guidelines and any other documents submitted in relation to outline and hybrid applications sufficiently describe the proposed cultural infrastructure or workspace (taking account of other Mayoral guidance listed in Section 2.1).

4.5 Consultation and Consideration Stages

Guidelines and any other documents submitted in relation to outline and hybrid applications sufficiently describe the proposed cultural infrastructure or workspace (taking account of other Mayoral guidance listed in Section 2.1).

Boroughs should:

4.M. Consult with the relevant consultees (see 4B) and the Mayor of London for strategic developments on the following:

- the application scheme
- any significant relevant revisions to the application scheme
- relevant proposed planning conditions (such as pre-commencement conditions need to be agreed with the applicant)
- relevant proposed planning obligations.

4.N. When considering applications for cultural consumption and production spaces, scrutinise the scheme with reference to the relevant guidance on spatial issues and technical specifications in the Cultural Facilities Design Toolkit.

4.O. Where an intended operator or workspace provider is specified as part of the application, ensure the proposed space and management arrangement meet their needs and consider specifying the particular operator or provider in the relevant s106 obligations (see Sections 5 and 6 for guidance on drafting s106 agreements).

4.P. It is always better to have an intended operator or provider on board prior to submitting a planning application. Where none is specified as part of the application ensure that the proposal is sufficiently flexible to maximise the prospect of finding an operator or provider.

4.Q. Consider whether circumstances justify the imposition of a condition(s) to remove permitted development rights that would otherwise allow for the loss of the cultural infrastructure or workspace to other uses without the approval of the borough.

Consultation

There are several legislative requirements relating to consultation on planning applications, including a specific requirement to consult the Theatres Trust on applications for land on which there is a theatre. Consultation on revisions made to applications may or may not be required, depending on the significance of the revisions and the requirements of the borough's Statement of Community Involvement (SCI). The same is true for consultation on proposed material amendments to consented schemes.

Consideration

A key consideration should be the extent to which the proposed facility or workspace is fit for purpose, taking account of this and other Mayoral guidance referred to in Section 2.1.

Particular attention should be paid to the acceptability of cultural facilities in basements. Assumptions and findings in supporting documents (such as noise impact assessments) should not be taken at face value, and should be robustly assessed by case officers and where appropriate, colleagues in other departments such as Environmental Health officers.

The context in which the background survey is carried out is critical. Underestimating noise impacts from existing venues can lead to inadequate noise mitigation, which leaves the venue vulnerable to complaints from new residents.

Where an intended operator or provider is known, they should be fully involved in the design, specification and management arrangements of the proposed scheme. It may also be appropriate to name specific organisations in s106 agreements. Suitable arrangements will need to be made for the interim situation and, wherever possible, satisfactory provision should be made to ensure that the audience of an existing cultural facility is not lost during redevelopment work. Guidance on this is provided in Sections 5 and 6.

Where no intended operator or workspace provider is specified as part of the application, there is the need to pay particular attention to ensuring that there is sufficient flexibility in the proposed design, specification and proposed management arrangements of the proposed cultural facility or workspace, so as to maximise the prospect of finding an operator or provider.

4.6 Determination Stage

Boroughs should:

4.R. Ensure that proposed planning conditions and planning obligations that relate to cultural infrastructure or workspace are set out sufficiently in committee reports to make it easier for committee decisions to provide a clear basis for drafting detailed conditions (where not set out in the report) and a s106 agreement.
4.S. When drafting planning conditions and s106 agreements in detail, consider whether it is appropriate to require subsequent consultation with a specialist organisation before determining the acceptability of detailed aspects of the scheme.
4.T. Consult with those consultees identified in 4B above, as necessary, on proposed detailed wording of planning obligations.
4.U. For strategic developments, consult with the GLA Planning case officer over the level of detail required by the Mayor in relation to the proposed planning obligations.
4.V. Inform all the individuals and organisations that commented on an application or proposed planning conditions and/or planning obligations of the decision.

The wording of a condition or planning obligation can make clear that the applicant should consult with a named specialist organisation before submitting details for approval, or that the borough will consult with a named organisation before determining relevant approval of detail applications. For example, requiring the applicant to consult with the Theatres Trust or Music Venue Trust where relevant before submitting an operating brief for a proposed theatre or venue space.

It is also helpful to consider who is likely to be discharging approval of details conditions, as responsibility may be split between developer (or different developer partners) and contractors. If so, it may be helpful for topics to be split into different conditions.

When negotiating detailed wording of proposed s106 agreements, case officers should call on the advice of colleagues where necessary. They should also consult intended occupiers, operators and managers of the proposed facility and industry experts and statutory consultees (including the Theatres Trust and the Music Venue Trust) on proposed detailed wording.

Applications for strategic developments must normally be formally referred back to the Mayor of London for considerationReference:1.

In addition to the minimum information requirements, GLA officers may ask for sight of detailed Heads of Terms or an advanced draft of the proposed s106 agreement. Officers may need to go back to committee to seek approval for any conditions or s106 obligations that are substantially different to those in the resolution to grant permission.

4.7 Ammendment Stage

Boroughs should:
4.W. Consult relevant industry experts on an application to remove or vary a condition or approval details if this would help them determine their acceptability.
4.X. Consult with the same organisations that were consulted at the pre-application or application stage before determining an application for (i) a material variation to a permission or (ii) to remove or vary a planning obligation.

The case officer should consider whether to consult The Theatres Trust, Music Venue Trust or other industry experts where this would help them determine the acceptability of applications to remove or vary conditions or approve details reserved by condition and, if so, consult the specialist body or bodies as soon as possible. The

same is true for applications for Minor Material Amendments.

Planning obligations can be re-negotiated at any point, where the borough and developer wish to do so by way of a Deed of Variation.

Where there is no agreement to re-negotiate, and the planning obligation predates April 2010 or is over 5 years old, an application to the borough may be made to change the obligation where it 'no longer serves a useful purpose' (or would continue to serve a useful purpose in a modified way). If this results in a refusal, an appeal can then be made to the Secretary of State.

4.8 Implementation, monitoring and enforcement

Boroughs should:
4.Y. Borough planning, regeneration, environmental health, highways, licencing and Building Control officers should liaise effectively when considering complaints against the operation of cultural facilities or workspace.
4.Z. Boroughs should monitor and where necessary enforce s106 obligations to ensure that policy objectives are delivered.

Planning monitoring and enforcement

The timing of provision of on-site facilities/workspace or financial payments secured by planning obligations will be set out in the s106 agreement. The use of triggers is discussed further in Sections 5 and 6. CIL payment is made upon commencement of the scheme and may be phased, commensurate with the phased delivery of the development. To help ensure that noise mitigation secured through the process is fully implemented, a number of boroughs use conditions to require post completion verification reports.

The NPPF (Para. 59) stresses that effective enforcement is important o maintain public confidence in the planning system. It notes that enforcement action is discretionary, and boroughs should act proportionately in responding to suspected breaches of planning control.

Planning Practice Guidance makes clear that boroughs have responsibility for taking whatever enforcement action may be necessary, when it is expedient and in the public interest to do so, having regard to the development plan and other material considerations. Boroughs need to be alert to potential vexatious complaints from local residents against the operation of cultural facilities.

Planning Practice Guidance encourages local planning authorities to prepare local enforcement plans, which a number of boroughs have done. The review or preparation of enforcement plan or procedures provides an opportunity to set out how borough planning, regeneration, environmental health, highways, licensing and Building Control officers will work effectively when considering complaints against the operation of cultural facilities or workspace.

Planning obligations dispute resolution

S106 agreements will usually include a dispute resolution clause, which sets out how disagreements between parties to the agreement will be resolved. This usually includes the involvement of an independent expert.

Planning obligations enforcement

S106 agreements are registered as local land charges. This means that the land itself, rather than the person or organisation that develops the land, is bound by a planning obligation.

If a planning obligation is not complied with, it is enforceable against the person(s) that entered into the obligation (subject to walkaway clauses agreed in the s106 agreement) and any subsequent owner of the land or anyone with a legal interest (including leaseholders and mortgagees in possession).

Planning obligations are enforceable by the borough, either through the courts by application for an injunction or by carrying out any operations required by the planning obligation and recovering the cost from the person(s) against whom the obligation is enforceable. They can also be enforced using usual contractual remedies.

4.9 Financial Contributions and Comissioning

Financial contributions

Financial contributions may be secured to fund the provision of cultural infrastructure and/or workspace on or off site (including design and project management costs). This could include to fund fit out costs or to fund permanent or meanwhile facilities in the local area.

Pooling contributions

Where insufficient s106 financial contributions are available from one development to deliver a project, it is possible to pool contributions from other schemes to fund an infrastructure project.

Prioritising and commissioning schemes

Boroughs will have in place internal procedures for evaluating and prioritising the use of CIL and s106 financial contributions based on a range of criteria. These include government guidance, the terms of the s106 agreement and relevant strategies and priorities. They will also have programme and project management procedures in place to manage monies and deliver projects.In most cases the borough will use CIL or s106 monies to deliver projects directly through its various functions (eg highways authority, housing authority, education authority and leisure provider). In other cases, they will provide funding to other public agencies such as TfL to deliver projects.

Snapshot case study: Infrastructure delivery (London Borough of Tower Hamlets) (June 2019)
The London Borough of Tower Hamlets has an Infrastructure Delivery Steering Group (IDSG) to oversee the prioritisation and delivery of projects. All those developing potential projects to use s106 monies must prepare Project Initiation Document (PID) that sets out what, how, when and what if questions.

5. Cultural Facilities

5.1 Introduction

This section provides a checklist of topics to examine when considering potential planning conditions or negotiating s106 agreements in relation to cultural facilities.

5.2 Clearly define cultural use(s)

5.A. Clearly define the cultural facility (including approved use or uses and hours of use) and the amount, location and volume of space to be provided within the scheme.

Planning permissions will define what use classes are approved in what spaces. These approved details will capture the spatial qualities of the space (including layout, sub-division and floor to ceiling heights) and may also capture requirements relating to floor load allowances, surface and sound attenuation features. It is important to double check what spaces are included in Gross Internal Areas (GIA) measurements and account for any spaces that fall outside of this definition.

Boroughs should be mindful of the commercial and operational needs of cultural facilities and avoid onerous restrictions on activities, including opening hours and the sale of alcohol. They should also take into account servicing arrangements, including the need to take away equipment after an event – which could be late into the evening.

5.3 Name an Operator

5.B. Identify the intended operator but allow for this to change.

Cultural facilities are not standard building types and need to be bespoke to meet the particular requirements of the relevant cultural organisation that is commissioning them or who is expected to operate them. As highlighted in Section 4, statutory consultees, relevant industry experts and intended operators should be consulted early on at the pre-application stage and kept involved so that they can help scope out what is needed. Where there is an intended operator, s106 agreements should specify them, such as operator x, or such other operator that may be approved in writing by the borough.Where the space is not being designed with a particular operator in mind, the s106 agreement will need to set out a clear mechanism for choosing an operator and any role they would have in the design and fit out of the space. See Section 5.7 below.

Case Study Old Vinyl Factory (LB Hillingdon) (April 2013) 5987/APP/2012/1838)

Outline planning permission was granted for a cultural space within the former pressing plant, which was intended to house an EMI Museum, but with no identified operator. The s106 agreement requires the implementation of an approved Community Facility Management Plan, setting out how and by whom the community facility will be managed and run during the lifetime of the development.

This Plan is required to set out the following:

- details of the initial Management Entity and mechanisms for selecting later Management Entities where necessary
- how charges will be set
- how rents will be set
- how the community facilities will be used
- how the community facilities will be maintained
- how the community facilities will be funded

- how the Council will be consulted regarding any proposals affecting the community facilities or their use
- how the operation of the plan shall be reviewed and submitted to the Council for approval from time to time at no less intervals than every five years and additionally in the event of the community facilities becoming vacant.

Please also see the Streatham Space case study.

5.4 Clearly define rent levels and service charges

5.C. Where planning policy requires it, secure appropriate rent levels that are below the prevailing market rate and set out clear requirements for rent reviews and service charges.

Rent levels:

The financial robustness of operators of cultural facilities will vary significantly, from commercially successful art galleries and venues that might trade in high value commodities or have substantial endowments to community theatres that might be reliant on grant funding or volunteers.

The appropriate rent level needs to take account of costs that fall on the intended operator and the length of lease. Generally, the larger the financial burden on the intended operator, the lower the level of rent payable to the developer needs to be. Ground rent levels also need to be defined. Some cultural facilities, such as theatres, may take a number of years to establish as they need to build up an audience base.

A number of s106 agreements make provision for ‘rent free periods’ and this should as a minimum be for the first 12 months. S106 obligations need to be clear about hen and how rent levels and ground rent levels are to be reviewed. In doing so, agreements should provide a period of stability for at least for the first 3 years and ideally for the first 5 years and set out criteria for review following this period. That way, the operator will know what to expect and be better able to plan for the future.

Rent reviews should be linked to the Retail Price Index (RPI), or another agreed relevant index. Service charges:It is also important that planning obligations make clear whether service charges are included and if so, how these are to be calculated and charged. It is vital that service charge levels are discussed and agreed in parallel with rent levels as unreasonably high service charges can undermine the continued operation of facilities. Overall scheme services should be itemised and apportioned on a reasonable and equitable basis, with only services to be used by the operator (or their customers) being charged to them.

Snapshot Case Study: The Other Palace Theatre, No 12 Palace Street, Westminster City Council December 2002.

Minimum 99-year lease at a peppercorn rent, plus the ability of the theatre operator to also operate the bar and retain bar profits.

5.5 Establish the Terms and Length of Lease

5.D. Secure the maximum reasonable length of lease for an operator and agree the terms of a lease.

5.E. Require the use of reasonable endeavours to ensure that a lease with an intended operator is entered into by an appropriate date.

Length of tenure:

The length of lease to an operator needs to be long enough to enable the cultural organisation to establish itself and deliver the required planning policy objectives. It also needs to take account of any fit-out costs that fall on the operator (the larger the financial burden, the longer the lease needed) and the reasonable expectations of developers and their funders. Longer leases may also help businesses secure loans and/or public funding. Many cultural organisations are charities and will need to apply for grants from public funders, who often require a minimum length of lease. Taking all this into account, the lease period should be the maximum reasonable and, following discussion with industry experts, should generally be no less than 25 years.

Terms of the lease and commencement date:

It is important to ensure that the terms of the lease with a future operator are agreed. This can be secured by Heads of Terms or a draft lease being appended to a s106 agreement, or by requiring that the lease must be approved in writing by the borough. To enable operators to raise necessary funding and plan their business operations, it is important that planning obligations require that a lease is entered in to before an appropriate date.

This should be linked to a delivery milestone, for example the implementation of a building or phase that is to include the cultural facility. Internal Repairing Insuring leases ensure that tenants have only liability for maintenance, decorations, repairs and insurance for the internal parts of the property they will occupy and are less costly for operators.

5.6 Agree Details

5.F. Secure the subsequent approval of details, marketing arrangements and ongoing management, where appropriate.

Some s106 agreements defer agreeing details of provision or ongoing management by requiring the subsequent approval of one or more documents by the borough. These often cover marketing of the space (where there is no named operator), a detailed specification and/ or detailed management of the space or particular types of events. It should be noted that documents approved outside of the s106 agreement itself may not be able to be enforced by an injunction (see para. 4.8 above).

5.7 Agree the required level of fit-out

5.G. Be clear about (i) the level of fit out, (ii) who is going to do and pay for it and (iii) who is going to oversee the works.

(i) Level of fit out:
Most planning obligations for new facilities require the provision of a ‘shell and core’ premises. Indeed, it may not be appropriate to build-out beyond this stage where a lease has not been entered into with an operator, as to do so is likely to lead to abortive works.

Planning obligations should include clear definitions of ‘shell and core’ or other level of fit-out required and avoid undefined terms such as ‘Category A’ or ‘Category B’. The definition of ‘shell and core’ should ensure that the cultural facility is suitable for all approved uses and complies with all relevant Building Regulations.

(ii) Who is going to do and pay for the fitting out?
The costs of fitting out a new facility can be a major obstacle to a cultural organisation signing-up to operate it.

Where this is the case, the developer will normally be expected to cover these costs and s106 obligations should be used to either (i) put in place mechanisms for agreeing a fit-out specification with an operator later or (ii) setting out a budget for either the developer or an operator to fit-out the premises later, when an operator has signed-up to a lease.

(iii) Who is going to oversee fit out works?

The detailed design and fit-out of cultural facilities, including access and servicing and mechanical and electrical services, require specialist skills. Boroughs should
ensure that the intended operator or a suitable cultural organisation acts as the client and oversees such works and that the design team has the requisite skills. Failing this, boroughs should consider securing funding for a suitably qualified person to monitor the developer’s fit out works.

Snapshot Case Study: 5-9 Great Newport Street (Westminster City Council) (April 2016)

Theatre to be provided to shell and core finish, with a Fit-Out Cost Contribution of £600,000 to be held in an escrow account and paid to the operator upon it signing a contract with fit-out contractors.

5.8 Continuitiy of use

5.H. Secure the continued operation of a cultural operation where that operation is to be re-provided as part of an approved scheme, including, where appropriate, the provision of a satisfactory temporary home.

It is quite common for existing cultural facilities to be re-provided, either on site or nearby, as part of a proposed refurbishment or redevelopment. It is important that boroughs consider the need to secure the continued operation of the particular cultural operation in order to sustain their positive social and economic impacts and business networks before the existing cultural facility is demolished or otherwise made unusable.

If a facility has to move to a temporary home during refurbishment or redevelopment (which can take several years), it is also important that boroughs secure a satisfactory temporary home for the organisation through either temporary provision or payment to the borough and that the same principles as apply to the final provision apply (such as amount of space, standard of fit-out, space and access) unless otherwise agreed by the borough.

5.9 Agree appropriate triggers for provision

5.I. Agree appropriate triggers for the provision of cultural facilities.

S106 agreements need to include an appropriate time trigger for when a cultural facility is to be provided. This will need to take account of the need for the borough to approve any outstanding details (and appropriate triggers

will also need to be agreed for the provision of such details), the need for the developer to receive income from the sale/rental of some elements of the scheme to help its cash flow and the need to incentivise the developer to provide the space.

The appropriate trigger will vary from scheme to scheme. Some agreements require provision before the occupation of any part of the approved development. Others require provision before the occupation of a certain number/ percentage of the private residential units in the development as a whole, or in the phase that the cultural facility is located.

Importantly, triggers should be worded both positively and negatively to enable the borough to enforce positive action and, if necessary, obtain an injunction against action.

5.10 Allow flexibility

5.J. Strike a balance when designing new cultural spaces between taking account of specific needs of an intended operator and providing flexible space that is fit for purpose and capable of being successfully operated by different organisations.

5.K. Future proof the s106 agreement by making provision for the following situations, where appropriate: (i) a named operator is no longer able or willing to take on that role, (ii) an operator cannot be found, (iii) a lease is terminated, or (iv) the cultural facility remains unlet on agreed terms.

Cultural organisations are susceptible to the whims of the market and changes in levels of public subsidy. A balance needs to be struck when designing new cultural spaces between taking account of specific needs of an intended operator and providing flexible space that is fit for purpose and capable of being successfully operated by different organisations.

Where possible, s106 agreements need to anticipate issues and set out mechanisms for dealing with changing circumstances. This includes the following circumstances:

(i) A named operator is no longer able to take on that role:

Defining the intended operator is discussed in 5.3 above. A planning obligation should include a positive requirement on the owner to use ‘all reasonable endeavours’ (or similar) to appoint another operator. This should include establishing parameters for a re-tender process to find an alternative operator and involvement of the relevant industry body, for example in regard to proposals involving theatres this would be the Theatres Trust.

(ii) An operator cannot be found:
This may be an indication that either the proposed space or the approved terms (or both) are unacceptable and need changing. It will be more challenging if the space is at fault, although it may be possible to make adjustments to the space that will make it more attractive. This highlights the importance of consulting with potential providers during the application stage (see Section 4).

S106 obligations should require a review of agreed terms (including any approved management plan) and for new terms to be approved by the borough.

(iii) A lease is terminated:
Planning obligations should require the owner to use ‘all reasonable endeavours’ to enter into a similar lease

terms with another operator.

(iv) Cultural facility remains unlet on agreed terms:
Planning obligations should require the developer to review the agreed terms with the borough if the facility has remained unlet for an agreed maximum period, adjust these and try again, and to continue to do this until the facility is let.

5.11 Establish a framework for meanwhile use(s)

5.L. Where appropriate, set out appropriate parameters for meanwhile use(s), including length of temporary permission, activities, hours of use, day-to-day management and event management.

Meanwhile use strategies will often be brought forward by land owners, to make the most of land or buildings pending redevelopment. For strategic development, this may include enabling meanwhile uses on parts of a site, while an earlier phase is being built out. Temporary planning permissions and conditions and/or planning obligations can be used to manage these uses.

Parameters for any meanwhile uses, particularly their longevity and associated obligations, should be established as early as possible in the application process and agreed by all parties.

5.12 Secure appropriate noise mitigation measures

5.M. Use planning conditions or planning obligations to (i) reduce noise breakout from new cultural facilities, (ii) safeguard amenity of new residents close to an existing/proposed facility and/or (iii) safeguard the internal noise environment of an existing or proposed cultural facility.

Reducing noise breakout from new cultural facilities:

Planning Practice Guidance encourages the thoughtful location, layout and design of proposed facilities as the first way of reducing noise breakout. Such measures should be explored fully and revisions to schemes made where necessary before considering the need for mitigation measures.

When considering the need for conditions, boroughs should start with securing details which reduce noise breakout from proposed facilities to acceptable levels and provide the maximum possible flexibility for operators. These include ensuring a certain minimum specification of built fabric, doors or glazing and, the enclosure of external areas. Only when these have been fully explored should consideration be given to the need for conditions to prevent or restrict the use of amplified music or prohibit the use of open areas at certain times.

Safeguarding amenity of new residents close to an existing/proposed facility:

The thoughtful layout and design of proposed cultural facilities and homes should be the first way to ensure an acceptable noise environment for new residents. This includes the location and design of vehicular access and servicing facilities (which could be used late at night) and venue exits, the layout of flats and location of bedrooms, façade, internal wall and slab design and the location and design of proposed private amenity space. Planning conditions should generally only be used where design and other mitigation options have been

exhausted and there is a residual need to ensure an acceptable internal noise environment for new homes near to existing pubs, restaurants, nightclubs and music venues. Such conditions typically ensure the provision of secondary glazing or particular slab/flooring treatment as part of the design of new homes.

It is important to ensure that required mitigation measures are implemented and boroughs should consider requiring verification from the developer before approved housing is first occupied.

The removal or adaptation of mitigation measures over time, once they have been implemented could expose residents to greater noise levels and increase the risk of nuisance claims being made against an existing facility. Given this, boroughs should consider using planning obligations to ensure that the installed mitigation is maintained.

Based on the principle that mitigating noise at source is best, and may be cheaper than off-site mitigation, boroughs should consider encouraging the use of planning obligations to secure financial contributions to carry out measures or install particular equipment at the existing facility.

Safeguarding amenity of cultural facility:

Existing or proposed nearby noise generating uses can cause disturbance to proposed quieter, reflective cultural spaces. Boroughs should consider the need for conditions to make the proposed cultural facility fit-for-purpose by using, where necessary, conditions to require the provision of appropriate mitigation measures.

5.13 Cultural infrastructure case studies

Case Study: Old Vinyl Factory (London Borough of Hillingdon) (April 2013) (REF:5987/APP/2012/1838)

Outline planning permission was granted for a cultural space within the former pressing plant, which was intended to house an EMI Museum, but with no identified operator. The s106 agreement requires the implementation of an approved Community Facility Management Plan, setting out how and by whom the community facility will be managed and run during the lifetime of the development. This Plan is required to set out the following:

- Details of the initial Management Entity and mechanisms for selecting later Management Entities where necessary.
- How charges will be set.
- How rents will be set.
- How the community facilities will be used.
- How the community facilities will be maintained.
- How the community facilities will be funded.
- How the Council will be consulted regarding any proposals affecting the community facilities or their use.
- How the operation of the plan shall be reviewed and submitted to the Council for approval from time to time at no less intervals than every five years and additionally in the event of the community facilities becoming vacant.

Please also see the Streatham Space case study on p44.

Case Study: The Joiners Arms (London Borough of Tower Hamlets) (REF:PA/20/00034/A2)

In response to interest in redeveloping the former pub, the Friends of the Joiners Arms (FJA) successfully got the club recognised as an Asset of Community Value due to its significance to the East London LGBTQ+ community. This added weight to a campaign to ensure that a New Joiners Arms was included as part of a mixed-use development. In response, the Council convened discussions with the prospective developer, the FJA and the GLA Culture at Risk officer. Significantly, it also undertook an Equality Assessment to justify requiring first refusal for a suitable LGBTQ+ operator. Measures secured by planning conditions and s106 obligations include:

- Right of First Refusal and procurement process to agree a suitable LGBTQ+ operator to run the club.
- Minimum 25-year lease period (18-month rent free).
- £138,000 contribution to fitting out beyond 'shell and core'.
- Noise management measures (including the Council's approval of a Noise Management Plan, glazing/ventilation details, a Design, Construction and Management Scheme and an acoustic report) and use of a sound limiting device to restrict amplified noise to approved levels.
- Extended opening hours for the first year of operation.

Full s106 Agreement and decision notice are available on the LBTH website.

Case Study: Waterman's Art Centre & Brentford Policy Station Site (London Borough of Hounslow) (April 2021) (REF:P/2017/3371 + P /2017/3372)

Concurrent planning permissions for the redevelopment of the existing Waterman's Arts Centre and adjoining riverside site for housing and the provision of a replacement arts centre and housing on a nearby town centre site. The approved new facility is 25 per cent larger than the existing and has been designed in consultation with Hounslow Arts Centre. Proposed common s106 Agreement secures the following:

- Replacement arts centre to be provided to shell and core before the existing is demolished.
- Financial contribution towards fit-out.
- Proposed planning conditions to secure approval of the following details:
    - schedule of fit-out works.
    - community use agreement.
    - soundproofing measures
    - travel plan.

Case Study 40-42 Ponton Road, SW8 (London Borough of Wandsworth) (REF:2014/0614)

Redevelopment of Christie's Auctioneers warehouse to provide 510 flats, 1,350sqm of flexible commercial space and 1,120sqm community use (D1/D2) on the ground floor of the eastern building. The site is within the Vauxhall Nine Elms Battersea Opportunity Area.

The borough's then emerging Planning Obligations SPD was one of the first to require contributions towards arts and culture and was instrumental to establishing the principle of a dedicated space. Pre-application discussions helped to shape the scheme and the application was supported by a Cultural Strategy and Appointment Process for the community space. No end-user was identified at the time permission was granted. Planning conditions and s106 obligations require:

- Submission and approval of a Cultural Strategy Action Plan (to be based on the applicant's Cultural Strategy).
- Cultural Strategy Action Plan to include details of the timescale and mechanisms for the delivery, maintenance and management of projects.
- Lease to a Cultural Occupier (a not-for-profit organisation) for a minimum of 5 years, with right to extend beyond this period
- 50 per cent market rent for the initial 5-year period.
- Noise insulation details to be approved and implemented.

The borough implemented a 'call out' process led by BOP Consulting and took on a 99-year lease from the developer, enabling it to provide a 25-year sub lease to Matt's Gallery – to help improve affordability and attract further funding. The space is to be fitted out as gallery space, two artists' studios a shop and events space. Matt's Gallery has entered into a Social Value Agreement (SVA) with the borough.

A Deed of Variation to the s106 agreement allowed for an approved mezzanine space not to be installed and, if not, for the construction costs to fund other cultural activities on the site. The borough sought to agree additional details as part of s106 agreements (including length of lease, SVA, details of service charges, 24-hour access, parking provision, and level of fit-out) and incorporated some of these issues in its revised Planning Obligations SPD, adopted in 2020.

Case Study: Streatham Space Project, 142-170 Streatham Hill and Wentworth House, SW16 (REF:10/00507/ FUL & 14/06765/ VOC)

Redevelopment of 'The Megabowl' bowling alley, Caesars' nightclub and shops to provide 243 flats, retail space and a 500sqm theatre and performance space, in a separate building to minimise potential disturbance.

The inclusion of the proposed theatre space helped meet policy requirements for a mixed-use development and arts and cultural uses in Streatham Town Centre. A revised scheme was granted permission in December 2015. The developer employed arts consultants and carried out public consultation to help shape the theatre space, which resulted in its height being increased and its commercial focus being revised. The application was supported by an Independent Viability Assessment to demonstrate that the proposed type of theatre space was viable. This was a speculative scheme with no operator identified at the time permission was granted. Planning conditions and s106 obligations require:

- Approval of layout, fit-out details and a BREEAM Post Construction Review certificate.

- Approval of a Community Use Management Plan setting out non-theatre and extended ‘community use’ of the space.
- No amplified sound, speech or music to be audible outside of the space.
- Fit-out costs of no less than £408,000 t o include specific items.
- Lease to an operator at a peppercorn rent for 25 years.
- Commitment to liaise with the Theatres Trust and two named arts consultancies to inform an Operating.

Brief, for the approval of the borough;

- Commitment to continue to liaise with the above organisations during the tender process to help select an operator, who must demonstrate how they intend to comply with the Operating Brief.
- Details to be approved by borough prior to commencement of above ground works and D2 space to be fitted out before more than 75 per cent of the approved private flats are occupied.

The Streatham Space Project is now a successful theatre, music and comedy venue run by Streatham-based arts professionals.

6. Workspace

6.1 Introduction

This section provides a checklist of topics to examine when considering potential planning conditions or negotiating s106 agreements in relation to affordable workspace.

6.2 Clearly define business use(s) and affordable workspace

Business use(s):

Planning permissions will define what use classes are approved in what spaces. These approved details will capture the spatial qualities of the space (including layout, subdivision and floor to ceiling heights) and may also capture particular requirements with respect to floor load allowances, surface and sound attenuation features. It is important to double check what spaces are included in Gross Internal Areas (GIA) measurements and account for any spaces that fall outside of this definition.

Conditions are often used to manage hours of use and other operational aspects of the development (such as servicing arrangements). Small businesses and start-ups often operate long and unconventional hours. Business uses falling into Use Class E(g) (i) to (iii) are by definition compatible with housing and boroughs should generally not seek to limit hours of use of such workspace.

Affordable workspace:

Where affordable space is to be secured, a s106 agreement will typically define ‘affordable workspace’ in terms of one or more of the following:

- eligibility certain categories and/ or size of business SMEs, sometimes prioritising particular businesses or businesses based in the borough or a particular area
- specification - capturing specific requirements on floor/ wall/ceiling finishes, services and arrangements access
- rent, ground rent and service charge levels (see below); and/or Let in compliance with an approved Affordable Workspace Strategy, Statement or Plan (see 6.6 below).

Definitions should define the use(s) that affordable space can be used for and the amount of floorspace (sqm). This could be with reference to a percentage of the overall business floorspace. Some planning obligations identify the affordable workspace on a plan appended to the s106 agreement and others require detail of the proposed area to be submitted and approved later on.

The amount and configuration of affordable workspace needs to be discussed with any named workspace provider early on in the process, to ensure that it is appropriate for the site and meets the requirements of the intended occupier. To be viable, many providers will not want to take on the management of workspace below a certain size. This will vary between different providers depending on their particular business model, uses, sector and tenants.

Snapshot case study: London Legacy Development Corporation Standard Agreement (June 2019)

Affordable Workspace means not less than *XX* square metres GIA of commercial floorspace in respect of which rent is charged at not more than the Affordable Workspace Rent (save in respect of the provisions of paragraph *X.X* of this Schedule) and which is made available to Occupiers on leases which must comply with the following terms:

a. The total of the rent shall not exceed the Affordable Rent.

b. There shall be no upward rent review for the first three years from first Occupation.

6.3 Name a preferred workspace provider

6.B. Identify the preferred workspace provider but allow for this to change.

S106 obligations should secure a suitable workspace provider, either specifically named or to be approved at a later date. Naming a preferred provider may help them to raise necessary funding. However, it is important to retain flexibility by keeping open the possibility of a different provider. This can be done by defining the provider as ‘Workshop Provider X, or such other Provider that may be approved in writing by the Council,’ Alternatively, priorities can be established by defining the provider as ‘in order of priority (1) Workspace provider X; (2) Type of provider Y that has been approved in writing by the Council; or (3) Type of provider Z that has been approved in writing by the Council.’

A number of boroughs publish a list of preferred workspace providers to help developers to partner with a recognised company with a proven track record as they design and plan new schemes and these should be referred to where available. The list also helps businesses find appropriate space.

6.4 Clearly define rent levels and service charges

6.C. Secure appropriate rent levels and set out clear requirements for rent reviews and service charges.
6.D. Make clear what rent and service levels future occupiers are to pay.

Rent levels:

Affordable workspace is, by definition, space that is let at rates that are below market rent. The appropriate rent level for a particular scheme will vary across London (and across individual boroughs) to reflect prevailing land values and rents, the operation of local economies and the requirements of particular sectors. Planning obligations tend to benchmark rents as a percentage of prevailing market rents (in a defined area) or specify rent in terms of pounds per square foot. The latter provides greater certainty for workspace providers and tenants. Ground rent levels also need to be defined.

The appropriate rent level needs to take account of the costs that fall on the workspace provider in terms of fit-out and operational costs etc. Generally, the larger the financial burden on the workspace provider, the lower the level of rent payable to the developer needs to be.

The VAT status of the workspace provider is also a consideration. Many organisations that provide workspace for artists or starts up will have a large number of tenants that trade below the VAT income threshold (currently £85,000) and are therefore not VAT registered themselves. This is because non-VAT registered tenants would not be able to recover the 20 per cent VAT that would need to be included within their rent.

Given that in most cases a workshop provider will have a head lease and manage the workspace, it is important to be clear about the rent and service levels that the occupier will be paying, as opposed to the provider.

The level of subsidy should be the maximum reasonable and, generally, be in the order of 50 per cent of prevailing rent in a defined area for non-VAT registered businesses and 30 per cent for VAT registered businesses.

S106 obligations need to be clear about when and how rent and ground rent levels are to be reviewed. In doing so, agreements should provide a period of stability for at least the first three years and ideally for the first five years and set out criteria for review following this period. That way, the workspace provider and occupiers will know what to expect and be better able to plan for the future. Rent reviews should maintain affordability by ensuring that any increases are linked to the Retail Price Index (RPI), or another agreed relevant index.

Service charges:

It is also important that planning obligations make clear whether service charges are included and if so, how these are to be calculated and charged. It is vital that service charge levels are discussed and agreed in parallel with rent levels as unreasonably high service charges can undermine the delivery of affordable space for occupiers. Overall scheme services should be itemised and apportioned on a reasonable and equitable basis, with only services to be used by occupiers of affordable workspace being charged to them. Service charges may need to be capped at an agreed upper level to ensure affordability.

Snapshot case study: Finsbury Tower – 103-105 Bunhill Row (London Borough of Islington) (August 2017) (P2016/3939/ FUL)

Peppercorn rent for the entirety of the term of the lease with no rent review, plus service charges for affordable workspace occupiers to be capped at 50 per cent of estate service charge costs (with specific exclusions).

6.5 Establish the terms and length of lease

6.E. Secure the maximum reasonable length of lease for a workspace provider and agree the terms of a lease.

6.F. Ensure that a lease with an approved provider is entered into by an appropriate date.

Length of tenure:

The length of lease to a provider needs to be long enough to assist SME formation and growth and deliver the positive social, cultural or economic impacts required by London Plan 2021 Policy E3 and local policies/guidance. It also needs to take account of the costs that fall on the workspace provider in terms of operational and any fit-out costs etc and the reasonable expectations of developers and their funders. The larger the financial burden on the workspace provider, the longer the lease needed. Longer leases may also help businesses secure loans or public funding.

Taking all this in to account, the lease period should be the maximum reasonable. The London Plan 2021 (6.3.2) states that affordable workspace can be provided in perpetuity or for a period of at least 15 years, although workspace providers have a preference for at least 25 years.

Terms of the lease and commencement date:

In addition to securing rent levels, rent review periods, service charge arrangements and the minimum length of tenure to be offered to providers, it is important to ensure that the terms of the lease with a future provider is agreed. This can be secured by Heads of Terms or a draft lease being appended to a s106 agreement, or by requiring that the lease must be approved in writing by the borough.

Internal Repairing Insuring leases ensure that tenants have only liability for maintenance, decorations, repairs and insurance for the internal parts of the property they will occupy and are less costly for workspace providers.

To enable providers to raise necessary funding and plan their business operations, it is important that planning obligations require that a lease is entered in to before an appropriate date. This should be linked to a delivery milestone, eg the implementation of a building or phase that is to include workspace.

Snapshot case study: Ruby Triangle (London Borough of Southwark) (June 2019) (18/ AP/0897)

The s106 agreement for a mixed-use development specifies Heads of Terms for an Affordable Workspace Lease that includes the following:

- Demise – 11 affordable workspace units of approx. 541sqm total (10 units in Phase 2 and 1 unit in Phase 3).
- Lease – internal repairing lease for a term of at least 30 years.
- Lease - within the Security of Tenure and Compensation Provisions of the Landlord & Tenant Act 1954.
- Use – Specific uses classes.
- Rent – £8 per square foot (exclusive of service charges, insurance and VAT).
- Rent review – five yearly, RPI linked.
- Rent free period – 12 months.
- Alienation – tenant’s rights.

- Service charges – adherence to RICS Code of Practice and subject to arbitration – maximum cap will apply of £0.50 per square foot.
- Insurance – lessee and landlord responsibilities.
- Utilities – premises to be served by electricity, water, drainage and gas/CHP heating.
- Compliance – details of legislation.
- Rights granted – access to loading facilities, refuse areas, emergency escape and CHP (to be separately metered and charged).
- Alterations – no structural alterations allowed.
- Reinstatement – how the premises are to be left when leaving.
- Break clause – lessee entitled to operate break clause after five, 10 and 20 years.
- Legal costs – each party to bear its own costs.

6.6 Agree details

6.G. Secure the subsequent approval of details, marketing arrangements and ongoing management and monitoring, where appropriate.

Some s106 agreements defer agreeing details of provision and/or ongoing management by requiring the subsequent approval of one or more documents by the borough. This will be particularly important where no specific workspace provider has been agreed at the planning permission stage. The type of documents typically required to be submitted and approved before any workspace is occupied include one or more of the following:

- Workspace Statement or Strategy – setting out details of proposed provision and ongoing management and monitoring arrangements.
- Workspace Marketing Strategy – setting out what steps are to be taken to market and let the space; and/or
- Workspace Management Plan – setting out matters such as hours of use, servicing arrangements and access to cycle parking and similar.

It should be noted that documents approved outside of the s106 agreement itself may not be able to be enforced by an injunction (see paragraph 4.8 above).

6.7 Agree the required level of fit out

The need to carry out and pay for the fit out of workspace can be a real barrier to SME businesses being able to occupy space. In most cases, they will want a ‘turnkey’ arrangement whereby they rent space that is fitted out to a standard that suits them and is ready to use. S106 agreements need to be clear about what (i) level of fit out is to be provided (ii) who is going to do the fitting out and (iii) who is going to pay for it. Decisions on these issues will need to take account of all other obligations on the various parties.

(i) Level of fit out:

Planning obligations should include clear definitions of ‘shell and core’ or other level of fit-out required and avoid undefined terms such as ‘Category A’ or ‘Category B’. The definition of ‘shell and core’ should ensure that the workspace is suitable for all approved uses and complies with all relevant Building Regulations (including ventilation).

(ii) Who is going to do the fitting out?

The obligation could fall on the developer or the workspace provider. The benefits of the developer doing it are that works can be done as part of the main works package. This could provide cost savings and ensure works happen before people move in to flats above, avoiding disturbance from further works. The drawbacks are that, even if specified in consultation with a workspace provider, this may result in abortive works/costs.

If the workspace provider is to be responsible, planning obligations need to ensure that they are bound to deliver space to the same standards as would be required by the developer.

(iii) Who is going to pay for it?

This can be dealt with in different ways. Some s106 agreements require the developer to fund the works. In other cases, boroughs have committed funding to help keep space affordable.

6.8 Agree appropriate triggers for provision

S106 agreements need to include an appropriate time trigger for when affordable workspace is to be provided. This will need to take account of the need for the borough to approve any outstanding details (see paragraph 6.6. above), the need for them to receive income from the sale/rental of some elements of the scheme to help its cash flow and the need to incentivise the developer to provide the space.

The appropriate trigger will vary from scheme to scheme. Some agreements require provision before the occupation of any part of the approved development. Others require provision before the occupation of a certain number/ percentage of the private residential units in the development as a whole, or in the phase that the affordable workspace is located. Sometimes the trigger relates to the occupation of the business space of which the affordable workspace forms a part. Importantly, triggers should be worded both positively and negatively to enable the borough to enforce positive action and, if necessary, obtain an injunction against action.

6.9 Agree appropriate monitoring arrangements

6.J. Agree appropriate arrangements for monitoring the success of the scheme in meeting policy objectives and action to be taken if monitoring reveals that requirements are not being met.

It is important that boroughs monitor compliance with planning obligations and keep under review the success of the scheme in meeting policy objectives. The Institute for Public Policy Research5 has identified an ‘impact matrix’ to help workspace providers consistently measure the same outcomes, and capture their impact as individual spaces and as a sector to gather evidence to support the case for public as well as private investment.

6.10 Allow flexibility

6.K. Future proof the s106 agreement by making provision for the following, where appropriate: (i) a preferred workspace provider is no longer able or willing to take on that role, (ii) a workspace provider cannot be found, (iii) a lease is terminated, or (iv) workspace remains unlet on agreed terms.

Where possible, s106 agreements need to anticipate issues and set out mechanisms for dealing with changing circumstances. This includes the following circumstances:

(i) A preferred workspace provider is no longer able to take on that role:

Defining a preferred provider is discussed in 6.3 above. A planning obligation should include a positive requirement on the owner to use 'all reasonable endeavours' (or similar) to appoint another provider.

(ii) A workspace provider cannot be found:

This may be an indication that either the proposed space or the approved terms (or both) are unacceptable and need changing. It will be more difficult if the size of the affordable space is at fault, but it may be possible to make adjustments to the space that will make it more attractive. This highlights the importance of consulting with potential providers during the application stage (see Section 4). Planning obligations should require a review of agreed terms (including any approved Affordable Workspace Plan/ Strategy) and for new terms to be approved by the borough.

(iii) A lease is terminated:

Planning obligations should require the owner to use 'all reasonable endeavours' (or similar) to enter into a similar lease terms with another provider.

(iv) Workspace remains unlet on agreed terms:

Planning obligations should require the workspace provider to review the agreed terms with the borough if the workspace has remained unlet for an agreed maximum period, adjust these and try again, and to continue to do this until the space is let.

6.11 Relocation of displaced workspace

6.L. Consider the potential for the relocation of existing long-term affordable workspace where this is to be displaced by the approved scheme.

Where development proposals would displace occupiers of existing long- term affordable workspace, boroughs and developers should consider the potential to re-provide space as part of the development, or nearby, and what assistance, if any, could be given to occupiers to find suitable alternative premises or have a right to return.

6.12 Establish a framework for meanwhile use(s)

6.M. Where appropriate, set out appropriate parameters for meanwhile use(s), including length of temporary permission, activities, hours of use, day-to-day management and event management.

Meanwhile use strategiesReference:2 will often be brought forward by land owners, to make the most of land or buildings pending redevelopment. For strategic development, this may include enabling meanwhile uses on parts of a site, while an earlier phase is being built out. Temporary planning permissions and conditions can be used to manage these uses. Parameters for any meanwhile uses, particularly their longevity and associated obligations, should be established as early as possible in the application process and agreed by all parties.

6.13 Establish clear principles for combined business and residential uses

6.N. Set out criteria for any proposed residential element of live-work units or ‘tethered housing’, including (i) eligibility (ii) tenure and (iii) occupancy.

Live-work accommodation emerged in the 1990s as an innovative, pragmatic planning policy to encourage private investment into run-down buildings by allowing integrated living and working accommodation within a single self-contained unit. A similar concept of ‘tethered housing’ has emerged in recent years. In this model, affordable housing and affordable work elements do not necessarily form part of a self-contained unit, but can include communally used workspaces and separate self-contained homes.

6.14 Workspace case studies

Case Study: 243 Ealing Road, W5 (London Borough of Brent) (REF:09/2116)

Redevelopment of a former B&Q store for mixed-use development comprising 440 new homes and approx. 1,400sqm of flexible community and commercial space, including approx.1,000sqm of affordable workspace.

This has a complicated planning history, with the most recent s106 agreement dated June 2015 and a Deed of Variation to that agreement dated May 2018. The s106 agreement secured the affordable workspace to be rented at no more than 50 per cent of market rate in perpetuity, but included general restrictions which meant that prospective providers were unable to raise the private finance necessary to acquire and fit-out the space. In response, the Artist Studio Company (ASC) worked with the Council and its bank (National Westminster) and applied to modify the affordable workspace provisions to introduce mortgagee exclusion clauses and step-in rights and safeguards so the lender had sufficient comfort to provide finance, and the borough had confidence that the space would remain affordable over the lifetime of the development. ASC were a signatory to the Deed of Variation and were then able to acquire a 125-year leasehold on the workspace and finance for fit-out.

The borough and ASC, a charitable operator with charitable aims and objectives, worked together to develop an Affordable Workspace Plan (required by the Deed of Variation) which secured the following:

- bespoke studios at affordable, inclusive rents, with priority for Brent residents
- studio rent-free for a two-year period to a young Brent resident, ongoing for the lifetime of the building
- open-plan bench spaces at very low rent, designed for development and collaboration between small creative start-ups
- training and mentoring for tenants, with financial support via business growth loans
- work placement and training opportunities for local people
- collaboration with Brent Regeneration and Employment Skills and Enterprise teams.

Facilitating access to the arts for young people is at the heart of the borough’s Culture programme, and the borough has connected ASC to local organisations, including the nearby Alperton Community School.

Case Study: Former North Westminster Community School site, North Wharf Road, W2 (Westminster City Council) (REF:10/10215/COFUL, 12/11911/FULL , 14/09037/FULL , 16/03602/ FULL & 18/08214/FULL)

Redevelopment of the former school to provide 150 flats, approx. 640sqm affordable business space at ground and first level, 590sqm social and community space, shops and restaurants. The site is within the Paddington Opportunity Area and North Westminster Economic Area.

The borough prepared a Planning Brief SPD for the site in 2010, which required social and community space and affordable business space for creative industries to meet the borough's planning policies and Economic Development Strategy and to mitigate the loss of the school.

This has a complicated planning history, including an initial Council-own development planning permission, which helped quantify the land use requirements in the Brief. Non-Material Amendments (NMAs) have been used to increase flexibility and quality of the proposed affordable business space. Planning conditions and s106 obligations require:

- 80-year lease by a 'Qualifying Tenant' to be agreed by the borough, with 6 month rent free period and no premium and annual rent reviews
- to be 60 per cent of market rent (to be agreed with the borough)
- out of the ABS to be to a defined 'Category A' standard
- for entering into a lease with a 'Qualifying Tenant', delivery and fit-out of space within defined periods
- clauses to identify an alternative 'Qualifying Tenant', prior to unrestricted use in defined circumstances.

Expectations and requirements have changed over long planning stage and flexibility has been needed, including space design and combined use of the affordable business space and social and community space.

7. Abbreviations and Glossary

7.1 Abbreviations

CIL - Community Infrastructure Levy

GLA - Greater London Authority

LDD - London Development Database

LGBTQ+ - Lesbian Gay Bisexual Trans Queer+

NMA - Non-material amendment

NPPF - National Planning Policy Framework

OAPF - Opportunity Area Planning Framework

PPA - Planning Performance Agreement

SMEs - Small and medium-sized enterprises (including micro-businesses)

SPD - Supplementary Planning Document (prepared by boroughs)

TfL - Transport for London

7.2 Glossary

Affordable workspace

Workspace that is provided at rents maintained below the market rate for that space for a specific social, cultural, or economic development purpose.

Agent of Change principle

The principle places the responsibility of mitigating the impact of nuisances (including noise) from existing nuisance generating uses on proposed new development close by, thereby ensuring that residents of the new development are protected from nuisance and existing uses are protected from nuisance complaints. Similarly, any new nuisance-generating development, for example a music venue, will need to put in place measures to mitigate noise impacts on existing development close by.

Amenity

Element of a location or neighbourhood that helps to make it attractive or enjoyable for residents and visitors.

Boroughs

The London boroughs are 32 of the 33 local authority districts within the Greater London administrative area (the 33rd is the City of London). For the purposes of this Practice Guide, this term includes all Local Planning Authorities including the City of London and the Mayoral Development Corporations. The Community Infrastructure Levy (CIL)This is a tool for the Mayor and the boroughs to help deliver infrastructure to support the development of the area. Where in place, it is a non-negotiable financial contribution paid by developers of most types of new development (subject to rules and exceptions).

Consultation requirements

Minimum consultation requirements for planning and related applications are set out in a number of Regulations and Orders. The Theatres Trust is a statutory consultee on applications for land on which there is a theatre (Article 18 and Schedule 4 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Boroughs also have to prepare a Statement of Community Involvement (SCI), setting out local policy on how they will consult when preparing planning policy and considering planning applications.

Creative Industries

Those industries which have their origin in individual creativity, skill and talent which have a potential for wealth and job creation through the generation and exploitation of intellectual property.

Cultural Consumption spaces

These are places where culture is experienced, participated in, showcased, exhibited or sold. For example, museums, galleries, theatres, cinemas, libraries, music venues and historic cultural sites. Cultural Production spacesThese are places of creative production, where creative work is made, usually by artists, performers, makers, manufacturers or digital processes. For example, creative workspaces, performing arts rehearsal spaces, music recording tudios, film and television studios and industrial and light industrial units used by creative and cultural businesses.

Cultural facilities

Facilities that include Cultural Consumption Spaces.

Cultural infrastructure

The buildings, structures and places where culture is either consumed (Cultural Consumption spaces) or produced (Cultural Production spaces).

Design and access statement

A statement that accompanies a planning application to explain the design principles and concepts that have informed the development and how access issues have been dealt with. The access element of the statement should demonstrate how the principles of inclusive design, including the specific needs of disabled people, have been integrated into the proposed development and how inclusion will be maintained and managed.

Development Plan

The London Plan, Local Plans, other Development Plan Documents and Neighbourhood Plans.

National Planning Policy Framework (NPPF)

This sets out the Government's planning policies for England and how these should be applied.

Material consideration

This is a consideration which is relevant to making the planning decision in question (for example whether to grant or refuse an application for planning permission). The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.

Minor Material Amendment

An amendment to a permitted development, approved following an application made under s73 of the 1990 Act to amend planning permissions. There is no statutory definition of a 'minor material amendment' but planning practice guidance (Paragraph: 017 Reference ID:17a-017-20140306) states that ... 'it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved'.

Outline application

An application for outline planning permission allows for a decision on the general principles of how a site can be developed. An outline permission is granted subject to conditions requiring the subsequent approval of one or more 'Reserved Matters' for later determination. The details of the reserved matters application must be in line with the outline approval, including any conditions attached to the permission. This includes the terms of approved 'control documents' (usually parameter plans, development specifications and/or design guidelines) that have been bound into the permission by conditions.

Payment in kind policy (CIL)

Such policies may set out the circumstances when in-kind land/facility transfer may be acceptable and set terms on which it would be acceptable (for example timing of delivery and the basis of valuing the land/facility).

Permitted Development Rights

A general planning permission granted not by the local authority but by Parliament. Legislation (currently the Town and Country Planning (General Permitted Development (England) Order 2015) sets out classes of development for which a grant of planning permission is automatically given, provided that no restrictive condition is attached or that the development is exempt from the permitted development rights.

Planning obligation

An obligation conferred by a legal agreement or a Unilateral Undertaking entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

Planning Performance Agreement (PPA)

This is a project management tool which boroughs and applicants can use to agree timescales, actions and resources for handling particular pre-application discussions and/or planning applications.

Pre-commencement condition

Those that require a particular action before development starts or the change of use is begun.

Reserved matters

Outline permissions are subject to the subsequent approval or one or more Reserved Matters. These are defined in Article 2 Town and Country Planning (Development Management Procedure) (England) Order 2015 and in summary are 'Access', 'Appearance,' 'Landscaping, 'Layout' and 'Scale'.

Removal or variations of conditions

Applications to remove or vary planning conditions are made under s72 of the Act. Approvals under s73 are new permissions and will sit alongside the original planning permission. To assist with clarity, decision notices for the grant of permission under s73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged OR amend them where policy considerations have changed.

Section 106 (s106) agreements

These agreements confer planning obligations on persons with an interest in land in order to achieve the implementation of relevant planning policies as authorised by Section 106 of the Town and Country Planning Act 1990.Strategic developments (applications referable to the Mayor). The planning applications that must be referred to the Mayor under the Town and Country Planning (Mayor of London) Order 2008 and any amendments hereto.

Statement of Community Involvement (SCI)

Explains how the borough will involve the community when preparing planning policy and guidance and deciding planning applications.Sui generisA use that does not fit in to a defined Use Class.

Supplementary Planning Document (SPD)

Gives guidance on the implementation of policies in the London Plan.

Unilateral undertaking

A legal document made pursuant to Section 106 of the Town and Country Planning Act 1990, which can only be entered into by the owner of the land to be developed and cannot impose any reciprocal obligations on the local planning authority.

Use class

The planning system manages the use of land and buildings and puts buildings into various categories or ‘Use Classes’. Workspace form of business use that includes incubators, co-working spaces, artists’ studios and maker spaces.

Workspace provider

Organisations that take on and manage non-residential space as workspace.

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GLA Project Team

- GLA Planning - Rob McNicol (London Plan Manager), Mikyla Smith (Team Leader - Housing and Social Infrastructure), Kate Gordon (Senior Strategic Planner, Housing, Social Infrastructure and Town Centres)

- GLA Culture and Creative Industires - Rachael Roe, (Senior Policy Officer Cultural Infrastrucure)

Back to table of contents

References

- Reference:1Note - applications for some proposals also require formal referral to the Secretary of State for Levelling Up, Housing and Communities
- Reference:2Meanwhile Use London – A Research Report for the Greater London Authority (November 2020)