



Derby City Council

COUNCIL CABINET 18 July 2018

ITEM 12

Report of the Strategic Director of Communities
and Place

Adoption of the Planning Obligations Supplementary Planning Document Review

SUMMARY

- 1.1 Planning obligations are contributions from developments secured through planning applications under Section 106 of the Town and Country Planning Act 1990 as amended. Since the Council's current Supplementary Planning Document (SPD) was adopted in 2008, there have been significant changes in local and national policy which mean that the document needs to be updated.
- 1.2 A draft of the revised SPD, titled 'Supplementary Planning Document Review', was approved for public consultation by the then Cabinet Member for Regeneration and Economy on 3rd November 2017.
- 1.3 Consultation on the draft SPD Review began on 13th November 2017 and ended on 3rd January 2018. There were 20 respondents. The appendices to this report contain a summary of the consultation, the responses to the issues raised during it and the proposed modifications to the SPD Review.

RECOMMENDATION

- 2.1 To approve the adoption of the SPD Review, subject to any minor amendments made by the Chief Planning Officer and Cabinet Member, with adoption to take effect on its publication by the Chief Planning Officer.

REASONS FOR RECOMMENDATION

- 3.1 To formally adopt the SPD Review.

SUPPORTING INFORMATION

- 4.1 The current Planning Obligations SPD was adopted in 2008. It sets out the Council's approach to securing contributions from planning applications. Since then, there have been a significant number of changes to national planning law and local and national planning policy. There is therefore a need to review and up-date the 2008 SPD.

- 4.2 Planning regulations require that draft SPD are publicly consulted on for a minimum of four weeks. Following approval by the Cabinet Member for Regeneration and Economy on 3rd November 2017, this consultation took place for over 7 weeks between Monday 13th November 2017 and Wednesday 3rd January 2018. The consultation draft was reported to the Regeneration and Housing Scrutiny Review Board and to a Cross Party Leader briefing.
- 4.3 The Scrutiny Board's comments included questions about how the new SPD would affect the Our City Our River (OCOR) flood relief project, the rules around securing planning obligations, site specific contributions and questions about restrictions on the wards in which contributions can be spent. Officers have considered the comments but no amendments to the SPD Review are considered to be necessary as the issues raised are covered within the document or not appropriate for inclusion.
- 4.4 Members at the Cross Party briefing asked for the SPD Review to clarify the role of Members in the planning obligations process. To address this, amendments are proposed to explain that this advice is contained in 'A Guide to Planning Obligations and S106 Agreements for Councillors and Neighbourhood Boards'. This document will itself be reviewed when the SPD Review has been adopted.
- 4.5 An Equalities Impact Assessment (EIA) was also undertaken, which included meeting members of the City Council's Diversity Hubs. Issues raised during the meeting included:
- The removal of the requirement for developers to provide Lifetime Homes
 - There is not a strong enough encouragement for developers to provide properties suitable for wheelchair users

However, due to the changes in national policy as outlined elsewhere in this report, it is not possible to alter the SPD in this way.

- 4.6 20 respondents made representations during the consultation. These included responses from statutory bodies, developers and members of the public.

Planning consultants WYG, on behalf of two developers, argued that the SPD should instead be a Development Plan Document (DPD) and therefore Examined. However the Council's legal team has advised that it can only be adopted as an SPD. In addition, the DPD process would have involved considerably more work and added significantly to the time taken to adopt it. Following lengthy negotiation, the representation has been withdrawn, subject to a number of recommended modifications.

The main points raised by other consultees were:

- *How will the Council ensure that the SPD Review complies with the Community Infrastructure Levy (CIL) Regulations?* This will be secured by making sure that obligations are related to local plan policies; tailored to the specific circumstances of the development and include named projects or tightly drawn geographical areas within which to spend contributions. Various minor amendments to the text in the SPD are recommended which help to clarify these points.

- *Clarification is needed to show how the contributions are calculated, in particular those relating to highways contributions.* It is recommended that amendments are made to the SPD Review to clarify that specific measures will be included in the heads of terms. It is also recommended that the SPD now contains a further break down of individual project costs.
- *What is the policy basis behind removing Recruitment and Training agreements from planning obligations?*
They have been removed because they will not meet the CIL regulations tests. However, developers and contractors will still be encouraged to engage with the Economic Regeneration team during the planning process to enter into voluntary agreements to encourage the creation of local skills development and employment opportunities (including construction). These activities would include providing work experience placements for young and unemployed people, working with young people, supporting local schools programmes, and providing apprenticeships opportunities.
- *The SPD Review needs to comply with a Ministerial Statement which affects the minimum thresholds that contributions can be sought from development.* This states that contributions should not be sought for developments of 10 or less homes. To comply with this, it is recommended that the minimum threshold for residential development in the SPD is raised to 11 units.
- *Further justification is needed to include public art and public realm in the SPD.* The SPD Review takes a different stand on public art to the 2008 document and only seeks contributions in key locations or in major, flag ship developments. Additionally, a change is recommended to the definition of major development so that it applies consistently to both public art and public realm.

4.7 Comments received from the statutory bodies Sport England and Historic England include the following:

- The evidence base for the sports contributions should be updated as new studies are completed. This point is accepted, but no change is needed as the most up to date evidence available at the time of negotiation is always used.
- Historic England felt that the SPD Review was not clear enough in demonstrating how impact on the Derwent Valley Mills World Heritage Site and other heritage assets would be mitigated. It is not recommended to accept Historic England's amendments however a minor addition is proposed to clarify the Council's approach to contributions towards the historic environment.

OTHER OPTIONS CONSIDERED

- 5.1 The Council could continue to use the adopted Planning Obligations SPD. However, as it is no longer compliant with current national planning law and national and local planning policy, this approach would leave the Council vulnerable to legal challenges by developers and third parties.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Stephen Teasdale David Gartside Andrew Waterhouse, Rosie Watson, Kathryn Armstrong-Prior
For more information contact: Background papers: List of appendices:	Rachel Reid 01332 642112 rachel.reid@derby.gov.uk None Appendix 1-Implications Appendix 2-Statement of Consultation Report Appendix 3-Modifications draft of Planning Obligations Supplementary Planning Document Review Appendix 4-Equalities Impact Assessment Appendix 5-Minutes from the Regeneration and Housing Scrutiny Board meeting November 17 th 2017

IMPLICATIONS

Financial and Value for Money

- 1.1 The Council secures millions of pounds through planning obligations every year. Without the SPD Review, the amount that the Council could secure in the future would reduce as the majority of the obligations would not be in line with current planning policy. The SPD Review includes a policy to ensure that contributions keep their value over time by increasing them annually by RPI.
- 1.2 The cost of producing paper copies of the SPD Review will be met though the Council's central printing budget.

Legal

- 2.1 Section 13 Planning and Compulsory Purchase Act 2004 requires SPD to be kept under review.
- 2.2 The revised SPD brings the document into line with current local, national and planning law. This therefore reduces the risk of the Council facing a legal challenge relating to planning obligations.
- 2.3 The SPD provides further guidance on the Council's approach to securing planning obligations for development in Derby. The policy approach is set out in Policy MH1 'Delivering Infrastructure' of the Derby City Local Plan Part 1: Core Strategy (January 2017). The SPD will be used to support the determination of planning applications where the provision of planning obligations is a requirement.
- 2.4 The document also ensures that the planning obligations secured will meet the tests set by Regulation 122 of the CIL regulations by making sure that they are related to planning, related in scale and kind to the development and necessary to make the development acceptable.
- 2.5 The SPD must be prepared in accordance with the Council's Statement of Community Involvement and follow the processes provided in the Town and Country Planning(Local Plans)(England) Regulations 2012.
- 2.6 Following consultation, the responses have been considered and changes made to the document where necessary. Once the document has been adopted it will form the Council's policy basis for securing planning obligations and the existing SPD (2008) will be superseded.

Personnel

- 3.1 None identified

IT

- 4.1 None identified

Equalities Impact

- 5.1 The SPD Review has had an Equalities Impact Assessment completed to demonstrate that we have paid 'due regard to equality' and is attached to this report.

Health and Safety

- 6.1 None identified

Environmental Sustainability

- 7.1 No direct impacts arising from the report

Property and Asset Management

- 8.1 Without the SPD Review, it will be more difficult for the Council to secure improvements to Council buildings and open spaces. It will also be more difficult to secure contributions towards maintenance of facilities.

Risk Management and Safeguarding

- 9.1 As per paragraph 5.1 of main report and 2.2 of Appendix 1 the current SPD is no longer compliant with current national planning law and national and local planning policy, this approach would leave the Council vulnerable to legal challenges by developers and third parties. As per para 1.1 of Appendix 1, without the SPD Review, the amount that the Council could secure in the future would reduce as the majority of the obligations would not be in line with current planning policy.

Corporate objectives and priorities for change

- 10.1 Improving housing, supporting job creation and regeneration