

## **Consultation on 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 by Section 12 of the 1991 Planning and Compensation Act 1991. The Council adopted a Supplementary Planning Document (SPD) on Planning Obligations in December 2008. Since then, there have been a significant number of changes in local and national planning law and policy.
- 1.2 The SPD Review has been drafted to take into account the above changes and the current priorities of the Council departments which receive developer contributions. This means that there are some contributions that the Council proposes to no longer secure through planning obligations.
- 1.3 It is intended to commence public consultation on the draft SPD Review for the statutory minimum period of four weeks, beginning in November 2017 using a variety of methods which are detailed in the report below. Following consultation, a statement of public participation will be produced detailing how the Council has taken responses into account when preparing the SPD Review which will be considered for adoption by Council Cabinet.

### **RECOMMENDATION**

- 2.1 To approve the draft Planning Obligations Supplementary Planning Document Review contained in Appendix 3.
- 2.2 To approve the process for public consultation on the draft SPD Review.

### **REASONS FOR RECOMMENDATION**

- 3.1 To ensure that the Council can continue to effectively and justifiably secure appropriate infrastructure to mitigate the impacts of development within the City and ensure that the SPD is updated to reflect current local planning policy and national planning law and responds to changes in local authority service delivery thereby providing a sound and updated basis for securing contributions which is more robust against legal challenges.
- 3.2 To ensure that statutory requirements for consultation can be met.

## SUPPORTING INFORMATION

- 4.1 The Council adopted the current Planning Obligations SPD in December 2008. This document sets out the Council's current approach to securing contributions from planning applications under Section 106 of the Town and Country Planning Act 1990 as amended by Section 12 of the 1991 Planning and Compensation Act. Since the SPD was adopted there have been a number of changes in national planning law and local and national planning policy, specifically the Community Infrastructure Levy (CIL) regulations and the adoption of the Local Plan Part 1: Core Strategy. More details of these changes can be found in the remainder of this report. Over this time, there have been new trends in residential development types, changes in infrastructure priorities and there have also been changes in the way Council services are delivered. These all require the adopted SPD to be updated.
- 4.2 In April 2010, the national CIL regulations came into force. This brought about significant changes to the way Councils could secure infrastructure funding from developers. The CIL regulations brought into law the requirement for planning obligations to be directly related to the development, related to it in kind and scale and necessary to make the development acceptable in planning terms. They also put restrictions on pooling more than five planning obligations towards one infrastructure project and require all contributions to be secured towards specific projects rather than generic and tariff based as in the adopted SPD. The SPD Review is therefore required to reflect these changes.
- 4.3 The Council has recently considered replacing Planning Obligations with CIL. However, the evidence has shown that CIL produces substantially lower developer contributions towards essential infrastructure than the current S106 process and so the Council has decided to continue using planning obligations to secure contributions from planning applications and to keep the situation under review.
- 4.4 The National Planning Policy Framework was adopted by the Government in March 2012. This introduced, amongst other things, a broadening of the types of tenure that can be classed as affordable housing and impresses upon Councils the importance of taking viability into account when considering whether to request planning obligations. Further details of which can be found in the draft document in Appendix 3.
- 4.5 The Council adopted its Local Plan Part 1: Core Strategy in January 2017. Policy MH1: 'Delivering Infrastructure' and other policies set a new context for negotiating S106 contributions which must be reflected through the SPD Review. This will mean that the Review will be more robust against legal challenges from developers.
- 4.6 The revised SPD also takes into account changes in service delivery during the nine years since the previous document was adopted. All Council departments and external bodies that benefit from contributions secured through planning obligations have been regularly consulted during the process of drafting the revised SPD. Some of the key changes to the SPD are outlined below. A summary of the changes can be found in Appendix 2. The full draft can be found in Appendix 3.
- Updated approach to seeking planning obligations in the light of CIL regulations.
  - Clarification of the Council's approach to development viability and the implication for planning obligations.

- Greater detail on the Council's requirements for developments where the public open space is privately managed instead of being transferred to the Council
  - Clarification on affordable housing tenure types.
  - A new section setting out the Council's approach towards applications for student accommodation.
  - A new section on Flooding and Drainage.
  - Clarification of which contributions will only be sought on a site by site basis.
  - The SPD Review reflects the new Local Plan policy on public art. It removes the requirement to include it on all developments over a certain threshold and instead requires it only in specific locations on a site by site basis.
  - Other contributions proposed to be negotiated on a site by site basis include public realm and libraries.
  - Introduction of a policy to increase contribution yearly by RPI.
- 4.7 In reviewing the SPD, certain sections have had to be removed. For example, in the context of the need for obligations to be reasonably related to planning and the impact of the development, the requirement for developers to enter into Recruitment and Training agreements has been deleted.
- 4.8 In order for the Council to consider moving forward towards adoption of the revised SPD, it must first undertake a public consultation for the statutory minimum period of four weeks. Approval is therefore sought for the draft document to be consulted on.
- 4.9 It is proposed to undertake this consultation during November and December 2017. Following consultation, responses will be analysed and changes to the document considered. A statement of public participation will be published when the document is put forward for adoption detailing the replies received and how the Council has taken these into account.

The consultation will use the following methods:

- Publication of the document on the Council's website.
- Emails and letters to those on the Council's Local Development Framework consultation database.
- Your City, Your Say
- Making the document available in Derby's libraries and Council House reception
- Article on Derby Newsroom.
- Internal consultation through In Touch and other media.

## **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.

- 5.2 This report has highlighted that continuing to secure planning obligations through the revised SPD is the most effective way of mitigating the impact of developments in Derby however the Council could choose instead to adopt CIL. As explained in the main body of this report, this approach would lead to a reduced level of funding being secured. However even if the Council was to adopt CIL, this would take time to implement and it would be likely that a revised SPD would be required during the transition period.
- 5.3 The Government is currently consulting on potential changes to the way viability is dealt with through Local Plans and in planning applications. The Council could delay publication of the draft SPD Review until the outcome of this and its implications for securing planning obligations are known. However the Government's timescales are unclear and for reasons stated elsewhere in the report it is important that the Council updates the SPD as soon as possible.

**This report has been approved by the following officers:**

<b>Legal officer</b>	Stephen Teasdale
<b>Financial officer</b>	Amanda Fletcher
<b>Human Resources officer</b>	
<b>Estates/Property officer</b>	John Sadler
<b>Service Director(s)</b>	David Gartside, Acting Director, Strategic Partnerships, Planning and Transportation
<b>Other(s)</b>	Andrew Waterhouse, Rosie Watson, Kathryn Armstrong-Prior

<b>For more information contact:</b>	Rachel Reid
<b>Background papers:</b>	01332 642112 rachel.reid@derby.gov.uk
<b>List of appendices:</b>	None
	Appendix 1 – Implications
	Appendix 2-Key changes in Planning Obligations SPD review
	Appendix 3-Draft Planning Obligations SPD review

<b>IMPLICATIONS</b>
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**Financial and Value for Money**

- 1.1 The Council secures millions of pounds through planning obligations every year. Without the revised SPD, 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 revised SPD includes a policy to ensure that contributions keep their value over time by increasing them annually by RPI.
- 1.2 The costs involved in the proposed consultation and adoption of the SPD are minimal and limited to printing and binding the documents. These will be met through the Council's central printing budget.
- 1.3 It has been recognised and been agreed by the Executive that recent research shows continuing with S106 contributions will deliver significantly more developer contributions, including financial contributions, than CIL.

**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 will be considered and changes made to the document, if appropriate. The final draft of the document will then be presented to Council Cabinet for adoption. Once the document has been adopted it will form the Council's policy basis for securing planning obligations and the existing SPD will be superseded.

## **Personnel**

- 3.1 Not applicable

## **IT**

- 4.1 Not applicable

## **Equalities Impact**

- 5.1 The SPD Review will have an Equalities Impact Assessment (EIA) completed to demonstrate that we have paid 'due regard to equality' and any equalities related comments received as part of the consultation process will be included in the EIA.

## **Health and Safety**

- 6.1 Not applicable

## **Environmental Sustainability**

- 7.1 Not applicable

## **Property and Asset Management**

- 8.1 Without the revised SPD, 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 Not applicable

## **Corporate objectives and priorities for change**

- 10.1 Improving housing, supporting job creation and regeneration