

Title of Report:	Delivering Investment from Growth – Responses to Consultation on Draft Supplementary Planning Guidance	Item 10
Report to be considered by:	Executive	
Forward Plan Ref:	EX0839	
Corporate Plan Priorities:	S4, S5, S6, S8, S10	
The proposals contained in this report (Part A) will help to achieve the above Corporate Plan priorities by: aiming to ensure new development contributes towards the improvement of local infrastructure, services and facilities upon which it impacts		

Purpose of Report:

To report to the Executive the results of the consultation on draft supplementary planning guidance for developer contributions and to put forward revisions to the draft.

Recommended Action:

The Executive is asked to resolve:

- i) that the Core Guidance section of the SPG is amended as set out in Appendix 10(a) and the Topic Papers in Appendix 10(b) are amended as described in section 5 of this report (subject to completion of detailed wording of Topic Paper 1 – Affordable Housing); and
- ii) the responses to comments set out in Appendix 10(c) are approved as the Council’s response to public consultation
- iii) delegated authority is given to the Leader of the Council in consultation with the opposition spokesman and the Chairman of the Affordable Housing Group to adopt the draft SPG on completion of the additional wording for Topic Paper 1

Reason for decision to be taken:

To develop supplementary planning guidance to the adopted West Berkshire District Local Plan in order to inform the Council’s decisions on planning applications

List of other options considered:

N/A

Key background documentation:

- Development Plan documents, planning legislation, relevant government circulars and consultation documents referred to in the report.

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Implications

- Policy:** The proposed supplementary planning guidance aims to support adopted policies in the Berkshire Structure Plan and the West Berkshire District Local Plan. It will become a material consideration in planning decisions.
- Relevant sections of Planning and Compulsory Purchase Act are due to be enacted during September. After commencement it will no longer be possible to adopt SPG and its replacement - 'SPD' - is subject to lengthy preparation processes such that the implementation of the approaches suggested would be delayed. Therefore, in order to bring the guidance into force at the earliest opportunity it will need to be adopted before the commencement date.
- Financial:** The proposed guidance should help to maximise the levels of contribution secured from new development towards the provision of local infrastructure, services and amenities. It should therefore help to minimise the impacts of new development on the public purse.
- Personnel:** None arising directly from the report.
- Legal:** As outlined in report.
- Property:** The proposals do not directly affect Council property but would be a material planning consideration in respect of any land which the Council may wish to dispose.
- Risk Management:** Risks are discussed in the report.

Supporting Information

1. Background

1.1 In April 2003 the Executive agreed that the draft supplementary planning guidance 'Delivering Investment from Growth' should be subject to public consultation. In many respects the draft reflected current practice in seeking developer contributions but for the first time this was set out clearly in a public document. Other parts of the SPG contained new proposals including:-

- An aggregated 'basic level of contribution' to be paid by smaller forms of development
- Seeking of contributions towards library facilities, fire hydrants, crime prevention measures and health care facilities.

The draft SPG also clarified the Council's approach to seeking affordable housing including a flexible approach to securing financial contributions rather than on site provision on units on certain sites.

1.2 A public consultation exercise was carried out through May - July 2003. A wide range of bodies including town and parish councils, business representatives, members of the development industry and neighbouring authorities were sent a copy of the draft which was also made available on the Council's web site. In addition, presentations on the draft were given by officers to the local Chamber of Commerce Property Group and the West Berkshire Partnership Housing Action Group.

1.3 After the public consultation exercise had taken place the Government issued new consultation proposals on planning obligations which were different in character to the direction previously taken. It has been necessary to take this into account in revising the proposals for the SPG.

1.4 The Environment and Public Protection Select Committee Section 106 Task Group is recommending that Supplementary Planning Guidance on developer contribution matters is brought forward as a matter of urgency. This report responds to that recommendation.

1.5 On 30 July 2004 the proposed SPG was considered by the Planning and Transport Policy Task Group which agreed various changes to the draft SPG as explained in this report. However, the Task Group continued to have specific concerns with respect to the threshold for seeking contributions in respect of affordable housing. Officers were requested to seek additional information. This is explained in further detail in the paragraphs covering affordable housing below (5.15 to 5.19).

2. Results of the Consultation Exercise

2.1 The consultation generated responses from over 30 organisations and individuals. Most responses were lengthy and detailed reflecting the extensive and complex nature of the draft. In total about 400 individual points were raised by consultees.

2.2 The responses vary greatly in character. There was a considerable amount of support for the concept of the SPG and there were calls for a more standardised tariff based approach to be adopted. There was also a strong body of opinion that the 'basic level of contribution' approach (seen as a tariff) was inappropriate and that contributions should be negotiated individually case-by-case having regard to the specific aspects of the proposal. Several consultees thought it wrong for small developments to make contributions, as they could not be seen to have an impact. However, no consultee put forward any sound argument for thresholds above which they considered impacts would begin.

- 2.3 A number of consultees used the opportunity of the consultation exercise to express views on the processes for securing developer contributions and how sums received are subsequently spent. There were a number of comments alluding to the length of time taken to negotiate and produce Section 106 agreements and suggestions for streamlining the system.
- 2.4 The comments received on the SPG are summarised in the schedule at **Appendix 10(c)** (bound separately). They are accompanied by a draft response from the Council. It is proposed that this forms the statement of consultation to accompany the SPG.

3. Government Policy

- 3.1 When the SPG was being drafted it had been expected that new Government advice on developer contributions and planning obligations in general was imminent. At the end of 2001 the Government had suggested that the current system of developer contributions should be replaced by a more standardised tariff system that could apply to a wider range of developments including those of a quite limited scale. The Government ultimately decided against primary legislation to put this in place but said that the objectives of the tariff proposal were widely welcomed by a majority of respondents to its consultation and that it had decided that many of its objectives could be delivered without legislative change. It said that it intended to revise its policy guidance and work with all the relevant stakeholders to create a more streamlined system that would enable the community to share in the benefits arising from development.
- 3.2 Unfortunately, the new advice was not finalised and late last year the Government produced for consultation new proposals for a reformed planning obligations regime to run alongside a new 'optional charge'. It is also currently considering a recommendation from the Barker Report for a Planning Gain Supplement (PGS) and expects to make a decision on that by the end of 2005. Proposals for the optional charge will be worked up on a timetable consistent with that on the PGS. Therefore, it is necessary for the SPG to continue to reflect the existing advice in Circular 1/97 which deals with planning obligations. Whilst there are various grey areas in how this advice is interpreted, officers' view is that it set out various barriers to seeking reasonable contributions rather than providing a positive set of tools for securing them. However, it is within this context that the Council must work until new advice is published later this year and until the new optional charge system is introduced.

4. Processes for Dealing with Planning Obligations

- 4.1 As mentioned above, the processes for dealing with contributions raised comments, even though not forming part of the SPG. Guided by the Member Reference Group, the Head of Planning and Transport Strategy has been reviewing processes for dealing with planning applications. The Environment and Public Protection Select Committee S106 Task Group is also making various recommendations on processes for dealing with developer contribution matters.

5. Proposed Changes to the SPG

- 5.1 Having regard to the comments received, Government inertia in delivering new guidance and issues surrounding processes, your officers consider that the draft guidance requires amendment before it can go forward to adoption.

Changes to Core Guidance Paper

- 5.2 Members' attention is drawn to Appendix 10(a) to this report which sets out proposed changes to the 'Core Guidance' paper. The proposed changes to the various topic papers are set out in Appendix 10(b) (Affordable Housing Topic paper is attached – remaining topic papers have been supplied to the Portfolio Member for Planning and Sustainability and the shadow spokesman and are available on the Council's web site). The key changes proposed to the Core Guidance are as follows:-

Basic Level of Contribution

- 5.3 The proposals for a 'basic level of contribution' to be paid by development up to and including 14 dwellings were contested by several consultees. They felt it inconsistent with Circular 1/97 and said that contributions could only be assessed on a case by case basis. Whilst the concept was welcomed by several, there was criticism surrounding the transparency of how the figures were derived.
- 5.4 Officers consider that the basic level of contribution – the tariff style approach – should be deleted from the SPG for the time being. However, this matter should be reconsidered in due course in the light of the result of the Government's intention to introduce an optional charge system.
- 5.5 In the absence of a standardised tariff approach to deal with small developments, it will be necessary to consider the impacts of development on a case by case basis, although a number of contributions can be assessed using **standardised formulas** set out in the topic papers. This raises the issue of which developments should be considered for potential contributions.

Size of development from which contributions should be sought

- 5.6 Several respondents contested the proposal in the draft SPG to seek contributions from small developments e.g. down to one dwelling, although there was also some qualified support for this approach. Officers do not agree with those who have argued that small developments do not have an impact – they clearly have an impact both individually and cumulatively. Members have stated their wish to seek contributions from the smallest appropriate level of development i.e. a single new dwelling. It is therefore proposed that the guidance indicates that contributions will be routinely sought from such developments particularly towards transport, education, open space, libraries and primary health care and that contributions towards other areas are not ruled out.
- 5.7 For commercial schemes officers consider the thresholds set out in the draft to be a reasonable level above which to seek developer contributions.

Summary Tables

- 5.8 It is proposed that the summary tables showing the basic level of contribution for residential development are removed and that a new summary table is added. In cases where there is a standard formula for calculating contributions (e.g. library provision) the table will indicate for each topic area the likely level of contribution. Where it is not possible to have a standard formula (e.g. environmental enhancements) the table will indicate broad examples of contribution in order to give a general indication of what may be sought. This will be useful to developers commencing their negotiations on site acquisition, although they are warned that contributions can only be finally determined at the planning application stage in the light of all relevant information. A similar summary table is proposed for commercial development.

Processes and Implementation

- 5.9 Some text has been added explaining that the Council will be implementing new systems for dealing with planning applications to ensure undue delays do not occur.
- 5.10 A section has been added explaining that the Council will set up a fund of contributions from proposals which would not by themselves generate the need for a complete project. This would enable the monies collected to be collated and spent on projects which help to meet the impacts of the contributing developments.
- 5.11 Another additional section to be added relates to Parish plans. These are likely to be very important in identifying services and facilities which may be impacted on by development. Proposals to enhance such services and facilities could therefore provide a basis for developer contributions.
- 5.12 It is proposed that there is a start date for implementing the new SPG. It is proposed that it is applicable to all applications received after **1 November 2004** when it is anticipated that new systems for dealing with major planning applications will be introduced. Applications received before then would continue to be assessed for contribution in accordance with the Council's current approaches.

Summary of Changes to Core Guidance

- 5.13 The effect of the changes to the Core Guidance is that developments will be assessed for contributions based on the approach set out in the topic papers. Those papers include several formulas for calculation where development impact is predictable. Therefore the document will continue to serve an important purpose in giving as far as is possible a degree of certainty as to the level and scope of developer contributions which the Council will seek.

Topic Papers

- 5.14 Various amendments are recommended to the topic papers. Revisions to the topic papers appear in Appendix 10(b) and the main changes proposed are set out below.

Affordable Housing

- 5.15 It is proposed that this paper is amended in a number of ways and that it is considerably streamlined.
- 5.16 The sudden abolition of Local Authority Social Housing Grant by the Government has created enormous uncertainty and difficulty for Councils in how they secure affordable housing from new development. In order to respond to these matters it is proposed to make a number of amendments to the draft:
- where on site provision is made any the transfer of any land to a registered social landlord should not result in pressure on public finance i.e. it must be presumed that there will be no grant aid to assist with the development of the affordable housing. Recent affordable housing contributions have been sought on the assumption that grant funding will be available. As this is no longer the case the affordable housing contribution must be made in such a way as to ensure that the housing can be financed without the need for grant support. This is a significant change from current practice and should ensure that the funding difficulties experienced with affordable housing provision negotiated in earlier legal agreements does not reoccur in the future.

- it is proposed to delete information on suggested mix of types of affordable housing to be provided on sites. This is considered now to be unduly detailed for a supplementary planning guidance paper and does not allow sufficient flexibility for members, officers, developers and the local community to consider the appropriate provision on a site by site basis having regard to funding issues. However, the proposed revised wording requires that developments must continue overall to ensure mixed and balanced communities consistent with Government policy expressed in PPG3.

5.17 Officers have proposed that the section of the draft SPG which indicated that contributions would be sought towards affordable housing provision from schemes below 15 dwellings should be deleted. This matter had been objected to by a number of consultees. The reason for officers' reluctant but strong recommendation was that Circular 6/98 explicitly restricts the seeking of affordable housing to sites of 15 dwellings or more. It allows for financial contributions to be sought in lieu of on-site provision in certain circumstances but says:

"These arrangements should not be used in respect of application sites which are inherently unsuitable for the provision of an element of affordable housing, such as those below the site threshold."

The Government Office for the South East has said that in order to carry weight in the development process SPG must be prepared in accordance with national policy. The Head of Legal and Electoral Services has said that the Council would risk judicial review of its policy and be at increased risk of incurring costs in appeals if it was to require contributions below the size thresholds.

5.18 The Planning and Transport Policy Task Group was strongly of the view that it was very important that smaller housing schemes should contribute to affordable housing provision and considered that every effort should be made to find ways of securing such provision. Members suggested that this practice may be occurring in certain specified authorities and requested that officers undertake further investigations. Officers are continuing to investigate these matters and will report to the portfolio member so that an update can be given at the Executive meeting.

5.19 The paper before the Task Group is incomplete and officers are also continuing to work on elements of the text. In particular further information on affordability criteria is being prepared and a formula for calculating off site contributions is being finalised. As this work is quite detailed it is unlikely to be ready for the Executive on 12 August and so **it is recommended that the Executive gives delegated authority to the Executive Member in consultation with the shadow spokesman and the chair of the Affordable Housing Group to agree the detailed wording for inclusion in the adopted SPG.**

Transport

5.20 At present the existing approaches to assessing contribution are working effectively and the approaches could be extended to single dwelling proposals. A table setting out various contribution levels has been added to provide more information.

Education

5.21 It is proposed that this section remains largely unchanged subject to some drafting amendments to aid clarification and to extend contribution formulas to cover smaller developments.

Public Libraries

- 5.22 It is proposed that this section remains largely unchanged. This paper contains a formula for securing contributions to the level of a single dwelling.

Community and Social Services Facilities - Health Care Provision

- 5.23 No material changes are proposed to these sections of the guidance.

Open Space

- 5.24 No material changes to the text are proposed although a considerable amount of additional explanation is proposed to ensure clarity.

Recycling Facilities

- 5.25 No material changes proposed.

Environmental Enhancements

- 5.26 No material changes are proposed but see proposed merger with other papers.

Air Quality and Pollution

- 5.27 It is proposed that this paper is merged with Environmental Enhancements to create a more streamlined SPG.

Archaeology, Conservation and the Historic Environment

- 5.28 No changes to the draft are required.

Provision of Public Art

- 5.29 It is proposed that this section is merged with Environmental Enhancements.

Provision of Fire and Rescue Infrastructure

- 5.30 It is proposed that this section be shortened by deleting reference to smoke detectors, sprinkler systems and access requirements as these are addressed via other regulations. It is also suggested that reference to possible contributions towards provision of new or extended fire stations is deleted. It is most unlikely that such a need will be generated within the current housing development requirements for West Berkshire. The SPG states that exceptional contributions may be needed in the case of very large developments and any impacts on fire stations would be addressed on that exceptional basis if funding for new provision was not available from other sources.

Preventing Crime and Disorder

- 5.31 No material changes to the text are proposed but it will be amended to ensure clarity.

6. Risk Assessment

- 6.1 Officers consider that there are a number of factors which will need to be considered in proceeding to the adopt the SPG as proposed.

Impact on Speed of Determining Applications

- 6.2 Routinely seeking contributions from smaller development will considerably increase the need for legal agreements related to planning applications. Whilst officers will work to find ways to streamline approaches it remains a fact that planning obligations are a matter for negotiation which can be resisted by developers. Even where they are not resisted and where contributions are calculated with standard formulas, shaping the appropriate agreements takes time. Legal process are not within the control of the Planning and Transport Strategy Service. Any reduction in the performance of the Council in determining applications could threaten future planning delivery grant settlements.

Arrangements for Collecting and Spending of Contributions

- 6.3 In seeking contributions from smaller developments it will be necessary to build funds to ensure that monies are spent effectively. Although the Planning and Transport Strategy Service has systems for tracking contributions, it is not responsible for spending on specific projects. The Council as a whole and the services responsible for spending will have to ensure that systems are in place to manage the finance received. All such systems would be subject to audit procedures. The Planning and Transport Strategy Service is the conduit through which contributions are made. It does not control finance and the spending of monies received by the relevant services or outside bodies – these are matters for other areas of the Council, individual service departments and any relevant outside bodies.

7. Next Stages

- 7.1 It is proposed that the Executive adopts the SPG as amended as set out in the recommendations above. The published SPG will include a statement of public consultation setting out how the public has been consulted and how the Council responded.
- 7.2 Once adopted the SPG will have weight in the determination of planning applications as supplementary planning guidance which has been subject to consultation. However, it is important to note that it must always be used in a manner consistent with Circular 1/97. It will continue to be necessary to show in each case that any developer contributions are reasonable, related to the development and comply with Government guidance and case law.
- 7.3 Officers recommend that the SPG is adopted as set out in this guidance but is reviewed when the Government publishes revised guidance later this year. It is not clear when the new optional charge will come into force, but the work carried out in producing this SPG will mean that the Council has made some progress towards bringing forward specific proposals under the proposed new system.

Appendices

Appendix 10(a) – Proposed revisions to draft SPG Core Guidance Paper

Appendix 10(b) – Topic Papers:

- 1 Affordable Housing
- 2 Transport
- 3 Education
- 4 Public Libraries
- 5 Community and Social Services Facilities
- 6 Health Care Provision
- 7 Open Space
- 8 Recycling Facilities
- 9 Environmental Enhancements
- 10 Archaeology, Conservation and the Historic Environment
- 11 Provision of Fire and Rescue Infrastructure
- 12 Preventing Crime and Disorder

Appendix 10(c) - Summary of comments received and draft Council's response (bound separately)
Appendix 10(c) has been bound separately made available to the portfolio holder and shadow portfolio holder and placed on the Council's web site and in the Members' room (copies available on request).

Consultation Responses

Local Stakeholders: See Appendix 10(c)
Officers Consulted: Corporate consultations
Trade Union: None