

Title of Report:	'Delivering Investment from Sustainable Development' Supplementary Planning Document - Update
Report to be considered by:	Executive
Date of Meeting:	24th July 2014
Forward Plan Ref:	EX2821

Purpose of Report: To seek Member approval for a new draft Supplementary Planning Document ("SPD") for developer contributions following the implementation of the Community Infrastructure Levy.

Recommended Action: Members are asked to approve the draft SPD prior to public consultation

Reason for decision to be taken: To allow the creation and adoption of a new SPD to come into force alongside the implementation of the Community Infrastructure Levy ("CIL")

Other options considered: Not to update the policy guidance

Key background documentation: None

The proposals contained in this report will help to achieve the following Council Strategy priorities:

- CSP2 – Promoting a vibrant district**
- CSP3 – Improving education**

The proposals will also help achieve the following Council Strategy principles:

- CSP6 - Living within our means**
- CSP8 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:
Ensuring that planning policy is in place so that developer contributions can be requested in appropriate circumstances

Portfolio Member Details	
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Date Portfolio Member agreed report:	20 May 2014

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Implications

- Policy:** The adoption of a new SPD for developer contributions will ensure that, where reasonable and in accordance with the CIL Regulations 2010 (as amended), the Council can continue to seek S106 contributions alongside the implemented Community Infrastructure Levy.
- Financial:** The continued use of S106 developer contributions will help to fund new infrastructure required directly as a result of particular development, within the pooling restrictions as detailed in the CIL Regulations 2010 (as amended).
- Personnel:** n/a
- Legal/Procurement:** Contributions can only be sought where they are in accordance with the CIL Regulations (as amended) and the new SPD must reflect that position.
- Property:** n/a
- Risk Management:** There is a risk of legal challenge if requests are made for S106 developer contributions contrary to the pooling restrictions. A robust SPD is required to minimise this risk.

Is this item relevant to equality?	Please tick relevant boxes	
	Yes	No
Does the policy affect service users, employees or the wider community and:		
• Is it likely to affect people with particular protected characteristics differently?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Is it a major policy, significantly affecting how functions are delivered?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Will the policy have a significant impact on how other organisations operate in terms of equality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• Does the policy relate to an area with known inequalities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)		
Relevant to equality - Complete an EIA available at www.westberks.gov.uk/eia		<input type="checkbox"/>
Not relevant to equality		<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input checked="" type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

Executive Summary

1. Introduction

- 1.1 The Council currently seeks developer contributions in accordance with its SPD 'Delivering Investment from Sustainable Development' (adopted June 2013). The SPD provides detailed guidance to developers and sets out our approach and procedures for securing developer contributions from development of 1 new dwelling or more, or commercial development where more than 10 new employees will be generated.
- 1.2 West Berkshire Council has sought developer contributions to mitigate the impact caused by development on a formulaic basis since 2004. The current SPD was adopted in June 2013, and was as a result of a process to ensure that the documents were as up to date as possible before the implementation of the Community Infrastructure Levy ("CIL") in West Berkshire.
- 1.3 The SPD consists of a set of documents. The Core Guidance Document provides the overarching policies and strategies enabling developer contributions to be sought. There are a set of 13 supporting papers which provide further detail on a topic by topic basis. Finally there is an Example Contributions document which sets out the likely level of contributions to be sought based on the size, type and scale of development proposed.
- 1.4 It is necessary to update the SPD in order that it remains effective alongside the CIL once it is implemented on 1st April 2015. Until that date, the current adopted SPD will remain in place.

2. Proposals

- 2.1 Officers of all relevant service units, together with partner organisations, have been asked to update their Topic Papers to reflect the much reduced ability to use S106 developer contributions once CIL is implemented.
- 2.2 The updated Topic Papers, together with an updated Core Guidance Document, are attached as Appendix A to this report.
- 2.3 Officers propose to change the title of the SPD to reflect its limited use and therefore its reduced ability to adequately mitigate the impact of development once CIL has been implemented. The updated SPD will be called simply 'Planning Obligations'.
- 2.4 Members of Executive, at their meeting on 24th July 2014, will be asked to approve the draft Supplementary Planning Document 'Planning Obligations' prior to a seven week consultation process which will run from Friday 25th July 2014 to Friday 12th September 2014.

3. Equalities Impact Assessment Outcomes

- 3.1 This item is not relevant to equality.

Executive Report

1. Introduction

- 1.1 SPD 'Delivering Investment from Sustainable Development' was adopted in June 2013. This replaced Supplementary Planning Guidance ("SPG") with the same name, which had been in place since 2004. The SPG and SPD have set out our approach and procedures for securing contributions to mitigate the impact of development in West Berkshire. The policy has been regularly updated to reflect changes to national and local policies, and changes to the methodology / formulae in place.
- 1.2 Contributions are sought based on a formulaic approach which has regard to the size and type of development proposed. The calculation makes use of the likely occupancy of each size dwelling, and likely numbers of employees generated from commercial development, to arrive at the contributions payable. These are set out in a legal agreement and are generally payable by the landowner when development commences.
- 1.3 Once paid, the contributions are passed to the appropriate service unit (or partner organisation) to be used to mitigate the impact on the local area where development has taken place. Our successful SPG and SPD have resulted in an average receipt of £4.5million per annum in the last 10 years, used to mitigate the impact caused by development in West Berkshire.
- 1.4 The Community Infrastructure Levy Regulations 2010 ("The Regulations ") came into force on 6th April 2010 and allow Councils to set a levy which will be charged on all new development resulting in the creation of one dwelling, or any new development over 100m² (excluding residential annexes and extensions).
- 1.5 Although the Regulations do not require any Council to adopt a CIL, the Regulations contain within them a restriction on the use of S106 agreements after 6th April 2015. For this reason it was necessary for this Council to adopt CIL. If this particular restriction had not been included in the Regulations it is very likely that this Council would not have adopted a CIL and would have continued to use the SPD to secure developer contributions.
- 1.6 West Berkshire's CIL Charging Schedule was adopted at a meeting of Council in March 2014. Members of Council also resolved to delay implementation of CIL until 1st April 2015. The levy will therefore apply to any planning applications determined on or after 1st April 2015. From that date the use of S106 agreements will be restricted. In accordance with CIL Statutory Guidance, officers propose that the SPD is updated to reflect the effect of the implementation of CIL.

2. Proposals

- 2.1 The purpose of this report is to consider an update to the SPD so that it can be used alongside the implemented CIL, from 1st April 2015. The revised Topic Papers and the updated Core Guidance document are attached at Appendix A to the report.

2.2 The documents reflect the restricted use of S106 agreements once CIL is implemented, and are in accordance with the CIL Regulations and statutory guidance.

3. Regulatory Background

3.1 The CIL is now the Government's preferred vehicle for securing developer contributions. The Regulations contain within them specific provisions to restrict the use of S106 agreements once any Council implements CIL, or after 6th April 2015, whichever is sooner. This Council will implement CIL on 1st April 2015.

3.2 The restrictions to the use of S106 agreements are detailed in Part 11 of the Regulations, and are explained in the following paragraphs.

3.3 Firstly, on or after the date an authority's charging schedule takes effect, Regulation 122 states that a planning obligation may not constitute a reason for granting planning permission if it requires the provision of any infrastructure that is published on the authority's Regulation 123 list as infrastructure that will be funded wholly or partly using CIL receipts.

3.4 The Council's Regulation 123 list is attached at Appendix B. It is a short document setting out what we will use CIL receipts for, and when we will still use S106 agreements to secure developer contributions. This document formed part of the supporting documentation when West Berkshire's CIL Draft Charging Schedule was examined in October 2013. The purpose of the Regulation 123 list is to ensure that a developer is not charged twice for the same piece of infrastructure. An infrastructure project or a type of infrastructure can be funded by S106, or by CIL but not both.

3.5 After 1st April 2015 West Berkshire Council cannot use S106 agreements for the provision of any infrastructure which is detailed in our Regulation 123 list as being funded by CIL.

3.6 Secondly, once an authority's charging schedule takes effect (or after 6th April 2015, whichever is sooner), Regulation 123(3) states that - a planning obligation which provides for the funding or provision of an infrastructure project or type of infrastructure cannot be required if five or more separate planning obligations which provide for the funding or provision of that project, or type of infrastructure have been entered into on or after 6th April 2010.

3.7 So, if since 6th April 2010 more than 5 planning obligations have been secured for a certain type of infrastructure, it will not be possible to use any further S106 agreements to require provision or contributions towards that type of infrastructure generally, once CIL is implemented on 1st April 2015. However, recent (Dec 2013) advice from Leading Counsel has established that further obligations (up to five) could be sought to fund a specific project within that type of infrastructure.

3.8 The Council's formulaic approach has, since 2004, relied on the use of standard terms and clauses in its S106 agreements. Therefore there have been more than 5 contributions secured using S106 agreements for all services with a formula approach in place. These are Transport, Libraries, Education, Open Spaces, Adult Social care, Healthcare, and Waste Management.

3.9 So, once CIL is implemented, S106 contributions can no longer be sought for the types of infrastructure listed in the preceding paragraph. However it remains possible for specific projects to be funded through S106 contributions if they are required directly as a result of particular development.

3.10 Requirements for Affordable Housing are excluded from these restrictions as the Government has expressly stated that it wishes the provision of Affordable Housing to remain within the S106 regime.

4. Update to SPD, to take effect from 1st April 2015

4.1 The restrictions as set out in part 3 of the report mean that the Council will no longer be able to secure contributions on a formulaic basis. Therefore the Example Contributions document has been removed from the draft SPD at Appendix A.

4.2 S106 legal agreements can only be used for the provision of Affordable Housing, and where infrastructure is required as a direct result of particular development. The Core Guidance Document and the Topic Papers have all been amended to reflect this change.

4.3 All the service units and partner organisations have been involved in updating their Topic Papers, to reflect the necessary changes brought about by the implementation of CIL. They have also taken the opportunity to update the Topic Papers to reflect changes in national and local planning policies where necessary.

4.4 In summary the changes made to the Topic Papers are as follows:

4.5 Table 1 - Summary of proposed changes to SPD

Document	Changes Made
Core Guidance	Document restructured. References to the formulaic approach removed. Explanation of how S106 will work alongside CIL and table showing where mitigation of development impacts using S106 agreements may still be sought. Explanation of different types of planning obligations together with a section on processes to follow where site viability may be an issue.
Example Contributions	Document removed from SPD altogether because the formulaic approach will not be used once CIL is implemented.
Topic Paper 1 - Affordable Housing	Inclusion of a table showing minimum space standards. Change to the method of calculation where financial contributions are agreed in lieu of on-site provision.

Document	Changes Made
Topic Paper 2 - Transport	Removal of references to current formulaic approach. Explanation of where mitigation measures using S106 agreements may still be required, and where S278 (Highways Act) agreements may be required.
Topic Paper 3 - Education	Removal of references to current formulaic approach, and explanation of where CIL will fund education infrastructure. Explanation of where mitigation measures using S106 agreements may still be required, and how the level of that contribution or provision will be determined.
Topic Paper 4 - Public Libraries	Removal of references to current formulaic approach, and explanation of where CIL will fund libraries infrastructure. Explanation of where mitigation measures using S106 agreements may still be required and how the level of that contribution or provision will be determined.
Topic Paper 5 - Community Facilities	Explanation of where CIL will be used and where mitigation measures may be required using S106 agreements.
Topic Paper 6 - Healthcare Provision	Removal of references to current formulaic approach, and explanation of where CIL will fund healthcare infrastructure. Explanation of where mitigation measures using S106 agreements may still be required and how the level of that contribution or provision will be determined.
Topic Paper 7 - Open Space	Removal of references to current formulaic approach, and explanation of where CIL will fund open spaces and play area infrastructure. Explanation of where areas of open space and play areas will be required on site and how any commuted sums will be calculated to enable future maintenance of any land and/or infrastructure transferred to the Council's ownership.
Topic Paper 8 - Waste Management	Removal of references to current formulaic approach. Explanation of when Mini Recycling Centres (MRC's) will be required to be provided.

Document	Changes Made
Topic Paper 9 - Environmental Enhancements	Details of the current relevant strategies updated. Explanation of where mitigation measures using S106 agreements may still be required and how the level of that contribution or provision will be determined.
Topic Paper 10 - Archaeology, Conservation and the Historic Environment	References to the use of developer contributions removed where no longer appropriate. Clarification on the use of planning conditions to secure mitigation measures.
Topic Paper 11 - Fire & Rescue Infrastructure	Reference to the cost of fire hydrants removed.
Topic Paper 12 - Preventing Crime and Disorder	Document restructured to improve clarity and readability. References to the use of developer contributions removed where no longer appropriate. Explanation of where mitigation measures using S106 agreements may still be required and how the level of that contribution or provision will be determined.
Topic Paper 13 - Adult Social Care	Removal of references to current formulaic approach. Explanation of where mitigation measures using S106 agreements may still be required and how the level of that contribution or provision will be determined.

5. Timescales and Process

- 5.1 Because this update will result in a new Supplementary Planning Document, the complete document will be subject to consultation. It is proposed that a seven week consultation process will take place from Friday 25th July 2014 to Friday 12th September 2014. An extra week has been added to the standard six week consultation process to compensate for the consultation taking place over the school summer holidays.
- 5.2 The consultation responses will be considered in September and early October 2014. Officers will make appropriate changes and it is planned that a report proposing adoption of the SPD will be taken to a meeting of Council in December 2014.

6. Recommendation

- 6.1 Members of Executive, at their meeting on 24th July 2014, will be asked to approve the draft Supplementary Planning Document 'Planning Obligations' prior to a seven week consultation process which will run from Friday 25th July 2014 to Friday 12th September 2014.

Appendices

Appendix A – Draft SPD ‘Planning Obligations’

Appendix B – West Berkshire Council’s Approved Regulation 123 List

Consultees

Local Stakeholders: Not applicable

Officers Consulted: Bryan Lyttle, Officers in Legal Services, Planning Policy consultant, All Service Units and Partner Organisations with Topic Papers, Corporate Board

Trade Union: Not applicable