

Title of Report:	Adoption of Supplementary Planning Document for Developer Contributions
Report to be considered by:	Council
Date of Meeting:	11 December 2014
Forward Plan Ref:	C2822

Purpose of Report: To seek Council approval for the adoption of the new Supplementary Planning Document (SPD) for Developer Contributions, to be called Planning Obligations SPD.

Recommended Action:

1. That Council is asked to approve the consultation responses and resultant amendments to the SPD and to adopt the Planning Obligations SPD, to replace the current SPD 'Delivering Investment from Sustainable Development'. The adopted SPD will apply to any applications determined or appeals decided on or after April 1st 2015.
2. That Council is asked to confirm delegated authority for non-material changes to the adopted SPD to the Head of Planning and Countryside in agreement with the Portfolio Member for Planning, Transport (Policy), Culture, Customer Services, and Countryside.

Reason for decision to be taken: To allow the Council to continue to secure developer contributions, albeit on a much reduced basis, alongside the implemented Community Infrastructure Levy (CIL) from April 2015.

Other options considered: Not to adopt an SPD and instead rely entirely on receipts of the Community Infrastructure Levy after April 2015.

Key background documentation: Delivering Investment from Sustainable Development SPD EX2821 - report to Executive which approved the draft SPD prior to consultation
West Berkshire Council's adopted CIL Charging Schedule

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

- CSP2 – Promoting a vibrant district**
- CSP3 – Improving education**
- CSP4 – Protecting the environment**

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

- CSP6 - Living within our means**
- CSP7 - Empowering people and communities**

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:
Helping to ensure that the full impact of development is mitigated by continuing to require contributions and other measures, where possible and in accordance with CIL Regulations, after CIL is implemented on 1st April 2015.

Portfolio Member Details	
Name & Telephone No.:	Councillor Hilary Cole - Tel (01635) 248542
E-mail Address:	hcole@westberks.gov.uk
Date Portfolio Member agreed report:	31 October 2014

Contact Officer Details	
Name:	Caroline Walsh
Job Title:	Developer Contributions Officer
Tel. No.:	01635 503018
E-mail Address:	cwalsh@westberks.gov.uk

Implications

Policy:	The policy basis for the SPD is contained within the West Berkshire Core Strategy. The adoption of an updated SPD for developer contributions will ensure that guidance is in place for developers once West Berkshire Council implements its Community Infrastructure Levy on 1st April 2015.
Financial:	S106 contributions will continue to be sought on a reduced basis once CIL is implemented, and where received, will be ringfenced mainly for capital spending on infrastructure and will be built into the Council's Capital Programme.
Personnel:	n/a
Legal/Procurement:	Contributions received must be spent in accordance with the terms of the legal agreements. For infrastructure being provided by the developer there are possible implications in terms of the Public Contracts Regulations 2006.
Property:	n/a

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 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 the 'Delivering Investment from Sustainable Development' Supplementary Planning Document (SPD). The SPD provides guidance to developers and sets out our approach for securing developer contributions from development of 1 new dwelling or more, or where commercial development would result in the need for 10 or more new employees.
- 1.2 The current SPD for developer contributions was adopted by Council in June 2013, and succeeds Supplementary Planning Guidance (SPG4/04) which was first adopted in 2004. Since 2004, the policy and its formulaic approach has been regularly reviewed and scrutinised, both by officers and members, and by developers through the application and appeal process.

2. Proposals

- 2.1 It is necessary to update the SPD to:
- (1) Ensure that the SPD remains effective once the Community Infrastructure Levy (CIL) is implemented on 1st April 2015. Until that date, the current adopted SPD will remain in place.
 - (2) Remove the formulaic approach from the SPD as it can no longer be used once CIL is implemented.
 - (3) Take account of new local and national planning policies.
 - (4) Take account of other updates.
- 2.2 It is proposed 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'.
- 2.3 On 24th July 2014 the Council's Executive approved the draft SPD prior to a 7 week consultation period which took place from 25th July to 12th September 2014.
- 2.4 A total of 15 consultation responses were received from 7 contributing consultees. These have been considered by officers and proposed amendments have been made to the SPD as appropriate. This is outlined in paragraphs 3.5 and 3.6 of the main report.

3. Equalities Impact Assessment Outcomes

- 3.1 This item is not relevant to equality.

4. Conclusion

- 4.1 The SPD has taken account of the consultation responses and is therefore recommended for adoption by Council in December 2014.

Executive Report

1. Introduction

- 1.1 Supplementary Planning Document (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 of 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 Community Infrastructure Levy (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 by Council in March 2014. However, 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 it is necessary to update the SPD to reflect the effect of the implementation of CIL.

2. Regulatory Background

- 2.1 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.
- 2.2 The restrictions to the use of S106 agreements are detailed in Part 11 of the Regulations, and are explained in paragraphs 2.3 to 2.10.

- 2.3 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.
- 2.4 The Council's Regulation 123 list is attached at Appendix A. 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.
- 2.5 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.
- 2.6 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.
- 2.7 Therefore, 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, advice received has established that further obligations (up to five) could be sought to fund a specific project within that type of infrastructure.
- 2.8 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.
- 2.9 Subsequently, 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. Until case law is established, there remains a potential risk of legal challenge if S106 contributions are requested.
- 2.10 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.

3. Consultation process

- 3.1 On 24th July 2014 the Council's Executive approved the draft SPD prior to a 7 week public consultation period which took place from 25th July to 12th September 2014.
- 3.2 A total of 15 consultation responses were received from 7 contributing consultees. In addition 2 further responses were received, but were intended for a different consultation which was running concurrently.
- 3.3 All the responses have been considered by officers and proposed amendments have been made to the SPD as appropriate. None of the proposed amendments are considered material; the majority provide additional clarity or supplementary information.
- 3.4 Attached at Appendix B is the consultation response statement which lists the consultation responses in full. The Council's proposed response to those consultation responses is also shown, together with any action or changes proposed to the SPD as a result.
- 3.5 One response, with regard to the Affordable Housing Topic Paper has resulted in a non material amendment to the Topic Paper. The Government has recently published the next stage in its review of housing standards. This review relates to access requirements, space standards, security, water efficiency and external waste storage. The Government has stated that it will issue a statement of policy in early 2015. This may require changes to standards currently set out in the Affordable Housing Topic Paper. The timing of the issuing of the Government's statement will require a separate update to the Topic Paper once details become known. This will constitute a factual update as a result of new Government policy and the Topic Paper will be amended again.
- 3.6 The table below summarises the responses received for each Topic Paper and any changes made as a result. Changes have only been proposed for the Core Guidance Paper, Topic Paper 1 for Affordable Housing, Topic Paper 9 for Environmental Enhancements and Topic Paper 12 for Preventing Crime and Disorder. A table showing those paragraphs proposed for amendment is attached at Appendix C.

Document	Comments Made	By	Changes Made
Overall Policy	Policy does not include references to spending CIL receipts.	Ms J Allen	No changes made. The policy is concerned with the use of S106 contributions, not CIL
	More work should be done with Parishes around infrastructure planning.		No changes made. Explanation provided about parish involvement in the refresh of the

Document	Comments Made	By	Changes Made
			Infrastructure Delivery Plan, and that engagement will take place to ensure CIL receipts are spent effectively.
Core Guidance	Response intended for a different consultation.	Ms M Pearson	No changes made.
	Concern about future funding of projects for the improvement of canal infrastructure once CIL is in place. A meeting was requested to discuss this further.	Canal and River Trust	No changes made. Explanation provided about the prioritisation of CIL receipts and future work to refresh the Infrastructure Delivery Plan. A meeting will take place with the Canal and River Trust in due course.
	No comments to make at this stage.	Gladman Developments	No changes made.
	Wording should be changed to strengthen the language and place emphasis on sustainable development.	Ms J Allen	Small changes to wording made to Paragraph 1 and Paragraph 13 as suggested.

Document	Comments Made	By	Changes Made
Topic Paper 1 - Affordable Housing	<p>Exceptional circumstances needs clarification.</p> <p>What is the council's position when the Code for Sustainable Homes is withdrawn?</p> <p>Houses should be designed to alleviate fuel poverty.</p> <p>Minimum space standards are very small.</p>	Ms J Allen	<p>Paragraph 1.5 has been amended to clarify the instances where exceptional circumstances may apply.</p> <p>Replacement of paragraph 1.38 to explain about the Government's Housing Standards Review and the statement of policy expected in early 2015.</p>
Topic Paper 2 - Transport	Response intended for a different consultation.	Miss A Dodd	No changes made.
	<p>There should be reference to other types of infrastructure required on site.</p> <p>Transport Statements, Transport Assessments and Travel Plans should be scoped with the LA prior to being prepared. Travel plans should not be detailed and not framework plans.</p> <p>Request for clarification on Public Transport - improvements to public transport are always required as a result of development.</p>	Ms J Allen	<p>No changes made.</p> <p>The types of infrastructure required on site are an indicative list, not exhaustive.</p> <p>Explanation provided about the pre-application process where scoping and requirements can be discussed.</p> <p>Explanation provided about the use of S106 and/or CIL for public transport improvements.</p>
Topic Paper 4 - Libraries	The Topic Paper is too vague and does not identify current issues. The service should be	Ms J Allen	<p>No changes made.</p> <p>Explanation of the proper use of S106</p>

Document	Comments Made	By	Changes Made
	improved for hard-to-reach residents. Access to library services in the eastern area is poor.		contributions and CIL, once CIL is implemented.
Topic Paper 5 - Community Facilities	Developers of large scale housing developments should be required to provide a community needs assessment.	Ms J Allen	No changes made. There may not always be a requirement for a community needs assessment.
Topic Paper 6 - Healthcare	A number of sites are proposed in the Housing Site Allocations DPD which would cause pressure on the practice. Suggestions provided on how the pressure could be mitigated. Funding is required.	Downland Practice	No changes made. Explanation provided of how CIL will be paid, and where it might be possible to seek S106 contributions. Explanation provided about the future work to refresh the Infrastructure Delivery Plan.
	Health Impact Assessments should be mandatory for large developments, and where existing services could be adversely affected. Topic Paper not strong enough on the protection of services.	Ms J Allen	No changes made. Financial contributions cannot resolve existing deficiencies in any service. Sustainable development will seek to provide opportunities for walking, cycling and recreational amenities. Explanation of the use of Health Impact Assessments as set out in the National Planning Practice Guidance.
Topic Paper 7 - Open Space	Development should not remove areas of open space. Pressures on existing	Ms J Allen	No changes made. Explanation provided of the importance of

Document	Comments Made	By	Changes Made
	<p>facilities should be investigated.</p> <p>Open spaces are important for well being, tranquillity, biodiversity, reduction of light pollution and clean air.</p>		<p>open spaces and green infrastructure to the Council.</p> <p>Reference made to policy CS18 of the Adopted Core Strategy for 'Green Infrastructure'.</p>
	<p>On site provision requirements for open space are not large enough to provide playing field space. Larger off-site facilities should be provided.</p> <p>Council should take note of Paragraph 73 of the National Planning Policy Framework - referring to needs assessments and evidence base.</p>	Sport England	<p>No changes made.</p> <p>Acknowledgment provided that space standards are in line with recommended levels.</p> <p>CIL receipts are more appropriately used for the provision of new facilities off site.</p>
Topic Paper 9 - Environmental Enhancements	Request for the inclusion of a requirement for hydrological implications to be conditioned, which is important where Sites of Special Scientific Interest or Special Areas of Conservation are involved.	Natural England	<p>No changes made.</p> <p>S106 agreements should not be used where it is possible to place conditions on a planning permission.</p>
	Suggested amendment to wording in regard to the provision of public art as a result of National Planning Practice Guidance	Officers	<p>Small change to wording of Paragraph 9.13</p>
Topic Paper 12 - Preventing Crime and Disorder	References to CCTV and ANPR should be clarified so that they can be requested as part of S106	Thames Valley Police	<p>The section setting out Crime Prevention Initiatives has been restructured, to improve the clarity</p>

Document	Comments Made	By	Changes Made
	agreements.		about the use of CCTV and ANPR (Paragraphs 12.11 to 12.18).
	Paragraph 12.21 should recognise that if development increases existing settlements to a particular size, then this would also trigger the need for new police infrastructure.	Ms J Allen	No changes made. Explanation provided about future use of S106 for large scale developments, and CIL for incremental increases. Explanation provided of the proposed refresh of the Infrastructure Delivery Plan where Thames Valley Police will be consulted.

4. Conclusion

- 4.1 The majority of responses received to the consultation process were from our partners involved in either service delivery or policy making. Only one developer responded, and a number of detailed responses were made from one individual.
- 4.2 This reflects the fact that the purpose of the update is to scale back the policy and remove the formulaic approach, so that it sits alongside the implemented CIL. Those involved in service delivery or policy making were keen to see the policy strengthened, or sought reassurance that funding would still be available for projects in the future.
- 4.3 The SPD will continue to be a strong document to provide guidance alongside the implemented CIL. It will allow for contributions to be sought where possible, in accordance with CIL Regulations and the Council's Regulation 123 list.

5. Recommendations

- 5.1 Council is asked to approve the Statement of Consultation attached at Appendix B, and adopt the Planning Obligations SPD as attached at Appendix D, to replace the current 'Delivering Investment from Sustainable Development' SPD. The adopted SPD will apply to any applications or appeals determined on or after 1st April 2015.
- 5.2 Council is asked to confirm delegated authority for non-material amendments to the adopted SPD to the Head of Planning and Countryside in agreement with the Portfolio Member for Planning, Transport (Policy), Culture, Customer Services, and Countryside.

Appendices

Appendix A - West Berkshire Council's Approved Regulation 123 List

Appendix B - Statement of Consultation

Appendix C - Table of proposed amendments

Appendix D - Planning Obligations SPD

Consultees

Local Stakeholders: Full public consultation

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

Trade Union: Not applicable