

CABINET
21 July 2020

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: DEVELOPER CONTRIBUTIONS SPD

REPORT OF THE SERVICE DIRECTOR - REGULATORY

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR PLANNING & TRANSPORT

CURRENT COUNCIL PRIORITY: ATTRACTIVE AND THRIVING / PROSPER AND PROTECT

NEW COUNCIL PRIORITY: RESPOND TO CHALLENGES TO THE ENVIRONMENT /
ENABLE AN ENTERPRISING AND CO-OPERATIVE ECONOMY / SUPPORT THE DELIVERY
OF GOOD QUALITY AND AFFORDABLE HOMES

1. EXECUTIVE SUMMARY

- 1.1 The Council is preparing a new Local Plan which will shape development in the District to 2031. To provide additional detail on planning policies and sites, the Council can produce Supplementary Planning Documents (SPD) to provide clarity to applicants and case officers when determining planning applications.
- 1.2 Cabinet has previously made decisions relating to (i) the nature of the SPDs that shall be produced to support the new Local Plan and (ii) the future approach to seeking developer contributions from new developments towards affordable housing, infrastructure and other matters.
- 1.3 The Developer Contributions SPD is the first of the proposed SPDs supporting the emerging Local Plan. The SPD was approved for a six-week period of public consultation through Cabinet in January 2020. Cabinet are asked to note the contents of the SPD and updated Regulation 12 Statement of Consultation. Furthermore, Cabinet are asked to resolve to adopt the SPD upon adoption of the new Local Plan (Proposed Submission Local Plan 2011-2031 (as amended by main modifications or any post-hearing modifications recommended)), so long as the new Local Plan is adopted within 12 months of the date of this Cabinet meeting.

2. RECOMMENDATIONS

- 2.1. That Cabinet resolve to adopt the Developer Contributions SPD, attached as Appendix A to this report, subject to the adoption of the new Local Plan within 12 months of the date of this Cabinet meeting.
- 2.2. That, in the interim, the proposed adoption version of the Developer Contributions SPD, be published and used as a material consideration in the determination of relevant schemes.

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| <p>2.3. That authority to make minor amendments to the Developer Contributions SPD prior to its formal adoption be delegated to the Service Director - Regulatory in consultation with the Executive Member for Planning and Transport as and when any further updates to the new Local Plan require alterations.</p> |
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3. REASONS FOR RECOMMENDATIONS

- 3.1. To allow the Developer Contributions SPD to be progressed so that it may be (i) adopted at the same time as, or shortly after, any future decision to adopt the new Local Plan and (ii) taken into account in relevant planning decisions.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. The Council could retain the existing Planning Obligations SPD or delay considering adoption of this SPD until such a time that the new Local Plan is adopted. The current SPD dates from 2006 and is not reflective of the emerging Local Plan policies or national planning policy and guidance. Given the number of sites coming forward for development on the strength of the new Local Plan, delaying the resolution to adopt the SPD will reduce its effectiveness in supporting the management of these planned developments.
- 4.2. The Developer Contributions SPD cannot be formally adopted in advance of the adoption new Local Plan. The SPD contains policy requirements which conflict with the Adopted Development Plan (currently the Saved Local Plan 2007). As a result, the SPD's adoption prior to the adoption of the new Local Plan would conflict with the Town and Country Planning (Local Plan) Regulations 2012 (as amended).
- 4.3. The Council could determine to produce a different suite of Supplementary Planning Documents to support the new Local Plan. This approach is not recommended for the reasons set out in the 25 July 2017 Cabinet report (see paragraph 17.1).
- 4.4. Officers have been instructed to conduct a review to consider the feasibility of introducing a Community Infrastructure Levy (CIL) as resolved in Cabinet meeting dated 28 January 2020. This work is ongoing, and is not an alternate option to the adoption of the Developer Contributions SPD. The Developer Contributions SPD will remain required and relevant regardless of the outcome of the ongoing review into CIL which is due to report to Cabinet by the end of the calendar year.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Executive Member for Planning and Transport and Deputy have been briefed on the matters set out above.
- 5.2. All Members were invited to a workshop held on 13 February 2019 to discuss 'Making the most of developer contributions' and to feed back on current processes and issues to enable development of the new SPD. Two members of each Parish Council were invited to a planning training session on 27 February 2019 where the Council's proposed approach to developer contributions was explained and discussed.

- 5.3. Relevant officers across Council departments, Hertfordshire County Council and NHS England have been involved in developing the SPD.
- 5.4. Following Cabinet resolution in January 2020, the Developer Contributions SPD has been through a six-week public consultation. The results of this public consultation can be found in appendix B (Regulation 12 Statement of Consultation). Furthermore, all Members have been invited to comment on the appendix A (Developer Contributions SPD) and appendix B (Regulation 12 Statement of Consultation) for a three-week period prior to this meeting.

6. FORWARD PLAN

- 6.1 This report relates to a key decision that was first notified to the public in the Forward Plan on 18 January 2019.

7. BACKGROUND

- 7.1. Developer contributions can be used to make a development acceptable but should only be used where unacceptable impacts cannot be dealt with by planning conditions. Legal tests must be applied to any planning obligations sought, and this is outlined in Community Infrastructure Levy Regulations 2010 (as amended) and in paragraph 56 of the NPPF. Any contributions must be:
 - a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
- 7.2. The National Planning Policy Framework (NPPF) defines Supplementary Planning Documents (SPDs) as documents which add further detail to the policies in the development plan. SPDs are capable of being a material consideration in planning decisions but are not part of the statutory Development Plan.
- 7.3. SPDs do not have the same status as the Development Plan (in North Hertfordshire's case, the Local Plan) and are not subject to an independent examination. However, SPDs have to undergo public consultation and are taken into account as material considerations in planning decisions.
- 7.4. A review of the Council's current planning guidance was undertaken in 2017 following submission of the proposed new Local Plan for examination. This identified that the Council's Planning Obligations Supplementary Planning Document (SPD) dating from 2006 should be prioritised for updating. This review of current Council planning guidance, and the identification of documents to be produced in the future, was considered and approved by Cabinet on 25th July 2017. Work on the SPDs since this time was delayed due to the ongoing nature of the Local Plan examination as an adopted SPD must relate to an adopted plan policy.

- 7.5. In June 2020, the Cabinet approved the Council's updated Housing Delivery Test Action Plan for publication. This contains a range of measures to boost the delivery of new homes in the District. The Action Plan reiterates this Council's intention to prepare a Developer Contributions SPD to be adopted alongside, or shortly after, any adoption of the new Local Plan.
- 7.6. Following the resolution of Cabinet in January 2020, a draft form of the Developer Contributions SPD has been through a six-week period of public consultation. This ran from 09:00 on 12 February 2020 to 17:00 on 24 March 2020. The results of this public consultation are outlined within appendix B: Regulation 12 Statement of Consultation, and has informed the final version of the document shown in appendix A: Developer Contributions SPD.
- 7.7. Subsequent to the resolution of Cabinet in January 2020, Officers are conducting a review to consider the feasibility of introducing CIL for residential sites. The results of this review cannot be prejudiced at this stage. The Developer Contributions SPD recommended here for a resolution to be adopted will remain relevant and required regardless of the result of the review into CIL.

8. RELEVANT CONSIDERATIONS

Resolving to Adopt the Developer Contributions SPD upon adoption of the new Local Plan

- 8.1. The new Local Plan contains a series of policies with implications for affordable housing and other infrastructure requirements, which will be secured via planning conditions or legal agreements. The main policy 'hook' that links to the ability for the Council to seek developer contributions is in emerging Local Plan Policy SP7: Infrastructure requirements and developer contributions.
- 8.2. To align the Council's approach to developer contributions with the new Local Plan policies and Government reforms to the CIL Regulations, work has been undertaken by Council officers to draft a new Developer Contributions SPD. The SPD will establish a framework for seeking contributions and will replace the current Planning Obligations SPD which dates from 2006.
- 8.3. The SPD has been informed by research on SPDs adopted by other local authorities relating to developer contributions, as well as liaison with relevant Council departments, Members, Hertfordshire County Council (HCC) and NHS England to better understand the most appropriate scope and content for the SPD.
- 8.4. It has also been critical to consider the scale of infrastructure that will be required to support the delivery of the Local Plan policies and development sites. In particular, the delivery of the Strategic Sites will be contingent on the use of Section 106 agreements to secure on-site infrastructure as well as mitigation measures.

- 8.5. The Developer Contributions SPD has been subject to a six-week public consultation, which was resolved by Cabinet on 28 January 2020. Appendix B is the resultant, updated, Regulation 12 Statement of Consultation, which contains a summary of all responses and actions taken in respect to those comments. The SPD was made available on the Council website, and letters were sent to interested parties with a link and information on the purpose of the document and notification. Sixteen representations were made, with comments specific to each section of the SPD. Many minor alterations have been made as a result of the consultation, adding clarity and further explanation to certain sections. No significant or key changes were required following the consultation. A further notification has been made of all Members of the Regulation 12 Statement of Consultation and resultant Developer Contributions SPD for a period of three weeks. The public consultation and notification of Members has informed the Developer Contributions SPD attached as appendix A
- 8.6. It is proposed to resolve to adopt the SPD upon adoption of the new Local Plan in advance of the Inspector's report for three main reasons:
- The SPD would contain policies which would conflict with the current adopted development plan (Saved Local Plan), so until such a time that the new Local Plan is adopted, the adoption of the SPD would conflict with relevant regulations;
 - So that the SPD can be adopted as close as is possible to any future adoption of the new Local Plan; and
 - To enable use of the SPD as a material consideration in the negotiation and determination of planning applications, or in providing pre-application advice, at the earliest opportunity, especially for sites allocated in the new Local Plan coming forward in advance of its adoption

Publication of the Developer Contributions SPD

- 8.7. As the new Local Plan progresses, sites allocated for development within it are coming forward in advance of the adoption. This has resulted in the negotiation of developments in line with policies contained within the new Local Plan. The Developer Contributions SPD will be a useful tool in clarifying and expanding upon the policy requirements of the new Local Plan.
- 8.8. Publishing the Developer Contributions SPD on the Council website in advance of its adoption would not contravene any relevant regulations or legislation. The publication will allow access to the SPD for all relevant parties prior to its adoption and allow greater weight to be afforded to the contents of the document in the negotiation and determination of planning applications. It is expected that the publication will assist in the processing of planning applications relevant to allocated sites in the new Local Plan which come forward in advance of the plan's adoption. It will help progress complex legal agreements on sites where planning applications have been submitted but are unlikely to be determined in advance of the examination outcome. This will help reduce further delays once any final decision to adopt the new Local Plan has been made.

Delegation of non-material amendments to the Developer Contributions SPD

- 8.9. It is anticipated that non-material amendments to the Developer Contributions SPD will be required prior to its adoption to ensure it aligns to the new Local Plan. The SPD has been formulated in line with the new Local Plan as altered by Main Modifications resultant from the first round of hearings. There are aspects already contained within the SPD which will need updating prior to its adoption, such as final policy numbers brought through from the new Local Plan.
- 8.10. Other amendments may be required as a result of the further hearings requested but not yet scheduled by the Inspector, and any subsequent amendments required in line with the Inspector's final report. It is recommended that Cabinet resolve to delegate authority to the Service Director - Regulatory to make minor-material amendments to the SPD as required by any changes required to the new Local Plan. This delegation will be subject to review and discussion with the Executive Member for Planning and Transport as and when the scale of the amendments are known. If the Service Director - Regulatory and Executive Member for Planning and Transport consider the amendments to be of a scale that requires the scrutiny of Cabinet, an amended Developer Contributions SPD will be presented to Cabinet for resolution to adopt or, if significant changes are required, further consultation.

Community Infrastructure Levy

- 8.11. As set out above, as a result of the resolution of Cabinet dated 28 January 2020, Officers are conducting a review into the viability of CIL for residential developments within the District. Even if a CIL for North Hertfordshire were eventually pursued as a result of this review, there would still be a role for Section 106 legal agreements and the Developer Contributions SPD. The SPD would still be required to secure affordable housing as well as contributions towards any matters not covered by a CIL. The largest proposed sites in the new Local Plan in particular would still be accompanied by a bespoke legal agreement. In this regard, it is necessary to maintain an up-to-date SPD on developer contributions in any event.

9. LEGAL IMPLICATIONS

- 9.1. The statutory basis for Supplementary Planning Documents and their preparation is set out by a range of acts and associated regulations including the Planning and Compulsory Purchase Act 2004 (as amended) and the Localism Act 2011. Detailed requirements for the preparation of SPDs, including requirements for consultation, are stipulated in the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 9.2. The provisions for planning obligations are set out under Section 106 of the Town and Country Planning Act 1990.

- 9.3. As soon as reasonably practicable after adoption of the Developer Contributions SPD, pursuant to the adoption of the new Local Plan, the Council will produce an adoption statement in line with regulation 14 and 11 of the Town and Country Planning (Local Plans) Regulations 2012 (as amended) and publish it in line with regulation 35 of those Regulations. Furthermore, the adoption statement shall be sent to any person who has asked to be notified of the adoption of the SPD.

10. FINANCIAL IMPLICATIONS

- 10.1. The general costs of preparing Supplementary Planning Documents are met through existing revenue budgets.
- 10.2. Resolving to adopt the SPD will help ensure that developers make fair and justified contributions towards the provision and / or management of infrastructure. Without these contributions, the financial burden of making necessary provision might otherwise fall to the Council and the wider public sector

11. RISK IMPLICATIONS

- 11.1. There are no new risk implications arising from this report. Sustainable Development of the District and the Local Plan are both Cabinet Top Risks. However, as SPDs clarify policies which are subject to their own separate approval processes, this report is not considered to present a corporate risk in itself.
- 11.2. Nonetheless, the risks associated with not producing an updated Developer Contributions SPD include:
- lack of clarity and uncertainty to case officers and applicants when negotiating and determining planning applications;
 - lack of consistency with the emerging Local Plan as well as national planning policy and guidance; and
 - a risk of not securing the maximum range and / or amount of contributions possible within the parameters of the CIL regulations.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are not considered to be any direct equality issues arising from this report. Future individual schemes or considerations may well be subject to appropriate review to ensure they comply with latest equality legislative need. Any risks and opportunities identified will also be subject to assessment for impact on those that share a protected characteristic.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1 Supplementary Planning Documents are required to undergo a Strategic Environmental Assessment screening assessment by the Environmental Assessment of Plans and Programmes Regulations 2004. A Strategic Environment Assessment Screening Determination Statement was produced prior to the six-week public consultation period, and the relevant consultees notified. No substantive responses have been received. The conclusion of the Screening Determination Statement is that a Strategic Environmental Assessment (SEA) is not required,
- 14.2 A SEA is not required as the development plan policies upon which this SPD supplements, have themselves been subjected to a SA and SEA. These assessments are considered as part of the new Local Plan examination by the Inspector, and would not be impacted by the SPD, as the SPD is only entitled to provide guidance to existing policies. Consequently, no further action is required in respect to the environmental implications of the SPD.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There are no new human resource implications arising from the contents of this report.

16. APPENDICES

- 16.1 Appendix A – Draft Developer Contributions SPD
- 16.2 Appendix B – Regulation 12 Statement of Consultation

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18. BACKGROUND PAPERS

18.1 [Review of North Hertfordshire Planning Guidance report to Cabinet, 25 July 2017](#)

18.2 [Strategic Planning Matters report to Cabinet, 18 December 2018](#)

18.3 [Housing Delivery Test Action Plan report to Cabinet, 11 June 2019](#)

18.4 [Local Plan Viability Assessment Update, August 2016](#) (Local Plan reference TI2)

18.5 [NHDC Viability Addendum, February 2018](#) (Local Plan reference ED72)

18.6 [Draft Developer Contributions SPD report to Cabinet, 28 January 2020](#)