

CABINET
13 SEPTEMBER 2022

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: DRAFT DEVELOPER CONTRIBUTIONS SPD

REPORT OF: IAN FULLSTONE, SERVICE DIRECTOR - REGULATORY

EXECUTIVE MEMBER: CLLR. RUTH BROWN, EXECUTIVE MEMBER FOR PLANNING & TRANSPORT

COUNCIL PRIORITY: PEOPLE FIRST / SUSTAINABILITY / A BRIGHTER FUTURE TOGETHER

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. Cabinet is asked to note the contents of the draft SPD (as updated) and approve a five-week public consultation which will inform any final version of the document.

2. RECOMMENDATIONS

- 2.1. That the draft Developer Contributions SPD, attached as Appendix A to this report, be endorsed and approved for a five-week public consultation.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To allow the Developer Contributions SPD to be progressed so that it may be adopted at the same time as, or shortly after, any future decision to adopt the new Local Plan.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. The Council could retain the existing Planning Obligations SPD and / or delay consultation upon this latest draft. However, the current SPD dates from 2006 and is not reflective of the emerging Local Plan policies or national planning policy and guidance. Officers therefore consider it important that a revised SPD is prepared. The draft SPD

has been updated to reflect relevant changes since Cabinet last considered this emerging document in July 2021.

4.2. Officers have previously given consideration to alternate approaches to the collection of developer contributions, namely the potential to prepare and adopt a Community Infrastructure Levy (CIL) for the District. On 16 March 2021, Cabinet resolved not to pursue the preparation of a Community Infrastructure Levy for the District at this time. This was due to a variety of factors including:

- the risk to the Council given the proposed national levy by Government that could render any preparatory works and costs abortive.
- the time and resource implications of meeting the statutory implementation requirements and developing the necessary administrative infrastructure (the Council would need to forward fund these given that the relief of administration costs can only commence once the CIL is implemented and collected.)
- the largest sites (which form the significant majority of anticipated future development in terms of dwelling numbers, albeit from a relatively small number of planning applications) would still require s106 legal agreements even if a CIL were pursued.
- The proposed revisions to the programme of SPDs and associated evidence base above would significantly enhance the Council's ability to negotiate effective legal agreements on new development and bring significant benefit in this regard.

4.3. Since this decision was taken, the Government has committed further to the introduction of a new 'Infrastructure Levy' (IL) in the Levelling-up and Regeneration Bill. This would be a mandatory rather than optional levy based on a percentage of the final Gross Development Value (GDV). At this stage there is inherent uncertainty over the operation and timescales for introduction of the Infrastructure Levy, with a consultation expected in the coming months. It is anticipated that, even under an IL regime, there will still be a requirement / role for site-specific Section 106 legal agreements, particularly on larger development sites.

4.4. This morphing, yet uncertain, national policy context coupled with the number of forthcoming sites allocated in the emerging Local Plan still necessitates the pressing need to have an up-to-date adopted Developer Contributions SPD.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1. The Executive Member for Planning and Transport has been briefed on the matters set out above.

5.3. Internal and external consultation with relevant officers across Council departments, Hertfordshire County Council and the NHS have been involved in developing the draft SPD, including in relation to the most recent updates.

5.4. An initial public consultation on the SPD was carried out in 2020.

6. FORWARD PLAN

6.1 This report relates to a key decision that was first notified to the public in the Forward Plan on 29 July 2022.

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 57 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. SPDs are not subject to an independent examination but are required to undergo public consultation.
- 7.3. 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.
- 7.4. A Draft Developer Contributions SPD was subsequently produced and consulted upon between February and March 2020.¹ In July 2020, Cabinet resolved to adopt the Developer Contributions SPD subject to the adoption of the new Local Plan within 12 months of the Cabinet meeting. Further to this, in the interim it was agreed that the document would be published and used as a material consideration when considering planning applications.
- 7.5. In March 2021, a Cabinet decision was made to not pursue a Community Infrastructure Levy at this time, and also to commence work on a revised and updated suite of Supplementary Planning Documents (although the latter had no bearing on the Developer Contributions SPD).
- 7.6. Delays in the Local Plan Examination precipitated a need to obtain Cabinet approval in July 2021 to continue to use the draft SPD as a material consideration in decision making, and to review the SPD to determine whether any further work was needed prior to adoption and any associated Cabinet decision. It was additionally decided at the same Cabinet meeting to use the Fields in Trust standards for open space provision in new development.
- 7.7. It is proposed that this latest version of the SPD will be consulted upon starting in October 2022 to enable adoption at the same time as, or shortly after, any future decision to adopt the Council's emerging Local Plan.

¹ Cabinet decision 28 January 2020, <https://democracy.north-herts.gov.uk/documents/s9737/Draft%20Developer%20Contributions%20SPD.pdf>

8. RELEVANT CONSIDERATIONS

- 8.1. The emerging 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. The latest version of the Draft Developer Contributions SPD (which is the subject of this Cabinet report) incorporates a range of changes necessary since the last round of consultation in 2020. It has been updated following internal and external consultation with key stakeholders to ensure the document is up to date and reflects the Council's current preferred approach to securing developer contributions. The key changes comprise the following:
- Inclusion of the Council's interim position on the delivery of First Homes as agreed at Cabinet in March 2022.
 - Reference to the ongoing update to the Strategic Housing Market Assessment Volume II.
 - The use of the Fields in Trust Standards to determine open space requirements
 - Updates to the approach to the management and maintenance of open space to reflect the most recent Green Spaces Strategy
 - Updates to the biodiversity section due to the increased prominence of Biodiversity Net Gain
 - Updated procedural guidance
 - Wider updates to reflect changes in national planning policy and guidance as well as the Levelling-up and Regeneration Bill.
- 8.3. The updated draft SPD is attached at Appendix A and the accompanying SEA Screening Determination at Appendix B. The SPD is drafted based upon the current emerging Local Plan. Due to this, minor amendments to this SPD, such as the terminology used, may be needed following adoption. Compared to the Local Plan, there is far greater scope to amend a draft SPD in response to consultation responses and other matters prior to its adoption.
- 8.4. Subject to approval by Cabinet, the draft SPD will be made available for public consultation for a period of five weeks commencing in early October 2022. This is longer than the statutory minimum of four weeks, but this will account for the half-term school holiday. Any comments received will inform the final version of the SPD which would then be re-presented to Cabinet for approval and adoption at an appropriate time having regard to the progress of the new Local Plan.

9. LEGAL IMPLICATIONS

- 9.1. Under the Terms of Reference for Cabinet Paragraph 5.6.18 of the Constitution states that the Cabinet should exercise the Council's functions as Local Planning Authority except where functions are reserved by law to the responsibility of the Council or delegated to the Service Director: Regulatory.

- 9.2. 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).
- 9.3. The provisions for planning obligations are set out under Section 106 of the Town and Country Planning Act 1990.

10. FINANCIAL IMPLICATIONS

- 10.1. The general costs of preparing Supplementary Planning Documents are met through existing revenue budgets.

11. RISK IMPLICATIONS

- 11.1. There are no new risk implications arising from this report. The Council has changed how it sets and monitors risks, as reported to Cabinet in March 2022. This will see a shift to strategic risks based on key projects such as the Local Plan.
- 11.2. An initial review of the existing risks for planning and development has been undertaken. It was concluded that it was best to revisit these risks once the Inspector's report has been received and / or any final decision on adoption of the new Local Plan has been taken. Reviews will also reflect the new approach to setting and monitoring Corporate Risks.
- 11.3. 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. The SPD will have positive environmental implications, securing contributions for a range of measures including, but not limited to: biodiversity net gain, sustainable travel, renewable energy and climate change adaptations and mitigations.

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 – SEA Screening Determination

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18. BACKGROUND PAPERS

- 18.1 [Review of North Hertfordshire Planning Guidance report to Cabinet, 25 July 2017](#)
- 18.2 [Draft Developer Contributions SPD report to Cabinet, 28 January 2020](#)
- 18.3 [Draft Developer Contributions SPD report to Cabinet, 21 July 2020](#)
- 18.4 [Local Plan Implementation report Cabinet, 16 March 2021](#)
- 18.5 [Extension of time for the Draft Developer Contributions SPD, 20 July 2021](#)
- 18.6 [Strategic Planning Matters report to Cabinet, 22 March 2022](#)