

**OVERVIEW AND SCRUTINY COMMITTEE
16 JULY 2019**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: DRAFT DEVELOPER CONTRIBUTIONS SPD

REPORT OF: SERVICE DIRECTOR - REGULATORY

EXECUTIVE MEMBER : EXECUTIVE MEMBER FOR PLANNING & TRANSPORT

COUNCIL PRIORITY : ATTRACTIVE AND THRIVING / PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 The Council is currently preparing a new Local Plan containing planning policies and site allocations, 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 The purpose of this report is to provide the Overview & Scrutiny committee with the opportunity to review and provide any comment or recommendation upon the draft Developer Contributions SPD, prior to its consideration by Cabinet on July 30 2019.

2. RECOMMENDATIONS

- 2.1 That the Committee receive and provide any comment or recommendation upon the working draft Developer Contributions SPD.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To enable Overview & Scrutiny Committee the opportunity to consider the draft SPD prior its presentation to Cabinet on July 30 2019.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Officers have 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. This approach is not recommended for proposed Local Plan sites for the reasons summarised below and set out in the 18 December 2018 Cabinet report (see paragraph 17.2). Although following a Countywide series of workshops, officers will explore the opportunity to use CIL for smaller developments in 2020.
- 4.2 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).

- 4.3 The Council could retain the existing Planning Obligations SPD or delay consultation upon this 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.
- 4.4 Any of the above alternates would require new Cabinet resolutions to instruct officers and countermand the existing Cabinet resolutions on these matters. Any alternate decision would need to have regard to its consistency with the measures included in the Housing Delivery Test Action Plan which was approved for publication by Cabinet in June 2019.

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. 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.
- 5.2 Relevant officers across Council departments, Hertfordshire County Council and NHS England have been involved in developing the draft SPD.

6. FORWARD PLAN

- 6.1 This report relates to a key decision to be taken by Cabinet on 30 July 2019. This 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)¹ 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 policies within 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 when determining planning applications.

¹Annex 2: Glossary

- 7.4 A review of the Council's current planning guidance was undertaken in 2017. 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.
- 7.5 The Council has previously considered whether some contributions from new development might instead be secured by introducing a Community Infrastructure Levy (CIL). CIL effectively operates as a flat-rate 'tax' levied upon qualifying development based on the amount of floorspace being provided. It is collected on an authority-wide basis. CIL can be spent on any matters or projects defined by the Council on its 'Regulation 123' list. However, unlike site-specific legal agreements, there is no guarantee at the point of determining applications that monies will be spent on any particular matter or project.
- 7.6 In December 2018, Cabinet reaffirmed its resolution of 30th July 2013: "That a Community Infrastructure Levy for North Hertfordshire be not pursued for the time being", and that developer contributions would continue to be collected through the use of Section 106 legal agreements. In the Cabinet report it was also recommended that work would be expedited on the review and adoption of a revised Planning Obligations SPD to reflect the Governments' recent strengthening of viability matters in Planning Practice Guidance; and, to address the full range of potential contributions that might be sought through s106 in the absence of CIL.
- 7.7 Subsequent to that Cabinet decision, the Government laid draft regulations confirming that all pooling restrictions are to be lifted so that multiple Section 106 agreements can be collected towards a single piece of infrastructure. This restriction has been in place since 2015 and presently means that no more than five Section 106 contributions may be made towards any single infrastructure scheme. This has been a notable barrier to the funding and delivery of infrastructure, particularly for larger projects.
- 7.8 In June 2019, the Cabinet approved the Council's 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 with a target date of July 2019 for approval of the draft document..

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 To align the Council's approach to developer contributions with the emerging Local Plan policies and proposed 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.

- 8.3 The draft 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 current draft of the SPD is attached as Appendix A. This is the 'working draft' at the time it was necessary to prepare this report. Some further changes may be made in finalising the draft SPD for presentation to Cabinet. However, it is not presently anticipated that any further changes would be substantive.
- 8.6 The SPD is drafted based upon the current progress of the new Local Plan as it proceeds through Examination. Any significant changes to the Plan may lead to a requirement to update the draft SPD prior to its adoption.
- 8.7 Subject to approval by Cabinet, the draft SPD will be made available for public consultation for a period of six weeks. Any comments received will inform the final version of the SPD which would then be re-presented to Cabinet for approval and adoption.
- 8.8 It is proposed to bring forward the draft SPD for consultation in advance of the Inspector's report on the new Local Plan for three main reasons:
- To seek the views of key stakeholders and the community upon the proposals developed to date;
 - So that the preparation of the SPD can be completed so as to allow for its adoption as close to any adoption of the new Local Plan as practicable; and
 - To enable use of the draft SPD as a material consideration in the determination of planning applications, or in providing pre-application advice, at the earliest opportunity given the age of the current guidance.

9. LEGAL IMPLICATIONS

- 9.1 The Overview and Scrutiny Committee has various powers to consider reports and make recommendations to Cabinet, including commenting as appropriate on items on the Forward Plan prior to any decision being made.
- 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).

10. FINANCIAL IMPLICATIONS

- 10.1 The general costs of preparing Supplementary Planning Documents are met through existing revenue budgets. Any specific costs or requirements for additional work in relation to the production of the Developer Contributions SPD could be met through an existing revenue budget for CIL/Planning Obligations.

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 determining planning applications, and lack of consistency with the emerging Local Plan as well as national planning policy and guidance.

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” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

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

15. APPENDICES

- 15.1 Appendix A - Developer Contributions Supplementary Planning Document – Working Draft as at June 2019

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17. BACKGROUND PAPERS

- 17.1 [Review of North Hertfordshire Planning Guidance report to Cabinet, 25 July 2017](#)
- 17.2 [Strategic Planning Matters report to Cabinet, 18 December 2018](#)
- 17.3 [Housing Delivery Test Action Plan report to Cabinet, 11 June 2019](#)
- 17.4 [Local Plan Viability Assessment Update, August 2016](#) (Local Plan reference TI2)
- 17.5 [NHDC Viability Addendum, February 2018](#) (Local Plan reference ED72)