

**OVERVIEW AND SCRUTINY COMMITTEE  
28 JANUARY 2020**

**PUBLIC DOCUMENT**

**TITLE OF REPORT: DRAFT 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. Cabinet are asked to note the contents of the draft SPD and approve a six-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 six-week public consultation.
- 2.2. That Officers be instructed to conduct a review to consider the feasibility of introducing a Community Infrastructure Levy for residential sites of 10 units or less.

### **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.
- 3.2. To determine whether there is scope to introduce a levy for small sites which are not normally subject to requests for contributions but which, collectively, result in additional burdens upon local infrastructure.

### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. 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.
- 4.2. 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. 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. This approach was 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).
- 4.4. Following a Hertfordshire-wide series of workshops held during 2019, officers now consider there is merit in exploring the scope to use CIL for smaller developments of 10 homes or less (see paragraph 7.8). At this time Officers have no particular grounds on which to recommend that the 18 December 2018 Cabinet resolution be overturned in order to pursue a Community Infrastructure Levy more broadly. However, Members may now wish to further consider this matter and instruct officers to explore CIL across a wider range of (or all) applications (see paragraphs 8.8 to 8.14) or await the outcome / anticipated financial receipts of the small developments CIL review.
- 4.5. 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 (see paragraph 7.9).

### **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.

- 5.2. 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 draft SPD.

## **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. 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 the planning decision that monies will be spent on any particular matter or project relating to that planning application.
- 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 has lifted pooling restrictions so that an unlimited number of Section 106 agreements can now be used to collect contributions towards a single infrastructure project. Pooling restrictions were in place between 2015 and 2019 and had meant that no more than five Section 106 contributions could be made towards any single infrastructure scheme. This had presented a notable barrier to the funding and delivery of infrastructure, particularly for larger projects.
- 7.8. During 2019, and following the above Cabinet decision, Council officers participated in a county-wide review in association with Hertfordshire County Council, the Planning Advisory Service (PAS) and the other nine district authorities. This process allowed officers to critically re-evaluate their position. This reaffirmed, in officers' view, that the use of Section 106 agreements is the best approach for the development strategy in the emerging local plan, where development is dispersed and (small groups of) sites can be reliant on the delivery of critical, locally specific infrastructure projects such as a school expansion. However, it did focus awareness of the cumulative infrastructure burden arising from the development of small residential sites of 10 units or less which are normally exempted from Section 106 requirements.
- 7.9. 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.

## 8. RELEVANT CONSIDERATIONS

### *Draft Developer Contributions SPD*

- 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 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 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 draft SPD is attached as Appendix A. 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. 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.
- 8.6. Subject to approval by Cabinet, the draft SPD will be made available for public consultation for a period of six weeks. This is longer than the statutory minimum of four weeks. However, this approach allows for consultation to be co-ordinated with the draft Statement of Community Involvement and Baldock, Bygrave and Clothall Neighbourhood Plan which are subject to separate reports to this meeting. It is proposed that consultation on all three documents will take place from Wednesday 12 February to Wednesday 25 March 2020. 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.
- 8.7. 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 negotiation and determination of planning applications, or in providing pre-application advice, at the earliest opportunity given the age of the current guidance.

### ***Community Infrastructure Levy***

- 8.8. As set out above, as a result of the PAS review work, officers now consider there is merit in assessing whether small sites might be asked to contribute towards infrastructure requirements. Sites of 10 homes or less are normally exempted from providing affordable housing or making other contributions through a legal agreement. However, they still create a demand for local services and infrastructure particularly when the cumulative impact of multiple small developments is considered.
- 8.9. Subject to approval by Cabinet, officers will consider the business case for introducing a small-sites CIL for the District. The review would consider the prospective benefits and costs of this approach. This would include, but is not necessarily limited to:
- Exploring the detailed legislative and regulatory requirements for producing, adopting and collecting CIL. This would include fully understanding the ability to set CIL thresholds in such a way as to capture small sites;
  - Identifying the quantum of development that might be captured by such a CIL (allowing for relevant exemptions);
  - Considering the level at which a CIL charge might be set having regard to viability and other relevant factors. It is notable that CIL examinations tend to take a precautionary approach. The recent examination in neighbouring Stevenage recommended CIL rates of between £40 and £100 per square metre of qualifying residential development whilst the evidence supporting our own Local Plan has consistently assumed that any future CIL for the District would be set at around £100 per square metre;
  - The potential CIL receipts that might be realised as a result of the above;
  - The potential timetable and administrative costs for producing a CIL up to the point of adoption;
  - The ongoing administrative processes and costs that would be required to support a CIL including calculation of CIL for individual sites, collection of receipts, enforcement and governance arrangements for its expenditure.
- 8.10. It is anticipated that the review would report back to Cabinet in the second half of 2020, however this timescale is dependant upon progress of the Local Plan and associated workloads.
- 8.11. Officers recognise there are potential benefits to introducing CIL more widely. These include the greater certainty provided to applicants, officers and community groups. By setting a flat-rate levy, CIL can reduce the requirement for lengthy negotiations on legal agreements. It also provides a guaranteed share of receipts to Parish Councils to be spent at their discretion rather than having to bid for specific projects in response to each individual planning application.

- 8.12. However, this needs to be balanced against a number of factors including the setup and ongoing costs to the Council of introducing CIL, the recent lifting of restrictive pooling limits on the collection and use of Section 106 legal agreements and the reduced certainty under a CIL regime that specific, and sometimes critical, local infrastructure projects will actually be delivered.
- 8.13. These factors informed the recommendation to Cabinet in December 2018. Notwithstanding the proposed approach to small sites above, officers have no particular grounds on which to now recommend that this decision is wholly reversed. However it is recognised that the joint administration may wish to widen the parameters of the review outlined in Paragraphs 8.8 and 8.9 above.
- 8.14. Even if a CIL for North Hertfordshire were eventually pursued more widely, there would still be a role for Section 106 legal agreements. They 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 and any recommendation under 2.2 above would not undermine this.

## **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. The process for introducing a Community Infrastructure Levy is set out in Section 211 of the Planning Act 2008 and a variety of accompanying regulations.

## **10. FINANCIAL IMPLICATIONS**

- 10.1. The general costs of preparing Supplementary Planning Documents are met through existing revenue budgets.
- 10.2. It is proposed that the CIL review work would be undertaken in-house but that any specific consultancy support (e.g. on viability) could be met through an existing revenue budget for CIL/Planning Obligations.
- 10.3. Any future financial implications of introducing a CIL will be set out in any review directed under recommendation 2.2 above.

## **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. HUMAN RESOURCE IMPLICATIONS**

- 14.1 There are no new human resource implications arising from the contents of this report although the outcomes of any review directed under recommendation 2.2 of this report could have resource implications in the future.

## **15. APPENDICES**

- 15.1. Appendix A – Draft Developer Contributions SPD



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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)