

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT, CULTURE AND SPORT

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| TO: | STRATEGIC ENVIRONMENT, PLANNING & TRANSPORT COMMITTEE | | |
| DATE: | 9 th July 2013 | AGENDA ITEM: | 9 |
| TITLE: | DRAFT REVISED S106 PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT | | |
| LEAD COUNCILLOR: | CLLR TONY PAGE | PORTFOLIO: | REGENERATION, TRANSPORT AND PLANNING |
| SERVICE: | PLANNING | WARDS: | ALL |
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The purpose of the report is to set out the key changes included in the Draft Revised S106 Planning Obligations Supplementary Planning Document (SPD).
- 1.2 The existing adopted guidance¹ on S106 planning obligations was published in 2004 and some of its evidence base is now viewed as relatively out-of date. The introduction of the Community Infrastructure Levy (CIL), which has been devised to replace various provisions currently being made under planning obligations, has taken priority over a review of the SPG. As part of this, Cabinet has already considered new Supplementary Planning Documents on Employment and Skills Training and Affordable Housing, which will remain outside the CIL regime. However, the Government is currently consulting on new regulations for CIL, including a proposal to extend the time for its introduction by a further 12 months. As it may remain in place up until 2015, it has been decided that the existing S106 guidance should be reviewed so that there is up-to-date guidance on matters that will eventually be dealt with under CIL. It is proposed to adopt a revised version of the guidance as an interim measure prior to the introduction of the Community Infrastructure Levy (CIL).
- 1.3 The main changes proposed in the revised SPD are the update of plans and costs. The primary infrastructure for which S106 will be sought is for transport, education and open space, along with other types of infrastructure in accordance with the Council's adopted Sites and Detailed Policies Document Policy DM3: Infrastructure. This sets out all the types of infrastructure, which will be sought, where relevant, and in accordance with legal tests.
- 1.4 This revised SPD will need to be read in conjunction with the Employment, Skills and Training SPD and Affordable Housing SPD.

¹ Planning Obligations under Section 106 of the Town and Country Planning Act 1990, Final Supplementary Planning Guidance (2004)

2. RECOMMENDED ACTION

- 2.1 That Committee approves the Draft Revised S106 Planning Obligations Supplementary Planning Document, as at Appendix 1, for consultation for a period of 6 weeks.
- 2.2 That Committee note that the results of the consultation will be reported back to a future Committee when approval for adoption will be sought.

3. POLICY CONTEXT

- 3.1 The Council's Supplementary Planning Guidance on Planning Obligations was adopted in 2004. It has been used effectively to secure planning obligations from developers, which have contributed towards funding a range of infrastructure within the Borough.
- 3.2 However, since its adoption there have been significant changes in terms of relevant policies and costs and recent planning appeal decisions have raised some issues with the SPG.
- 3.3 In 2010 the Community Infrastructure Levy Regulations introduced three **legal** tests to be applied when seeking planning obligations from developers. These are as follows and are also set out in paragraph 204 of the National Planning Policy Framework (NPPF), 2012:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development
- 3.4 The NPPF recognises that where safeguards are necessary to make a particular development acceptable in planning terms the development should not be approved if the measures required cannot be secured through appropriate conditions or obligations through agreements. The NPPF also sets out in paragraph 173 that it is important that the scale of obligations does not threaten the ability of a site to be developed viably.
- 3.5 Since 2004 there has also been the adoption of a number of relevant local planning policies:
 - Core Strategy (2008) Policy CS9: Infrastructure, Services, Resources and Amenities - which requires development proposals to be sustainable through the provision or re-provision of any infrastructure, services, resources or other assets affected by the development.
 - Sites and Detailed Policies Document (SDPD) Policy DM3: Infrastructure - sets out the specific infrastructure types, for which planning obligations will be sought. The Policy includes a prioritisation to be applied, for example for reasons of viability, when seeking to agree an appropriate range of measures for which planning obligations will be secured.
- 3.6 Additionally there are a number of policies within the Core Strategy, which include specific thresholds and quantified requirements for the provision of infrastructure, and policies, which include general requirements to enhance facilities, and to make new provision where appropriate. These include community infrastructure (CS32), biodiversity (CS36) and access to open space (CS30). There are also policies which require specific mitigation measures including CS20: Implementation of the Reading

Transport Strategy; CS22: Transport Assessments; CS34: Pollution and Water Resources; and CS38: Trees, Hedges and Woodland.

- 3.7 The adopted Reading Central Area Action Plan (RCAAP, 2009) and the SDPD include a number of site specific allocations which include reference to specific infrastructure which will need to be considered in bringing the site forward for redevelopment as well as specific policies such as DM16: Provision of Open Space.
- 3.8 These policies seek to ensure that development proposals make an appropriate contribution towards necessary and relevant physical and social infrastructure in order to ensure that development is both sustainable and contributes to the proper planning of an area.

4. THE PROPOSAL

a) Current Position

- 4.1 The Council currently secures developer contributions negotiated through s106 for a whole range of infrastructure projects. These comprise a mix of pooled and individual site related contributions. The receipt of S106 planning obligations has generated an average of about £3million per year over the past 10 years.
- 4.2 The current S106 SPG needs to be updated to ensure that it continues to provide a relevant basis for seeking obligations from developers.

b) Option Proposed

- 4.3 It is proposed to revise the existing S106 SPG to provide an updated basis for seeking planning obligations from developers in accordance with Policy DM3 of the Sites and Detailed Policies Document. This will serve as an interim version until a review is put in place alongside the introduction of Community Infrastructure Levy (CIL).
- 4.4 The draft updated version includes the following key changes:
 - Updated policy, plan and strategy references;
 - Specific updates to the evidence base for securing contributions towards the primary infrastructure of open space, education and transport;
 - Updated evidence base and contribution levels for open space, transport and education;
 - A revised section on other types of obligations to provide the detail to relevant adopted Sites and Detailed Policies Document policy DM3;
 - Deletion of the original sections on Affordable Housing (no. 2) and Economic Development (no. 6) as these are dealt with through separate Supplementary Planning Documents;
 - Detail with regard to the role of the S106 monitoring officer and the process of reviewing S106 legal agreements.

- 4.5 The proposed revised contribution levels indicate some slight increases and slight decreases for transport, depending on the development type, reflecting varying trip rates since 2003 when the original SPG was prepared. A small increase is proposed for leisure/open space to reflect increased costs. For education, a revised method for calculating education contributions based on 'gap' funding requirements is proposed. The existing SPG used a benchmark cost per place provided by the Department of Education. This has not been updated since 2008/9. The formula is now based on the 'gap' between the Council's cost per school place calculations and the assumed

available funding from central government and local sources including an element of borrowing. This represents a modest increase per dwelling (varying depending on dwelling type/ size) over the original figures. The overall proposed changes might affect the viability of some schemes and would therefore have some implications on the level of other obligations (e.g. affordable housing) which could be secured on a scheme.

c) Other Options Considered

(i) Not updating the 2004 S106 SPG

- 4.6 There will be a need to complete a review of the S106 planning obligations, alongside the introduction of the Community Infrastructure Levy. However, until that is provided, the Council could face challenges to the validity of the SPG both from developers and through the appeal process. This could not only lead to additional costs, but could affect the level of contributions secured through S106, thereby potentially undermining the Council's ability to achieve sustainable growth.

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 The introduction of a Revised S106 SPD will contribute to achieving the Council's following strategic aims, through providing funding for a range of infrastructure to support development:

- To develop Reading as a Green City with a sustainable environment and economy at the heart of the Thames Valley;
- To establish Reading as a learning City and a stimulating and rewarding place to live and visit;
- To promote equality, social inclusion and a safe and healthy environment for all.

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 It is proposed to undertake public consultation for at least 6 weeks. This will involve sending out consultation letters to relevant parties on the LDF team's consultation database, including government departments, adjoining local authorities, developers and agents, other users of the planning system and local interest groups. It is also proposed to advertise the consultation via local press and the RBC website. This will be in accordance with the relevant Town and Country Planning Regulations².

7. EQUALITY IMPACT ASSESSMENT

- 7.1 The Council has had regard to the general equality duty imposed by the Equality Act 2010 (S.149). This requires public authorities, in the exercise of their functions, to have due regard to the need to eliminate discrimination, harassment and victimisation etc.; to advance equality of opportunity between people who share a relevant protected characteristic and people who do not; and to foster good relations between people who share a relevant protected characteristic and those who do not.

- 7.2 The Council has carried out an Equality Impact Assessment, and considers that the application of the Revised S106 Planning Obligations SPD will not have a direct impact

² The Town and Country Planning (Local Planning) (England) Regulations 2012.

on any groups with protected characteristics. The Scoping Assessment, included at Appendix 2, identifies that an Equality Impact Assessment (EqIA) is not relevant to the Draft Revised SPD as it will apply to all developers. There is no evidence or belief that the operation of seeking and securing S106 planning obligations will have a direct impact on any groups with protected characteristics.

8. LEGAL IMPLICATIONS

- 8.1 The framework for securing planning obligations was introduced under S106 the Town and Country Planning Act 1990. Regulation 122 (2) of the Community Infrastructure Levy Regulations introduced three legal tests to be applied when seeking planning obligations. This is reiterated in the National Planning Policy Framework.
- 8.2 The Revised S106 SPD will not take effect until it has been published in accordance with the Town and Country Planning Regulations 2012².
- 8.3 Approval is currently sought for consulting on the Draft Revised S106 Planning Obligations SPD. This is being undertaken in accordance with regulations 12 and 13 of the 2012 Regulations.

9. FINANCIAL IMPLICATIONS

- 9.1 The costs of consulting on and administering S106 will be covered by existing budgets and staff costs. The relevant costs for monitoring and legal costs can be recouped as they are included as costs within the S106 legal agreements.

Value for Money

- 9.2 The introduction of the Revised SPD will ensure that the Council maximises developer funding towards infrastructure, and on the basis that the Council has the means to recoup legal and monitoring costs, then it represents value for money.

Risk Assessment

- 9.3 There are risks associated with not revising the 2004 SPG, in that it was adopted almost nine years ago and is out-of-date in some areas. The Council could be subject to increasing numbers of challenges to the validity of the evidence base being used to secure obligations. This could affect the levels of funding the Council is able to secure, thereby affecting the level of infrastructure provided to support development.

10. BACKGROUND PAPERS

- Town and Country Planning Act 1990
- The Community Infrastructure Levy Regulations 2010 (SI 948)
- The Town and Country Planning (Local Planning) (England) Regulations 2012.
- Reading Borough Council Supplementary Planning Guidance: Planning Obligations under Section 106 of the Town and Country Planning Act 1990, Final SPG (2004);
- Reading Borough Council Core Strategy (2008)
- Reading Borough Council Sites and Detailed Policies Document (2012)
- Reading Borough Council Reading Central Area Action Plan (2009)
- Reading Borough Council Infrastructure Delivery Plan (July 2011)

APPENDIX 1: DRAFT REVISED S106 PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

APPENDIX 2: EQUALITY IMPACT ASSESSMENT

Provide basic details

Name of proposal/activity/policy to be assessed:

Draft Revised S106 Planning Obligations Supplementary Planning Document

Directorate: ENCAS - Environment, Culture and Sport

Service: Planning and Building Control

Name: Alison Amoah

Job Title: Principal Planner

Date of assessment: 11/6/13

Scope your proposal

What is the aim of your policy or new service?

To set out the proposed S106 planning obligations and the relevant evidence.

Who will benefit from this proposal and how?

All developers will benefit as the Revised S106 Planning Obligations Supplementary Planning Document (SPD) will set out the proposed planning obligations that will be sought from developers.

What outcomes will the change achieve and for whom?

The Draft Revised SPD is the first stage of consultation leading to the adoption of a Revised SPD. This will enable the Council to secure developer contributions towards infrastructure, which in turn will enable sustainable development within the Borough. The SPD will provide a clear framework for developers, and the residents of the Borough will benefit from the outputs of spend of S106.

Who are the main stakeholders and what do they want?

All developers and the public. Developers want certainty over relevant costs to apply in bringing forward development proposals. Other stakeholders want to ensure that the Council uses all measures available to secure infrastructure to support development.

Assess whether an EIA is Relevant

How does your proposal relate to eliminating discrimination; promoting equality of opportunity; promoting good community relations?

Do you have evidence or reason to believe that some (racial, disability, gender, sexuality, age and religious belief) groups may be affected differently than others? (Think about your monitoring information, research, national data/reports etc)

Yes No

Is there already public concern about potentially discriminatory practices/impact or could there be? Think about your complaints, consultation, feedback.

Yes No

If the answer is Yes to any of the above you need to do an Equality Impact Assessment.

If No you **MUST** complete this statement

An Equality Impact Assessment is not relevant because the Revised S106 Planning Obligations SPD, would apply to all developers, and the levels of contribution would be based on the size and/or type of the proposed scheme. There is no evidence that any group would be treated differently. The output of the policy would be the provision of infrastructure, for which there is no evidence or belief that any group would be treated differently.