

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING & TRANSPORT COMMITTEE		
DATE:	20 <sup>th</sup> November 2013	AGENDA ITEM:	13
TITLE:	FINAL REVISED S106 PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT		
LEAD COUNCILLOR:	CLLR TONY PAGE	PORTFOLIO:	REGENERATION, TRANSPORT AND PLANNING
SERVICE:	PLANNING	WARDS:	ALL
LEAD OFFICER:	ALISON AMOAH	TEL:	0118 9372286
JOB TITLE:	PRINCIPAL PLANNER	E-MAIL:	Alison.amoah@reading.gov.uk

**1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 The purpose of the report is to set out the key changes included in the Final Revised S106 Planning Obligations Supplementary Planning Document (SPD). The existing adopted guidance<sup>1</sup> on S106 planning obligations was published in 2004 and some of its evidence base is now viewed as relatively out of date. A Draft Revised S106 SPD was consulted on during July to September 2013, which proposed changes involving an update of plans and costs. The Revised SPD is intended as an interim version until the introduction of Community Infrastructure Levy (CIL), at which time a new S106 SPD will be required to operate alongside CIL.
- 1.2 The primary infrastructure for which S106 will be sought is 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.
- 1.3 This revised SPD, once adopted, will need to be read in conjunction with the Employment, Skills and Training SPD (May 2013) and Affordable Housing SPD (July 2013).

**2. RECOMMENDED ACTION**

- 2.1 That Committee approves the Final Revised S106 Planning Obligations Supplementary Planning Document attached as at Appendix 1.
- 2.2 That Committee note the results of the consultation set out in the Statement of Consultation attached at Appendix 2.

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

### 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 new policies and changes in costs and values. A number of 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 adopt the Final Revised S106 SPD 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 As a result of the consultation on the Draft Revised S106 SPD, approved for consultation by SEPT Committee, 9<sup>th</sup> July 2013, which took place during July-September 2013, a number of further changes are proposed. These can be summarised as follows:

- Additional reference to assessing obligations on a site by site basis in accordance with the relevant legal tests and to make a development acceptable in planning terms;
- Clarification that floorspace measurement is Gross Internal Area;
- Transport contributions are calculated with regard to the net increase in trip movements generated;
- Inclusion of general principles of open space provision (new Appendix 2).
- Amended wording regarding open space contributions for employment uses;
- Further information regarding the transport calculation;
- Additional detail in Section 8 regarding the other types of infrastructure;
- Other minor wording changes.

The full results of consultation are recorded in the Statement of Consultation that is attached at Appendix 2.

##### c) Other Options Considered

*(i) Not updating the 2004 S106 SPG*

4.6 Until a new S106 SPD is adopted, to operate alongside the introduction of the Community Infrastructure Levy, there is a need to have a Revised S106 guidance document. If this revision was not adopted, albeit it would only be in force for an interim period, 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 Consultation was undertaken on the Draft Revised S106 SPD for a period of nine weeks, with emails/letters sent to just over 670 individuals, organisations, councillors and internal officers, as well as being advertised via the local press and the RBC website. This was in accordance with the relevant Town and Country Planning Regulations<sup>2</sup>. A number of changes have been made to the Draft Revised version of the SPD, as summarised in paragraph 4.4 above, as a result of the 15 responses received. These are summarised in the Statement of Consultation attached at Appendix 2.
- 6.2 A tracked changed version of the Draft Final SPD is attached at Appendix 1. An Adoption Statement will be prepared, and those who commented on the SPD will be informed of the adoption. This will be in accordance with the relevant Regulations.

## **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 on any groups with protected characteristics. A Scoping Assessment was undertaken at the draft stage (Attached at Appendix 3) and it was considered that an Equality Impact Assessment (EqIA) was not relevant as the SPD will apply to all developers, nor was there evidence or belief that the operation of seeking and securing S106 planning obligations would have a direct impact on any groups with protected characteristics. The Final Revised S106 SPD includes a few further changes as a result of the consultation. These do not change the results of the Scoping Assessment with regard to the EqIA.

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<sup>2</sup> The Town and Country Planning (Local Planning) (England) Regulations 2012.

## 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. This Final Revised S106 SPD will be published in accordance with the Town and Country Planning Regulations 2012<sup>2</sup>.

## 9. FINANCIAL IMPLICATIONS

- 9.1 The cost of 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: FINAL REVISED S106 PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

(tracked changed version - please note that this tracked changed version and a 'clean' version will be published)

**Insert Draft Revised S106 SPD**

APPENDIX 2: STATEMENT OF CONSULTATION OCTOBER 2013

INSERT

APPENDIX 3: 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.