

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING & TRANSPORT COMMITTEE		
DATE:	19 th March 2014	AGENDA ITEM:	13
TITLE:	DRAFT SECTION 106 PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT (TO OPERATE ALONGSIDE THE COMMUNITY INFRASTRUCTURE LEVY)		
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SERVICE:	PLANNING, DEVELOPMENT & REGULATORY SERVICES	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 aspects of the proposed Draft Section 106 Supplementary Planning Document, which will operate alongside the Community Infrastructure Levy (CIL), once introduced by the Council. It should be noted that an interim Revised Section 106 SPD (November 2013), consulted on during the summer, was approved for adoption at the November 20th 2013 SEPT Committee. This was an update of the 2004 Section 106 Planning Obligations Supplementary Planning Guidance.
- 1.2 Once CIL is being operated by the Council, or from April 2015¹, there will be restrictions on how Section 106 receipts can be used. Essentially CIL will become the main means of securing developer contributions towards infrastructure to support development. Section 106 will be for site related infrastructure necessary to make a development acceptable in planning terms and can only be sought in accordance with relevant legal tests². Section 106 and CIL will not be able to be used for the same item of infrastructure. Additionally the 'pooling' of Section 106 planning obligations, to be used for an item of infrastructure, will be limited to no more than five.
- 1.3 It should be noted that obligations for affordable housing and for matters not deemed as infrastructure under CIL, are not subject to the same pooling restrictions. Therefore, this new SPD, once adopted, will need to be read in conjunction with the Employment, Skills and Training SPD (April 2013) and Affordable Housing SPD (July 2013).

¹ CIL Amendment Regulations 2014 (February)

² CIL Regulation 122 (2) sets out three tests: 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

2. RECOMMENDED ACTION

- 2.1 That Committee approves the Draft Section 106 Planning Obligations Supplementary Planning Document, attached at Appendix 1, for consultation.

3. POLICY CONTEXT

- 3.1 The Council's original 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. As a result of the significant changes to relevant policies and costs since its adoption, an interim version was consulted on during the summer 2013 and was adopted by SEPT Committee on November 20th 2013.
- 3.2 It is intended to operate the Community Infrastructure Levy from April 2015 (see separate report on this agenda), at which time the use of Section 106 planning obligations will be more restricted. CIL will become the primary mechanism for achieving infrastructure payments, but there may be instances where site specific contributions will be required to enable a site to be developed and these will be secured through Section 106. Section 106 and CIL cannot be used to fund the same item of infrastructure and the pooling of Section 106 obligations entered into, towards an item of infrastructure, will be limited to no more than five contributions. (dating back to April 2010).
- 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 At the local level there are a number of relevant adopted 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 adopted 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 Section 106 for infrastructure, which meets the relevant legal tests, as set out in paragraph 3.3 above and in accordance with the Revised Section 106 Planning Obligations SPD adopted in November 2013, the Employment, Skills and Training SPD (May 2013), and the Affordable Housing SPD (July 2013). This system will fundamentally change as a result of the introduction of CIL. The existing Revised Planning Obligations SPD will cease to be operable. However there will be infrastructure requirements related to a specific site, e.g. the provision of a road junction or the provision of on-site open space, that it is necessary to provide as part of the development and which will need to be secured via a Section 106 agreement.

b) Option Proposed

- 4.2 It is proposed to consult on a new Draft Section 106 SPD, attached at Appendix 1, which will operate alongside the introduction of CIL. This sets out the relationship between CIL and Section 106 planning obligations and sets out the key principles, as follows, when S106 will be required:

- A need is established for specific site related infrastructure to make the development acceptable in planning terms and in accordance with relevant legal tests;
- A specific policy requirement needs to be met;
- Impacts on local infrastructure, directly resulting from the development, need to be mitigated, in accordance with relevant legal tests;

- 4.3 The SPD includes examples of site related infrastructure that Section 106 might be required for, depending on the circumstances of a scheme, and where the relevant legal tests are met.

c) Other Options Considered

(i) Not producing a new Section 106 guidance

- 4.4 The effect of not producing a new Section 106 guidance would be that there would be a lack of transparency as to the matters for which planning obligations could be sought, and the relationship between CIL and Section 106. Potentially it would also

mean that developers could not be required to carry out site specific works or make contributions towards infrastructure made necessary solely as a result of the development of that site. There is a requirement for Local Authorities to submit evidence to the CIL Examination as to the specific infrastructure it is intended will be funded through CIL and through Section 106.

5. CONTRIBUTION TO STRATEGIC AIMS

5.1 The introduction of a New Section 106 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 will be undertaken for six weeks, alongside the consultation on the Draft Charging Schedule for CIL. This will involve sending emails/ letters to a wide range of individuals, organisations, councillors, and internal officers, as well as being advertised via the local press and on the RBC website. This will be in accordance with the relevant Town and Country Planning Regulations³.

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 Draft Section 106 Planning Obligations SPD will not have a direct impact on any groups with protected characteristics. A Scoping Assessment was undertaken (Attached at Appendix 2) 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 Section 106 planning obligations would have a direct impact on any groups with protected characteristics.

8. LEGAL IMPLICATIONS

8.1 The framework for securing planning obligations was introduced under Section 106 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

³ The Town and Country Planning (Local Planning) (England) Regulations 2012.

Framework. The consultation on this Draft Section 106 SPD will be in accordance with Regulations 12 & 13 of the Regulations 2012².

9. FINANCIAL IMPLICATIONS

- 9.1 The cost of administering Section 106 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 Section 106 legal agreements.

Value for Money

- 9.2 The introduction of the Section 106 Planning Obligations 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 having a Section 106 SPD, which are that developers may challenge any obligations sought, which could affect the levels of site related infrastructure the Council is able to secure.

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 Revised Section 106 Planning Obligations SPD (2013)
- Employment, Skills and Training SPD (2013)
- Affordable Housing SPD (2013) ;
- 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)
- Reading Borough Council Infrastructure Delivery Schedule (incorporated into the adopted Sites and Detailed Policies Document (2012)