

## READING BOROUGH COUNCIL

### REPORT BY DIRECTOR OF ENVIRONMENT AND NEIGHBOURHOOD SERVICES

TO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT COMMITTEE		
DATE:	26 MARCH 2015	AGENDA ITEM:	12
TITLE:	REVISED SUPPLEMENTARY PLANNING DOCUMENT ON PLANNING OBLIGATIONS UNDER SECTION 106		
LEAD COUNCILLOR:	COUNCILLOR PAGE	PORTFOLIO:	STRATEGIC ENVIRONMENT, PLANNING AND TRANSPORT
SERVICE:	PLANNING	WARDS:	ALL
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#### 1. EXECUTIVE SUMMARY

- 1.1 The way in which local authorities can secure financial contributions from development towards infrastructure is changing. The Council are in the process of introducing the Community Infrastructure Levy (CIL), which will be in place on 1 April 2015. This partially replaces the Section 106 system, under which tariff-based payments were sought but often subject to a process of negotiation. CIL has no such scope for negotiation and is a levy per sq m of floorspace. The Council's CIL Charges were approved at Council on 27 January 2015 (Minute 43 refers). The role of Section 106 is now restricted to securing affordable housing (dealt with in the Council's adopted Affordable Housing SPD) and dealing with site-specific infrastructure requirements.
- 1.2 The introduction of CIL means that there is a need to produce a new version of the Section 106 Planning Obligations SPD to reflect this changed role of Section 106. This new version sets out the basis for securing site-specific infrastructure. It was subject to consultation in March, April and May 2014, and the results of consultation have been taken into account in the final version of the document. Once adopted, it will be used in deciding planning applications.

#### 2. RECOMMENDED ACTION

- 2.1 That the results of the consultation on the Section 106 Planning Obligations Supplementary Planning Document, undertaken during March, April and May 2014, as set out in the Consultation Statement at Appendix 1, be noted.

2.2 That the Section 106 Planning Obligations Supplementary Planning Document, as set out in Appendix 2 to the report, be adopted, effective from 1 April 2015.

### 3. POLICY CONTEXT

3.1 The Council's existing Supplementary Planning Document on Section 106 Planning Obligations was adopted in November 2013, and sets out the contributions would be expected under a number of headings, including transport, education and leisure and open space.

3.2 However, the Council is about to implement the Community Infrastructure Levy (CIL). The CIL Charging Schedule was approved by Council on 27 January 2015 (Minute 43 refers), with an implementation date of the 1 April. CIL will replace much of what Section 106 currently does, in particular in terms of tariff-based contributions towards infrastructure. However, Section 106 will still exist for seeking affordable housing (dealt with in the Council's adopted Affordable Housing SPD), as well as for dealing with site-specific issues. It is these site-specific issues that are the subject of the new version of the Section 106 Planning Obligations SPD.

### 4. THE PROPOSAL

#### (a) Current Position

4.1 The revised version of the Section 106 Planning Obligations SPD needs to be introduced in conjunction with CIL, since its purpose is to manage the operation of Section 106 in the context created by CIL. Therefore, the process has been conducted alongside CIL.

4.2 A draft SPD was considered by Strategic Environment, Planning and Transport Committee on 19 March 2014 (Minute 31 refers), and was approved for consultation. Consultation was undertaken over a six-week period during March, April and May 2014, and undertaken alongside the Draft Community Infrastructure Levy Charging Schedule.

4.3 In total, seven organisations responded to the consultation, although two of these responses were simply to state that there were no objections.

4.4 Other than support for the approach and minor wording issues, the main substantive responses that were made are summarised below:

- The new SPD does not calculate how much the contributions sought, particularly transport contributions, will cost, unlike the previous document;
- The relationship between this SPD and the SPDs on affordable housing and employment, skills and training (all of which relate to

the S106 regime) is confusing and should be addressed by a single SPD;

- The viability of the proposals, and the viability of seeking affordable housing from office development as set out in the Employment, Skills and Training SPD, have not been tested, as required by the NPPF;
- Contributing towards the monitoring of planning obligations is not justified.

4.5 The Report of Consultation in Appendix 1 contains a schedule summarising each individual point made, and containing a draft response stating how the point has been taken into account in the final version of the SPD.

(b) Option Proposed

4.6 Committee is recommended to adopt the amended version of the Section 106 Planning Obligations SPD, as set out in Appendix 2 to this paper. Once adopted, the Section 106 Planning Obligations SPD will be used to supplement the Core Strategy and Sites and Detailed Policies Document for the determination of planning applications. Committee is also recommended to approve the recommended responses to representations made on the draft document. These are contained in the Annex 1 of the Report of Consultation (at Appendix 1).

4.7 The representations made have led to a small number of proposed changes to the SPD. These changes are minor wording alterations that do not affect the policy direction of the SPD. A tracked changes version of the SPD can be provided on request.

(c) Other Options Considered

4.8 There is one alternative option that could be considered, which is to not adopt the SPD. This option would mean that the current Section 106 SPD, which centres around a tariff-based system of seeking contributions, would continue to be the Council's main document setting out how Section 106 is to be used. In practice, however, the Council would not be able to operate the system as set out in the current SPD, as Section 106 will be scaled back nationally from April 2015 such that it cannot be used for such tariff-based contributions. The existing SPD would not clearly set out where the division should be between CIL and Section 106 and would lead to confusion and, potentially, a loss of contribution towards the site-specific infrastructure that Section 106 can still provide for

## 5. CONTRIBUTION TO STRATEGIC AIMS

5.1 Section 106 agreements provide funding and works that while benefiting the development to which they relate also provide wider benefits for the Borough. The Planning Obligations SPD will therefore contribute towards meeting the 2015 -18 Corporate Plan objective for 'Providing infrastructure to support the economy' through providing works and

funding for a range of infrastructure to support development. The SPD will also contribute to the objective of, 'Keeping the town clean, safe, green and active,' and to the development of learning and leisure facilities in the town which are also supported under the Corporate Plan.

## **6. COMMUNITY ENGAGEMENT AND INFORMATION**

- 6.1 The Section 106 Planning Obligations SPD has been subject to one period of community involvement, during March, April and May 2014. This was carried out in line with the Council's adopted Statement of Community Involvement. The Report of Consultation (Appendix 1) sets out the steps undertaken and the response, and this is summarised in paragraphs 4.3 and 4.4 of this report.

## **7. EQUALITY ASSESSMENT**

- 7.1 A Scoping Assessment was undertaken when the draft version of the SPD was produced, and this was reported to this Committee on 19<sup>th</sup> March 2014. 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. No changes have been made to the version of the SPD for adoption that would change that conclusion.

## **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. Obligations should 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.

- 8.2 The SPD as drafted would ensure that planning obligations comply with those legal tests.

## **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.

#### **BACKGROUND PAPERS**

- Community Infrastructure Levy Regulations 2010 (as amended)
- Community Infrastructure Levy Charging Schedule (2015)
- Town and Country Planning (Local Planning) (England) Regulations 2012
- Reading Borough Council Core Strategy (2008, amended 2015)
- Reading Borough Council Sites and Detailed Policies Document (2012, amended 2015)