

Cherwell District Council

Executive

6 November 2017

Developer Contributions Supplementary Planning Document (SPD)

Report of Head of Strategic Planning and the Economy

This report is public

Purpose of report

To seek Member endorsement for a four week public consultation on a Draft Developer Contributions Supplementary Planning Document (SPD).

1.0 Recommendations

The Executive is recommended:

- 1.1 To approve the Draft Developer Contributions SPD (Appendices 1 and 2) for a four week public consultation.
- 1.2 To authorise the Head of Strategic Planning and the Economy to make any necessary minor and presentational changes to the Draft Developer Contributions SPD (Appendices 1 and 2) before formal consultation commences.

2.0 Introduction

- 2.1 The purpose of the Developer Contributions SPD is to set out the Council's approach to seeking Section 106 planning obligations from new developments for the provision of infrastructure, community facilities and services. It will enable developers to understand the Council's planning obligation requirements and costs from an early stage in the development process and to make appropriate provision when formulating costs and undertaking financial appraisals.
- 2.2 Since the introduction of the Community Infrastructure Levy (CIL) Regulations in 2010, the Government has expected developers to contribute towards the provision of infrastructure through a combination of mechanisms: paying a levy through CIL (if adopted at local level), S106 obligations, planning conditions and S278 highway contributions.
- 2.3 The CIL Regulations have recently been the subject of review by Central Government. The CIL Review Group was established by the former Communities Secretary and former Minister for Housing and Planning in November 2015. The

purpose of the review was to '*Assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government's wider housing and growth objectives*'. The report was submitted to Government in October 2016, and published in March 2017. It is anticipated that an announcement on the Government's response to this Review will be made in the 2017 Autumn Statement.

- 2.4 The timing and scope of the Government's review is outside the control of the Council but there is a pressing need to provide up to date guidance on developer contributions within the parameters of existing regulations and adopted local plan policies.
- 2.5 In November 2016 the Council published a draft Developer Contributions SPD and undertook a six week formal public consultation. That document was drafted to complement, and operate alongside an emerging CIL Charging Schedule. However, following the publication of the CIL Review which recommended significant reforms to CIL, work towards its introduction was 'paused' to await the Government's announcement.
- 2.6 The Council's developer contribution requirements are presently guided by a Draft Supplementary Planning Document (July 2011) approved by the Executive in May 2011 as informal guidance for development management purposes. The document does not carry statutory weight and new legislation, national policy and guidance have been introduced since it was prepared. The Council has also adopted its Cherwell Local Plan Part 1 (2011-2031) since it was prepared. The draft SPD therefore carries limited weight in decision making but remains the Council's most recent guidance.
- 2.7 A revised draft Developer Contributions SPD has now been prepared for public consultation subject to approval by Members. The decision to 'pause' the introduction of CIL has necessitated a substantial redrafting of the SPD. Given the extent and nature of these changes it is necessary to undertake a further public consultation prior to the adoption of the SPD. Further refinement may be necessary following the Autumn Statement.
- 2.8 The Developer Contributions SPD does not create new policy. The adopted Cherwell Local Plan 2011-2031 sets the planning framework up to 2031 with the SPD providing a further level of detail to guide development.
- 2.9 When completed it is intended that the document be adopted by the Council as a formal Supplementary Planning Document (SPD) which would then have statutory status as planning guidance.
- 2.10 The Developer Contributions SPD will help deliver Local Plan objectives of ensuring the local economy, communities and development in CDC are sustainable and support, in particular the aims of Local Plan Policy INF1: Infrastructure, and its associated Infrastructure Delivery Plan (IDP).

3.0 Report Details

- 3.1 Planning obligations, secured under Section 106 of the Town and Country Planning Act 1990 (as amended), are known as Section 106 agreements. They can either be a multi-party deed of agreement, or a unilateral undertaking made under planning legislation in association with a planning permission for new development. They are normally applied to aspects of development that cannot be controlled by imposing a planning condition or by the use of other statutory controls. Planning obligations are legally binding and enforceable if planning permission is granted. They can cover almost any relevant issue such as types of infrastructure or services and future maintenance.
- 3.2 The legal tests for the use of Section 106 agreements are set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended). Regulation 122(2) states that the use of planning obligations should only be sought where they meet all of the following tests:
- They are necessary to make a development acceptable in planning terms;
 - They are directly related to a development;
 - They are fairly and reasonably related in scale and kind to the development.
- 3.3 The obligation is a formal document, a deed which becomes a land charge. If the Section 106 agreement is not complied with, it is enforceable against the person that entered in to the obligation and any subsequent owner.

Draft Developer Contributions SPD

- 3.4 The introduction to the SPD provides an overview of the document and describes the relationship between S106 agreements and CIL. The next section sets out the policy framework at both national and local level. There is then detailed general guidance on the procedures to be used by the Council in assessing the need and type of S106 agreement required for developments. The topics covered include pre-application discussions, fees, viability, monitoring and enforcement.
- 3.5 Section 4 of the SPD gives specific guidance for different types of infrastructure. The types of infrastructure covered include affordable housing, education, transport and access, open space, play facilities, indoor and outdoor sport and recreation, community facilities, nature conservation and biodiversity, apprenticeship and skills, and public realm and public art.
- 3.6 Detailed technical advice, including the Council's standards for indoor and outdoor recreation provision, and capital contributions and commuted sums for maintenance are set out in the appendices to the document. The draft SPD also includes new standards for community hall developments and community development workers. These standards have been informed by a revised draft Cherwell Community Spaces and Development Study.
- 3.7 The draft SPD is supported by a Statement of Consultation (Appendix 3). It explains the stakeholder engagement that took place in preparing the document. The Statement also details the public consultation undertaken on the November 2016 Draft SPD and provides a summary of all the representations received.

- 3.8 A Screening Statement (Appendix 4) was prepared for the November 2016 version of the SPD. It concluded that a Strategic Environmental Assessment (SEA) was not required. Statutory consultees had the opportunity to review that Screening Statement and agreed that an SEA was not required. The statutory consultees will be requested to review their conclusions on the need for an SEA during this proposed consultation.

4.0 Conclusion and Reasons for Recommendations

- 4.1 A Draft Developer Contributions SPD (Appendices 1 and 2) is presented for approval to proceed to a further formal consultation.
- 4.2 Once adopted and subject to consultation the Developer Contributions SPD will set out the package of contributions or obligations expected to come forward from development proposals to mitigate the impact of development and help fund infrastructure needed to support growth. It is not intended to provide all the funding needed but could help maximise resource income which would otherwise not be available.

5.0 Consultation

Internal briefing: Councillor Colin Clarke, Lead Member for Planning

The Regulation 12 Statement of Consultation (Appendix 3) details the consultation undertaken in preparing the Draft Developer Contributions SPD.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Not consulting on the proposed document

The current Draft Planning Obligations SPD (July 2011) is now out of date, it carries little weight in decision making and its continued use will potentially make it more difficult for the Council to secure S106 developer contributions in the future. Not progressing the new SPD will create uncertainty about the Council's requirements for developer contributions.

Option 2: Amending the proposed documents

The document proposed for consultation has been prepared having regard to national policy and guidance, the responses received to previous public consultation, informal engagement with key stakeholders, and updated development evidence. It is considered by officers that it presents an appropriate balance between ensuring that 'as a whole' the economic viability of development proposals is not detrimentally affected and the desire to fund infrastructure.

Proceeding to consultation will provide a further opportunity for stakeholders and members of the public to address matters formally and inform the preparation of document.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications at this stage of the Developer Contributions SPD preparation. The cost of preparing the document is met from existing resources.

Comments checked by:

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Legal Implications

- 7.2 The SPD is being prepared as statutory planning guidance in accordance with the relevant legislation. Once adopted, the SPD will be a material consideration in the determination of planning applications and provide a firm basis from which to seek planning obligations.

Comments checked by:

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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: Yes

Wards Affected

All

Links to Corporate Plan and Policy Framework

This report directly links to all four of the corporate priorities and objectives set out in the Cherwell District Council Business Plan 2017-18 as follows:

- Sound budgets and a customer focused council
- Thriving communities
- District of opportunity
- Safe, clean and green

Lead Councillor

Councillor Colin Clarke – Lead Member for Planning

Document Information

Appendix No	Title
Appendix 1	Draft Developer Contributions SPD
Appendix 2	Appendices to Draft Developer Contributions SPD
Appendix 3	Regulation 12 Consultation Statement
Appendix 4	Draft Developer Contributions SPD – SEA Screening Statement
Background Papers	
None	
Published Supporting Documents	
Report to Executive 7 November 2016: Community Infrastructure Levy (CIL) Draft Charging Schedule and Developer Contributions Supplementary Planning Document (SPD)	
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