

Cherwell District Council

Council

26 February 2018

<p>Developer Contributions Supplementary Planning Document (SPD)</p>

Report of Executive Director for Place and Growth

This report is public

Purpose of report

To seek adoption of the Developer Contributions Supplementary Planning Document (SPD).

1.0 Recommendations

The meeting is recommended to:

- 1.1 Agree that the Council adopts the Developer Contributions document presented at Appendices 1 and 2 as a Supplementary Planning Document (SPD) in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).
- 1.2 Authorise the Executive Director for Place and Growth to publish an Adoption Statement.

2.0 Introduction

2.1 This report follows a report to a meeting of the Executive on 5 February 2018 at which it was resolved to:

- (1) note the responses to consultation summarised in the Consultation Statement presented at Appendix 3;
- (2) to approve the final draft of the Developer Contributions SPD as presented at Appendices 1 and 2 and incorporating the changes summarised at paragraph 3.9 of this report;
- (3) to recommend to Council that it adopts the final draft of the Developer Contributions document as a statutory Supplementary Planning Document under the Town and Country Planning (Local Planning) (England) Regulations 2012;
- (4) to authorise the Executive Director for Place and Growth to make any necessary minor changes to the final draft of the SPD before the meeting of the Council.

One change has been made to the SPD since it was considered by the Executive to correct an administrative error. The error resulted in the incorrect version of Appendix 13 being inserted in the SPD. The correct version, reflecting that which was the subject of consultation, has been re-inserted within the SPD's appendices at Appendix 2 to this report.

- 2.2 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 necessary 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. It will provide local communities with a clear understanding of the Council's requirements.
- 2.3 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.
- 2.4 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.
- 2.5 The Government's formal response to the review is still awaited. However, at the Autumn Budget 2017 the Government announced that it will launch a consultation with detailed proposals on a number of matters including:
 - removing restrictions on Section 106 pooling towards a single piece of infrastructure where the local authority has adopted CIL, in certain circumstances such as where the authority is in a low viability area, or where significant development is planned on several large strategic sites;
 - speeding up the process of setting and revising CIL to make it easier to respond to changes to the market;
 - allowing authorities to set rates which better reflect the uplift in land values between a proposed and existing use;
 - giving Combined Authorities and planning joint committees with statutory planning functions the option to levy a Strategic Infrastructure Tariff (SIT) in future.
- 2.6 The consultation document has yet to be published but there is a pressing need now to provide up to date guidance on developer contributions within the parameters of existing regulations and adopted local plan policies.
- 2.7 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.

- 2.8 A revised draft Developer Contributions SPD (Appendix 5), drafted in the context of the Council not adopting a CIL Charging Schedule at this time, was approved by the Executive for public consultation on 6 November 2017. The results of the consultation have now been taken into account and consequently modifications have been made to the document as now presented for adoption (Appendices 1 and 2).
- 2.9 Further to the Executive's recommendation (para. 2.1(3) above), the Council is invited to adopt the completed Developer Contributions document at Appendices 1 and 2 as a Supplementary Planning Document (SPD). As an SPD the document will have statutory status as planning guidance. It does not establish Development Plan policy which is the role of the Council's Local Plans.

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.

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.

Developer Contributions SPD

- 3.3 The Developer Contributions SPD (Appendices 1 and 2) is a detailed, technical document. It is supported by a Consultation Statement (Appendix 3) which explains the public consultation that has taken place in preparing the document. It also provides a summary of all the representations received. A Screening Statement (Appendix 4) has also been prepared concluding that a Strategic Environmental Assessment is not required. Statutory consultees had the opportunity to review a draft Screening Statement during the formal consultation period. They concurred that a Strategic Environmental Assessment is not required.

- 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 developers. 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.

Consultation Results

- 3.7 Thirty-two representations were received in response to consultation on the November 2017 draft of SPD (Appendix 5). The Consultation Statement at Appendix 3 to this report includes a summary of the main issues raised in each representation and explains how they have been addressed in the final draft of the SPD. The representations have been placed in the Members' Room and are available on-line at <https://www.cherwell.gov.uk/info/234/supplementary-planning-documents-spd/489/planning-obligationsdeveloper-contributions-in-preparation>.
- 3.8 In brief, the main issues raised include:
- Relationship to CIL – concern raised about the need to have an early review of the SPD to reflect any functional or legislative changes to the role of CIL. Concern was also expressed regarding the potential mechanisms to deliver strategic infrastructure, particularly transport, in the absence of an adopted CIL charging schedule and in the context of pooling restrictions on the number of contributions (5) per infrastructure project.
 - The County Council has advised that it has begun work on a Developer Guide. Updated population figures based on a survey of new housing are due to be published in 2018. Given that the outcome of the Government's CIL review is also due to be published during 2018, the County Council states that the District Council should consider whether to postpone adoption of the SPD so that these revisions can be incorporated.
 - Concern that the SPD contains a number of new policies which are not in the adopted Cherwell Local Plan eg affordable housing space standards, Employment Skills and Training Plans and Community Development Workers. The emerging Cherwell Local Plan Part 2 should provide the policy basis for all planning obligations.
 - Evidence Base – Concern that there are a number of infrastructure items for which the SPD provides no supporting evidence to justify how values have been calculated.
 - Viability – Concern that the SPD is not consistent with the NPPF. In addition the overall approach to viability reviews should be revised to ensure that it only applies to larger, multi-phased schemes.

- Views that there should be flexibility built in to the SPD to allow a more bespoke approach to infrastructure provision for larger scale developments, to capture opportunities for alternative approaches to delivery.
- Pre-Application discussions – A view that there needs to be direct consultation with Town and Parish councils at an early stage in the development process.
- Affordable Housing – A views that there should be greater flexibility in the SPD to allow changes to tenure split. University staff housing should be included as part of the affordable housing provision.
- Health – the Oxfordshire Clinical Commissioning Group (OCCG) has provided updated and detailed calculations relating to contributions towards primary care facilities.
- Concern that a number of requirements are not compliant with regulations e.g. waste bins, local management organisations for open space management, public art and community development requirements.
- Payments in Kind – Views that the SPD should allow for ‘payments in kind’ contributions to mitigate development impact.
- Heritage – Historic England state that it regrets that there is no sub-section specifically on heritage.

Response to the Issues Raised

- 3.9 The Consultation Statement at Appendix 3 explains how the issues raised have been taken in to account. The key proposed changes to the SPD, which have been incorporated into the final draft of the SPD at Appendices 1 and 2, are as follows:
- Clarification on the role of the SPD in the absence of a CIL Charging Schedule.
 - Clarification on the role of ‘payments in kind’.
 - Textual changes to financial viability requirements generally and more specifically in relation to affordable housing.
 - Additional cost information relating to cemetery provision.
 - The introduction of new and updated requirements related to the provision of primary care infrastructure (provided by the OCCG).
 - Introduction of a new requirement for capital contributions where development results in the need for additional waste recycling capacity (capital costs).
 - A new sub-section on ‘Heritage’.
 - A general review of the ‘Procedures’ having regard to representations received.
 - A general review of the infrastructure requirements having regard to representations received.
- 3.10 Changes are not proposed where the issues raised relate to wider local plan policy matters; where they assume that CIL will be introduced; where they seek unnecessary flexibility in the SPD's requirements; where there would be conflict with other corporate policy; and where they relate to matters more appropriately considered through any the future review of Development Management processes or by dealing with development proposals on a site-by-site basis.
- 3.11 The Developer Contributions SPD is now complete and presented for adoption. Upon adoption, the SPD will be a material consideration in the determination of planning applications. It sets 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 maximize resource income which would otherwise not be available.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Public consultation on a revised draft Developer Contributions SPD occurred between 23 November 2017 and 21 December 2017. The results of that consultation have been considered in producing a final document. The Executive approved the SPD on 5 February 2018 and recommends its adoption. It is now presented for formal adoption so that it has statutory status as planning guidance. The SPD does not establish Development Plan policy which is the role of the Council's Local Plans.

5.0 Consultation

Internal briefing: Councillor Colin Clarke, Lead Member for Planning

Public consultation as set out in the Statement of Consultation (Appendix 3)

6.0 Alternative Options and Reasons for Rejection

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

Option 1: Not to adopt the Developer Contributions SPD and seek changes.

Officers consider that the SPD has been prepared in accordance with the relevant legislation. 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. Significant changes may require further consultation.

Option 2: Not to adopt the Developer Contributions SPD and to rely on the current Draft Planning Obligations SPD (July 2011).

The 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 adopting the new SPD will create uncertainty about the Council's requirements for developer contributions.

7.0 Implications

Financial and Resource Implications

- 7.1 Adoption of the Developer Contributions Supplementary Planning Document is being met within existing budgets.

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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.

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8.0 Decision Information

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	Developer Contributions SPD Final Draft - Main Document
Appendix 2	Developer Contributions SPD Final Draft - Appendices
Appendix 3	Consultation Statement
Appendix 4	SEA/SA Screening Statement
Appendix 5	Developer Contributions SPD – 2 nd Consultation Draft - November 2017 (Superseded)
Background Papers	
None	
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