




**Haringey Council**

<b>Report for:</b>	<b>Cabinet – 14 October 2014</b>	<b>Item Number:</b>	
<b>Title:</b>	<b>Adoption of Planning Obligations Supplementary Planning Document (SPD)</b>		
<b>Report Authorised by:</b>	<b>Lyn Garner, Director Regeneration, Planning and Development</b> 		
<b>Lead Officer:</b>	<b>Gavin Ball, Strategic Planning and Transport Policy</b>		
<b>Ward(s) affected: All</b>	<b>Report for Key Decision</b>		

## 1. Describe the issue under consideration

- 1.1 In parallel with the granting of planning permission in Haringey, the Borough also seeks appropriate contributions towards the delivery of the supporting infrastructure to make sure that the effects of growth on infrastructure can be mitigated. From 1<sup>st</sup> November, this process will change with the introduction of the Haringey Community Infrastructure Levy (CIL). To ensure that there is a transparent means for the collection of such contributions, and as a complement to the proposed Community Infrastructure Levy (CIL), coming into force on 1<sup>st</sup> November, the Council has accordingly prepared a Planning Obligations SPD. The SPD aims to set out the circumstances in the future where a S106 will be required, and the obligations which the Council will seek through S106 agreements to accompany planning permission. The draft Planning Obligations SPD was approved by the July Cabinet for public consultation. The consultation ran between 1<sup>st</sup> August - 12<sup>th</sup> September.
- 1.2 This report seeks to adopt the SPD, subject to the changes made as a consequence of the responses received. This timetable will allow the SPD to be adopted in time to support the implementation of Haringey Community Infrastructure Levy.



1.3 Publishing a Planning Obligations SPD (along with CIL) is consistent with best practice in the management of infrastructure through planning and is consistent with the Council's aspiration to ensure greater openness and transparency throughout the planning process. Moreover, as part of the Council's Local Plan framework the document has a key role in helping the Council to deliver its corporate objectives in the following ways:

- **Outstanding for all:** Collecting infrastructure contributions to fund improved education, health, transport and open spaces in the borough.
- **Safety and wellbeing for all:** Improving local housing stock through the collection of planning obligations to deliver affordable housing. Creating certainty for developers to deliver the homes needed to meet housing need in the borough.
- **Opportunities for all:** Enabling the development of homes across the borough, as well as creating opportunities for employment by collecting monies for training and work placement schemes.
- **A better council:** Infrastructure contributions will help to improve council services by supplementing central grant and council tax revenues.

1.4 Additionally, the SPD will ensure:

- Haringey optimises development contributions including infrastructure contributions and affordable housing contributions;
- Developers have certainty about infrastructure costs and development contributions when making a planning application;
- Communities have certainty about the Council's process for collecting revenue from development, and how the revenue will be spent.

## **2. Suggested Cabinet Member introduction**

- With the introduction from 1<sup>st</sup> November 2014 of the Community Infrastructure Levy, the Council's planning process is taking an important step forward in providing a clear and transparent regime for the collection of money and associated obligations that will help to provide strategic infrastructure in Haringey alongside new development.
- The Planning Obligations SPD is complementary to the CIL, and will offer guidance to developers on how the new CIL regime and revised s106 regime will operate together. This is important in terms of mitigating and optimizing new development in terms of:
  - Securing affordable housing
  - Securing infrastructure contributions
  - Securing contributions towards skills & employment
  - Ensuring negative impacts of development are mitigated appropriately



### **3. Recommendations**

- 3.1 Cabinet notes the consultation findings as set out in Appendix B to this report, and adopts an updated Planning Obligations SPD as set out in Appendix A of this report, to support CIL implementation from 1<sup>st</sup> November.

### **4. Alternative options considered**

- 4.1 The Council determined in July to implement CIL from 1<sup>st</sup> November. In order to manage the transition in legislative requirements to CIL, the Planning Obligations SPD is considered important to ensure transparency and efficiency to the new process for collecting contributions for and managing the delivery of new infrastructure to support growth.
- 4.2 There is no statutory obligation to produce a Planning Obligation SPD. To not have this document adopted would however not provide clarity in the process and use of planning obligations, and would create uncertainty amongst developers, putting the Council's regeneration objectives in jeopardy. The document would assist in reducing ambiguity and the time spent in negotiating such obligations and will assist the Planning Committee in making decisions on planning applications.

### **5. Background information**

#### **Adoption of CIL**

- 5.1 Regulations governing CIL were produced in 2010 (amended 2011, 2012, 2013, 2014). These govern how a CIL Charging Schedule should be prepared, and what it must contain. Information regarding preparation of the Haringey CIL was provided in reports to Cabinet in April 2013, July 2014, and in the form of a report to the Cabinet Member for Planning and Enforcement in October 2013.

#### **Interface between s106 & CIL – A Planning Obligations SPD**

- 5.2 CIL is a standardised non-negotiable local levy placed on development for the purpose of raising funds to support the delivery of infrastructure that is required as a result of new development. CIL provides a more consistent and transparent mechanism to raise financial contributions, than the current system of s106 agreements.
- 5.3 However, under CIL, developers can still be required to directly provide both 'off-site' infrastructure, through s106 contributions, and 'on site' improvements through planning conditions to mitigate the direct impact of the development proposed (e.g. landscaping, access roads). The proposed Planning Obligations SPD setting out what obligations will be collected through s106 and CIL is



included as Appendix A. The types of contributions to be collected through CIL and S106 are summarised in Table 1, from the SPD, below:

<b>Table1- Infrastructure Type</b>		<b>Delivery Mechanism</b>	
<b>Infrastructure Theme</b>	<b>Specific Requirement</b>	<b>Planning Obligation</b>	<b>CIL</b>
<b>Community Facilities</b>	Multi-Use Community Facilities, Youth Centres, Libraries, Leisure Centres, and Emergency Services	X	✓
	Upgrades to Multi-Use Community Facilities, Youth Centres, Libraries, Leisure Centres, and Emergency Services as part of development on a site.	✓	X
<b>Education</b>	Primary School	X	✓
	Secondary School	X	✓
<b>Health</b>	Primary Care Facilities	X	✓
<b>Affordable Housing (section 6)</b>	Provision of on-site affordable housing	✓	X
	Provision of off-site affordable housing	✓	X
<b>Employment and Training (section 7)</b>	Provision of employment and training facilities	X	✓
	Construction phase skills and training	✓	X
	End user skills training	✓	X
	Compensation for loss of employment land	✓	X
<b>Transport and Highways (section 8)</b>	Strategic borough-wide transport improvements	X	✓
	Site-specific transport and highway measures to make development acceptable	✓	X
<b>Open Space and Public Realm (section 9)</b>	Public Open Space/public parks, including improvements to existing facilities	X	✓
	Borough-wide improvements to Street scene and built environment	X	✓
	Public art not linked to a development site	X	✓
	Public art on or immediately adjacent to a development site	✓	X
	Site-specific improvements to ensure new developments make a positive contribution to the on-site public realm, and their immediate surrounds.	✓	X
<b>Environmental Sustainability (section 10)</b>	Carbon Reduction Measures/Initiatives	✓	X
	Creation of new decentralised energy capacity	X	✓
	Ensuring new developments are/can be connected to existing/future decentralised energy networks	✓	X
	Biodiversity Measures/Initiatives	✓	X



	Strategic Flood Mitigation	X	✓
	Site-specific flood mitigation	✓	X

5.4 The timeframe for preparation of the Planning Obligations SPD is summarised in Table 2 below:

<b>Table 2: Milestones in preparation of Haringey Planning Obligations SPD</b>	
<b>Task</b>	<b>Completion Date</b>
Cabinet meeting to recommend adoption of CIL Charging Schedule & commence consultation on Planning Obligations SPD	15 <sup>th</sup> July 2014
Adoption of CIL Charging Schedule at July Full Council	21 <sup>st</sup> July 2014
Consultation period for Planning Obligations SPD	1 <sup>st</sup> August – 12 <sup>th</sup> September 2014
Implementation of Haringey CIL	1 <sup>st</sup> November 2014
Adoption of Planning Obligations SPD (estimated)	14 <sup>th</sup> October 2014

### **Consultation Reporting**

5.5 The consultation required by planning regulations commenced on 1<sup>st</sup> August 2014. A consultation report is included as Appendix B to this report. Nine responses were received from:

- Haringey Disability First Consortium
- CGMS on behalf of Provewell Estates
- Montagu Evans on behalf of Berkeley Group
- English Heritage
- Diocese of London
- Transport for London
- The Theatres Trust
- Natural England
- Lambert Smith Hampton on behalf of the Mayor's Office for Policing and Crime (MOPAC)/ Metropolitan Police Service (MPS)

5.6 The main issues raised were:

- HDFC members would like to see the London Borough of Haringey use planning obligations and/or CIL to fund an Independent Consultative Access Group;
- Developers seeking exemptions from/reduction in the amount of contribution for skills contributions, including compensation for loss of commercial floorspace (set at £30/m<sup>2</sup>) and leave to use their in-house local employment schemes;
- Recommendation that existing community facilities could be improved through s106 when the site they are currently located on is redeveloped;
- Clarity being sought around the value of carbon offsetting;



- Minor text alterations and clarifications.
- 5.7 It is considered that these issues can be reasonably dealt with through minor amendments to the document, and a revised version, which is included at Appendix A of this report.
- 5.8 In addition to the issues raised during consultation, further consideration by officers of the changing economic conditions in the Borough has caused officers to recommend a further change to the document:
- Additional guidance regarding the requirement for planning obligations to be renegotiated in the event of value escalation subsequent to the grant of planning permission.

### **Delivery of Infrastructure in Haringey**

- 5.9 Once CIL is implemented and contributions are collected, this will become a highly visible and transparent method for funding infrastructure (and will be recorded through the Annual Monitoring Report).
- 5.10 How funding choices for infrastructure are made will continue to be an important part of the Council's role in bringing forward sustainable development in the borough. This will include ensuring that local resident's everyday needs are met, while ensuring Haringey continues to receive improved strategic services as its population grows.
- 5.11 There will need to be careful integration of capital plans, and receipts from planning obligations in the future (as well as through other funding streams), in order to drive the best value from these investments. Additionally this needs to be closely linked to development identified in existing and emerging Local Plan documents.

### **6. Comments of the Chief Finance Officer and financial implications**

- 6.1 Section 106 funding has been an important source of funding for the Council, especially for school expansion projects and is largely used to support the capital programme.
- 6.2 Under the new legislation the funding previously received via S106 will be largely replaced by CIL, with the exceptions of those areas highlighted in Section 5.3 of this report. It is envisaged that in future the level of funding received from S106 and CIL combined will be broadly similar with the funding received from S106 in prior years.
- 6.3 Once set the Council has the option to review its CIL schedule on a periodic basis and allocate funding received differently to reflect the Council's funding priorities.



- 6.4 In addition to CIL payments to Haringey, the Borough is also responsible for collecting CIL payments due to the Mayor of London.”

## **7. Comments of the Assistant Director of Corporate Governance and legal implications**

- 7.1 The Assistant Director of Corporate Governance has been consulted on the contents of this report and comments as follows.
- 7.2 The statutory test for planning obligations is set out in the Town and Country Planning Act 1990 (as amended) (“the Act”) and the Community Infrastructure Levy Regulations 2010 (as amended) (“the CIL Regulations”). The policy test is set out in National Planning Policy Framework (“the NPPF”).
- 7.3 Section 106 of the Act provides that a planning obligation provided under the terms of the statutory provisions may restrict the development or use of the land in any specified way; require specified operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or require a sum or sums to be paid to the authority (or, in applicable cases to the Greater London Authority) on a specified date or dates or periodically.
- 7.4 Regulation 122 of the CIL Regulations provides that where a determination is made on or after 6th April 2010 which results in planning permission being granted for development, a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is 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. There are further restrictions in the Regulations on planning obligations being used for the funding of infrastructure through requiring highway agreements and a limitation on the pooling of financial contributions received.
- 7.5 The NPPF provides at paragraph 203 that “Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition”.
- 7.6 The NPPF goes to provide as follows:
- “Planning obligations should only be sought where they meet all of the following 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”.
- “Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever





appropriate, be sufficiently flexible to prevent planned development being stalled”.

“Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”.

- 7.7 National Planning Practice Guidance (“NPPG”) indicates that “Policies for seeking obligations should be set out in a development plan document to enable fair and open testing of the policy at examination. Supplementary planning documents should not be used to add unnecessarily to the financial burdens on development and should not be used to set rates or charges which have not been established through development plan policy”.
- 7.8 NPPG goes on to indicate that “In all cases, including where tariff style charges are sought, the local planning authority must ensure that the obligation meets the relevant tests for planning obligations in that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. Planning obligations should not be sought – on for instance, public art – which are clearly not necessary to make a development acceptable in planning terms. The Government is clear that obligations must be fully justified and evidenced. Where affordable housing contributions are being sought, obligations should not prevent development from going forward”.
- 7.9 The Council is required under the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the Local Planning Regulations”) to consult on the Planning Obligations SPD and to take into account all consultation responses received before adopting thereof.
- 7.10 Under the Localism Act 2011 there is placed on plan making authorities a statutory duty to co-operate with adjoining authorities and prescribed bodies and persons in the preparation of development plan documents and other local development documents. This duty requires active and constructive engagement with those parties and to have regard to the activities of those parties.
- 7.11 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 7.12 Although the proposed SPD is not a development plan document it will, upon adoption, be a material consideration in the determination of planning applications within the area covered by the SPD and will assist and guide the Council, developers and other stakeholders in addressing the provision of affordable housing and site specific infrastructure requirements in an open and transparent manner.





- 7.13 By virtue of Regulation 14 of the Local Planning Regulations, as soon as reasonably practicable after the Council adopts the Planning Obligations SPD it must make available in accordance with regulation 35 the supplementary planning document; and an adoption statement; and send a copy of the adoption statement to any person who has asked to be notified of the adoption of the supplementary planning document.

## **8. Equalities and Community Cohesion Comments**

- 8.1 The Planning Obligations SPD will help to provide the infrastructure necessary to deliver sustainable communities and quality environment. The strategic implications of growth in our borough and its impact on infrastructure that could arise are considered in the Equalities Impact Assessment (EqIA) that supports the adopted Local Plan Strategic Policies. Equality impacts of specific developments are considered as proposals come forward.

## **9. Head of Procurement Comments**

- 9.1 Not applicable

## **10. Policy Implication**

- 10.1 The term 'infrastructure' includes schools and other educational facilities, open space, green infrastructure, transport facilities, health and medical facilities, flood defences, sporting and recreational facilities. Local Plan Strategic Policies document 2013 sets out the basis for strategic infrastructure that will be required to support growth in the borough during the plan period. The CIL will be used to help contribute towards meeting the funding gap that exists for the infrastructure. Documents such as CIL and Planning Obligations SPD help to deliver Local Plan Strategic Policies and the Corporate Plan priorities, especially those contained in the "Opportunities for All" section.

## **11. Reasons for Decision**

- 11.1 This document will be implemented at the same time as CIL in Haringey. Once adopted these documents will ensure that development makes a fair contribution to providing the infrastructure needed to meet the needs of the future Haringey residents. Mechanisms to collect infrastructure contributions, affordable housing and skills development contributions are included in this document.

## **12. Use of Appendices**

Appendix A: final Planning Obligations SPD for adoption

Appendix B: Consultation Report for the draft Planning Obligations SPD



**Haringey** Council

### **13. Local Government (Access to Information) Act 1985**