

Report for: 6 March 2018 Cabinet

Title: Planning Obligations SPD

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Lead Officer: Matthew Paterson, Head of Strategic Planning, Transport and Infrastructure

Ward(s) affected: All

Report for Key/ Non Key Decision: Key

1 Describe the issue under consideration

- 1.1. Consultation on the Draft Planning Obligations Supplementary Planning Document (SPD) was held from 3rd November to 15th December 2017. This revised and updated the Council's adopted (2014) Planning Obligations SPD. This was necessary to take account of changes to: relevant policies within the new Local Plan (adopted July 2017); Haringey's revised CIL Regulation 123 list (adopted November 2017); other central government regulations and guidance; and the recent Mayoral guidance on affordable housing and development viability.
- 1.2. The purpose of this report is to provide a summary of the comments received to consultation, highlighting the key issues raised, and how we intend to address these in finalising the Planning Obligations SPD.

2 Cabinet member introduction

- 2.1. We recently adopted our new Local Plan for Haringey that will enable the determination of planning applications for new development proposals that will meet our identified needs for housing, including affordable housing, employment, community facilities, and infrastructure.
- 2.2. It is therefore essential that we update our guidance on planning obligations to ensure we secure the necessary commitments and funding from new development to deliver the infrastructure and community benefits needed to realise our ambitions for the borough, its residents, businesses and environment.

3 Recommendations

- 3.1 That Cabinet note the comments received to consultation on the draft Planning Obligations Supplementary Planning Document (SPD) and the Council's

proposed response, as set out in the Consultation Statement at Appendix A and in the tracked changes version of the final Planning Obligations SPD at Appendix B.

- 3.2 That Cabinet adopt the revised Planning Obligations SPD (provided at Appendix B) as a material consideration in the determination of planning applications.

4 Reasons for decision

- 4.1 The revised Planning Obligations Supplementary Planning Document (SPD) will give greater clarity to the Council's procedures and requirements for securing planning obligations, including financial contributions and affordable housing.

5 Alternative options considered

- 5.1 No other alternative options have been considered on the basis that planning obligations are necessary to ensure the economic, social and environmental impacts arising as a result of a new development proposal are appropriately considered and mitigated.

6 Background information

- 6.1 Where a development proposal does not meet the standards required of local planning policy, it may be possible to make it acceptable through the use of planning obligations. Planning obligations are used to secure measures which are essential for the development to proceed and measures which are required to mitigate the impact of the development.
- 6.2 Planning obligations do this through: Prescribing the nature of a development (e.g. by requiring a proportion of affordable housing); Securing a contribution from a developer to compensate or re-provide for loss or damage created by a development (e.g. through the transfer of land, the requiring of a cash payment to be made, or new habitats to be created etc); and mitigating a development's impact on the locality (e.g. through the securing of environmental improvements and the provision of both on and off-site infrastructure and facilities to serve the development such as new roads or junction improvements which, without the proposed development taking place, would not necessarily be required).
- 6.3 The outcome of the use of planning obligations should be that the proposed development is brought into compliance with the Local Plan policies and that any development specific works are undertaken satisfactorily. Used properly, planning obligations can significantly increase the quality of development.
- 6.4 While planning obligations can secure benefits capable of mitigating the adverse impacts of a development, they cannot however, be used to make a bad application good where, for example, a scheme does not comply with the spatial strategy and land use principles of the Local Plan.

Responses to consultation on the Draft Planning Obligations SPD

- 6.5 We received 18 written representations to the consultation. These were predominantly from the development industry, statutory agencies and non-governmental organisations. The list of respondents, their detailed comments, and the Council's proposed response to these, are set out in the Consultation Statement attached at Appendix A.
- 6.6 In summary, with respect to the statutory agencies, Natural England and Highways England wrote to confirm they had no comment. It is proposed the SPD be amended to take account of Historic England's comment that on-site improvements to public realm be included as a potential obligation. Also the Environment Agency's comment that development affecting a main or ordinary watercourse should be obligated to restore or improve its condition, in accordance with Local Plan Policy DM29.
- 6.7 With regard to the non-governmental organisations, the Canals and Rivers Trust queried whether an obligation could be secured towards improvement of the Lee Navigation towpath. In response it was confirmed it could, for development impacting upon and within the vicinity of the towpath, but that this was too specific for inclusion in the SPD.
- 6.8 Sport England's representation noted that Haringey included sports and leisure facilities provision within its CIL Regulation 123 (with the exception of replacement facilities) and wished to ensure the Council was directed CIL funding towards appropriate sporting provision to meet the needs generated by new development. In response it was outlined that the sports and leisure facilities needed to support growth were identified in the Council's Infrastructure Delivery Plan and, once the trigger threshold had been reached, would be included on the Council's Capital Programme and identified as eligible for CIL funding.
- 6.9 Thames Water's representation acknowledged that obligations could not be required to be used to secure water and waste water infrastructure upgrades. Nevertheless, they sought amendments to the SPD requiring developers to engage with water and waste water providers, in studies if required, to determine if there are capacity issues. Where capacity constraints are identified, they wished to include a requirement upon the developer to set out what appropriate improvements are needed and how they will be delivered. In response it was noted that this wording was already included in support of Policy DM29, which expects a drainage strategy to be submitted with a planning application and any mitigation measures delivered as part of the development scheme, conditioned if necessary. It was not considered necessary to repeat this again in this SPD, especially as this was not relevant to securing possible obligations.
- 6.10 The representation from the Education and Skills Funding Agency made the case that the SPD should seek contributions towards the delivery of schools, where relevant, through provision of land and/or a financial contribution to the capital costs of delivery new schools in lieu of CIL. In response it was clarified that, whilst CIL is the Council's main mechanism for securing funding towards school provision required to support the cumulative demands from development, there will be instances where an individual development gives

rise to their own requirement. It is therefore proposed that a new section be added to secure school provision as an obligation, where the need for a new school arises entirely as a result of an individual development.

- 6.11 Emergence Energy Savings Trust sought the inclusion of a financial obligation for the monitoring of renewable energy or combined heat and power/district heat supply on new schemes. In response it was clarified that, in Haringey, the monitoring of compliance with an agreed Energy Statement/Energy Strategy, including the achievement of targets/performance, was dealt with as a planning condition with the developer responsible for meeting the cost of any required monitoring equipment and assessments. No change is therefore proposed.
- 6.12 In respect of the one representation received from a residents' association, this put forward suggested amendments to enable community associations to identify and seek specific mitigation via an obligation and that any costs should be 'offset' against the CIL due. In responses it was highlighted that consultation on a planning application enabled interested parties to draw the Council's attention to potential impacts and necessary mitigation measures. Further, the legislation governing the collection of CIL did not allow the Council to offset a CIL liability as suggested.
- 6.13 The representations received from, or on behalf of, the development industry were very detailed. That made by McCarthy and Stone Retirement Lifestyles Ltd concerned older persons housing, such as extra care housing. Their representation sought to make the case that this form of housing should be considered by the Council as Use Class C2, rather than general housing (Use Class C3), and should therefore not be subject to an obligation for affordable housing and reduced obligations for on-site amenity requirements.
- 6.14 In response it was clarified that extra care housing was considered to fall within Use Class C3, being self-contained accommodation for market rent and/or sale, unless the applicant can provide acceptable justification that would enable the Planning Authority, on a case-by-case basis, to determine otherwise. In respect of on-site amenity, it was noted that the Local Plan requires all development to be well designed, of high quality and sustainable, and that this applies to all forms of housing. In addition, the standards applicable within the SPD take into account unit size / number of bed rooms / occupancy levels etc in determining the appropriate level of applicable amenity requirements and therefore the quantity to be secured in the obligations due.
- 6.15 In respect of the other developer representations, these raised a number of common issues or concerns. These included, ensuring the obligations sought did not undermine development viability and deliverability. In response, it was noted that the policy requirements of the Local Plan had themselves been the recent subject of viability assessment to ensure their combined application did not put development at viability or delivery risk. Through the examination process, it was concluded that these were reasonable and were subsequently found to be 'sound' by the independent planning inspector. It was further noted that each development would be considered on its own merits, having regard to site and development circumstances, with the obligations due negotiated in accordance with the legal tests.

- 6.16 Concern was raised with the need for applicants to submit heads of terms at the pre-application and with the planning application. It was considered that this was unnecessary and such heads of terms would be subject to further negotiation and change throughout the application process. In response it is noted that draft heads of terms should be submitted with a planning application and that this is required by our local validation list. It is accepted that these may evolve through the life of the application.
- 6.17 There was concern with the SPD's assertion that the Council always prepares the first draft of the obligations using the Council's standardised template. The developers considered there were exceptional circumstances, in respect of strategic sites, where it would benefit the process if the applicant prepared the first draft. In response, it is accepted that in exceptional circumstances and as agreed with the Head of Development Management or Assistant Director Planning that the applicant may prepare the first draft.
- 6.18 More flexibility was requested on when obligations would be triggered, including triggers for the review of a scheme's viability. The SPD has been amended to account of phased developments and also to acknowledge that there will be flexibility, particularly taking account of cash flow and viability, with regard to trigger points although the default position remains for the majority of payments to be made on commencement.
- 6.19 Of particular concern was the requirement for the submission of a 'short form' viability statement, which was considered to be inconsistent with, and would undermine, the Mayor's new 'fast-track' approach to securing affordable housing. In response it was clarified that such a requirement was justified and considered necessary to provide a benchmark against which to enable any subsequent revisions to the submitted or approved scheme to be assessed. It was also noted that this was not considered a burdensome requirement and had no implications for the fast tracking of applications that secured 35% affordable housing and a policy compliant tenure split, in accordance with the Mayor's Affordable Housing and Viability SPG (2017).
- 6.20 Issue was taken with the requirement that all major mixed-use development within a Local Employment Area/Regeneration Area would be required to make provision for affordable workspace. In response it was point out that this requirement is in line with the Local Plan policy, which seeks to ensure that the introduction of other land uses into these specific employment areas provides new employment floorspace, a proportion of which needed to be affordable to existing or new local businesses, including Haringey's SME sector. Where viability was a concern in complying with this policy requirement, it was noted that this consideration was already addressed at para 5.47 – 5.50 in the SPD, which dealt with the viability of obligations generally.
- 6.21 There were concerns with the approach to employment and training contributions, which developers considered did not properly reflect individual circumstances, and for which they asked that additional flexibility be introduced to take into account. In response, it was considered the SPD appropriately, and in line with Local Plan policies, sought to secure employment opportunities for local residents from new development. Further, it did not consider that the SPD

needed to be amended to introduce the flexibility requested, as planning legislation enshrines that all applications be dealt with on their merit and obligations be considered and negotiated have regard to the individual site and scheme circumstances.

- 6.22 Lastly, it was considered that there was no justification or evidence provided to support the increase in the price per tonne of carbon for an offset payment from £1,800 per tonne in the Mayor's Sustainable Design and Construction SPG to £2,700 as set out in the draft SPD. On the basis of a lack of evidence, it is proposed that the SPD be amended to refer to the latest published rate by the Mayor for London, noting that the rate set by the Mayor is subject to frequent review and is likely to be revised upwards shortly anyway.

Summary

- 6.23 The main changes proposed to the SPD are as follows:

- Clarifications that there is flexibility relating to trigger points for payments, the drafting of agreements by the applicant in exceptional circumstances and accepting that index-linking is from the date of the decision notice.
- Amendments to ensure that the viability assessment approach matches that of the Mayor of London
- Addition of reference to the portfolio approach to affordable housing in Tottenham
- The carbon offsetting contribution is set at the figure put forward by the Mayor (currently £1,800 per tonne) rather than the £2,700 per tonne previously proposed. It should be noted that it is understood that the Mayor intends to increase this shortly in any case.

7 Contribution to strategic outcomes

- 7.1 Priority 4: Drive Growth from which everyone can benefit. Updating the Planning Obligations SPD ensures new development contributes towards the creation of sustainable communities through maximising the community benefits to be realised.
- 7.2 Priority 5: Create homes and communities where people choose to live and are able to thrive. The revised Planning Obligations SPD reflect Local Plan requirements for the provision of economic, social and environmental benefits, including securing a proportion of new housing and employment floorspace on proposed major development schemes as 'affordable'.

8 Comments of Chief Financial Officer

- 8.1 This report seeks approval of the revised Planning Obligations Supplementary Planning Document (SPD), which will give greater clarity to the Council's

procedures and requirements for securing planning obligations, including financial contributions and benefits in kind.

- 8.2 The effective application of Local Plan policies and the guidance in SPD will ensure that new development mitigates any potential impacts arising directly from the development and will make adequate provision, onsite to meet the immediate needs of the development.
- 8.3 It will also ensure that the Council continues to secure affordable housing on applicable residential schemes in accordance with the Council's Local Plan and Housing policies.
- 8.4 It is not possible at this stage to estimate how many legal agreements may be forthcoming, over the next year, because of adoption of the revised Planning Obligations SPD. However, the adoption of it will ensure there is a good mechanism in place to realise a good outcome for the council.
- 8.5 There is a potential fee income of up to £50,000 from a developer for adequate monitoring of the implementation of S106 agreements.
- 8.6 There is no net cost to the council because of the adoption of the revised Planning Obligation SPD.

9 Comments of Chief Legal Officer

- 9.1 The Assistant Director of Corporate Governance notes the contents of this report on which Legal Services have been consulted.
- 9.2 In line with government guidance in the National Planning Policy Framework, a SPD should only be prepared where necessary and be used to help applicants make successful applications or aid infrastructure delivery, and not be used to add unnecessarily to the financial burden on development.
- 9.3 As the SPD concerns planning obligations, the Legal Team have been closely involved in the evolution of the SPD following consultation.

10 Comments from Equalities Officer

- 10.0 The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and those people who do not
 - Foster good relations between people who share those characteristics and people who do not.

- 10.1 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.
- 10.2 This proposal sets out the additional planning obligations that the Council expects to see in major development proposals, with regard to the additional infrastructure and community benefits that should be included. This will ensure that all residents benefit from major new developments and regeneration schemes, in terms of commitments to new affordable housing and workspace, public realm and environmental sustainability, and new social infrastructure such as schools and leisure facilities. This is also designed to ensure that current residents near proposed developments are not adversely impacted in terms of their access to services and the new opportunities created through regeneration. Together this represents the Council's commitment to advancing equality of opportunity for all of our residents.
- 10.3 As noted in the report these proposals reflect a number of major existing regeneration and development strategies in Haringey, most notably the Tottenham Strategic Regeneration Framework, Wood Green Strategic Regeneration Framework, Haringey's Housing Strategy 2017- 22, and the renewed Local Plan 2017. Each of these was subject to a full Equalities Impact Assessment (EqIA) prior to their adoption by Cabinet and can be reviewed with the relevant Cabinet decision. These EqIAs set out the implications of Regeneration and Planning decisions for all residents who might be impacted and how existing inequalities will be addressed through those decisions.

11 Use of Appendices

- Appendix A – Draft Consultation Statement to consultation on the Draft Planning Obligations Supplementary Planning Document
- Appendix B – Final version of the Planning Obligations Supplementary Planning Document, including tracked changes.

12 Local Government (Access to Information) Act 1985

The current Planning Obligations SPD, adopted by Cabinet on 14th October 2014

http://www.haringey.gov.uk/sites/haringeygovuk/files/planning_obligations_spd_final.pdf

Report to Cabinet (17th October 2017) seeking approval to consultation on the revised Planning Obligations SPD, and to adopt the revised Regulation 123 List for inclusion in Haringey's CIL Charging Schedule

http://www.minutes.haringey.gov.uk/documents/s96913/CIL_Planning%20Obs%20SPD%20Cabinet%20Report%2021017%20003.pdf