

Mayor & Cabinet & Sustainable Development Select Committee		
Report Title	Planning Obligations Supplementary Planning Document 2014 (the SPD) - draft for public consultation	
Key Decision	YES	Item No. 5
Ward	All	
Contributors	Head of Planning & Head of Law	
Class	Part 1	Date: 16 & 17 July 2014

1. Summary

- 1.1. The report seeks approval to consult on the draft Planning Obligations Supplementary Planning Document 2014 (the SPD), which is proposed to replace the existing Planning Obligations SPD 2011. When adopted the 2014 SPD will replace the 2011 SPD and form part of the Local Development Framework, providing guidance on how planning obligations are used to promote sustainable development and deliver the infrastructure necessary to support the growth of residential, business and visitor populations. This report explains why there is a need for a replacement SPD and summary detail of the guidance provided.

2. Purpose

- 2.1 To provide Mayor and Cabinet and subsequently the full Council with the information needed to approve the draft Planning Obligations SPD for public consultation.

3. Recommendations

(1)

- 3.1. The Mayor is recommended to agree the draft Planning Obligations SPD for public consultation in accordance with the Statement of Community Involvement, and recommend that the full Council do the same.

(2)

3.2. The Mayor is also recommended to delegate power to the Director of Resources and Regeneration to make any minor changes to the text and format of the documents prior to the document going to public consultation.

4. Policy Context

4.1. The SPD will form part of the Council's Local Development Framework (LDF).

4.2. The role of the SPD is to explain and elaborate on the policies in the Lewisham Core Strategy (part of the LDF) in relation to planning obligations. The LDF forms part of the Council's policy framework.

4.3. In addition to implementing planning policy the SPD will assist and aid the implementation of other documents in the Council's policy framework.

4.4. In particular the SPD, will contribute to the implementation of Council's priorities:

- community leadership and empowerment – developing opportunities for the active participation and engagement of people in the life of the community
- young people's achievement and involvement – raising educational attainment and improving facilities for young people through partnership working
- clean, green and liveable – improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment
- safety, security and a visible presence – partnership working with the police and others and using the Council's powers to combat anti-social behaviour
- strengthening the local economy – gaining resources to regenerate key localities, strengthen employment skills and promote public transport
- decent homes for all – investment in social and affordable housing to achieve the Decent Homes Standard, tackle homelessness and supply key worker housing
- active, healthy citizens – leisure, sporting, learning and creative activities for everyone
- inspiring efficiency, effectiveness and equity – ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community.

4.5. The SPD will also play an important role in the implementation of the Sustainable Community Strategy vision 'Together we will make Lewisham the

best place to live, work and learn' and all of the six strategic priorities, which are:

- 4.6. Ambitious and achieving – where people are inspired and supported to fulfil their potential
- Safer – where people feel safe and live free from crime, antisocial behaviour and abuse
 - Empowered and responsible – where people are actively involved in their local area and contribute to supportive communities
 - Clean, green and liveable – where people live in high quality housing and can care for their environment
 - Healthy, active and enjoyable – where people can actively participate in maintaining and improving their health and well-being
 - Dynamic and prosperous – where people are part of vibrant

5. Background

- 5.1. Planning obligations are used to mitigate specified negative impacts of development. They should not be seen as a way for the Council to share in the profits from a development or as an inducement offered by a developer as a way to gain planning permission. Unrelated or unnecessary planning obligations are not a means to secure planning permission for unacceptable development. Planning obligations should always be relevant to the development and contribute to achieving the planning aims of the Council.
- 5.2. The SPD is used to explain and elaborate on the implementation of policy in a development plan document. It does not set out any new policy. It must be consistent with the policies in the Development Plan including the Core Strategy and the London Plan. The relevant local, regional and national policies are listed in the SPD under the individual topic areas.
- 5.3. The existing Planning Obligations SPD was adopted in 2011. Since then, the policy context has changed especially with the introduction of the National Planning Policy Framework, and changes to the London Plan 2011 and the development of the Council's own Local Development Framework - the Core Strategy that sets the Council's policy on planning obligations.
- 5.4. The Community Infrastructure Levy (CIL) was introduced by the Government in April 2010 and has since been amended by further regulations in 2011, 2012 and 2014. The CIL is a levy that local authorities can choose to charge on new developments in their area. The money generated is to be spent upon infrastructure that is required in the local authority which may include roads and other transport needs, parks, schools, sports centres, emergency services and community facilities.

- 5.5. The Council has developed a CIL charging schedule that has been placed before Mayor and Cabinet and Full Council at each stage of it's development over the past 3 years. In January 2014 the charging schedule was approved without changes at an independent Examination in Public. The charging schedule will be put before Mayor and Cabinet and Full Council in September 2014 seeking approval to adopt CIL as of 1st October 2014.
- 5.6. The adoption of a CIL charging schedule has an impact on Planning Obligations. The Council are not allowed to charge developers for the same infrastructure through both CIL and Planning Obligations, therefore the adoption of a CIL charging schedule will result in a reduction in the scope and application of Planning Obligations.
- 5.7. Given the changing policy context and the introduction of CIL, amendments are required to the SPD. The intention is to adopt an amended SPD to work in conjunction with the Council's CIL before the end of 2014.
- 5.8. The SPD has been developed with the input and assistance of key internal and external stakeholders representing each of the topic areas covered in the SPD (and those amended or removed to reflect the proposed adoption of CIL). Stakeholder meetings were held at key stages of the process culminating in a number of detailed review sessions for each topic area.
- 5.9. The SPD has also been developed in accordance with the Statement of Community Involvement.

6. Planning Obligations SPD summary

- 6.1. The SPD sets out how planning obligations will be used to promote sustainable development and deliver the infrastructure necessary to support the growth of the residential, business and visitor populations in accordance with infrastructure supported through CIL. The SPD takes into account the overall, cumulative impact of development on the borough, and explains how this will be dealt with through the use of planning obligations to mitigate the direct and cumulative impacts of developments.
- 6.2. In particular, the SPD seeks to:
 - Identify the range, scale and form of planning obligations likely to be sought;
 - Identify the types of development likely to require planning obligations;
 - Identify the protocols for negotiating contributions;
 - Identify how planning obligations are secured and monitored;
 - Minimise the need for detailed negotiations for each planning application;

- Streamline the process by which planning obligations are secured and implemented; and
 - Ensure an efficient, consistent, accountable and transparent process
- 6.3. The first section of the SPD provides an introduction to the SPD itself an outline of the policy context for seeking planning obligations and an overview of the Council's approach to securing planning obligations.
- 6.4. The following sections of the SPD set out in detail the justification and policy basis for requiring each type of planning obligation for each of the following topic areas and the form in which they should be provided:
- Affordable housing
 - Non-strategic transport
 - Public realm
 - Environmental protection
 - Local labour and business
 - Employment floorspace
 - Carbon offsetting
 - Flood alleviation
 - Professional, legal and monitoring fees
- 6.5. For clarity, please note that the following topics are not included in the SPD as they are subject to the CIL charge:
- State education facilities
 - Public health care facilities
 - Strategic transport enhancements (excluding site-specific, highways and public transport matters needed to make developments acceptable in planning terms, which may include matters on site, regarding access to the site or off site where the need for such works is identified in a transport assessment or travel plan)
 - Publicly accessible open space, allotments and biodiversity
 - Strategic flood management infrastructure
 - Publicly owned leisure facilities

- Local community facilities (including (but not limited to) community centres and halls and libraries, but excluding places of worship).
- 6.6. The final section of the SPD sets out the general principles for securing planning obligations and frequently asked questions about planning obligations.
- 6.7. The SPD, whilst setting out formula based approaches for some of the topic areas covered, has been developed in a way that provides some flexibility in decision making. This will allow planning officers to consider the site specific impacts of proposed developments and the on-site or in-kind provision of facilities, before considering the need to secure off-site provision or financial obligations. The SPD clearly states that obligations will only be secured for those items that cannot be addressed as part of the development itself or through planning conditions.
- 6.8. A copy of the SPD is included as Appendix 1.

7. Sustainability Appraisal and Strategic Environmental Assessment

- 7.1. It is not necessary to undertake a Sustainability Appraisal to accompany the production of a SPD. It is however necessary to assess the need to undertake a Strategic Environmental Assessment (SEA).
- 7.2. In order to assess the need to undertake an SEA of an SPD, it is necessary to produce a SEA Screening Opinion. Pro Vision Projects were appointed as independent consultants to produce the screening opinion and they concluded that there was no requirement for a full SEA to be undertaken. The SEA Screening Opinion for the SPD is included as Appendix 2.

8. Consultation process for the draft SPD

- 8.1. The consultation process for Local Development Framework documents such as this SPD is set out in the Statement of Community Involvement. It is a legal requirement to undertake the consultation stated in the SCI. It runs for six weeks and will involve:
- Advertising the draft SPD in a local newspaper
 - Notifying by letter all those who have been involved in the consultation process
 - Make paper or CD copies available to all who want them
 - Publishing the SPD and any associated documents on the Council website, and making them available in the Planning Information Office and at the local library

8.2. After the 6 week consultation period, all representations received will be taken into consideration and a final SPD will be reported for adoption to Mayor and Cabinet and Full Council.

9. Legal implications

9.1. The Council has adopted its Statement of Community Involvement (SCI) which sets out the minimum consultation that will take place. It is a requirement of a 'sound' plan that the standards in the SCI are met.

9.2. The power of a Local Planning Authority to enter into a planning obligation with the those parties who have a legal interest in the land within its area is contained within Section 106 of the Town and Country Planning Act 1990 (The Act). Planning obligations made under Section 106 are secured as either planning agreements or unilateral undertakings.

9.3. In accordance with the Act, planning obligations may:

- Restrict the development or use of land;
- Require specified operations or activities to be carried out;
- Require land to be used in any specified way;
- Require cash payments to be made;
- May be either positive, i.e. requiring a person to carry out a specified action, or negative, i.e. restricting the person from developing or using the land in a specified way;
- May be entered into either by agreement with the Local Planning Authority or by an undertaking by the developer to which the Local Planning Authority is not a party (e.g. unilateral undertakings in appeal cases);
- Must be entered into by means of a Deed (which can be varied later if necessary by 'Deed of Variation');
- Must be registered as a local land charge (for the Purposes of the Local Land Charges Act 1975);
- Run with the land and may be enforced against the person entering into it and against any successors in title; and
- Can be enforced by means of injunction.

9.5 Regulation 122 of the Community Infrastructure Levy Regulations 2010 places additional limitations on the use of planning obligations. A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
(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.

9.6 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good

practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

10. Financial Implications

- 10.1. The SPD aims to ensure the Council does not suffer financial burden from any major development, by imposing in-kind provisions, or financial obligations to provide or contribute to the necessary infrastructure.
- 10.2. There are no capital costs to the Council arising from the SPD. The costs associated with the printing, publishing and consulting on the report will be met from existing revenue budgets.

11. Equalities Implications

- 11.1. The Equality Act 2010 became law in October 2010. The Act aims to streamline all previous anti-discrimination laws within a Single Act. The new public sector Equality Duty, which is part of the Equality Act 2010, came into effect on the 5 April 2011.
- 11.2. The Equality Duty has three aims. It requires public bodies (including local authorities) when making decisions to have due regard to the need to
 - eliminate unlawful discrimination, harassment, victimisation and any conduct prohibited by the Equality Act 2010
 - advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
 - foster good relations between people who share a protected characteristic and people who do not share it.
- 11.3 The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 11.4 New development within the borough will be subject to the provisions set out in the SPD will improve the general accessibility of the public realm, facilitate the provision of new residential and commercial units which are fully accessible to people with disabilities, while the regeneration opportunities generally will provide scope to implement equal opportunities policies.
- 11.5 It is not necessary to undertake an Equalities Analysis Assessment (EAA) of the SPD. The Core Strategy has been subject to EAA and the SPD is guidance that will assist in the implementation of the already assessed Core Strategy. It does not create new policy.

Environmental implications

- 12.1 Environmental issues are at the heart of the SPD. The SEA Screening Opinion found no environmental matters of concern in reviewing the SPD, to the contrary it found a number of positive impacts that are likely to be delivered.

13. Conclusion

- 13.1. The Council is required to review and refresh it's approach towards Planning Obligations in the light of changes to the wider planning policy context and the introduction of CIL.
- 13.2. Alongside the CIL, which has been approved at Examination in Public, officers consider that the revised approach to Planning Obligations detailed in the SPD will enable the Council to continue to secure appropriate support for the delivery of local and strategic infrastructure in the borough. It is therefore recommended that the draft SPD is approved to go out to public consultation.

Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
Town and Country Planning Act (as amended)	1990	Laurence House	Planning	Matthew Pullen	No
Planning & Compulsory Purchase Act 2004	2004	Laurence House	Planning	Matthew Pullen	No
Localism Act	2011	Laurence House	Planning	Matthew Pullen	No

If you have any queries on this report, please contact Matthew Pullen, S106 & CIL Officer, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 6235.

Annex 1: draft Planning Obligations SPD 2014

Annex 2: SEA Screening Opinion