

COUNCIL			
Report Title	Planning Obligations Supplementary Planning Document 2014 – draft for public consultation		
Key Decision	Yes		Item No.
Ward	All		
Contributors	Head of Planning & Head of Law		
Class	Part 1	Date: 17 September 2014	

1. Summary

- 1.1 The report seeks the formal resolution of the Council to consult on the draft Planning Obligations Supplementary Planning Document 2014 (the SPD), in accordance with the Lewisham constitution and planning regulations. When adopted the 2014 SPD will replace the 2011 version of the 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. The SPD was reported to Mayor and Cabinet on 16th July 2014 and subsequently scrutinised by the Sustainable Development Select Committee. As a result of feedback from Scrutiny it is proposed to make some minor amendments to the SPD, details of which are set out in section 7 of this report and as track changes to the SPD included as appendix 1 to this report.

2. Purpose

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

3. Recommendation

- 3.1. The Council is recommended to approve the draft Planning Obligations SPD for public consultation in accordance with the Statement of Community Involvement.

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 The full policy context is set out in the report to Mayor and Cabinet dated 16th July 2014 which is set out as appendix 2 to this report.

5. Background

- 5.1 Members will be aware that the Planning Service has prepared a number of development plan documents that set out the town planning strategy and policy for the borough over the next 10-15 years. This includes the Core Strategy and a number of supporting Local Plans. The SPD is used to explain and elaborate on the implementation of policy in the existing Development Plan. It does not set out any new policy and 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.
- 5.2 Planning regulations set out the form and content of local plans and the process to be followed for adoption. In summary, in preparing a local plan the local planning authority must consult certain named bodies and organisations including local residents and local business about the proposed content of the local plan and take any representations received into account when preparing the local plan.
- 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 including 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 on 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 been developing a CIL charging schedule that has been placed before Mayor and Cabinet and Full Council at each stage of its development over the past 3 years. In January 2014 the draft charging schedule was approved without changes at an independent Examination in Public. It is proposed that the draft charging schedule be submitted to Mayor and Cabinet and Full Council early in 2015, seeking approval to adopt CIL as of 1st April 2015.
- 5.6 The adoption of a CIL charging schedule has an impact on Planning Obligations. The Council is 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 adoption of CIL.

6. The Planning Obligations SPD draft for consultation

- 6.1 The draft 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. 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 topic areas listed below 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, it should be noted 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. Changes to the SPD resulting from Scrutiny

- 7.1 The Sustainable Development Select Committee at its metting of 17 July 2014 recommended that a small number of changes / clarifications were made before the SPD was consulted upon. The recommended changes are listed below along with the officers response and a description of any amendment made as a result. Appendix 1 to this report is a track changed version of the SPD showing amendments made to accommodate the recommendations:
- The definition of key worker used should be extended beyond the Government definition, to ensure that it covers other key local workers that the Council might wish the definition to include, such as refuse workers, social care workers etc.

Officer response and resulting change to the SPD: Officers have amended paragraph 3.1.61 regarding key workers to include refuse workers and social care workers as examples. Paragraphs 3.1.61 and 3.1.63 allow the Council flexibility to include other key workers should it wish at any future date by publishing a list on its website. See Appx 1, paragraphs 3.1.61 – 3.1.63.

- Section 3.3.6 should be reworded to better explain what is meant by “intensifying communities”.

Officer response and resulting change to the SPD: This is a grammatical error and has been amended. The sentence now reads “Reducing deprivation is an essential part of developing socially sustainable communities, especially in areas experiencing high density development.”. See Appx 1, paragraph 3.3.6.

- The definition of “public realm” should be explicitly included within the draft document to provide clarity and to avoid confusion with the Council’s own definition of public realm in relation to a cabinet member portfolio.

Officer response and resulting change to the SPD: A definition of public realm has been included in the glossary of the SPD as follows, “Public Realm – This includes exterior places, linkages and built form elements, excluding green open spaces, that are physically and/or visually accessible regardless of ownership. These elements can include, but are not limited to, streets, pedestrian ways, bikeways, bridges, plazas, nodes, squares, transportation hubs, gateways, landmarks and building interfaces.” See Appx 1, page 70.

- In relation to the required financial obligations for the loss of employment floor space and the cost of a trainee; the figure should not be set at £10,000 but should be index linked to ensure that the contribution rises (or falls) as appropriate over the lifetime of the policy.

Officer response and resulting change to the SPD: An additional paragraph has been added as new paragraph 3.4.17, stating “The rate of £10,000 will be subject to indexation in the form of the BCIS index quarterly in order to ensure that it stays appropriate over the lifetime of the policy.”.

8. Legal implications

- 8.1 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.

- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.

8.6 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.

8.7 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.

8.8 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/>

8.9 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

8.10 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/>

9 Conclusion

- 9.1 The Council is asked to agree the draft Planning Obligations SPD for consultation. The consultation will take place in accordance with the planning regulations and will last for a minimum period of 6 weeks. Following this period any representations will be considered in producing a final version of the SPD for approval to adopt.

Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
Planning & Compulsory Purchases Act 2004	2004	Laurence House	Planning Policy	Brian Regan	No
Local Plan Regulations	2012	Laurence House	Planning Policy	Brian Regan	No

If you have any queries on this report, please contact Brian Regan, Planning Policy, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU – telephone 020 8314 8774.

Appendix 1 Planning Obligations SPD – draft for consultation – with track changes

This can be viewed at:

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=138&MId=3290>

Appendix 2 Report to Mayor and Cabinet on 16 July 2014.

This can be viewed at:

<http://councilmeetings.lewisham.gov.uk/documents/s30338/Planning%20Obligations%20SPD.pdf>