

<b>Mayor and Cabinet</b>		
<b>Report Title</b>	Adoption of the Planning Obligations Supplementary Planning Document 2015	
<b>Key Decision</b>	Yes	Item No.
<b>Ward</b>	All	
<b>Contributors</b>	Executive Director for Resources and Regeneration	
<b>Class</b>	Part 1	Date: 14 January 2015

## 1. Summary

- 1.1 The adoption version of the section 106 planning obligations supplementary planning document (SPD) is intended to replace the current S.106 SPD, in order to reflect the proposed introduction of CIL (the community infrastructure levy) from April 2015. CIL will be the mechanism by which the Council will collect developer contributions to help pay for strategic infrastructure, a function that to date has been undertaken using S.106.
- 1.2 S.106 will remain as the mechanism for securing certain types of obligations. These relate to affordable housing provision, employment and training contributions, and mitigation of adverse impacts that would otherwise arise from development. These mitigation measures will generally be in the form of works, and will in most cases be on or adjacent to the development site. Councils are not allowed to seek funding through CIL and through S.106 for the same types of infrastructure, which underlies the distinction between *strategic* (funded through CIL) and *scheme-specific* (funded through S.106) infrastructure.
- 1.3 This SPD will apply throughout the borough.

## 2. Purpose

- 2.1 The purpose of this report is to recommend the Mayor approve the Planning Obligations Supplementary Planning Document (SPD) and to recommend to Full Council that they adopt the Planning Obligations SPD.

## 3. Recommendation

The Mayor is recommended to:

- 3.1 approve the Planning Obligations SPD; and
- 3.2 recommend that Council adopt the Planning Obligations SPD; and

- 3.3 delegate power to make any minor editorial changes to the text and format of the document prior to consideration by full Council, to the Executive Director for Resources and Regeneration.

#### **4. Policy Context**

4.1 The content of this report are consistent with the Council's policy framework. The SPD will form part of the Council's Local Development Framework (LDF). 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.

4.2 In addition to implementing Core Strategy policy the SPD will assist and aid the implementation of other documents in the Council's policy framework. This report supports the following Sustainable Community Strategy objectives:

- *Empowered and responsible*: where people can be actively involved in their local area and contribute to tolerant, caring and supportive local communities.
- *Clean, green and liveable*: where people live in affordable, high quality and adaptable housing, have access to green spaces and take responsibility for their impact on the environment.
- *Healthy, active and enjoyable*: where people can actively participate in maintaining and improving their health and well-being, supported by high quality health and care services, leisure, culture and recreational activities.
- *Safer*: where people feel safe throughout the borough and are able to live lives free from crime, anti-social behaviour and abuse.
- *Dynamic and prosperous*: where people are part of vibrant and creative localities and town centres, well-connected to London and beyond.

#### **5. Background**

5.1 The existing Planning Obligations SPD was adopted in 2011. Since then, the policy context has changed, especially with the introduction of the Community Infrastructure Levy, 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 adoption of the Core Strategy, Site Allocation local plan, Lewisham town centre local plan and Development Management local plan.

5.2 Planning obligations under section 106 of the Town and Country Planning Act 1990 (as amended) are a mechanism which makes a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on mitigating the impact of development.

- 5.3 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.
- 5.4 The Council is in the process of adopting a CIL Charging Schedule (see separate item on this agenda) and this will have an impact on how Planning Obligations work. Under Regulation 123 of the CIL Regulations 2010 (as amended) the use of Planning Obligations to deliver infrastructure will be restricted. From April 2015, whether or not the council has adopted a CIL, it will no longer be possible to pool 5 or more S106 Obligations to pay for a single infrastructure project or type. The limitation on pooling will take into account any s106 agreed from April 2010. 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.
- 5.5 As a consequence of the government changes regarding CIL and use of Planning Obligations it is necessary to update the S106 SPD so that it conforms with the new rules. The SPD has therefore been re-written and updated, the draft was approved by the Mayor in June 2014 and Full Council in September 2014 for public consultation.
- 5.6 In considering the draft updated Planning Obligations SPD, the CIL charging schedule must be taken into account.
- 5.7 The introduction of CIL as a means of collecting a floorspace area based levy for relevant infrastructure means that S.106 cannot be used to fund non site-specific relevant infrastructure, for example, a district flood protection scheme. Planning Obligations can still be used to secure site specific mitigation required to make individual development proposals acceptable in planning terms, for example securing Affordable Housing.
- 5.8 CIL is intended to fund strategic infrastructure, that is, infrastructure whose need is not created by a specific development, but rather, relates to the ongoing need to improve and renew infrastructure. This will generally be items listed in the Council's infrastructure development plan. It is possible for a development scheme to fund its own infrastructure requirements, which may be off-site, for example, improvements to a nearby road junction to handle the traffic the scheme will generate, as well as make a contribution to on-site strategic infrastructure. eg a railway viaduct.
- 5.9 As stated above, CIL, will be used to fund strategic infrastructure. This is the infrastructure required regardless of any individual scheme, and will not necessarily directly benefit the scheme/s which have helped fund it. CIL contributions will be paid into a common CIL fund, from which funds will be drawn down to help pay for the relevant infrastructure as appropriate.

## **6. Consultation on Draft SPD**

- 6.1 The consultation on the draft SPD ran for 6 weeks from Friday 10 October 2014 to Friday 21 November 2014. All those on the Planning Policy database for consultation, which is over 1,000 individuals, business and other organisations, were consulted. In addition an advert was placed in the South London Press and copies of the consultation draft were placed in all the borough libraries.
- 6.2 A summary of the consultation responses and the changes made to the SPD as a result is set out as Appendix 2 to this report. Issues arising from the consultation relate to the following:
- Suggested additional text to clarify the purpose and effect of some requirements;
  - Seeking clarification of the quantum of obligations following the introduction of CIL alongside, and partially replacing, S.106;
  - Clarification of the obligations that will be imposed on any replacement permissions where approved schemes are subsequently modified and CIL and/or S.106 obligations already met;
  - Failure to include requirements for theatre provision in the SPD; and
  - Lack of consideration of the practical implementation of meaningful biodiversity requirements.
- 6.3 It was evident in one submission that there is confusion over the works to be funded by CIL and those secured through planning obligations once the two are operating side by side. This matter was discussed in the previous section. The Council cannot levy a charge and secure a obligation for the same relevant infrastructure.

## **7. Proposed Changes to SPD following Consultation**

- 7.1 A number of points raised in the consultation submissions merit changes to the SPD in order to improve clarity of meaning and operation. The suggested changes are set out in appendix 2 to this report and are as follows:
1. Section 3.5 Transport:
    - Expand the scope of possible works required to enhance public transport operation (paragraphs 3.5.15 and 3.5.16).
  2. Section 3.9 Environmental Protection:
    - expanded to include discussion regarding soil decontamination and groundwater quality
    - strengthen provisions intended to prevent loss of biodiversity as a result of development;
    - Include provisions to minimise adverse impacts arising from demolition activities.

Appendix 1 to the consultation draft SPD related to Policy Pointers:

- Include additional references to documentation providing guidance on best practice in respect of flood risk and water management , river and waterway protection and enhancement, and demolition practices.

7.2 While the draft SPD was being consulted on, further consideration was given internally to some parts of the SPD, and a number of background matters referred to in the draft are proposed to be updated. Chief among these is the fact that the Council is now in possession of the 2014 South East London Housing Market Assessment, which contains more recent data than the 2009 Assessment, referred to in the consultation version of the SPD. Changes to the text arising from this relate only to contextual data, not to the intent or requirements in the SPD.

## **8. Adoption of Planning Obligations SPD**

8.1 It is proposed that the Planning Obligations SPD will come into operation at the same time as the Lewisham CIL charging schedule, that is, on 1 April 2015.

## **9. Legal Implications**

9.1 The power of a Local Planning Authority to enter into a planning obligation with any person interested in land in the area of the local planning authority is contained within Section 106 of the Town and Country Planning Act 1990 (as amended). Planning obligations are secured by Deed either by way of planning agreements or unilateral undertakings and are required in order to mitigate the impact of the proposed development.

9.2 In accordance with the Act, planning obligations:

- May restrict the development or use of land;
- May require specified operations or activities to be carried out;
- May require land to be used in any specified way;
- May require cash payments to be made;
- Can 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
- may be enforced against the person entering into it and against any person deriving title from that person; and
- Can be enforced by means of injunction.

- 9.3 Regulation 122 of The Community Infrastructure Levy Regulations 2010 requires that 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.

Regulation 123 scales the use of obligations back where an authority introduces a Community Infrastructure Levy to those matters that are directly related to a specific site, satisfies Regulation 122, and is not for relevant infrastructure. “Relevant infrastructure” means, in this context, where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL.

- 9.4 Planning obligations are not to secure the provision of relevant infrastructure. The SPD before the Mayor, clarifies the Council’s policy towards securing appropriate planning obligations required to mitigate the impact of development, in the light of CIL.

- 9.5 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.

- 9.6 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.

- 9.7 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.

- 9.8 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/>

9.9 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

9.10 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/>

## 10. Equalities Implications

10.1 *Shaping our future*, Lewisham's Sustainable Community Strategy for 2008-2020, sets out a vision for Lewisham:

***“Together we will make Lewisham the best place in London to live work and learn.”***

This is underpinned by hard-edged principles for:

- **reducing inequality** – narrowing the gap in outcomes for citizens
- **delivering together efficiently, effectively and equitably** - ensuring that all citizens have appropriate access to and choice of high quality local services

10.2 The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities to support the Sustainable Community Strategy and to ensure compliance with the Equality Act 2010.

- 10.3 The role of the S.106 SPD is to explain and elaborate on the policies in the Lewisham Core Strategy (part of the LDF) in relation to planning obligations. An Equalities Analysis Assessment (EAA) of the Core Strategy was undertaken in 2009 with an update in 2012 to address the three new protected characteristics identified in The Equality Act 2010.
- 10.4 The S.106 SPD contains guidance that will assist in the implementation of the previously assessed Core Strategy and it is therefore not necessary to undertake a separate EAA of the SPD itself.

## **11. Financial Implications**

- 11.1 There are no specific financial implications arising from this report. The SPD will, however, continue to provide a means of ensuring that development continues to contribute towards affordable housing, employment and training, and scheme-specific infrastructure, all of which would need to be funded from Council or other sources in the absence of planning obligations.

## **12. Crime and disorder implications**

- 12.1 There are no specific crime and disorder implications arising from this report.

## **13. Environmental implications**

- 13.1 There are no specific environmental implications from this report.

## **14. Conclusion**

- 14.1 The revised Planning Obligations SPD will continue to give the Council the means to secure appropriate contributions from development, following the introduction of CIL. Whilst CIL will help to fund strategic infrastructure, S.106, Planning Obligations will still be needed to secure site-specific infrastructure and to mitigate adverse impacts.



## Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
The CIL Regulations	2010	Laurence House	Planning Policy	Brian Regan	No
Lewisham Core Strategy Equalities Analysis Assessment	2009	Laurence House	Planning Policy	Brian Regan	No
Lewisham Site Allocations Equalities Analysis Assessment (incorporating an update to the Core Strategy EAA)	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: Adoption version of Planning Obligations Supplementary Planning Document (SPD)

This may be viewed at:

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CId=139&MId=3498>

Appendix 2: Consultation Report – Summary of issues raised, responses and changes to SPD arising from consultation.