

CABINET

12 July 2022

Title: Draft Planning Obligations Supplementary Planning Document (SPD) Update and Consultation	
Report of the Cabinet Member for Regeneration and Economic Development	
Open Report	For Decision
Wards Affected: All wards	Key Decision: Yes
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Accountable Director: Caroline Harper, Chief Planning Director, Be First	
Accountable Strategic Director: Abi Gbago, Strategic Director of Inclusive Growth	
Summary	
<p>This report provides an update on the Draft Planning Obligations Supplementary Planning Document (SPD) and seeks approval to progress the draft document to statutory public consultation (intended to take place over a six-week period in Summer 2022). It is the intention, subject to the relevant approvals, for the document to be formally adopted in November/December 2022.</p> <p>The London Borough of Barking and Dagenham Draft Local Plan 2037 was submitted to the Secretary of State for examination on 20 December 2021. The Local Plan outlines how the borough's ambitious housing and employment targets will be met over the plan period and beyond, alongside detailing how supporting infrastructure will be delivered to support the level of growth projected. Developer contributions through planning obligations are the most significant mechanism through which this will be funded.</p> <p>The new SPD document will provide supplementary planning guidance to developers, planning officers and borough residents as to how the Council will seek developer contributions, the extent and nature of these contributions (both financial and non-financial), the justification for this approach and, in some cases, how these contributions will be spent.</p> <p>Cabinet should note that the Government's new Levelling Up Bill outlines changes to the current CIL and S106 regime in order to bring forward a proposed Infrastructure Levy. This will be kept under review, however given it is unlikely any new legislation will be come into effect for 1-2 years, it is necessary to press on with the SPD to support the Local Plan and LBBD's substantial development pipeline in train.</p> <p>The proposed timeline for this SPD is set out below:</p>	
	DATE
Cabinet	12 July 2022
Consultation period (6 weeks)	August/September 2022

Review responses and update SPD Adoption by Assembly	September 2022 November/December 2022
Recommendation(s)	
The Cabinet is recommended to:	
<ul style="list-style-type: none"> (i) Approve the Draft Planning Obligations Supplementary Planning Document, as set out at Appendix A to the report, for public consultation; and (ii) Delegate authority to the Strategic Director, Inclusive Growth, in consultation with the Cabinet Member for Regeneration and Economic Development and the Chief Legal Officer, to make any appropriate amendments to the document following public consultation, prior to its submission to the Assembly for formal adoption. 	
Reason(s)	
To assist the Council in achieving its priorities of 'Inclusive Growth' and 'Well Run Organisation'.	

1. Introduction and Background

- 1.1 Supplementary Planning Documents provide guidance on policies set out in a Local Plan, such as site-specific information, or specific matters such as Developer Contributions. They provide a material consideration in planning decisions and are pivotal in helping to shape development in specific areas.
- 1.2 LBBD's Draft Local Plan outlines a target to build 44,051 new homes and create 20,000 new jobs over the next 20 years. This level of growth will require significant investment in infrastructure, which is outlined in the Council's supporting Infrastructure Delivery Plan (2020) along with the site allocations in Appendix 2 of the Local Plan.
- 1.3 As outlined in Policy DMM1 in Chapter 11 of the Draft Local Plan, the Council and developers have a responsibility, through the planning process, to manage the impact of this growth and ensure that any harm caused by development is mitigated, ensuring that the necessary infrastructure is provided. As such, clear and detailed guidance on developer contributions to achieve this is required.
- 1.4 However, although Barking and Dagenham has significant growth ambitions, viability is still challenging as set out in the [viability study](#) conducted by BNP Paribas in September 2020. Whilst this is likely to change over the coming years, given the level of Council-led regeneration proposed over the course of the Local plan period and the impact this is likely to have on land values, this nevertheless remains a key consideration when determining how the Council will seek planning obligations from developers.
- 1.5 The two main mechanisms for collecting developer contributions which are examined in this SPD are CIL and Section 106. For background, both of these mechanisms are described below.

- 1.6 The Community Infrastructure Levy (CIL) is a standard charge levied by Local Authorities, as well as the GLA, on most new development which creates net additional floorspace of 100m² or more. It is an important tool for delivering the infrastructure needed to support development in each borough and is collected not to directly mitigate the impact of the development in question, but instead is pooled in a single fund to be spent flexibly where it is considered necessary. It is non-negotiable, but most affordable housing is granted relief from CIL.
- 1.7 Planning Obligations are secured through legal agreement known as Section 106 (S106) agreement under Section 106 of the Town and Country Planning Act 1990, or unilateral undertaking. Negotiated between the Council and applicants, they can take the form of works, payments or restrictions on the way a property can be used. The Council uses Section 106 to secure important outcomes such as affordable housing provision, carbon offset payments and employment and training plans. Unlike CIL, the legal agreements usually define where monies contributed must be spent (usually in the vicinity of the development) and what the money must be spent on, with all of this agreed under the terms outlined in Section 2.1 below. This makes it a less flexible funding tool than CIL, with some monies only received several years after they are secured.
- 1.8 Prior to 2015, Section 106 was the primary mechanism by which the Council would collect developer contributions. However, since then CIL has been the primary method of collecting contributions, with £8,372,216 obtained in the seven years to March 2022 and £3,505,187.75 in 2019/20 alone. In contrast, only £53,817 was collected in financial contributions through Section 106 in the same financial year. The key aim of this updated SPD is to strengthen the role which Section 106 can play in obtaining developer contributions to help fund the borough's corporate priorities throughout the Local Plan Period. It will also help meet the requirement of the Infrastructure Delivery Plan by using CIL and Section 106 contributions to be best allocate towards the areas where greatest future need is identified.
- 1.9 This SPD forms part of a wider framework of planning tools to shape delivery of future development and regeneration across the borough. It provides Officers with the scope to acquire contributions to mitigate site-specific impacts of development and support infrastructure requirements which are outlined in the Council's Infrastructure Delivery Plan, Local Plan site allocations and their related topic papers, as well as area-based masterplans such as the Thames Road Transformation Area SPD.

2. Proposal and Issues

- 2.1 The Planning Obligations SPD must seek to balance a realistic response to the borough's limited viability context, which poses challenges to delivery, with the multiple expectations of stakeholders across (and indeed beyond) the Council. This SPD will provide clarity on the borough's expectations to allow consistent application but allow flexibility where site specific constraints or viability challenges necessitate this. Our approach has also been designed to 'fit' in the legal framework for the use of S106, as set out in the CIL Regulations (2010) as amended, which requires that anything we ask 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

2.2 While the viability and legal contexts act as a constraint, there remains a real opportunity to use this new guidance to strengthen our negotiating position and secure wide-ranging social, environmental and economic corporate objectives. The starting point for defining what goes into the new S106 guidance is the emerging new Local Plan which articulates our spatial strategy for achieving inclusive growth. The guidance will set out our approach to:

- Securing onsite policy requirements such as affordable housing onsite or payments in lieu
- Addressing the transport impacts of development:
 - securing contributions to public transport improvements eg new bus routes
 - highways improvements e.g., s278 such as the recent City Markets agreement to upgrade the A13 at Goresbrook
 - measures that support shifts to less polluting forms of travel, for example, cycle lanes, electric vehicle infrastructure or parking restrictions
- Where on-site standards cannot be achieved, contribution to mitigate the impact of carbon and air quality emissions
- Continuing to secure employment and training plans – and local employment targets – through S106
- Capturing monitoring fees consistently for all S106 agreements with specific monitoring fee associated with travel plans and employment plans
- Providing more standard means of calculation for payments where possible
- Reinforcing that we will take a more proactive approach to ensuring compliance.

Planning Obligations SPD - Structure and content

2.3 A summary of each section of the Planning Obligations SPD is below:

2.3.1 **Introduction** – Provides an outline of the purpose and status of the draft SPD, as well as outlining information on statutory consultation.

2.3.2 **Background** – Outlines the context of this document within the long term strategic aim of the Local Plan as well as how the document will broadly be used.

2.3.3 **Policy and Legislative Context** – Outlines the national, regional and local policy frameworks as well as the requirements laid out in the Town and Country Planning Act (1990) and CIL Regulations (as amended 2019).

2.3.4 **What Are Planning Obligations?** – Explanation of different standard planning obligations and CIL (Mayoral and Borough) and the difference between them, as well as planning conditions and Section 278 Agreements

2.3.5 **How Planning Obligations are secured** – A general explanation of how CIL and Section 106 contributions are sought, the appropriate thresholds used to determine where they are required, information on monitoring and the various S106 trigger points.

2.3.6 **Obligations and Charges** – A detailed description of the contributions that are/may be required for various housing and infrastructure needs

- 2.3.7 **Appendix 1** – A table summarising the key information within the SPD in relation to more specific development thresholds (e.g. commercial, 10+ unit residential)

Supporting Evidence Base

- 2.4 The Planning Obligation SPD has been informed by the following documents:
- LB Barking and Dagenham Infrastructure Delivery Plan (2020); and
 - LB Barking and Dagenham Infrastructure Funding Statement (2020)
- 2.5 The Sustainability Appraisal, which has already been undertaken, is a key evidence base document, which not only fulfils the statutory requirements for Sustainability Appraisal (SA) and Strategic Environmental Assessment Directive (SEA) 2001/42/EU and associated UK Regulations. An SEA is unlikely to be required where a supplementary planning document deals only with a small area at a local level (see [regulation 5\(6\) of the Environmental Assessment of Plans and Programmes Regulations 2004](#)) unless it is considered that there are likely to be significant environmental effects. A screening document has been created, which supports this conclusion.

Next Steps

- 2.6 Be First will consult on this document in Summer 2022 for six weeks, in line with the Council's Statement of Community Involvement (SCI) Refresh 2019 (updated in August 2020). All representations made in response to the public consultation on the draft SPD will be processed and subsequently considered prior to adopting the final version of the masterplan.
- 2.7 Following the statutory consultation period, the Planning Policy Team will undertake a period of examination of the representations made and create a final draft of the SPD. Final changes will be cleared by the Strategic Director, Inclusive Growth in consultation with Be First's Chief Planner and submitted to Assembly for approval in November/December this year.

3. Options Appraisal

- 3.1 The options for consideration here were:
- Do not bring forward a draft Planning Obligations SPD
 - Bring forward a draft Planning Obligations SPD, but at a later date
 - Bring forward the draft Planning Obligations SPD now
- 3.2 The first two options were not considered viable, primarily because more in-depth supplementary planning guidance is required to support emerging Local Plan policy in Chapter 11, which is now a material consideration in planning terms. Consequently, Planning Officers and LBBDO Officers have highlighted the requirement for such supplementary guidance to be brought forward to support emerging Local Plan policy which is already the benchmark for determining planning applications. Therefore, the third option is considered to be the only acceptable option.

3.3 Furthermore, whilst the Levelling-up and Regeneration Bill does set out the Government's intentions regarding changes to the collection of developer contributions, we feel it is unlikely that we are to see these changes in practise during the next couple of years. As such, bringing forward an SPD on the matter now is still judged to be the most appropriate option.

4. Consultation

4.1 The structure and content of Planning Obligations SPD has been informed by internal engagement with borough officers and Be First Development Management Officers. Early engagement has taken place to date as follows:

- Internal consultation and workshops with officers from across the Council
- Briefing session and presentation on draft SPD with Inclusive Growth and other LBBB Departments (inc. Education, Air Quality, Parks and Green Space, Universal Lifecycle and Health)

4.2 The proposals in this report were considered and endorsed by the Corporate Strategy Group at its meeting on 16 June 2022.

5. Financial Implications

Implications completed by: Katherine Heffernan, Head of Service Finance

5.1 There is no specific additional funding available for the development or consultation on the SPD and so this activity must be carried out from within existing resources.

5.2 A robust SPD is required to support the Council's planning regime and in particular to secure appropriate and sufficient section 106 contributions and to plan the most effective use of Community Infrastructure Levy.

5.3 The Cabinet should note that there is a risk that these contribution mechanisms could be changed as a result of Government policy changes and the new Levelling Up bill. However, it is important to continue to make use of the existing regime in the interim.

6. Legal Implications

Implications completed by: Dr Paul Feild, Senior Standards & Governance Lawyer

6.1 The Planning and Compulsory Purchase Act 2004 (the "Act") required the Council to replace its Unitary Development Plan (UDP) with a Local Development Framework (LDF). As observed above the Draft Planning Obligations Supplementary Planning Document is a key LDF documents.

6.2 The Local Authorities (Functions and Responsibilities) (Amendment) (No 2) (England) Regulations 2004 provide that adoption of LDF documents are not an Executive function, so the resolution to adopt LDF documents under section 23 of the Act must be carried out by the Assembly.

7. Other Implications

- 7.1 **Contractual Issues** - This SPD is required to provide supplementary planning guidance to the emerging Barking and Dagenham Local Plan 2037. It is outlined in the Draft Local Plan that an SPD for planning obligations is required to ensure the Council can successfully “address a development’s impacts and ensure it aligns with the development plan for the borough.”
- 7.2 **Corporate Policy and Equality Impact** - The planning policy team has undertaken a full Equality Impact Assessment (EqIA) as part of the new Local Plan Regulation 19 document, which this document supplements. The Council’s Policy and Participation Officer has advised that a further assessment is not required for SPDs due to their supplementary status outside of the Development Plan, but separate EqIA may be required for individual schemes when brought forward in future.

Public Background Papers Used in the Preparation of the Report:

[Regulation 19 \(2\) Draft Local Plan 2037](#)

[LBBB Infrastructure Delivery Plan 2020](#)

List of appendices:

Appendix A: Draft Planning Obligations SPD