

**Decision Maker:** **Development Control Committee Executive**

**Date:** **24<sup>th</sup> March 2015**  
**June 2015**

**Decision Type:** Non-Urgent                      Non-Executive                      Non-Key

**Title:** **Supplementary Planning Document (SPD) on Planning Obligations: Addendum on Changes to Pooling s106 Contributions and s106 Threshold changes.**

**Contact Officer:** Mary Manuel, Head of Planning Strategy  
Tel: 020 8313 4303 E-mail: mary.manuel@bromley.gov.uk

**Chief Officer:** Jim Kehoe, Chief Planner

**Ward:** N/A

---

1. Reason for report

This report seeks Members agreement to an addendum to the Council's existing Supplementary Planning Document Planning Obligations (2010) to reflect changes introduced by the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) which come into effect from 6<sup>th</sup> April 2015. The report advises Members that changes to the pooling of s106 planning contributions (Town and Country Planning Act 1990) of more than five contributions from separate permissions for an item of infrastructure, come into effect Nationally from 6<sup>th</sup> April 2015. The report proposes the Council's approach to ensure that contributions for necessary infrastructure to support development continues to be sought from developers in line with the Development Plan.

---

2. **RECOMMENDATION(S)**

**Development Control Committee**

- 2.1 Endorse the addendum to the Council's adopted SPD Planning Obligations (2010) updating references to threshold, and the pooling of s106s as required by the CIL Regulation 2010 , and recommend Executive agree the addendum at Appendix 1 to this report.
- 2.2 Note the changes set out in the report that are due to come into effect on 6<sup>th</sup> April 2015 as a result of the CIL Regulation 2010.

**Executive**

- 2.3 Agrees the addendum at Appendix 1 updating references to pooling and threshold changes.

### Corporate Policy

1. Policy Status: Existing Policy:
  2. BBB Priority: Quality Environment:
- 

### Financial

1. Cost of proposal: N/A
  2. Ongoing costs: N/A
  3. Budget head/performance centre: N/A
  4. Total current budget for this head: N/A
  5. Source of funding: N/A
- 

### Staff

1. Number of staff (current and additional): 11
  2. If from existing staff resources, number of staff hours: N/A
- 

### Legal

1. Legal Requirement: Community Infrastructure Levy Regulation 2010 as amended
  2. Call-in: Not Applicable:
- 

### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough-wide
- 

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

### **3. COMMENTARY**

- 3.1 The Council adopted its Supplementary Planning Document Planning Obligations in 2010 setting out the requirements and process for S106 agreements under the Town & Country Planning Act 1990 to secure planning obligations.
- 3.2 The Community Infrastructure Levy Regulations came into effect in April 2010. For a planning obligation to be taken into account in determining a planning application for a development, it must meet the three tests set out in Regulation 122 :-
- Necessary to make the proposed development acceptable in planning terms;
  - Directly related to the proposed development;
  - Fairly and reasonably related in scale
- 3.3 However, from 6<sup>th</sup> April 2015, Regulation 123 will ensure that the use of s106 and CIL do not overlap. As an interim arrangement until a local CIL is in place the Council will need to seek specific financial contributions from developers (e.g. '£x for the provision of a new classroom at y primary school or in the 'z' ward), rather than the historic/generic approach of seeking general contributions (e.g. '£x for education provision') and ensure only a maximum of five contributions are spent for such a specific item of infrastructure. The challenge provided by this new approach is to ensure the Council is up to date with the infrastructure needed, where and when, at any point in time, so that timely (and lawful) s106 agreements can be made and implemented.
- 3.4 In those cases where Affordable Housing Policy has not been met due to financial viability, and subsequently there have been difficulties in the implementation of a specific project, the Council will consider whether the sum should be used instead for Affordable Housing.
- 3.5 The interim arrangement is expected to last until mid-2016. Meanwhile, the process for developing a CIL for the Borough is underway and is co-dependent on, the robustness of evidence for infrastructure required for growth and delivery of the Local Plan, being found sound at the Examination in Public, before adoption.
- 3.6 For provision that is not capable of being funded by the levy, such as affordable housing, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies on planning obligations set out in the National Planning Policy Framework (NPPF).
- 3.7 Specific projects will normally be selected from projects approved by the Council (e.g. through a Capital Programme) in consultation with relevant services or partner organisations.
- 3.8 In addition to the CIL regulations changes, a Ministerial Statement was issued on the 28<sup>th</sup> November 2014 (and then the National Planning Policy Guidance (NPPG) was subsequently amended) with regard to planning contributions and the threshold at which affordable housing can be required. Therefore from this date the Council will ask for affordable housing contributions on schemes of eleven units or more, not the 10 units as described in Policy H2. The existing policy criteria of 0.4 of a hectare still stands if the floor area of the residential development proposed is more than 1000 square metres.

#### **Changes to adopted SPD on Planning Obligations**

- 3.9 The Adopted Planning Obligations SPD sets out and explanation and provides non-statutory guidance on the Council's general approach to planning obligations, and where possible the requirements, and mechanisms for infrastructure contributions.

3.10 Consequently in light of the changes to CIL Regulation rules from April, that effect pooled s106, and the recent threshold changes, an addendum is required to go alongside the Council's adopted SPD on Planning Obligations. This should be taken into consideration in the determination of relevant planning applications.

3.11 Appendix 1 to this report comprises the proposed addendum.

#### **4. POLICY IMPLICATIONS**

4.1 The addendum attached as Appendix 1 to this report will be taken into consideration in the development of forthcoming policy documents including the Local Plan, any replacement SPD and the assessment of relevant planning applications.

#### **5. FINANCIAL IMPLICATIONS**

5.1 Regulation 123 will ensure that the use of S106 and CIL monies do not overlap. The Regulation will, in effect, restrict the scale of contributions to five per infrastructure type.

5.2 When CIL is introduced, Officers will ensure that the Council has an up to date infrastructure plan in place and that the specific projects listed as Regulation 123 projects, are not funded from S106 contributions.

5.3 As mentioned above, the introduction of this Regulation does not affect S278 contributions nor affordable housing contributions.

#### **6. LEGAL IMPLICATIONS**

6.1 The implication of the introduction of pooling restrictions of Section 106 contributions is addressed in the report. .

<b>Non-Applicable Sections:</b>	Personnel
Background Documents: (Access via Contact Officer)	National Planning Policy Framework (March 2012) Adopted Supplementary Planning Document Planning Obligations (December 2010) Community Infrastructure Levy Regulation 2010 as amended 2014

**ADDENDUM (March 2015) TO COUNCIL'S:****ADOPTED SUPPLEMENTARY PLANNING DOCUMENT PLANNING OBLIGATIONS (2010)****Chapter 1 Introduction – Legislation, and National, Regional, and Local Policy guidance**

Amend

Page 4, paragraph 1.8, 2<sup>nd</sup> paragraph delete “has affect from 6 April 2014” and insert “has effect from 6 April 2015”

**Chapter 2 General Principles****Thresholds**

Page 8, insert new para 2.3A

2.3A A Ministerial Statement was issued on the 28<sup>th</sup> November 2014 (and then the National Planning Policy Guidance (NPPG) was subsequently amended) with regard to planning contributions and the threshold at which affordable housing can be required. Therefore from this date the Council will ask for affordable housing contributions on schemes of eleven units or more, not the 10 units as described in Policy H2. The existing policy criteria of 0.4 of a hectare still stands if the floor area of the residential development proposed is more than 1000 square metres.

**Pooled Contributions**

Page 10, delete Paragraphs 2.10, 2.11 and 2.12

~~2.10 Circular 05/2005 advises that pooling of contributions can take place both *between developments and between local authorities where there is a cross-authority impact*. The Council has already set up a capital fund known as the Town Centre Improvement Fund to hold relevant s.106 contributions which directly refer to town centre environments or local economy matters that could, subject to Member agreement, be reinvested as appropriate in the Borough's larger town centres towards identified projects once any improvement plans have been approved.~~

~~2.11 When any such contributions are requested, the Council would set out in advance any need for joint supporting infrastructure (for specific requirements of the Bromley Town Centre developers should refer to the Bromley Town Centre Area Action Plan). There would be a clear audit trail between the contribution made and the infrastructure provided and the Council would account to the developer for the initiatives on which the contributions are spent. Any unspent balance, together with interest, would be returned to the developer.~~

~~2.12 Pooled contributions can also be sought from developments which are permitted after the infrastructure has been provided where the policy tests are met and the need for the infrastructure and proportionate contributions to be sought is set out in advance (Circular 05/2005 Para 23 refers).~~

And insert new paras 2.10, 2.11 and 2.12:

2.10 CIL regulation<sup>1</sup> states that when the levy is introduced (and nationally from April 2015), the regulations restrict the use of pooled contributions towards items that may be funded via the levy.. As an interim arrangement until a local CIL is in place the Council will need to seek specific financial contributions from developers (e.g. '£x for the provision of a new classroom at y primary school or in

<sup>1</sup>Community Infrastructure Levy (Amendment) Regulations 2014

the 'z' ward), ensuring only a maximum of five contributions are spent for such a specific item of infrastructure.

- 2.11 Contributions for Affordable Housing and also highway works that are secured through section 278 of the Highways Act 1980, are not subject to the pooling restriction from April 2015.
- 2.12 In those cases where Affordable Housing Policy has not been met due to financial viability, and subsequently there have been difficulties in the implementation of a specific project, the Council will consider whether the sum should be used instead for Affordable Housing.

## **APPENDIX 1**

### **Table 'Summary of Planning Obligations and Costs'**

#### **Affordable Housing -Threshold** column

Delete 'Sites capable of providing 10 units or more or 0.4ha or more in size' and insert 'developments of 11 residential units or more and 0.4 ha or more where the residential floorspace is more than 1000 sqm'.