

Decision Maker: EXECUTIVE

**FOR PRE-DECISION SCRUTINY BY THE RENEWAL,
RECREATION AND HOUSING POLICY DEVELOPMENT AND
SCRUTINY COMMITTEE AND DEVELOPMENT CONTROL
COMMITTEE**

Date:
DCC: 11 January 2022
RRH PDS: 26 January 2022
Executive: 9 February 2022

Decision Type: Non-Urgent Executive Key

Title: UPDATE OF THE PLANNING OBLIGATIONS
SUPPLEMENTARY PLANNING DOCUMENT – CONSULTATION
DRAFT

Contact Officer: James Renwick, Infrastructure Delivery Team Leader
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Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: (All Wards);

1. Reason for report

- 1.1 This report recommends that the revised Planning Obligations Supplementary Planning Document (SPD) is published for six weeks public consultation. The SPD is an update of the current SPD which was adopted in 2010. The update is necessary to reflect changes following the adoption of the Bromley Community Infrastructure Levy (CIL) and changes to national, regional and local planning policy since 2010.
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2. RECOMMENDATION(S)

- 2.1 That Development Control Committee endorse the draft Planning Obligations Supplementary Planning Document (shown at Appendix 1) for six weeks public consultation, noting that there may be further minor amendments prior to consultation.

- 2.2 That Members refer the matter to the Renewal, Recreation and Housing Policy Development and Scrutiny Committee for pre-decision scrutiny.**
- 2.3 That Executive approve the draft Planning Obligations Supplementary Planning Document (shown at Appendix 1) for six weeks public consultation.**
- 2.4 That Executive authorise the Director of Housing, Planning, Property and Regeneration, in consultation with the Portfolio Holder for Renewal, Recreation and Housing, to approve any further minor changes to the draft Planning Obligations Supplementary Planning Document (shown at Appendix 1) ahead of public consultation.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: No Impact
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Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Regeneration
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Financial

1. Cost of proposal: Costs associated with the preparation of the SPD and public consultation will be met from the Planning Policy and Strategy budget.
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Planning Policy and Strategy
 4. Total current budget for this head: £0.568m
 5. Source of funding: Existing Revenue Budget for 2021/22
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Personnel

1. Number of staff (current and additional): 3 FTE
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Town and Country Planning (Local Planning) (England) Regulations 2012
 2. Call-in: Applicable: Further Details – Executive Decision
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background

- 3.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 (“the Regulations”) allow a Local Planning Authority to publish SPDs to build upon and provide more detailed advice or guidance on policies in an adopted local plan. National Planning Policy guidance further stipulates that SPDs do not form part of the Development Plan and cannot introduce new planning policies into the Development Plan. They are however a material consideration in decision-making.
- 3.2 The Council already has a Planning Obligations SPD, which was adopted in December 2010. ‘Planning Obligation’ is the generic term used to describe any obligation placed by the Council on the grant of planning permission to require the developer to undertake certain commitments, either financial or non-financial in nature. Typically secured under Section 106 of the Town and Country Planning Act, planning obligations are used to control or offset the impacts of new development and make them consistent with adopted planning policy.
- 3.3 Typical planning obligations include the provision of affordable housing, payment of a sum towards localised highway improvements, carbon reduction / offset measures and the control of matters connected with new development (such as parking controls). CIL is not classified as a planning obligation, however there is a strong relationship between the two, which is explained further in the SPD. In summary, CIL is a strategic levy to cover the cost of providing future background infrastructure needs (e.g. school provision, health needs) while planning obligations are concerned with the specific site impact of a development proposal.
- 3.4 Since the adoption of the SPD, there have been significant changes to the adopted policy framework at the national, London and local level; furthermore, the adoption of the Bromley CIL in April 2021 changes the scope of requirements which the Council may seek as a planning obligation in the determination of a planning application. The Council also has adopted a new Corporate Strategy - ‘Making Bromley Even Better’ - in September 2021, which should be reflected in any guidance on the use of planning obligations, to assist with the delivery of Council priorities.

Draft Planning Obligations SPD

- 3.5 The adoption of the Bromley CIL means that the collection of general ‘strategic tariffs’ towards infrastructure, previously secured through planning obligations, are now assumed to be provided by any CIL payment.
- 3.6 Since the adoption of the 2010 SPD, there have been changes in approach to the use of planning obligations, particularly regarding the provision of affordable housing, sustainability measures and economic development; the revised SPD seeks to provide updated guidance on these matters and the Council’s approach more generally.
- 3.7 The revised SPD provides a framework for how the Council may use the Section 106 mechanism to secure matters relevant to the award of a planning consent. It does not prescribe a hierarchy of priorities, nor does it prescribe specific projects or sites. Furthermore, the SPD may be supplemented in future with technical guidance to further define what the Council seek in specific matters.
- 3.8 Many of the matters raised in the draft SPD could be adequately handled by a planning condition rather than a separate S106 legal agreement. The schedule contained in the appendix of the draft SPD outlines the circumstances where this may be the case.

Key changes in the Draft SPD from the 2010 adopted SPD

- 3.9 The most significant update is the revision of the relevant planning policies in the Bromley Local Plan (adopted January 2019) and the London Plan (adopted March 2021); in addition, the revised SPD now reflects the new Bromley Corporate Strategy and other strategy documents prepared by the Council since the adoption of the current SPD. The SPD has also been expanded to cover potential circumstances where bespoke planning obligation requirements may be requested regarding on-going management of a development – for example, parking controls, servicing arrangements or the control of construction activity. This is currently implemented on an ad-hoc basis as there is no guidance in the adopted SPD.
- 3.10 The adopted SPD also removes tariff-based contributions for education, health, open space and community use payments, which were previously levied on small sites that did not in themselves result in a direct impact on such services or infrastructure. Contributions to these areas will now be assumed to be provided through the CIL. The revised SPD does however cover potential circumstances where sites with a specific impact on infrastructure (including larger sites) may be required to address such issues, initially as part of the development proposal or potentially as an in-lieu payment.
- 3.11 The revised SPD has also been redrafted to form a greater thematic narrative to the areas in which the Council may seek a planning obligation, reflecting the themes of the new Corporate Strategy as follows:
- Affordable Housing
 - On-site Amenity and Green Infrastructure
 - Community Health and Education
 - Control of development and management plans
 - Highways and Transport
 - Local employment and services
 - Sustainable development
 - Urban centres and public realm
- 3.12 Officers are continuing discussions with Legal Services regarding the issue of legal fees in Appendix 1 of the draft SPD, and amendments to the planning obligation template at Appendix 2 of the draft SPD. The intention is for these issues to be finalised ahead of public consultation, but this may be after consideration by committees. The report recommendation therefore asks Executive to authorise that any minor updates to the draft SPD, to reflect the above changes, can be approved by the Director of Housing, Planning, Property and Regeneration, in consultation with the Portfolio Holder for Renewal, Recreation and Housing; this approval is envisaged to be in writing, i.e. exchange of emails.

Consultation to date

- 3.13 While no formal consultation on the draft SPD has been undertaken to date, the document has been circulated to relevant council services for comment. This engagement was focused on services who mainly benefit from planning obligations, for example, through a financial contribution which assists with implementing a particular workstream, or through the imposition of certain restrictions on development which assists with the work of the service.
- 3.14 In addition, there have been some dialogue with certain external stakeholders, such as the NHS and Clinical Commissioning Group (CCG), with regards to the changes that are proposed to the treatment of health requirements. Furthermore, the SPD is in itself representative of other documents and strategies that have undergone formal consultation; the SPD does not prescribe any new priorities or policies expressed in these adopted documents, but merely articulates a process to secure them.

Next Steps

- 3.15 If approved, the SPD will be subject to six weeks public consultation. The Regulations require a minimum of four weeks consultation; however, the Bromley Statement of Community Involvement (SCI)¹ specifies a minimum of six weeks. Consultation will be undertaken in line with the SCI.
- 3.16 The local election purdah period will commence in mid to late March and last until election day on 5 May 2022. The consultation is likely to launch prior to the purdah period, but undoubtedly part of the consultation will overlap with the purdah period. However, as the SPD sets out guidance to be used to assess future planning applications (rather than making decisions itself) and could be considered normal Council business (linked to planning legislation), it is considered that the consultation on the SPD would not be in contravention of guidance on what can be publicised during the purdah period.
- 3.17 Following public consultation, all representations will be considered, and, where necessary, amendments to the SPD will be proposed. An adoption version of the SPD will then be put forward for consideration by committees. The adoption of the SPD is a matter for the Executive.

4. POLICY IMPLICATIONS

- 4.1 Planning obligations must only be sought where they meet the three tests set out in Regulation 122 of the CIL Regulations. The National Planning Policy Framework (NPPF)² and PPG³ sets out national policy and guidance relating to planning obligations.
- 4.2 Development Plan policies play a crucial role in securing appropriate planning obligations. Policy 125 of the Local Plan (2019) sets out the Council's approach to Section 106 agreements. The current Planning Obligations Supplementary Planning Document (SPD) (2010) provides further guidance on the Council's general approach to planning obligations, and where possible the requirements, and mechanisms for infrastructure contributions.
- 4.3 Policies in the adopted London Plan also set out priorities for planning obligations, which includes affordable housing and public transport improvements.

5. FINANCIAL IMPLICATIONS

- 5.1 The production of the Planning Obligations SPD and the costs of public consultation will be funded from the Planning Policy and Strategy budget.

6. LEGAL IMPLICATIONS

- 6.1 The draft SPD has been prepared in line with relevant planning guidance and regulations, including the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). If adopted following public consultation, the SPD will be a material consideration in the determination of relevant planning applications.
- 6.2 A Screening Statement to determine the need for a Strategic Environmental Assessment (SEA) has been prepared by officers, in accordance with the requirements of European Directive

¹ Available from: https://www.bromley.gov.uk/downloads/download/781/revised_statement_of_community_involvement_-_documents

² NPPF paragraphs 55-58, available here: <https://www.gov.uk/guidance/national-planning-policy-framework/4-decision-making#para55>

³ PPG, Planning Obligations, available here: <https://www.gov.uk/guidance/planning-obligations>

2001/42/EC; and the Environmental Assessment of Plans and Programmes Regulations 2004; this is provided at Appendix 2. The screening has concluded that an SEA does not need to be prepared as the SPD does not introduce new policies but provides further guidance on adopted Development Plan policy. This policy has been sufficiently appraised in the Sustainability Appraisals of the Local Plan and London Plan documents; it is considered that the Planning Obligations SPD will not result in any additional significant effects to those already identified through these higher-level Sustainability Appraisals.

- 6.3 This approach is consistent with national planning guidance which states that SPDs are only likely to require an SEA in exceptional circumstances, where they are likely to have significant environmental effects that have not already been assessed during the preparation of the relevant strategic policies.
- 6.4 There is a requirement to consult three statutory consultation bodies designated in the SEA Regulations (the Environment Agency, Historic England and Natural England) on whether a strategic environmental assessment is required. Officers have consulted each of the three bodies on the screening statement provided at Appendix 2; details of the responses are provided in the Screening Statement appendix. To date (as of 20 December 2021), the Environment Agency and Natural England have confirmed that it agrees that a SEA is not required and added no further comment. Historic England had not responded as of this date.

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| Non-Applicable Sections: | IMPACT ON VULNERABLE ADULTS AND CHILDREN PERSONNEL IMPLICATIONS PROCUREMENT IMPLICATIONS |
| Background Documents: (Access via Contact Officer) | Bromley Local Plan 2019 - https://www.bromley.gov.uk/download/downloads/id/4768/bromley_local_plan.pdf Bromley CIL documents (including CIL Charging Schedule and Infrastructure Delivery Plan) - https://www.bromley.gov.uk/info/1004/planning_policy/1179/bromleys_community_infrastructure_levy London Plan (adopted 2 March 2021), available from: https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf National Planning Policy Framework (July 2021) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf Current adopted Planning Obligations SPD - https://www.bromley.gov.uk/info/1004/planning_policy/160/planning_obligations_supplementary_planning_document |