

**Decision Maker:** EXECUTIVE

**Date:** 29 June 2022

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

**Title:** ADOPTION OF THE PLANNING OBLIGATIONS  
SUPPLEMENTARY PLANNING DOCUMENT

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**Chief Officer:** Tim Horsman, Assistant Director (Planning)

**Ward:** (All Wards);

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1. Reason for decision/report and options

- 1.1 This report recommends the adoption of the revised Planning Obligations Supplementary Planning Document (SPD). The Draft SPD underwent 6 weeks public consultation between 9 March 2022 and 22 April 2022, and whilst generally there was support for its content, there are some minor amendments in the proposed version in response to consultation comments. There are also minor amendments as a result of comments from Development Control Committee (DCC) and the Renewal, Recreation and Housing Policy Development and Scrutiny Committee (RRHPDS). The revised SPD is necessary to reflect changes following the adoption of the Bromley Community Infrastructure Levy (CIL) and changes to national, regional and local planning policy that have occurred since the date of publication of the current SPD (2010)

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2. RECOMMENDATION(S)

- 2.1 That Executive approve the revised Planning Obligations Supplementary Planning Document (shown at Appendix 1) for adoption.
- 2.2 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 (e.g. related to formatting) to the Planning Obligations Supplementary Planning Document (shown at Appendix 1) prior to adoption.

## Impact on Vulnerable Adults and Children

1. Summary of Impact: No Impact
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## Transformation Policy

1. Policy Status: Not Applicable
  2. Making Bromley Even Better Priority (delete as appropriate):
    - (3) For people to make their homes in Bromley and for business, enterprise and the third sector to prosper.
    - (4) For residents to live responsibly and prosper in a safe, clean and green environment great for today and a sustainable future.
    - (5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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## Financial

1. Cost of proposal: Costs associated with the adoption of the SPD 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 2022/23
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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, Executive Decision
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## Procurement

1. Summary of Procurement Implications: N/A
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## Property

1. Summary of Property Implications: N/A
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## Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: N/A – The SPD provides a framework for securing improvements to Carbon Reduction and Social Value, but has no direct implications
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## Customer Impact

1. Estimated number of users or customers (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.

#### Consultation on the Draft Planning Obligations SPD

- 3.5 Executive approved the draft Planning Obligations SPD for consultation at their meeting of 9 February 2022<sup>1</sup>. The Council consulted on a draft Planning Obligations SPD between 9 March 2022 and 22 April 2022. The draft SPD updated the policy context for the SPD and included greater content to guide the negotiation of planning obligations. Comments were sought from infrastructure providers, community groups and the development industry, with the draft SPD made available on the Council’s website. The SPD also included a Strategic Environmental Assessment (SEA) screening statement (available at Appendix 3) which concluded that the SPD did not produce significant environmental effects.
- 3.6 In total nine individual responses were received during the consultation period, raising 42 specific representations. A summary of the responses received have been compiled in a “Regulation 12(a) Consultation Statement” (see Appendix 2 to this report). In general comments were supportive of the Draft SPD, with no outright objections to its content, however there were some suggested content amendments.

#### Amendments in response to consultation comments

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<sup>1</sup> <https://cds.bromley.gov.uk/documents/s50095934/Exec%20090222%20Planning%20Obligations%20Report.pdf>

- 3.7 The main changes in the proposed adoption draft SPD as a result of comments received during the consultation are:
- Inclusion of the requirement for a biodiversity 'net 10% gain' (as proposed by the Environment Agency)
  - Linkage in Section 8 (On-site amenity and green infrastructure) , Section 11 (Open space and Outdoor sport) and Section 13 (Urban centres and public realm) that provision or contributions offered under one section may be considered towards the provision in another section (i.e. an enhanced public realm offer may count towards on-site amenity space requirements).
  - Additional text for the management of flood risk and improvements to flood risk infrastructure.
  - Additional text to support heritage management as proposed by Historic England.
- 3.8 Furthermore, after internal discussion, it is now considered that Appendix 2 of the SPD (Section 106 precedent and notification form) should be removed from the SPD and hosted as 'living draft' document on the same webpage that will host the Planning Obligations SPD. This will allow more regular updates to the templates without having to amend the SPD. Any templates would continue to be informed by the guidance set out in the SPD. Similarly, Appendix 1 of the SPD has been amended to refer to this change.
- 3.9 Further details on proposed changes, and matters raised during the consultation that are not being considered for amendment (and the reasons why not) can be found in Appendix 2 to this report
- 3.10 It should be noted that the revised SPD does not establish any hierarchy of priorities, its role is to provide a framework for securing contributions based on current adopted policy. Applicable obligations will be determined on a case-by-case basis at the point of the award of planning permission.

#### Amendments following DCC and RRHPDS meetings

- 3.11 The proposed adoption draft SPD was considered by DCC on 7 June 2022 and RRHPDS on 14 June 2022. DCC voted to recommend that Executive delay the adoption of the SPD until a number of issues were considered and the SPD amended to address these. Following the DCC meeting, officers considered a number of issues raised by members, and proposed further minor amendments to the SPD as follows:
- Amendments to sections 4 and 7 to clarify policy around loss of community facilities.
  - Amendment to paragraph 4.10 to clarify issue regarding responsibility for maintenance costs of community facilities secured through planning obligations.
  - Additions to section 6 to reference policy on Sites of Special Scientific Interest, and to introduce a preference for UK native tree species where trees are replaced as part of development proposals.
  - Introduction of guidance on light pollution in section 8, reflecting relevant Local Plan and London Plan policies.
  - Amendment to overview of section 9 to better reflect the transport policy context from the London Plan.
  - Amendment to guidance on electric vehicle charging points to encourage 100% active provision of electric car charging points in new developments.
  - Introduction of examples of water saving measures and potential off-site air quality measures in section 12.

3.12 At the meeting of 14 June 2022, RRHPDS endorsed the SPD for adoption, with inclusion of the amendments made in response to consultation comments, and the further amendments following DCC member comments. The adoption draft SPD at Appendix 1 includes all amendments.

#### **4. TRANSFORMATION/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)<sup>2</sup> and PPG<sup>3</sup> 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 Revised Planning Obligations SPD and the costs associated with adoption 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, 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 SEA has been prepared by officers, in accordance with the requirements of European Directive 2001/42/EC; and the Environmental Assessment of Plans and Programmes Regulations 2004; this is provided at Appendix 3. 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 have 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 3; details of the responses are provided in the Screening Statement appendix.

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

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

## 7. CARBON REDUCTION/SOCIAL VALUE IMPLICATIONS

- 7.1 The Revised Planning Obligations SPD provides a framework for negotiating Planning Obligations, and therefore has no direct impact on carbon reduction or social value. Individual planning decisions may be guided by the principals of the framework and lead to positive outcomes in these areas.

## 8. WARD COUNCILLOR VIEWS

- 8.1 The Revised Planning Obligations SPD is not geographically specific and would apply to the whole borough.

<p><b>Non-Applicable Headings:</b></p>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL IMPLICATIONS</p> <p>PROCUREMENT IMPLICATIONS</p> <p>PROPERTY IMPLICATIONS</p> <p>CUSTOMER IMPACT</p>
<p>Background Documents: (Access via Contact Officer)</p>	<p>Bromley Local Plan 2019 - <a href="https://www.bromley.gov.uk/downloads/file/51/bromley-local-plan">https://www.bromley.gov.uk/downloads/file/51/bromley-local-plan</a></p> <p>Bromley CIL documents (including CIL Charging Schedule and Infrastructure Delivery Plan) - <a href="https://www.bromley.gov.uk/planning-policy/bromleys-community-infrastructure-levy">https://www.bromley.gov.uk/planning-policy/bromleys-community-infrastructure-levy</a></p> <p>London Plan (adopted 2 March 2021), available from: <a href="https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf">https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf</a></p> <p>National Planning Policy Framework (July 2021) - <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf</a></p> <p>Current adopted Planning Obligations SPD - <a href="https://www.bromley.gov.uk/planning-policy/planning-obligations-supplementary-planning-document">https://www.bromley.gov.uk/planning-policy/planning-obligations-supplementary-planning-document</a></p> <p>Web page hosting the consultation on the Draft Planning Obligations SPD: <a href="https://www.bromley.gov.uk/planning-policy/supplementary-planning-guidance">https://www.bromley.gov.uk/planning-policy/supplementary-planning-guidance</a></p>