

LONDON BOROUGH OF BRENT

Meeting of the Planning Committee 16 November 2005

Report from the Director of Environment and Culture

For action	Wards affected: All
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Report Title: Planning Obligations SPD

1.0 Summary

- 1.1 The ODPM have issued a revised Planning Obligations Circular 05/2005. This Circular obliges local authorities to set out the implications for planning obligations of topic-based Development Plan Documents policies (e.g. transport, open space etc.) in a Supplementary Document, based on the policies of the Circular. The Circular also encourages local planning authorities to adopt standard formulae and charges where possible.
- 1.2 A number of problems are currently being experienced in the use of planning obligations by Brent Council. Some of these problems can be addressed through adopting a standard formulae / charges approach.
- 1.3 A Planning Obligations Supplementary Planning Document for Brent will develop a standard charge approach where appropriate as an alternative to the current system of negotiating a unique set of planning obligations on a case by case basis.
- 1.4 The Local Development Scheme (LDS) currently identifies the need for the production on such an SPD to commence during summer 2006. However, the release of circular 05/2005 prompts the commencement of this work sooner than previously identified. Therefore, the LDS must be amended to reflect this.

2.0 Recommendations

That this Committee:

- 2.1 Recommend to the Executive that an amendment be made to Brent's Local Development Scheme to bring forward the drafting of a Planning Obligations SPD originally planned for Summer 2006.
- 2.2 Agree that officers should produce a proposed SPD covering both planning obligations based on topic led Development Plan Policies and the standard formulae / charges approach.

3.0 Detail

Brent's Local Development Scheme

- 3.1 The Local Development Scheme (LDS) was approved at the Meeting of the Executive held on 20th June 2005 and thereafter submitted to the Government Office for London to be signed off. The LDS submitted identified the production of a Planning Obligation SPD as per the schedule outlined below;

<u>Timetable</u>	
<ul style="list-style-type: none"> • Preparation of draft supplementary planning document and sustainability appraisal report; 	This is to be new guidance to be brought forward as SPD to DPD as per programme below; Summer 2006
<ul style="list-style-type: none"> • Draft supplementary planning document and sustainability appraisal report issued for public participation as required by Regulation 17; 	Spring 2007
<ul style="list-style-type: none"> • Authority consideration of consultation representations; and 	Summer 2007
<ul style="list-style-type: none"> • Adoption and publication of document. 	Winter 2007 / Spring 08

- 3.2 However, the release of the revised Planning Obligations Circular 05/2005 prompts the commencement of this work sooner than previously identified as it obliges local authorities to set out the implications for planning obligations of topic-based Development Plan Policies in a Supplementary Planning Document, based on the policies of the Circular. The Circular also encourages local planning authorities to adopt standard formulae and charges where possible. Whilst normally SPD would need to relate to policies in either a "saved" UDP (ie being in force during the transitional period whilst Development Plan

Documents are worked up) or to policies in DPDs once they have been adopted, the Circular says that during the transitional period it is open to Councils to adopt SPD on planning obligations based on the policies in the Circular instead. In fact, Brent's proposed SPD will partly follow on from the current UDP and partly from the requirements of the Circular.

3.3 It is therefore proposed that the SPD be produced as per the schedule outlined below as SPD to the UDP and based on the policies in the Circular and that the LDS be amended to reflect this;

- Pre-consultation & Sustainability Appraisal - Winter 2005 / Spring 2006
- Draft SPD presented to Planning Committee (Policy) for approval for consultation – 15th March 2006
- 6 weeks consultation - March / April 2006
- Consideration of representations - May 2006
- Proposed SPD presented to committee for comment and then to Executive for adoption – June / July 2006

ODPM's Circular 05/2005

3.4 The ODPM have issued a revised Planning Obligations Circular 05/2005. Key provisions of the Circular include:

- The Circular obliges local authorities to set out the implications for planning obligations of topic-based Development Plan Documents policies (e.g. transport, open space etc.) in a Supplementary Document, based on the policies of the Circular.
- The Circular also encourages local planning authorities to employ standard formulae and standard charges where appropriate, as part of a framework for negotiating and securing planning obligations. Formulae and standard charges are quantitative indications of the level of contribution likely to be sought by a local planning authority, through a planning obligation, towards the provision of infrastructure that is necessitated by a new development.

3.5 Standard charges can assist in speeding up negotiations and ensure predictability, by indicating the likely type and size of some contributions in advance. They can also promote transparency by making indicative figures public and assist in ensuring accountability in the spending of monies.

3.6 Standard charging is an extension of the formulaic approach currently used by Brent to calculate contributions towards education provision, for example, and does not represent a radical shift in government advice. The new Planning Obligations Circular encourages local authorities to develop the standard charging approach, making it

possible to develop the softer side of infrastructure provision into a standard charge; e.g. open space and environmental improvements.

- 3.7 Importantly the ODPM's Circular 05/2005 gives powers to the Council to consider the cumulative impact of developments and to use planning obligations to mitigate this impact on a more holistic level to better achieve sustainability; i.e. the Circular recognises the Council's need for greater flexibility in how and when financial obligations received are applied. This is a critical change to planning obligations policy and will be a key focus of Council's Planning Obligations policy.

The Use of Planning Obligations by Brent Council

- 3.8 A number of problems are experienced by the Council with planning obligations in practice currently:
- Not all development impacts are mitigated against; for example, the need for transportation-related contributions has been well researched, the need for health facilities less so.
 - There is insufficient flexibility in how financial contributions received by the Council may be spent;
 - It has proved difficult to spend financial contributions quickly;
 - Better alignment can be achieved between planning obligations secured and the Council's corporate priorities; and
 - It is important that the Council avoids the potential for legal challenges in the future.
- 3.9 The Capital Board's recent consideration of financial contributions secured by the Council through planning obligation agreements has highlighted the lack of fit or mismatch between the planning obligations secured from development schemes and the ability of those obligations to fund the range of needs that such development generates.
- 3.10 Traditionally the Council has sought to secure obligations to meet transportation (particularly, forms of non-car accessibility) and environmental improvement impacts, as the Council has sufficient information to justify such requirements. However, it is clear that there are significant needs in the Borough for social facilities provision, exacerbated by further development in the Borough at increased densities. More background study is needed to support planning obligations that respond to this need
- 3.11 It is proposed that the Council develop policy on planning obligations and in particular standard formulae and charges as a means to addressing some of these problems.
- 3.12 West London housing requirements also demand a step change in housing delivered in Brent. Clearer more explicit planning obligations policy will assist with this step change by providing developers with

clearer, more transparent and predictable guidance on the planning obligations that will be sought by the Council.

- 3.13 Officers propose that planning obligations sought by the Council are reviewed, revised and a standard charges approach is developed through the drafting of a Planning Obligations SPD.
- 3.14 A Planning Obligations SPD and the development of the standard charges approach will enable the Council to better meet Circular 05/2005's requirement that the Council's planning obligations system is faster, predictable, transparent and accountable.
- 3.15 The SPD will state that the Council would expect that a set of standard charges related to the nature of the impacts of the proposed development that need to be mitigated, calculated on the basis of a formula using a standard amount per residential unit or square metre per type of impact (e.g. accessibility, open space, etc.) would be the norm. The SPD will further state that it will be for the developer to make a case for the use of a set of unique obligations negotiated on a case by case basis, as is practiced for the large part currently.

Standard Charges

3.16 How will they work?

- Assuming that a development of 100 dwellings will have a similar impact across the Borough and that the demands of the new residents cannot be met from existing capacity; then say the Borough plans to build 24,000 new homes generating 60,000 new residents (at 2.5 persons per dwelling).
- This would generate the need for a new sports centre whose capital build cost is £6 million. A standard charge for meeting the needs generated by that new development is £100 per person or £250 per dwelling. This charge is then built into a standard planning obligations charge.
- Each of the standard charges for education, open space, public art, etc. is calculated separately based on a single dwelling unit or floor space charge.
- Where circumstances change and the need for school places, for example, no longer applies, the standard charge could be amended but the overall total of the charges is intended to cover an average cost of a 'basket of impacts' created by a development.

3.17 There are a number of benefits to using standard charging as integral to the Council's Planning Obligations policy:

- Owners/ developers will be able to better anticipate and calculate financial obligations the Council would be likely to seek to secure;
- There may be scope for the legal document agreeing to the obligations to be simplified, the process to complete this to be shortened and the costs reduced;
- Obligations on the part of owners and the Council will be easier to understand and to implement;
- Standard charges can be better used to assist in achieving the Council's regeneration objectives;
- Through a standard charges approach as set out in a Planning Obligations SPD, the Council is better placed to ensure that developments are considered on a more holistic basis to achieve greater sustainability of development in the Borough; and
- The burden of infrastructural contributions can potentially be carried by most developments rather than only by large development schemes.

3.18 It is anticipated that the SPD will offer developers a facility to calculate likely financial obligations/ standard charges that the Council will seek to secure for a proposed development and developers will in turn be able to reflect this in the land cost (residual value) of any proposed development.

3.19 It is hoped that the predictability this approach will offer developers, as planning obligation related costs will be known from the outset, will lead to better outcomes for the Council. For example, the Council typically secures contributions towards education provision and public transportation as the reason and methodology for motivating for, and calculating such contributions, has been well developed and justified. It should be possible to extend this standard payment approach to other areas of need created by housing developments, such as sports, libraries, open space, community facilities, etc.

3.20 The likely challenges that the Council may face in the implementation of a standard charge approach is balancing the needs of different sectors within the Borough; e.g. between the need for accessibility improvements (e.g. public transportation and highway works), community and environment benefits and other regeneration needs.

Key Principles and Objectives of a new approach to Planning Obligations and Planning Obligations Policy

3.21 Planning obligations are used to make acceptable development which would otherwise be unacceptable in planning terms. The ODPM's tests for the use of planning obligations hold and are reiterated in the new Circular, namely that planning obligations sought by local planning authorities must be:

- necessary;
- relevant to planning;
- directly related to the proposed development;

- fairly and reasonably related in scale and kind to the proposed development; and
- reasonable in all other respects.

At the same time, it is important that planning obligations are used by the Council to meet key needs within the Borough at the right times, in the right places.

- 3.22 Furthermore, it is important to emphasise that standard charges and / or negotiated financial obligations remain contributions towards, and do not meet the full cost of improvements to facilities or service provision.
- 3.23 With respect to affordable housing, the Council's priority will remain to secure affordable housing provision on site (as part of proposed developments) and as a result, affordable housing obligations may not be included in the proposed set of standard charges.
- 3.24 The Planning Obligations SPD will seek to better articulate what Council requires from developments, at the same time as provide a mechanism that gives the Council's greater flexibility in order that it may respond to changing needs and priorities over time.
- 3.25 The SPD will explore what is possible in terms of offering developers who agree to the standard charges approach a discount, where developers are prepared to give the Council more flexibility in how contributions are spent, within reason and the legal framework.
- 3.26 Nevertheless, it will still remain possible for developers to justify following the traditional route of negotiating a unique set of obligations.
- 3.27 Similarly, the Council will reserve the right to enter into negotiations specific to part or all of a proposed development should this be appropriate; for example, developments in town centres, or strategic regeneration sites which warrant separate negotiations on a unique set of planning obligations to adequately respond to the needs generated by this scale of development proposed.
- 3.28 The new SPD has limited scope to seek revenue payments. The SPD could set out that standard charges can include a requirement for maintenance payments; although, following guidance contained within the circular this is likely to be limited to a few particular cases. It will be made clear within the SPD that there are limited timescales for which this type of payment can be sought in accordance with the circular.
- 3.29 The purpose of the standard charge is to provide funds to mitigate some of the impacts of a proposed development. It is important that this does not put such a burden on a development that it becomes unviable or acts as a deterrent to regenerative development. There will be the flexibility for developers to propose a lower 'charge' where material circumstances dictate that the Council accept such proposals. Developers may wish to provide evidence on the viability of their schemes taking into account the standard charging approach. It is

hoped that this standard charging approach will allow developers to be able to calculate planning obligation payments in advance and reflect these in land acquisition costs.

- 3.30 The Council's Legal and Planning Services' currently charge fees for the preparation and completion of Planning Obligations Agreement. Completed agreements also include provision for the Council to claim costs in respect of monitoring and enforcing compliance with obligations contained in the Agreement. These costs have not been specified to date although in some cases the Council has agreed a cap on such costs. In practice, monitoring and/ or enforcement costs have seldom been claimed although such costs have certainly been incurred. The SPD will consider how better to integrate and operationalise provision for monitoring and enforcement costs into planning obligation agreements.

4.0 Financial Implications

- 4.1 Clearer, more explicit planning obligations policy will create greater certainty in the development sector and assist the Council to secure planning benefits on a more holistic and sustainable basis. It is anticipated that this improved practice will result in better outcomes for the Council, streamlining planning obligations with the Capital Programme and other government agency funding to secure key priorities and strategic outcomes.
- 4.2 Where greater flexibility is secured for the Council in how financial contributions may be used, this will also assist the Council to ensure better alignment between planning obligation contributions and the ability of the Council (and other agencies) to respond to the new needs that have arisen through the development.

5.0 Legal Implications

- 5.1 The Planning and Compulsory Purchase Act 2004 has changed the statutory basis for drawing up development plans in England and Wales. Unitary Development Plans and Supplementary Planning Guidance will be replaced by a Local Development Framework. Since there are no provisions under the Act to produce SPG's the Council must now produce SPD.
- 5.2 Planning Policy Statement 12 'Local Development Frameworks' sets out the procedural policy and process of preparing Local Development Documents including Supplementary Planning Documents. The SPD has been prepared in accordance with the guidance contained within PPS12. PPS 12 requires a Sustainability Appraisal and a consultation strategy to accompany a draft Supplementary Planning Document for public consultation.

5.3 Supplementary Planning Documents are not subject to independent examination and will not form part of the statutory development plan. However they should be subjected to rigorous procedures for community involvement.

5.4 Supplementary Planning Documents are not statutory documents in the same way as the UDP but are material considerations to be taken into account when determining individual planning applications.

6.0 Diversity Implications

6.1 It is intended that a Planning Obligations SPD will provide guidance supplementary to the policies of the Council on planning obligations in such a way as to improve how planning obligations reflect and meet the Council's key strategic priorities, which themselves are rooted in the objective of fair treatment for all.

6.2 Many planning obligations such as those which contribute towards transportation-related works seek to give priority to the most disadvantaged groups; e.g. public transport users, etc.

6.3 The SPD will be produced in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004 and the Council's Draft Statement of Community Involvement. A Consultation Statement detailing the process will be produced. Additionally an Equalities Impact Assessment will be conducted.

7.0 Staffing Implications

7.1 A clear definition of fees and costs will assist the Council in supporting staff costs for legal and professional staff handling planning obligations matters.

8.0 Environmental Implications

8.1 Planning Obligations are often agreed to mitigate the environmental impact of development.

8.2 A Sustainability Assessment is required as part of the process of drafting the SPD.

9.0 Conclusion

- 9.1 It is anticipated that the Planning Obligations SPD is at the forefront of innovation and good practice and offers benefits for both developers of land and communities affected by such development.

Background Papers

ODPM Planning Obligations Circular 05/2005
UDP Annual Monitoring Report 2005
Brent Local development Scheme July 2005
S106 Update Report to the Planning Committee of 16 March 2005
S106 Circular Planning Committee Report of 26 January 2005
S106 Review: Report to Capital Board – 23 April 2004
S106 Update Report to the Executive of 10 March 2003
S106 Case files held by the Planning Service, Brent House

Contact Officers

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