



Executive
14th March 2007

**Report from the Director of
Environment and Culture**

For Action

Wards Affected:
ALL

Draft S106 Planning Obligations SPD (Standard Charging)

Forward Plan Ref: E&C-06/07-045

1.0 Summary

- 1.1. This report gives an outline of the proposed new Supplementary Planning Document (SPD) on Planning Obligations, which includes the introduction of a standard charge, and highlights the key implications for Brent's planning service and the wider council.

2.0 Recommendations

- 2.1 That the Council's Executive agrees the proposal to consult on the Planning Obligations SPD in the April and May 2007.

3.1. Detail

- 3.2. Brent Council has been successful in securing contributions and obligations from development over the past 15 years. These obligations, whether in the form of education, transportation or open space improvements, have ensured developments provide wider community benefits and mitigate some of the associated impacts from the developments. The Wembley Stadium development alone will provide in excess of £26million of improvements to schools, public transport and transportation.
- 3.3. Through the council's policies in the adopted Unitary Development Plan (2004), the council has a firm platform to secure additional benefits from future planning applications. The policies in the proposed Local Development Framework will continue this. Current reforms of the Planning System, in

particular the revision of Circular 1/97 in the form of 05/05, which gives the foundation for Planning Obligations, provide local councils with an opportunity to set out clear and straight-forward formulae to calculate certain monetary contributions and hence secure explicit benefits from developments. The council's response will be in the form of a new Supplementary Planning Document setting out our rationale and formulae in planning policy, which should provide the opportunity to secure a wider range of obligations in the future.

- 3.4. The purpose of this report is to highlight, the potential implications of the SPD and to seek the agreement of Executive to carry out public consultation on the SPD.
- 3.5. The SPD proposes a standard charge, applied to each bedroom or bed space or sqm of commercial developments, that developers will be expected to pay as a contribution to the additional physical, social and economic infrastructure that will be required from new developments. This contribution may be used towards education/training, transport, public space and sport improvements. This is in addition to the affordable housing units that will be secured. In appropriate cases, the Council will also seek contributions, calculated individually, in respect of infrastructure required to support development, but to which standard charges do not apply.
- 3.6. The standard charge and SPD will give clarity to developers and the council as to what contributions to expect. This follows the spirit of the revised Circular and best practice. The justification within the SPD will ensure the policy and charge are robust and fair.
- 3.7. Circular 5/05 encourages the use of standard charges where they reflect the actual impacts of a development. It is considered that all residential developments will have an impact on educational, transportation, open space and sports provision. There may be instances where circumstances justify waiving part or all of a particular standard charge, for example, where a developer is providing on site community space this may justify reducing the standard charge for transportation improvements which would normally apply.
- 3.8. The future level of contributions received is not expected to increase significantly per unit above the current level, the total amount will increase as the standard charges will have a wider application. The wording of the obligation will be such to allow contributions from a variety of developments to be pooled together to pay for large infrastructure schemes which relate to the development. The legitimacy of seeking the obligations in the first instance is that the obligation/contribution must relate to the development. The SPD will define which infrastructure improvements are legitimately associated with developments in general, i.e. education (or training in the case of commercial developments), transportation, open space and sports provision. Officers will ensure that the allocation of a particular contribution is made to appropriate schemes that relate to the development.

- 3.9. If the council sought an amount representing the full calculated impacts on educational, transportation, open space and sports provision was demanded, this would render developments unviable. Based on past experience, it is felt that an overall level of £3,000 per residential bedroom/space would enable developments to achieve viability. Accordingly, the level of standard charges for education, transportation, open space and sports provision has been adjusted so that this overall level is not exceeded.
- 3.10. In view of this, flexibility is sought in section 106 agreements to 'switch' contributions between these different categories of infrastructure where this will assist in funding appropriate schemes. However, this is subject to the overall level of impact on a particular infrastructure category – for example, part of a contribution paid towards education might be used towards a transportation scheme reasonably related to a particular development but only up to the level of standard charge for transportation which would have been justified if it had not been adjusted downwards on viability grounds. Where developers can show through financial appraisals that the overall level of contributions would still threaten the viability of the scheme, then the level of contributions will be reduced accordingly.
- 3.11. For example, a new development of flats in Alperton may require a contribution of £300,000 split between, Education, Transportation, Open Space and Sports improvements. The wording of the legal agreement would allow it to be used in any education, transportation, open space or sport improvements in the local area that may be affected by the development This is subject to expenditure on any element (i.e. education, transportation, open space or sports provision) not exceeding the impact in terms of costs for that element as set out in the SPD below. For example, this may be improvements to any secondary school in the borough, principal access routes to and from the development, local sports grounds or parks. It would not be appropriate for it to be spent on refurbishing a pocket park or crossing near the Welsh Harp, which has no relationship to the development. Large scale infrastructure improvements particularly transportation, sports and schools have borough wide pressures and therefore tend to be acceptable. Contributions from different developments may be combined.
- 3.12. Planning Obligations by their nature are hard to predict if and when they may come forward. With a standard charge of £3,000 per bedroom/space and a predicted increase of approximately 2,000 bedroom/spaces per year for the next 10 years, the council is able to take a more long-term view to strategic and local infrastructure improvements.
- 3.13. The government is currently re-consulting on their proposed Planning Gain Supplement (PGS). This Treasury backed policy, takes the form of a tax on land that increases in value after gaining planning consent. There is much deliberation about its form and level. The government has indicated that should they proceed with PGS it will not be before 2009. Given that this centrally collected PGS would result in a paring back of current s106 contributions, government has assured local authorities they will at least maintain their current level of contribution. Given this comment, the SPD

would set a bar as a minimum level of revenue Brent can expect should PGS be introduced.

- 3.14. It was originally proposed to allocate 5% of all contributions over £50,000 through a community based Decision Panel. Area Consultative Form, local community groups and members would have determined the allocation of these funds. Planning Committee were concerned this was inappropriate and it was agreed to remove the paragraph relating to it.
- 3.15. A Sustainability Appraisal (SA) was carried out during the pre-production phase of the SPD. The process informs the development of the SPD to ensure that sustainability issues are comprehensively considered in drawing up the SPD. Representatives from Housing, Transportation, Environmental Health, the PCT and the Directorate all provided input into the assessment and discussed the main issues at a meeting. The appendix covers the draft Sustainability Appraisal Report, which will accompany the draft SPD for public consultation purposes.

4.0 Financial Implications

- 4.1 A consistent level of contributions will allow the council to effectively manage Planning Obligation revenue in order to plan for long-term investment in infrastructure. Appropriately open worded agreements, will allow for the pooling of appropriate contributions within a service area, which can fund larger improvement schemes. This will aid in the delivery of improved services and financial management across those affected departments. The higher level of revenue from increasing development should result in increased funding of infrastructure improvements across the borough.
- 4.2 Applying any interest gained from future contribution to those improvements, should support the professional nature of the SPD and the planning service, will maintain in real terms the amount available to s106 for funded Capital projects.

5.0 Legal Implications

- 5.1. Under regulation 13(8) of the Town and Country Planning(Local Development) (England) regulations 2004, SPDs must be in conformity with development plan documents adopted under the new development plan regime or where this is inapplicable, with "saved" policies in the existing UDP. In Brent's case as no Development Plan Documents (DPDs) have yet been adopted, the latter would apply. However, para. B27 of Circular 05/2005 sets out that where there are no specific policies relating to planning obligations in the UDP, then during the transitional period before adoption of DPDs, Councils should adopt SPDs relating to planning obligations based on the policies set out in the Circular.
- 5.2. Accordingly, the proposed SPD on planning obligations must accord with the policies in the Circular and (where there are any policies in the UDP relating to planning obligations) with the UDP. Failure to observe this could lead to a legal challenge to the SPD or if the Council refused planning permission in

any particular case because the SPD had not been complied with, could lead to the developers being successful on appeal to the Planning Inspectorate.

- 5.3. The final version of the SPD (i.e. following public consultation) is required to be adopted by the Executive.

6.0 Diversity Implications

- 6.1 Local community groups will be able to comment on planning applications in the ways they currently can, with officer's giving consideration to pressures that may require a planning obligations.

- 6.2 The Statement of Community Involvement identifies how the public are to be engaged in the preparation of SPDs in general. An inclusive approach is suggested to ensure that different groups have the opportunity to participate and are not disadvantaged in the process.

7.0 Staffing/Accommodation Implications

- 7.1. Once in place the proposal should result in a more effective and efficient planning application process where developers know from the outset what to expect. The time spent on negotiating both the Heads of Terms and the wording of the agreement itself, should be significantly reduced. This reduction in officer workload would be matched by increases in the level of agreements. Further workload increase from the greater level of contributions should be match be a reduction in the number and piecemeal funding of projects.

Background Papers

- Planning Obligations SPD - Sustainability Appraisal Scoping Report
- The draft Planning Obligations Supplementary Planning Document (SPD).
- Office of the Deputy Prime Minister 2005 – Planning Circular 2005/05

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