



Executive
8th October 2007

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

Wards Affected:
ALL

**S106 Planning Obligations SPD (Standard Charging)
Approval for Adoption**

Forward Plan Ref: E&C-07/08-003

1.0 Summary

- 1.1. This report seeks approval for the adoption of the Supplementary Planning Guidance (SPD) on Planning Obligations and its accompanying Sustainability Assessment (SA) and Consultation Statement, following changes recommended in the responses to representations to the draft SPD, following public consultation. The proposed amendments would seek to alleviate the issues raised by the consultees and allow for adoption of the SPD. Copies of the draft SPD and SA were appended to the Executive report of 12th March 2007 and members can refer to that report for copies. Other appendices because of their bulk are not attached to this agenda but are available as set out in the background papers section at the end of this report.

2.0 Recommendations

That the Council's Executive:

- 2.1 Adopt the S106 Planning Obligations SPD as a Supplementary Planning Document to the Brent Unitary Development Plan 2004;
- 2.2 Delegate any minor or technical changes to the final draft, as a result of continuing discussion with the GLA to the Director of Planning Services.

3.0. Detail

History

- 3.1. Through the council's policies in the adopted Unitary Development Plan (2004), the Council has been successful in securing contributions and obligations from development over the past 15 years. The policies in the proposed Local Development Framework will continue this. Current reforms of the Planning System provide local councils with an opportunity to set out clear and straight-forward formulae to calculate certain monetary contributions. 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.
- 3.2. The SPD proposes a standard charge, applied to each bedroom (£3,000) or sqm of commercial developments (£25), 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.
- 3.3. 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.
- 3.4. 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.
- 3.5. For example, a new development of flats 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. 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, when appropriate.

- 3.6. 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.

Representation

- 3.7. The representations made can be found in Appendix 2 of this report, detailing the 'Respondent', their 'Comment' and 'Officer response'. The Actions have been incorporated into the current SPD which is now proposed for adoption, Appendix 1. These appendices are not attached to this agenda but are available on the council's website and copies have been placed in the Members room. Public consultation lasted over 6 weeks and included meetings with internal stakeholders, the GLA family (GLA, LDA and TfL) and the council's Joint Commissioning housing partners, along with an article in the local press.
- 3.8. Of the 18 responses, 12 supported the policy with conditions to the level and scope of the standard charge, 4 opposed it and 2 only made comments.

Key Issues

Application of the charge

- 3.9. A number of the key landowners while supporting the principal believed there were specific reasons why the charge should not apply to their development, including high land and remediation costs to scaring development away. The council believes that to ensure the development is sustainable and its impacts are addressed that the standard charge should apply to them. Having said that, The SPD provides that, if justified by exceptional circumstances, the Council will consider reducing the standard charges which would otherwise be payable or even waiving this entirely if the viability of the development would be prejudiced if it had to be paid. As the SPD make this clear, no change to it is proposed.
- 3.10. Of the four who opposed the charge, predominately supermarkets and house builders, they objected was on the grounds that it was unfair, unreasonable and when against government guidance. Other key land owners, sought to claim the formulae was not robust in certain aspects that may affect their sites. The SPD goes to great length to show how the charge is fair, reasonable and in line with current central and regional guidance on planning obligations, particularly the Circular 05/05. This has been supported by the Council's Legal team and the GLA. Therefore, no changes are proposed.

Clarification

- 3.11. There are a number of points which respondents sought clarity on, such as when exceptions would be made and references to Affordable Housing and links to other policies. Clarification was also sought on when the Other Obligations would be sought and its case-by-case use. Many of the comments were valid it is proposed to incorporate these explanations in to the SPD. The response table in Appendix 2 (see background papers section of this report for location of appendices) details proposed minor amendments which are aimed at clarify both the process and reasoning for it.
- 3.12. The Greater London Authority raised initial concerns to the approach of the standard charge, however after discussions and further explanation they now support this approach, as it links with their aspirations for the Park Royal Area. An additional wording has been added to emphasise that Education/ Training, Transportation, Affordable Housing and Sport/ Parks will be given priority, when considering obligations. Expansion of the wording for Employment and Training has been added to give greater clarity and cover the concerns raised by the LDA. Discussions are ongoing to ensure the most appropriate wording is used to overcome their initial concerns.
- 3.13. Respondents asked about the omission of retail from the standard charge and argued for its inclusion. The impact for Major Retail development is quite specific to both the location and exact site / use, therefore they have been excluded from the Standard Charge as case by case negotiation would be more appropriate.
- 3.14. Evidence and supporting costing will be procedure in a separate documents that can be more regularly and accurately updated, this is in response to GLA and Kilburn Together's concern. In response to the Queens Park Residents Association, comments about the expenditure of the planning obligations contributions, it will be noted in the report that "consideration will be given to appropriate improvements schemes identified by planning committee". This is supplemented by the production of annual reports of s106 expenditure. An additional paragraph has been added to explain the likely expenditure procedure, in response to concerns about the Audit Trail and monitoring raised by the Kilburn Together.
- 3.15. In response to Brent PCT's and Planning Policy Committee comments, Planning will work with Brent PCT to identify an agreed approach to securing s106 planning obligations from large schemes. Potentially using PCT data to input into the HUDU or other models to identify the need for health services from new development. This may included a standard charge for health or on-site provision of services on large applications. This approach will be used on a case by case basis and will not require amendments to the SPD, as it currently allows for this.
- 3.16. The Utilities and infrastructure organisations such as Thames Water, Network Rail and TfL argue for their respective areas to be highlighted and prioritised as recipient of contributions. The aim of the documents is to set out the

infrastructure areas for mitigation, not to prejudge future development and set out a list of priorities that will quickly become out of date. No amendments are proposed.

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 (if appropriate)

- 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

Please Note that Appendix 1 and 2 have not been included in this agenda because of their bulk. Copies have been placed in the Members Room and are available on the council's website link as follows:

<http://www.brent.gov.uk/planning.nsf/1bdde7119d29a15b80256e6f0047f7c4/821d3296910cd9ae80256e6f0048159f!OpenDocument>

- 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
- Consultation Statement.

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