

<b>Committee/Meeting:</b> Cabinet	<b>Date:</b> 10 April 2013	<b>Classification:</b> Unrestricted	<b>Report No:</b> CAB 95/123
<b>Report of:</b>  Aman Dalvi, Corporate Director of Development and Renewal  <b>Originating officer(s)</b> Owen Whalley Service Head (Planning and Building Control)		<b>Title:</b>  Revised Planning Obligations Supplementary Planning Document  <b>Wards Affected:</b> All	

<b>Lead Member</b>	Councillor Rabina Khan
<b>Community Plan Theme</b>	A Great Place to Live
<b>Strategic Priority</b>	Provide effective local services and facilities

## 1. **SUMMARY**

- 1.1 On 11 January 2012 the Council formally adopted the Planning Obligations Supplementary Planning Document (SPD). It outlines the Council's approach to securing planning contributions through Section 106 (S106) Agreements. S106 Agreements are currently used to mitigate any negative impacts of development on the borough's infrastructure and any adverse impacts of development at the site-specific level.
- 1.2 From April 2014, or sooner, the Council can implement a local Community Infrastructure Levy (CIL), a per square metre levy on most forms of new development. Proceeds from the levy will be used to deliver infrastructure improvements in Tower Hamlets.
- 1.3 Whether or not the Council implements a CIL, the Council will be unable to continue to apply the Planning Obligations SPD in its current form due to restrictions in how S106 can be used from April 2014. The Council may continue to negotiate S106 Agreements. However, the scope for such agreements will be restricted to addressing any site specific impacts of development and to avoid charging developers for the same items through both CIL and S106. It is recommended the Council adopts a Revised Planning Obligations SPD to set out the circumstances under which S106 will continue to be used following the introduction of CIL.
- 1.4 The Revised Planning Obligations SPD, which is proposed for public consultation alongside the proposed Draft Charging Schedule, is appended to this report (Appendix 1).

- 1.5 This Cabinet Report should be read directly in conjunction with the Cabinet Report for the CIL Draft Charging Schedule, also an item for this Cabinet meeting.

## **2. DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- 2.1 Approve the Revised Planning Obligations Supplementary Planning Document, as set out in Appendix 1, for a six week consultation period to align with the consultation period of the CIL Draft Charging Schedule as per a separate Cabinet report on the agenda.
- 2.2 Delegate authority to the Corporate Director of Development and Renewal, in consultation with the Lead Members for Housing and Resources, to make editorial changes to the Revised Planning Obligations Supplementary Planning Document where necessary, prior to the beginning of the consultation period.

## **3. REASONS FOR THE DECISIONS**

- 3.1 Cabinet is asked to agree the publication of the Revised Planning Obligations SPD for consultation. The SPD sets out the Council's approach to the future use of S106 and its relationship with CIL. It explains the Council's approach to infrastructure provision in general and explains which mechanisms will be used to mitigate the impacts of development and to secure specific types of infrastructure.
- 3.2 It is important for the Council to set out its intended approach to S106 prior to the public examination of the CIL Charging Schedule. This will ensure transparency and will support the Council's case at the examination. It will also help demonstrate that there will be no adverse impacts on development viability in Tower Hamlets.

## **4. ALTERNATIVE OPTIONS**

- 4.1 Failure to proceed with a revised Planning Obligations SPD would mean that (at the point when the Council adopts its CIL) the Council may not have a sufficiently robust foundation upon which to continue to apply S106 within the limitations set out in the CIL regulations. Without a revised SPD the Council would also be more vulnerable to challenge over compliance with CIL Regulations and potentially the combined impact on scheme viability where both CIL and S106 are applied.
- 4.2 If the Council does not adopt a Revised Planning Obligations SPD, following a mandatory period of consultation, the Council's capacity to secure site specific mitigation measures and other S106 contributions will be more difficult to achieve.

## **5. BACKGROUND**

- 5.1 The Cabinet Report of the 7<sup>th</sup> November 2012 relating to the PDCS provides extensive background information relating to CIL. The Council is unable to fund any single infrastructure item through a combination of S106 and CIL, except where historic S106 contributions remain. The Council must therefore identify which infrastructure will be funded through CIL and which infrastructure or site-specific development mitigation measures will be secured through S106.
- 5.2 The Council adopted the Planning Obligations SPD on 11<sup>th</sup> January 2012; it sets out the Council's current approach to mitigating the impacts of development through S106 agreements. The SPD will become obsolete following the introduction of CIL in Tower Hamlets because Regulations prohibit the Council from charging CIL and securing a S106 contribution to deliver the same infrastructure items. However, S106 will continue to provide a mechanism through which to secure site mitigation measures and some infrastructure provision, albeit under a more limited scope, from April 2014.

## **6. PROPOSED USE OF S106 PLANNING OBLIGATIONS AND CIL**

- 6.1 The Council will likely use CIL as the primary mechanism through which the impact of new development on the borough's infrastructure is mitigated. CIL will be chargeable on most forms of development and the proceeds will be used to fund infrastructure. The Council will continue to secure S106 planning contributions where site-specific infrastructure is required to make a development acceptable. This will be appropriate because site-specific infrastructure requirements are difficult to define in advance of an appraisal of a planning application or because of the impracticability of delivering certain infrastructure effectively through CIL.
- 6.2 In accordance with Regulation 122 of the CIL Regulations (2010), a planning obligation may only be entered into where the obligation is: -
- (a) Necessary to make the development acceptable in planning terms;
  - (b) Directly related to the development; and
  - (c) Fairly and reasonably related in scale and kind to the development.

### CIL

- 6.3 At the borough level, CIL, and where appropriate, capital funding, will be used to fund infrastructure which include:

#### Employment, Training, Skills and Enterprise

- Employment and training facilities

#### Community Facilities

- Multi-use community facilities
- Youth centres

- Idea Stores, libraries and archives
- Leisure centres

#### Education

- Primary schools
- Secondary schools

#### Health

- Primary care facilities

#### Public Realm

- Public open space
- Borough wide improvements to the street scene and built environment
- Public art

#### Environmental Sustainability

- De-centralised energy facilities

#### Transport and Highways

- Strategic borough wide transport improvements

- 6.4 On strategic sites identified in the Tower Hamlets Managing Development Plan Document (submission version May 2012), where there is a requirement to provide one or more specific pieces of infrastructure the Council may accept CIL payment 'in-kind', such as the provision of land.

#### S106

- 6.5 The Council will continue to use S106 to ensure the delivery of:

- Affordable Housing

#### Employment, Skills Training and Enterprise

- Job brokerage
- Construction phase skills training
- End user skills training
- Apprenticeships and work placements
- Local enterprise – supply chain
- Training – commuted sum

#### Transport and Highways

- Site-specific highway works such as localised safety improvements and re-instatement of highways
- Site specific works to amenity land, access roads etc.
- Crossrail
- Car Clubs
- Electric vehicle charging
- Travel plans
- Car and permit free agreements

### Environmental Sustainability

- Carbon reduction projects
- Biodiversity

6.6 The Revised Planning Obligations SPD (Appendix 1) details the circumstances under which a S106 Agreement may be appropriate to mitigate the impacts of development. The Revised S106 SPD does not alter the policy on Affordable Housing, currently set out in the previous version of the SPD. It is intended that a separate Affordable Housing SPD will be produced, and that the Revised S106 SPD will be read in tandem with it.

## **7. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

7.1 This report seeks approval of the Revised Planning Obligations Supplementary Planning Document which is needed to support the proposed introduction of the Council's Community Infrastructure Levy by April 2014.

7.2 As detailed in the 'Community Infrastructure Levy (CIL) Draft Charging Schedule' report elsewhere on this agenda, CIL will replace elements of the current Section 106 planning process although the Council will continue to negotiate site specific Section 106 agreements where the impact is not covered through the CIL process.

7.3 In order for the Council to adopt its CIL Charging Schedule, the existing Planning Obligations Supplementary Planning Document must be revised, to ensure that the two documents complement each other and that potential duplication of charges is avoided.

7.4 The Authority currently generates substantial resources via the Section 106 system. It is therefore important that both the CIL charges and Section 106 obligations are set at a realistic level that enable the generation of significant community resources in tandem with the delivery of viable developments.

7.5 CIL and Section 106 resources must be used to finance specific separate infrastructure needs. The proposed different funding uses are shown in paragraph 6. It is essential that processes are put in place to ensure that detailed records are maintained to closely monitor the use of these resources.

7.6 The costs of the statutory consultation process will be met from within existing budgets.

## **8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

8.1. Supplementary Planning Documents (SPDs) provide detail to support policy in higher level Development Plan Documents (DPDs) or saved unitary development plan policies. They undergo a simpler preparation process

than DPDs and in particular they are not subject to independent scrutiny by a planning inspector.

- 8.2. SPDs are subject to statutory preparation procedures under Regulations 12 to 14 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regs”), with the requirement to undergo a process of public consultation and engagement with relevant parties.
- 8.3. This report seeks to revise the current adopted Planning Obligations SPD to take into account the introduction of the Council’s CIL. The Revised Planning Obligations SPD will replace the existing SPD and ultimately be adopted as a Supplementary Planning Document in accordance with Regulation 14 of the 2012 Regs. Before the draft Planning Obligations SPD is formally adopted, the Council is required to carry out public consultation for a period of not less than 4 weeks in accordance with Regulations 12 & 13 of the 2012 Regs. Supplementary planning documents provide greater detail on the policies contained in the Council’s development plan documents.
- 8.4. Following the formal public consultation the Council will need to consider any representations made during the consultation period. The Council are then required to prepare a statement setting out a summary of the main issues raised in the representations and how these main issues have been addressed in the SPD that the Council intends to adopt. Following consultation and once any necessary amendments have been made the SPD can be adopted by resolution. Once the SPD is adopted it can be considered to be a material consideration to be taken into account in the development control process.
- 8.5. Before adopting the SPD, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don’t. The report identifies that an equality impact assessment has been carried out to assist the Council to consider these matters. This assessment is to be made available to the public as part of the consultation, which should increase the likelihood of the Council meeting its equality duty.

## **9. ONE TOWER HAMLETS CONSIDERATIONS**

- 9.1 The Revised Planning Obligations SPD will allow the Council to ensure that any negative impacts of development which cannot be avoided or mitigated through planning conditions will be mitigated to the fullest extent allowable through S106 Planning Obligations. Site mitigation secured through S106 agreements may include works that will contribute to the One Tower Hamlets objectives of reducing inequalities; ensuring community cohesion; and strengthening community leadership.
- 9.2 The Revised Planning Obligations SPD will set out how the Council will secure a local employment and enterprise benefit for local residents and businesses. Training initiatives provide local residents with valuable skills

which enhance opportunities to enter the workforce. The SPD policy on Affordable Housing will continue to apply, and the Revised SPD will be read in tandem with an Affordable Housing SPD which will set out the detail of the Council's approach to the delivery of affordable homes through S106 agreements. These elements of Planning Obligations support the objectives of One Tower Hamlets.

- 9.3 The Council has undertaken an Equalities Analysis Screening to identify any impacts resultant from the proposed changes to the operation of S106 which is appended to this report (Appendix 2). The Revised Planning Obligations SPD is considered to have a neutral impact on equalities strands however, as the SPD is designed to mitigate negative impacts of development at the site-specific level, the SPD has a positive impact upon all residents who may, in the absence of the SPD, experience negative impacts from development.

## **10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1 Planning Obligations can be used to support a greener environment and aid sustainable development. However the Planning Obligations SPD is not a plan or programme but an approach to ensuring site-specific negative impacts caused by development are mitigated.
- 10.2 A Strategic Environmental Assessment Screening (SEA) outlining environmental impacts is appended to this report (Appendix 3).

## **11. RISK MANAGEMENT IMPLICATIONS**

- 11.1 The proposed Revised Planning Obligations SPD clearly communicates the Council's approach to the funding and delivery of infrastructure. Developers will be able to consult the SPD to identify any financial considerations arising from their scheme and address these prior to the application stage. There is therefore a benefit of certainty and transparency by having an adopted SPD as this reduces scope for developers failing to meet the expectations of the borough.
- 11.2 Unlike CIL, S106 is negotiable. The risk associated with this is that in circumstances where an individual scheme cannot meet both the full CIL requirement and requirements of planning obligations, for reasons of viability, the negotiable element of S106 could be reduced. However should market factors dictate that schemes are able to accommodate higher level of S106 then the S106 offer could be increased.
- 11.3 Viability has been a key factor in determining the CIL charging rates. A policy compliant affordable housing policy assuming 35% provision has been factored into determining the Council's CIL charge.
- 11.4 Both the CIL Charging schedule and the revised Planning Obligations SPD are mutually dependent. There is a risk that should the Revised Planning Obligations SPD and CIL Charging Schedule not be adopted simultaneously

the Council will be unable to fully mitigate impacts of development after April 2014.

## **12. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 12.1 The Revised Planning Obligations SPD seeks to ensure that any site-specific impacts of development are mitigated. Whilst not specifically intended to reduce crime and disorder, the SPD sets out the Council's approach to mitigating site-specific impacts of development. This may include works which are complementary to the reduction of crime and disorder.

## **13. EFFICIENCY STATEMENT**

- 13.1 The operation of the Revised Planning Obligations SPD will place an administrative burden on the Council. The Council intends to charge developers a monitoring fee, proposed at £500 per agreement signed.

## **14. APPENDICES**

Appendix 1 – Revised Planning Obligations SPD (2013)  
Appendix 2 – Revised Planning Obligations SPD Equalities Analysis (2013)  
Appendix 3 – Revised Planning Obligations SPD Strategic Environmental Assessment Screening (2013)

---

### **Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012**

#### **Brief description of “background papers”**

2010 Adopted Core Strategy

2012 Managing Development – DPD (Post Examination in Public version) 2012

Planning Obligations SPD

#### **Name and telephone number of holder and address where open to inspection:**

Anne-Marie Berni,  
Infrastructure Planning Manager  
Development & Renewal  
5<sup>th</sup> Floor Anchorage House  
Tel: 020 7364 5324