


<b>Cabinet</b> 08 April 2015	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Aman Dalvi, Corporate Director of Development and Renewal	<b>Classification:</b> Unrestricted
Draft Revised Planning Obligations Supplementary Planning Document	

<b>Lead Member</b>	<b>Councillor Rabina Khan, Cabinet Member for Housing and Development</b>
<b>Originating Officer(s)</b>	Owen Whalley Service Head (Planning and Building Control)
<b>Wards affected</b>	All Wards
<b>Community Plan Theme</b>	<b>A Great Place to Live</b>
<b>Key Decision?</b>	Yes

## Executive Summary

An approval to go to public consultation is required for a draft Revised Planning Obligations SPD. The Revised Planning Obligation SPD sets out the Council's approach in securing Planning Contributions and the differences between the Community Infrastructure Levy (CIL) and Planning Obligation agreements and other relevant legal agreements.

The Revised Planning Obligation SPD is intended to replace the current Planning Obligation SPD (2012), in order to reflect the proposed introduction of CIL from April 2015. CIL will be the mechanism by which the Council will collect developer contributions to help pay for strategic infrastructure, a function that to date has been undertaken using Planning Obligations.

The Revised Planning Obligations SPD first went to Cabinet on the 10th April 2013 for approval to go out to consultation alongside the CIL Revised Draft Charging Schedule, in October 2013.

Since the last public consultation, further amendments have been made to the draft Revised Planning Obligations SPD to ensure that development management officers, other stakeholders and local residents have a clearer understanding as to the likely combined level of the Borough's CIL and Section 106 Planning Obligations, to ensure that any proposed development is acceptable and also makes a justified contribution to the infrastructure needs of the Borough.

The Infrastructure Planning Team is now seeking Cabinet's approval to go for a further 5 weeks public consultation on the amended Revised Planning Obligation

SPD. The Revised Planning Obligation SPD is contained in Appendix1 to this report.

**Recommendations:**

The Mayor in Cabinet is recommended to:-

1. Approve the Revised Planning Obligations SPD (as set out in Appendix 1), for public consultation.
2. Delegate authority to the Corporate Director of Development and Renewal, to make changes to the Revised Planning Obligations SPD where necessary, prior to the beginning of the consultation period provided the changes do not change the substance of the document.

## **1. REASONS FOR THE DECISIONS**

- 1.1 Cabinet is asked to agree the publication of the Revised Planning Obligations SPD for public 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.

## **2. ALTERNATIVE OPTIONS**

### **Do Nothing and Retain Current Planning Obligations SPD**

- 2.1 Failure to proceed with a Revised Planning Obligations SPD to accommodate the changes in Government policy on the application and use of Planning Obligations would mean that (when the Council CIL is adopted) the Council may not have a sufficiently robust foundation upon which to continue to apply Planning Obligations within the limitations set out in The Community Infrastructure Levy Regulations 2010 (as amended) ("the CIL Regulations"). Without a Revised Planning Obligations SPD there would be no clarity on the use of Planning Obligations under the new Government policies and the Council would be more vulnerable to challenge at Planning Appeal, over compliance with the NPPF and CIL Regulations.
- 2.2 If the Council does not adopt a Revised Planning Obligations SPD, following a statutory period of consultation, the Council's capacity to secure site specific mitigation measures and other Planning Obligations will be more limited.

## **3. DETAILS OF REPORT**

- 3.1 The draft Revised Planning Obligations SPD first went to Cabinet on the 10th April 2013 for approval to go out to consultation alongside the CIL Revised Draft Charging Schedule, in October 2013.
- 3.2 Since the last public consultation, further amendments have been made to the draft Revised Planning Obligations SPD to ensure that developers, development management officers, stakeholders and local residents have a clearer understanding as to the likely combined level of the Borough's CIL and Section 106 Planning Obligations, to ensure that any proposed development is acceptable and also makes a justified contribution to the infrastructure needs of the Borough. Some of the changes were required as a result of amendments the Independent Examiner deemed it necessary to make to the Council's CIL Charging Schedule.
- 3.3 In summary, amendments have been made to the following:
- Chapter 1:

- 'Community Infrastructure Levy' to give clarity on the various types of Developers contributions that may apply in the borough (i.e. Borough CIL, Mayoral CIL and London Mayoral Section 106 planning obligation for Crossrail).
- Chapter 2:
  - 'Approach to Development Mitigation and Infrastructure Delivery', to give clarity on the Council's approach to overall infrastructure Delivery, through Planning Obligations and CIL.
- Chapter 4:
  - 'Negotiating Planning Obligations in Tower Hamlets' To give clarity on the Council's process for negotiating and securing planning obligations at Post Decision Stage, Viability and Viability re-appraisals stages.
- Chapter 5:
  - 'Affordable housing' to give greater clarity on the Council's approach to negotiating affordable housing provision and when a viability re-appraisal may be triggered.
  - 'Student Housing Development', to include recommendations made by the CIL Examiner's to £0 rate University led Student Housing development under CIL and securing the student housing at submarket rents in a Planning Obligation.
  - 'Public Realm, Public Access and Children's Play Space' to give clarity on the Council approach to negotiating these types of infrastructure that are site specific in nature.
  - 'Energy' to give clarity on the Council's approach to negotiating Carbon offsetting contributions from developments that do not meet policy requirement targets.
  - 'Flood Risk' to give clarity on the Council's approach to negotiating site related flood mitigation/ adaptation measures.

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

4.1 Government policy on the application and use of Planning Obligations is contained within the CIL Regulations 2010 (as amended), the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). Regulation 122 of the CIL Regulations includes in legislation for the first time the Government's policy tests on the use of Planning Obligations. It is unlawful for Planning Obligations to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL if the Planning Obligation does not meet all of the following tests

- (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.

4.2 Some developments will be required to pay CIL and enter into a Planning Obligation agreement. The CIL payment and Planning Obligation would cover different types of infrastructure, and the Council cannot charge for the same items of infrastructure through both Planning Obligation and CIL.

- 4.3 Local Planning Authorities (LPAs) adopting CIL are required under CIL Regulation 123 (Reg 123) to prepare and publish a list of those items or types of infrastructure it intends to fund through CIL and the Planning Authority cannot then seek Planning Obligations towards those items included in this Reg 123 list. Tower Hamlets' Reg 123 list has been approved for adoption alongside the Borough's CIL Charging Schedule on the 1<sup>st</sup> April 2015

## **5. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 5.1 This report seeks approval for consultation to be undertaken on the Revised Planning Obligations Supplementary Planning Document which is required to support the introduction of the Council's Community Infrastructure Levy from April 2015. Although a previous version of this SPD was submitted for consultation in 2013, the document has had to be revised and updated to reflect changes that have arisen as part of the of the finalisation of the CIL Charging Schedule, which following an inspection in public was approved by Council on 25 February 2015.
- 5.2 CIL will replace elements of the current Section 106 planning process although site specific Section 106 agreements will continue to be negotiated where the impact is not covered through the CIL process.
- 5.3 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.
- 5.4 The Authority currently generates substantial resources via the Section 106 system. Although CIL will now generate the more significant levels of funding, it is important that future Section 106 obligations are set at a realistic level that enable the generation of community resources in tandem with the delivery of viable developments. The Council will continue to use Section 106 legislation to ensure the delivery of Affordable Housing.
- 5.5 CIL and Section 106 resources must be used to finance specific separate infrastructure needs. It is essential that processes are put in place to ensure that detailed records are maintained to closely monitor the use of these resources.
- 5.6 The costs of the statutory consultation process will be met from within existing budgets.

## **6. LEGAL COMMENTS**

- 6.1 Following changes being made to the Council's draft Revised Planning Obligations SPD, this report seeks the approval of the Mayor in Cabinet for officers to carry out a further round of consultation on the revised document, and authority for the Corporate Director of Development and Renewal to

make any minor amendments to the draft SPD that may be necessary before the consultation begins. The Revised Planning Obligations SPD will replace the existing SPD adopted in January 2012.

- 6.2 Supplementary Planning Documents (SPDs) provide detail to support policy in higher level Development Plan Documents (DPDs). They undergo a simpler preparation process than DPDs and in particular they are not subject to independent scrutiny by a planning inspector. SPDs are subject to statutory preparation procedures under Regulations 12 to 14 of the Town and Country Planning (Local Planning) (England) Regulations 2012, with the requirement to undergo a process of public consultation and engagement with relevant parties for a period of not less than 4 weeks. Because the modifications proposed to the original revised draft SPD are more than minor it is considered necessary to carry out a new round of consultation.
- 6.3 Following the further 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 of Cabinet. Once the SPD is adopted it will be considered to be a material consideration to be taken into account in the development control process.
- 6.4 An SPD does not form part of the Policy Framework and therefore by virtue of the default provisions in the Local Government Act 2000 and regulations made thereunder, the SPD is an executive function and required to be approved by Cabinet before adoption.
- 6.5 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. This report identifies that an Equalities Analysis Screening has been carried out on the revised SPD to inform the Council in discharging its duties under the Equality Act.

## **7. ONE TOWER HAMLETS CONSIDERATIONS**

- 7.1 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.
- 7.2 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 Revised Planning Obligations SPD policy on Affordable Housing sets out the Council's approach to the delivery of affordable homes through Planning obligations agreements. These elements of Planning Obligations support the objectives of One Tower Hamlets.

- 7.3 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. 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 Revised Planning Obligations SPD has a positive impact upon all residents who may, in the absence of the SPD, experience negative impacts from development.

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

- 8.1 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.
- 8.2 A Draft Strategic Environmental Assessment Screening (SEA) outlining environmental impacts is appended to this report (to be approved by the SEA officer).

## **9. RISK MANAGEMENT IMPLICATIONS**

- 9.1 The proposed Revised Planning Obligations SPD clearly communicates the Council's approach to the funding and delivery of infrastructure. Developers will be able to refer to the Revised Planning Obligations 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 Revised Planning Obligations SPD alongside the CIL Charging Schedule as this reduces scope for developers failing to meet the expectations of the borough.
- 9.2 Unlike CIL, Planning Obligations are 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 Planning Obligations could be reduced. However the Council CIL Charging Schedule has been through Public Examination, where it was found that development could accommodate both CIL and Planning Obligations contributions.

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

- 10.1 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.

## **11. EFFICIENCY STATEMENT**

- 11.1 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.
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### **Appendices**

- Appendix 1 – Revised Planning Obligations SPD (2015) Available upon request in March
- Appendix 2 – Revised Planning Obligations SPD Draft Equalities Analysis (2015)
- Appendix 3 – Revised Planning Obligations SPD Draft Strategic Environmental Assessment Screening (2015).

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

- None

### **Officer contact details for documents:**

- Danalee Edmund, Infrastructure Planning Team, Planning and Building Control, 2<sup>nd</sup> Floor, Mulberry Place. Ext: 1666