

<b>Cabinet</b>  24 March 2021	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director of Place	<b>Classification:</b> Unrestricted
<b>Approval to adopt the new Planning Obligations Supplementary Planning Document and withdraw the current Planning Obligations Supplementary Planning Document 2016.</b>	

<b>Lead Member</b>	<b>Councillor Eve McQuillan, Cabinet Member for Planning</b>
<b>Originating Officer(s)</b>	Matthew Pullen, Infrastructure Planning Manager Sarah Wilks, Infrastructure Planning Team Leader
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Reason for Key Decision</b>	(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards.
<b>Forward Plan Notice Published</b>	04/01/2021
<b>Strategic Plan Priority / Outcome</b>	1. People are aspirational, independent and have equal access to opportunities;  2. A borough that our residents are proud of and love to live in;  3. A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our borough.

### **Executive Summary**

Planning obligations are legal obligations entered into by the developer in an agreement with the local planning authority under Section 106 of the Town and Country Planning Act 1990 (as amended) in order to mitigate the impacts of a development proposal.

The draft Planning Obligations Supplementary Planning Document (SPD) provides updated guidance on how planning obligations will be secured from new development. Following two rounds of public consultation the draft Planning Obligations SPD has been reviewed and updated and approval is now sought to adopt the draft Planning Obligations SPD and withdraw the current Planning Obligations SPD 2016.

## **Recommendations:**

The Cabinet is recommended:

1. To approve the Planning Obligations SPD (Appendix A and B) for adoption, authorise officers to prepare an adoption statement and withdraw the current Planning Obligations SPD (2016) in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012, Regulations 14 and 15.
2. To authorise the Corporate Director of Place to make any necessary factual or minor editing changes prior to publishing the final Planning Obligations SPD.
3. To note the Equalities Impact Assessment as summarised in Paragraph 4 (and included in Appendix C).
4. To note the Consultation Statement summarising representations received during the public consultation and the responses to these representations as set out in Appendix D to the report.
5. To note the SEA Screening Statement as set out in Appendix E to the report.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The reason for the decision is to ensure that the Council provides up to date guidance on the circumstances in which planning obligations will be secured from new development in order to mitigate development impacts and meet infrastructure requirements.

## **2 ALTERNATIVE OPTIONS**

- 2.1 One alternative would be to not adopt the new Planning Obligations SPD. This is not considered appropriate as the Local Plan (adopted January 2020) includes updated and new policies. As such, the current Planning Obligations SPD (2016) needs to be updated to provide guidance as to how developer contributions will enable site-specific mitigation and meet infrastructure requirements in accordance with the Local Plan.

## **3 DETAILS OF THE REPORT**

### What are Planning Obligations?

- 3.1 Planning obligations are legal obligations entered into by the developer in an agreement with the local planning authority under Section 106 of the Town

and Country Planning Act 1990 (as amended) in order to mitigate the impacts of a development proposal.

- 3.2 The Planning Obligations SPD details the Council's approach to using planning obligations and provides guidance on the circumstances in which planning obligations will be secured from new development. Planning obligations may be in the form of a financial contribution to the Council or of a non-financial nature such as the in perpetuity securing of affordable housing. The SPD is intended to help improve transparency regarding planning obligation requirements and is a material consideration for the determination of planning applications.
- 3.3 Planning obligations must meet the following statutory tests in order to be included in a section 106 agreement and therefore must be:
- Necessary to make the development acceptable in planning terms
  - Directly related to the development
  - Fairly and reasonably related in scale and kind to the development
- 3.4 Financial contributions secured as a planning obligation must also not conflict with the use of the Community Infrastructure Levy (CIL) as the Council's mechanism for collecting funding from development towards strategic cumulative infrastructure impacts. As a result, financial planning obligations must only relate to non-infrastructure matters or those infrastructure matters that are site specific requirements.

#### What does the Planning Obligations SPD cover?

- 3.5 Sections 1 and 2 of the SPD outline the Council's approach to securing planning obligations and explain the relationship between CIL and section 106 planning obligations. Section 3 of the planning guidance outlines the relevant legislation and policies while Section 4 details the process for negotiating and securing planning obligations.
- 3.6 Section 5 of the SPD sets out the standard obligations which may be required to make a development acceptable in planning terms. For each obligation the justification, threshold and contribution requirement is detailed to assist with determining whether a proposed development should be subject to planning obligations.
- 3.7 The obligations included in the SPD are those that are common to most large developments. However, should bespoke obligations be required for any particular development they can be negotiated at planning application stage.
- 3.8 The topic areas for the standard obligations in Section 5 include:
- Affordable housing (major and minor applications), affordable self-build housing, temporary housing, specialist housing and intermediate housing
  - Wheelchair accessible housing and parking

- Student housing development
- Employment, skills, training and enterprise
- Affordable workspace
- Early years education and care facilities
- Transport, highways and public realm
- Open space and access
- Children's play space
- Carbon emission reduction
- Biodiversity
- Flood risk
- Development co-ordination and integration
- Air quality
- Design certification
- Mansard roof conservation area

3.9 The Council is required to monitor the implementation of section 106 legal agreements. Section 6 of the SPD outlines the monitoring fees charged to developers that will be required to support this. Section 7 details the procedural matters for s106 agreements, including trigger points for when an obligation is required to be delivered, the developers role in complying with the planning obligations and the Council's role in monitoring compliance and delivery of s106 legal agreements.

#### Process for preparing, consulting and adopting the new Planning Obligations SPD

- 3.10 The draft Planning Obligations SPD has been prepared with input from all appropriate service areas and was publicly consulted on twice. The following stages were followed as part of the preparation of the SPD:
1. Development of first draft for consultation – Due to the technical nature of planning obligations, including the statutory tests that have to be met, an initial draft document was prepared to help inform the first round of public consultation. This was prepared with input and review from relevant service areas, including legal services.
  2. Preparation stage – The Council's intention to update the SPD and the initial draft document was communicated and interested people or organisations were encouraged to provide comments. This was initially planned to take place over a 6-week period from 13 March 2020. However, following the outbreak of COVID-19 the consultation was extended by 4 weeks and closed on 24 May 2020. A consultation statement was prepared which summarised the process and how the feedback received was taken into account.
  3. Consultation stage – The draft Planning Obligations SPD was updated following review of the feedback received during the Preparation Stage. The updated version was then published for public consultation for a 6-

week period from 08 October 2020. Following the close of the second consultation period a further consultation statement was prepared.

4. Adoption stage – The draft Planning Obligations SPD was again updated following review of feedback received during the Consultation Stage. Approval is now being sought from Cabinet to adopt the updated Planning Obligations SPD and withdraw the current Planning Obligations SPD (2016).

3.11 It should be noted that the public consultations were undertaken in accordance with the requirements of the Statement of Community Involvement as far as practical given the restrictions in place to combat the spread of coronavirus (COVID-19). This approach was in line with updated guidance from the Ministry of Housing, Communities and Local Government.

3.12 The Consultation Statement which summarises the approach taken in both public consultations is included in Appendix D. This sets out the feedback received, the Council’s response to the feedback and whether changes were made to the Planning Obligations SPD as a result.

3.13 A variety of changes have been made to the Planning Obligations SPD as a result of the feedback received during the public consultation, including requests for clarification and to better reflect the Local Plan. The most substantial changes are summarised in the table below.

Main comments received	Response
<p><u>Small sites affordable housing:</u> Representations objected to the proposed calculation methodology noting that it does not account for the value that Affordable Housing has to a developer and would generate a much higher affordable housing contribution than that suggested by the Topic Paper having significant implications for the viability of schemes.</p>	<p>It was agreed that the formula included in the first draft was too simplistic and didn’t take into account the complexities of affordable housing delivery. The calculation approach was reviewed and updated for the second public consultation. This new approach is set out in a separate spreadsheet showing the information and assumptions which feed into the calculation (see linked report: Small Sites Affordable Housing Calculator).</p>
<p><u>Wheelchair accessible housing and SUDs:</u> Comments received noted that wheelchair accessible housing and SUDs are better addressed through conditions.</p>	<p>The SPD has been updated to reflect that wheelchair accessible housing and SUDs will be addressed by conditions in most instances. These sections remain in the SPD to provide guidance to developers.</p>
<p><u>Employment and Enterprise:</u></p> <ul style="list-style-type: none"> <li>• Some responders were opposed to the proposed increase in the End User Skills</li> </ul>	<p>In the First Draft Planning Obligations SPD it was proposed to increase the End User Phase Skills Training cost. Following review of feedback received in both consultations, review</p>

<p>and Training contribution</p> <ul style="list-style-type: none"> <li>• Comments received were opposed to the inclusion of a 'penalties' approach to Employment and Enterprise obligations, noting that it is onerous and does not meet the Regulation 122 tests.</li> </ul>	<p>of the evidence for the proposed increase and advice from Legal Services, it is proposed to keep this contribution as currently drafted in the 2016 SPD.</p> <p>The section relating to penalties for Employment, Skills, Training and Enterprise obligations has been removed in the second draft Planning Obligations SPD.</p>
<p><u>Air Quality:</u></p> <p>Comments received stated that the blanket approach of this obligation was too onerous and / or didn't meet the Regulation 122 tests and should be amended / deleted as a result.</p>	<p>The Air Quality section of the SPD has been updated to provide greater clarity on the instances in which a planning obligation may be sought. This will be determined on a case-by-case basis depending on the air quality impact of the development.</p>
<p><u>Development co-ordination and integration:</u></p> <p>Responses did not support the proposed contribution / approach, noting that it does not meet the Regulation 122 tests and is not justified by Local Plan policy. Some responses also noted that the management of developments are already managed through Construction Management Plans.</p>	<p>This section has been updated to provide more detail on why this contribution is being sought, the development impacts that it will help mitigate and how it differs from Construction Management Plan and the Considerate Constructors Scheme. The calculation for the financial contribution has also been reviewed and reduced based on the feedback received.</p>
<p><u>Design certification:</u></p> <p>Some responses were opposed to this new obligation noting that it fails to meet the Regulation 122 tests and that detailed design should be addressed by planning consent and conditions.</p>	<p>The design certification obligation guidance has been updated to provide more specificity on the instances in which this obligation will be sought. This will be where there is uncertainty about whether the application design intent will be realised and where this cannot be addressed via conditions.</p>
<p><u>Viability:</u></p> <p>Various comments were made in relation to viability, including concerns about the financial implications of the obligations in the SPD and uncertainty resulting from the covid-19 pandemic.</p>	<p>Further information has been included in the SPD about the viability assessments which support the Local Plan policies, CIL and s106 contributions.</p> <p>These documents demonstrate that in general, the Local Plan policies, CIL and planning obligations can viably be delivered on schemes in the Borough. All of these assessments state that as they are borough-wide evaluations they do not reflect all possible specific circumstances that may impact viability. As such, it is important to note that planning obligations will still be subject to the specific circumstances and viability of individual schemes.</p> <p>We recognise the economic uncertainty</p>

	resulting from covid-19. However, it is considered that this is best addressed on a case-by-case basis in order to be able to deal with s106 pragmatically.
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## **4 EQUALITIES IMPLICATIONS**

- 4.1 An Equality Analysis Quality Assurance Checklist was completed (March 2020) and referred to the CLT in relation to the approval to consult. Following the two rounds of public consultation this has been reviewed. The updated Equality Analysis is provided in Appendix C and has found that:

*The Planning Obligations SPD provides further detail and guidance on the implementation of Local Plan policies and how planning obligations are to be secured from new development, including obligations relating to affordable housing, adaptable and accessible housing and the employment and upskilling of local people. It is therefore considered to be accordance with the Local Plan Integrated Impact Assessment.*

*The Local Plan IIA noted that the review of policies did not identify the potential for any adverse effects on local people. Furthermore, certain policies were noted as having significant positive effects, such as the provision of adaptable and accessible housing.*

*The Planning Obligations SPD was subject to two public consultations to provide the public an opportunity to comment prior to adoption of the document. No additional equalities concerns were raised during this process. Based on this Quality Assurance Checklist a full Equalities Assessment will not be undertaken.*

## **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.
- Data Protection / Privacy Impact Assessment.

- 5.2 The proposal has limited impact on best value implications and no safeguarding or crime reduction implications arise from the proposals.

- 5.3 As far as practical, the proposed public consultation was carried out in accordance with the Council's Statement of Community Involvement, given the restrictions in place to combat the spread of coronavirus (COVID-19). This approach was in line with guidance from the Ministry of Housing, Communities and Local Government. Internal consultation and review with relevant service areas has been undertaken during the preparation of the document.
- 5.4 In terms of environmental implications, the draft SPD includes guidance on planning obligations related to environmental impacts including carbon emission reduction, biodiversity, flood risk and air quality. These obligations seek to mitigate impacts of development proposals so that they are acceptable in planning terms.
- 5.5 In terms of risk management, the SPD provides guidance on the circumstances in which planning obligations will be secured from new development. This helps improve transparency for applicants and mitigates against the risk of inconsistent application and calculation of planning obligations. Ultimately the SPD will contribute to ensuring that development proposals are acceptable in planning terms.
- 5.6 In terms of data protection, all responses submitted as part of the two public consultations will be subject to the General Data Protection Regulations (GDPR).

## **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 A planning obligation is entered into by a developer in an agreement with the local planning authority under s106 of the Town and Country Planning Act 1990. This agreement is designed to mitigate the impacts of a development proposal, normally in the form of a financial contribution (s106 payment). On occasions, the mitigation can be non-financial, for example by securing affordable housing.
- 6.2 This report is seeking to update the guidance on how such planning obligations will be secured for new developments, bringing the Planning Obligations SPD in line with the latest local plan.
- 6.3 Financial contributions secured as a planning obligation must also not conflict with the use of the Community Infrastructure Levy (CIL) as the Council's mechanism for collecting funding from development towards strategic cumulative infrastructure impacts. As a result, financial planning obligations must only relate to non-infrastructure matters or those infrastructure matters that are site specific requirements.
- 6.4 This report does not have any financial implications directly emanating from it, however the introduction of a new Planning Obligations Supplementary Planning Document will impact on future s106 payments received by the



Council. This will impact on both future revenue budgets and capital funding and should be considered as part of the decision making process.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Planning and Compulsory Purchase Act 2004 places a legal obligation upon Local Planning Authorities (“LPA”) to prepare local plan documents as part of their Local Development Framework. The Act provides an LPA with the power to introduce supplementary planning guidance (“SPD’s”) to support development plan documents.
- 7.2 The Report advises that the extant Planning Obligations SPD was adopted by the Council in 2016. The Council is required to keep its planning policy under review and therefore seeks Cabinet’s authority to formally adopt the refreshed Planning Obligations SPD attached at Appendix A and B of the report.
- 7.3 The statutory basis for preparation of SPD’s, including consultation requirements, are prescribed by the following acts and regulations: The Planning and Compulsory Purchase Act 2004 (as amended); the Localism Act 2011; and the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 7.4 The legal provisions governing planning obligations are set out under Section 106 of the Town and Country Planning Act 1990.
- 7.5 Paragraph 3.11 of the Report sets out the consultation arrangements undertaken by the Council in accordance with the statutory requirements, further a copy of the Consultation Statement is appended at Appendix D of the report. Cabinet will note that careful consideration has been given to the determination and assessment of the objections made to the Planning Obligation SPD as set out at in the Table at paragraph 3.13 of the report.
- 7.6 The report also confirms that the consultation arrangements were undertaken in accordance with compliance with the Council’s Statement of Community Involvement which sets out how the authority will consult and engage with individuals, communities and other stakeholders in accordance with section 19(3) of the Planning and Compulsory Purchase Act 2004.
- 7.7 Cabinet will note that, if so minded the approve the Recommendation, as soon as reasonably practicable after adoption of the Planning Obligations SPD the Council is required to produce an Adoption Statement in accordance with regulation 14 and 11 of the Town and Country Planning (Local Plans) Regulations 2012 (as amended), which must be published it in accordance with regulation 35 of those Regulations. The Adoption Statement shall be sent to any person who has asked to be notified of the adoption of the SPD.
- 7.8 The power of a Local Planning Authority to enter into a planning obligation with any person interested in land in the area of the local planning authority is contained within Section 106 of the Town and Country Planning Act 1990 (as amended). Planning obligations are secured by Deed either by way of

planning agreements or unilateral undertakings and are required in order to mitigate the impact of the proposed development.

- 7.9 Regulation 122 of The Community Infrastructure Levy Regulations 2010 requires that a planning obligation may only constitute a reason for granting planning permission for the development if 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.
- 7.10 As set out at paragraph 6.3 of the report, planning obligations cannot be used to secure the provision of strategic infrastructure and are restricted to non-infrastructure or site specific infrastructure requirements.
- 7.11 The Council is required to adhere to the Public Sector Equality Duty in accordance with the Equality Act 2010 which must be given due regard in its decision making. Paragraph 4.1 of the report advises Cabinet that an Equality Analysis Quality Assurance Checklist was completed (March 2020) and updated Equality Analysis is provided in Appendix C and has found that the Planning Obligations SPD accords with the Local Plan Integrated Impact Assessment which did not identify the potential for any adverse effects on local people. It highlights that, particular policies were noted as having significant positive effects.
- 7.12 The report confirms that Planning Obligations SPD was subject to two public consultations to provide the public with an opportunity to comment prior to adoption of the document. As no additional equalities concerns were raised during this process, coupled with the findings of the Quality Assurance Checklist, a full Equalities Assessment will not be undertaken.
- 7.13 The adoption of local development documents (which includes SPDs is undertaken by resolution of the authority. In accordance with section 9D of the Local Government Act 2000 and the Council's constitutional arrangements, Cabinet (or any person who has authority to act in that capacity) may resolve to adopt the SPD.

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## **Linked Reports, Appendices and Background Documents**

### **Appendices**

- A: Draft Planning Obligations Supplementary Planning Document
- B: Small Sites Affordable Housing Calculator (excel spreadsheet)
- C: Equality Assurance Checklist
- D: Consultation Statement
- E: SEA Screening Statement

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

- None

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