

<b>Cabinet</b>  24/03/2021	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director of Place	<b>Classification:</b> Unrestricted
<b>Addendum to Cabinet report seeking 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.

### **Recommendations:**

The recommendations are outlined in the principal Cabinet report for the Planning Obligations Supplementary Planning Document.

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

- 1.1 The reason for the decisions is outlined in the principal Cabinet report for the Planning Obligations Supplementary Planning Document.

#### **2 ALTERNATIVE OPTIONS**

- 2.1 The alternative options are in the principal Cabinet report for the Planning Obligations Supplementary Planning Document.

### **3 DETAILS OF THE REPORT**

#### Background to the Addendum

- 3.1 This addendum has been prepared following the submission of two letters objecting to the adoption of the Planning Obligations Supplementary Planning Document (SPD) at the Cabinet meeting on 24 March 2021.
- 3.2 The objection of both letters relates to the inclusion of a calculation for a financial contribution in the Planning Obligations SPD from minor applications of 2-9 units towards the provision of affordable housing ('small sites contribution').
- 3.3 This addendum addresses the concerns raised in the letters. In addition, a formal response will also be provided in due course to each party.

#### Points of Objection

- 3.4 The letters received broadly raise two points of objection to the small sites contribution. These are:
- That the draft SPD requiring an affordable housing contribution from residential schemes of fewer than ten units is in conflict with (i) the National Planning Policy Framework 2019 ("the NPPF"); (ii) the new London Plan 2021 ("the London Plan"); and (iii) the Government's recent consultation on changes to the current planning system.
  - That the calculation of the contribution has not been adequately consulted upon and that the calculation methodology could result in housing schemes on small sites becoming unviable.
- 3.5 Each of these points is addressed below.

#### Potential for Conflict with National Policy and the London Plan

- 3.6 With regard to National Policy, it is correct that the Local Plan policy is contrary to the NPPF (2019) and the Secretary of State's Written Ministerial Statement (November 2014). However, the Tower Hamlets Local Plan was examined under and is in accordance with the 2012 National Planning Policy Framework and the Inspector did not raise an issue with the relevant policy at the modification stage. Following this, the Local Plan was adopted.
- 3.7 By extension, this means that the Planning Obligations SPD is contrary to the NPPF (2019). However, it is in accordance with the adopted Local Plan.
- 3.8 With regard to the London Plan, it has been argued that there is a conflict between policy in the Local Plan and the recently adopted new London Plan.

Therefore, it is suggested in accordance with section 38(5) of the Planning and Compulsory Purchase Act 2004, that this conflict should be resolved in favour of the (more recent) London Plan. By applying this hierarchy to the application of development plan documents it is suggested, in practice, that there is no longer any development plan policy support for the draft SPD which seeks affordable housing contributions in lieu for affordable housing on small sites. This is because the purpose of an SPD is to provide detailed guidance upon the application and mechanics of the adopted parent development plan, in this instance, the Council's Local Plan.

- 3.9 Whilst the Council accepts that s38(5) provides the legal test to be applied where a policy conflict exists (the hierarchy test), the Council does not agree that such a conflict exists in this instance.
- 3.10 The objections received are correct in that the London Plan was amended prior to adoption to remove the proposed policy text that supported the small sites contribution approach. However, this text has not been replaced by a policy that states that boroughs cannot seek such contributions. Rather, the London Plan is now silent on the matter. As it is silent, there is no conflict. As there is no conflict, no issue with s.38(5) arises.

#### Calculation Methodology and Consultation

- 3.11 In accordance with the Local Plan, the Planning Obligations SPD sets out the Council's preferred methodology for calculating the required financial contribution. The Consultation Statement (Appendix D to the Cabinet Report) sets out the process that was followed when undertaking public consultation and how the feedback received was addressed. This includes feedback that was received in relation to the small sites contribution.
- 3.12 The public consultation was undertaken in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012, the Planning and Compulsory Purchase Act 2004 and The Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020. As the public consultation is now complete, the calculation included in the Planning Obligations SPD represents the Council's preferred methodology for calculating the financial contribution.
- 3.13 With regard to the concerns identified in relation to the potential impact to viability as a result of the financial contribution, we note that Local Plan Policy S.H1 (2) (a) (ii) specifically states that the contribution is subject to viability. If there are concerns about the impact of the financial contribution on the viability of a specific scheme, then this can be discussed with the Council when the scheme comes forward. Therefore, there is no disproportionate impact upon either developers of small sites, as a result of the application of this policy, or general housing delivery within the borough

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 The equalities implications are outlined in the principal Cabinet report for the Planning Obligations Supplementary Planning Document.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 The other statutory implications are outlined in the principal Cabinet report for the Planning Obligations Supplementary Planning Document.

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

- 6.1 Comments from the Chief Finance Officer are outlined in the principal Cabinet report for the Planning Obligations Supplementary Planning Document.

#### **7 COMMENTS OF LEGAL SERVICES**

- 7.1 The legal issues and associated comments are identified within the main body of this addendum.

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

#### **Appendices**

- None to this addendum

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

- None

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

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