

# REPORT FOR: **CABINET**

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<b>Date of Meeting:</b>	17 October 2013
<b>Subject:</b>	Planning Obligations Supplementary Planning Document
<b>Key Decision:</b>	Yes
<b>Responsible Officer:</b>	Caroline Bruce, Corporate Director of Environment and Enterprise
<b>Portfolio Holder:</b>	Councillor Stephen Greek, Portfolio Holder for Planning, Development and Regeneration
<b>Exempt:</b>	No
<b>Decision subject to Call-in:</b>	Yes
<b>Enclosures:</b>	Appendix A – Schedule of Consultation Responses to the draft Planning Obligations Supplementary Planning Document  Appendix B - The Planning Obligations Supplementary Planning Document for adoption  Appendix C – Recommendation from the LDF Panel meeting held on 3 October 2013

## **Section 1 – Summary and Recommendations**

This report proposes the adoption of the Planning Obligations Supplementary Planning Document (SPD) to aid in the effective implementation of the Harrow Local Plan and, in particular, Policy DM50 Planning Obligations.

### **Recommendations:**

Cabinet is requested to:

1. Adopt the Planning Obligations SPD attached at Appendix B;

2. Delegate authority to the Divisional Director of Planning to make typographical corrections and any other necessary non-material amendments to the Planning Obligations SPD prior to formal publication of the SPD.

**Reason: (For recommendation)**

To afford weight to the SPD as a material planning consideration.

To clarify the relationship between Council's use of its Community Infrastructure Levy and Planning Obligations to reduce the planning risk of 'double dipping' when seeking or securing contributions from development towards specific infrastructure requirements.

## **Section 2 – Report**

### **Background**

1. Section 106 of the Town and Country Planning Act 1990 (as amended) allows the drafting of planning obligations between developers and the Council. These legal agreements allow the Council to secure the provision of affordable housing and to control the impact of a development, beyond that which can be achieved via planning conditions.
2. The legislative framework within which planning obligations are considered has recently changed with the introduction of the Community Infrastructure Levy (CIL) Regulations 2010. These changes effectively mean that CIL income should be used to help fund strategic infrastructure, such as schools and healthcare, while the role of planning obligations is to be limited to affordable housing and the mitigation of site specific impacts.
3. The Council is currently in the process of bringing into effect its CIL. The Planning Obligations SPD has been prepared to clearly set out the Council's approach, policies and procedures in respect of the use of planning obligations in relation to the CIL to be applied in Harrow.
4. It is considered that the SPD will, upon adoption:
  - Aid the smooth functioning of the planning application process by making developers and landowners aware of the procedures for securing planning obligations, including the provision of affordable housing;
  - Clarify the types of planning obligations that may be sought depending on the nature of the development proposal and site circumstances;
  - Clarify the relationship between planning obligations, planning conditions and the Council's CIL; and

- Help to deliver good quality sustainable development that accords with the policies and requirements of the Harrow Local Plan.

## **Consultation Undertaken**

5. In accordance with Regulation 12 of the Town and Country Planning (Local Planning) (England) Regulations 2012 the SPD was subject to public consultation. The period for consultation commenced 11<sup>th</sup> July and closed on 5<sup>th</sup> September 2013. The longer than required consultation period took into account the summer holiday period.

6. The draft SPD was published electronically on the Council's website and on the Council's consultation portal, and a paper copy was placed on deposit at each of the Borough's libraries and at the Civic Centre. Consistent with the requirements of the Council's Statement of Community Involvement:

- a public notice was placed in the Harrow Observer newspaper, on 11<sup>th</sup> July; and
- over 1,000 notifications were sent out by letter and e-mail to individuals and organisations on Harrow's Planning consultation database and users with a registered interest in town and country planning on the Council's consultation portal.

## **Outcome of Consultation**

7. There were a total of **9** responses to the consultation. These are reproduced in full, alongside the Council's response, in the Schedule of Consultation Responses at Appendix A to this report. The main issues raised are summarised below.

8. The Highways Agency responded that they had no comment and Natural England confirmed their support for the SPD and sought no amendments. English Heritage requested the Council to include a paragraph within this SPD setting out opportunities for planning obligations to be used to address the historic environment. However, Chapter 14 already set out the types of obligations that might be sought in relation to heritage assets and, as these were exactly as that listed in English Heritage's representation, no further changes were required.

9. The response by Thames Water sought to include a paragraph requiring developers to demonstrate sufficient wastewater and sewerage capacity both on and off-site to serve the development. This seemed to be a standardised response; the Council's Local Plan already includes such a requirement and confirms that, in instances where improvements are required, the Council would use a planning condition, rather than a planning obligation, to secure works in accordance with an agreed drainage strategy. No amendments are therefore required to address Thames Water's comments.

10. The comments from Campaign for a Better Harrow Environment helpfully highlighted areas of the SPD that could usefully do with further clarification. Such suggestions have generally been taken on board and

additional text added, errors corrected and definitions provided for some of the planning terms used in the SPD. They also sought to query the basis for calculating commuted sums for a number of the obligations and also raised concerns regarding the assessment of development viability. In response to these matters we have not amended the SPD but rather provided a detailed explanation in the Schedule of Consultation Responses justifying the approach taken.

With regard to the representations of the Kingsfield Estate Resident's Action Group and Harrow Environmental Forum, these were very similar in the issues raised. Unfortunately however, the vast majority of comments were not relevant to the consultation or were beyond the scope of an SPD on planning obligations to address. As a result there were only a few comments of relevance that required only minor amendments to the SPD to add the clarity.

11. The representation of the Mayor of London raised concern as to the general conformity of the SPD with London Plan and the Revised Early Minor Alterations - which prevent boroughs from introducing rent caps for affordable rented housing within planning policy. While the SPD did not in itself explicitly include rent caps, the SPD referenced the Council's Tenancy Strategy, which does suggest that the Council will impose rent caps. As such, the Mayor considered that the referencing of the Tenancy Strategy constituted an attempt to bring rent caps into the planning system via the 'backdoor'. The Mayor therefore offered alternative wording to bring the SPD into conformity but having considered this, the preference of Council officers is that SPD should instead remain silent on the issue and the section on housing affordability be deleted in its entirety.

12. The above changes are incorporated in the SPD that is proposed for adoption at Appendix B to this report.

### **Other options considered**

13. Subject to the minor changes arising from the consultation responses, as described in the Schedule of Consultation Responses at Appendix A, it is recommended that the SPD be adopted.

14. There are two alternative options to the adopting the SPD:

- do nothing; and
- issue an informal guidance note.

15. Do nothing: The Council does not currently have formal planning guidance on the use of planning obligations. While the Council could continue with this approach, this would be at odds with government guidance that requires local authorities, intent on bringing forward a CIL, to clearly set out the infrastructure eligible for CIL funding and that which may still fall to planning conditions or obligations to secure. This is so developers know and understand what they are expected to pay for through which route, and avoid any actual or perceived 'double dipping' (i.e. development being charged twice for the same item of infrastructure).

16. Further, the introduction of the SPD also seeks to aid in the negotiations that currently take place with developers about the planning obligations that may be applicable to a particular scheme. Such negotiations are often protracted, slowing down both the planning application process and the process of finalising the legal agreement. These delays, and the multiple drafting of the agreements themselves, add cost to all parties in the process. Maintaining the status quo would not help to address this issue and could hinder other initiatives by the Council to deal with planning applications in a more timely and efficient manner.

17. Informal guidance: the text contained within the SPD could simply be published on the Council's website as an informal guidance note, thus avoiding the costs associated with adopting the SPD (comprising the preparation of an adoption statement and any printing costs). Such a note may still be a material consideration when considering planning applications, but the weight to be attached to such a note in the absence of public consultation and formal adoption is likely to be limited. The majority of the staff cost associated with preparing the SPD has now been expended. Although cheaper than the formal adoption of the SPD, this approach would offer marginal financial benefits whilst diminishing the effectiveness of the final document. It would also mean that expenditure already undertaken in the preparation and consultation of the SPD would be abortive.

## **Implications of the Recommendation**

### **Legal comments**

18. Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

19. Although the proposed SPD is not a development plan document it will, upon adoption, be a material consideration in the determination of proposals for development within the Borough.

20. The Council is required by law to consult on the SPD and to take into account all consultation responses received before adopting the SPD. The Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012 provide guidance on the preparation and adoption of the Local Plan. Upon adoption, the Planning Obligations Supplementary Planning Document will form part of Harrow's formal planning policy.

### **Financial Implications**

21. The adoption of the SPD represents a relatively minor project, the costs of which can be adequately contained within the existing LDF budget. The most resource intensive part of the work (preparation and consultation) has already been undertaken.

22. With regard to developments costs as a result of implementing the SPD, the effective application of Local Plan policies and the guidance in SPD should ensure that new development mitigates any potential impacts arising directly from the development and will make adequate provision, on-site to meet the immediate needs of the development. It will also ensure that the Council continues to secure affordable housing on applicable residential schemes in accordance with Harrow's Local Plan and Housing policies. This will mean that the costs that are currently incurred by the Council as a result of new development will be more reasonably borne by both the council and the developer.

## **Performance Issues**

23. With the exception of affordable housing, there are no local indicators relevant to the performance of planning obligations. This is because planning obligations are only triggered when development proposed can not meet the applicable policy requirements of the Local Plan or give rise to specific impacts that require mitigation.

24. With regard to affordable housing, the existing local indicator is a net addition of 165 affordable units per annum. The Authority's Monitoring Report shows that over the past 11 years, the Council has managed to secure on average 137 affordable units per annum. The provision of affordable housing is very much subject to development viability. It is therefore not anticipated that the SPD will necessarily improve performance in this area but rather will ensure that tenure and mix of affordable housing to be provided is directed at those areas identified by the Council as being of greatest need. Overall the SPD will aid the smooth functioning of the planning application process by making developers and landowners aware of the procedures for securing planning obligations, including the provision of affordable housing.

## **Environmental Impact**

Does the proposal comply with all relevant environmental legislation? Yes

25. The policies that the SPD supplements have been the subject of a comprehensive Sustainability Appraisal, incorporating the requirements of Strategic Environmental Assessment, in compliance with the regulatory requirements for preparing local plan documents. The government has confirmed that, where the parent policy has been appraised, it is not necessary to appraise any guidance that simply seeks to give effect to the policy.

## Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

Potential Risks	Commentary	Mitigation Measures
Compliance with legislation	SPDs are required to comply with the legal requirements for preparation and consultation as set out in the Planning and Compulsory Purchase Act.	The SPD has been subject to public consultation in accordance with the requirements set out in Council's Statement of Community Involvement and all representations received have been analysed, responded to, and the SPD amended, where necessary, to take account of relevant comments prior to its formal adoption.
Changes to the planning system	The government continues to reform the existing legislation applicable to planning in England. A focus of these reforms is on reducing the financial and regulatory burden placed upon proposals for new development. Planning obligations, in particular, requirements for affordable housing, can be a significant development costs and are therefore likely to be the subject of further reforms.	Officers will continue to keep abreast of proposals and consultation on changes to the planning legislation and national planning policy. Where potential issues arise with either the context or processes outlined in the SPD, these will be reported to the LDF Panel to consider alongside office recommendations on review or necessary amendments.
Application of the SPD	In preparing the draft SPD, the Council has sought to apply robust justification for the obligation included. However, there is a degree of professional judgment required in the assessment of likely impacts of an individual planning application that may give rise to potential obligations.	The SPD includes requirements for monitoring its effectiveness that would necessarily trigger an analysis and potential review of the SPD should the monitoring indicate that the processes outline or obligation types where no the most applicable.

## Equalities implications

Was an Equality Impact Assessment carried out? No

26. By definition, supplementary planning documents cannot introduce new policies nor modify adopted policies and do not form a part of the development plan. Rather, their role is to supplement a 'parent' policy in a development plan document. The SPD the subject of this report

supplements Policy DM50 of the Local Plan. A full equalities impact assessment was carried out at each formal stage in the preparation of the Local Plan.

27. Therefore, there is no requirement to carry out an equalities impact assessment of the SPD the subject of this report because the impact of implementing Policy DM50 has already been considered as part of the Local Plan equalities impact assessment.

### **Section 3 - Statutory Officer Clearance**

Name: Jessie Man	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 18 September 2013		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 19 September 2013		

### **Section 4 – Performance Officer Clearance**

Name: Martin Randall	<input checked="" type="checkbox"/>	on behalf of the Divisional Director Strategic Commissioning
Date: 17 September 2013		

### **Section 5 – Environmental Impact Officer Clearance**

Name: Andrew Baker	<input checked="" type="checkbox"/>	on behalf of the Corporate Director (Environment & Enterprise)
Date: 17 September 2013		



## **Section 6 - Contact Details and Background Papers**

Contact: Matthew Paterson, Senior Professional Policy  
Planning, Development and Enterprise

Tel: 020 8736 6082

Background Papers: Harrow's Core Strategy (February 2012)  
[http://www.harrow.gov.uk/downloads/file/11418/core\\_strategy\\_2012](http://www.harrow.gov.uk/downloads/file/11418/core_strategy_2012) ;  
London Plan (2011)  
<http://www.london.gov.uk/priorities/planning/london-plan>  
Draft Development Management Policies Local Plan  
[http://www.harrow.gov.uk/info/856/local\\_development\\_framework\\_policy/2654/examination\\_in\\_public\\_on\\_three\\_dpds/2](http://www.harrow.gov.uk/info/856/local_development_framework_policy/2654/examination_in_public_on_three_dpds/2)  
Harrow's CIL Draft Charging Schedule (including the proposed Regulation 123 list)  
[http://www.harrow.gov.uk/info/856/local\\_development\\_framework\\_policy/2677/community\\_infrastructure\\_levy\\_cil/3](http://www.harrow.gov.uk/info/856/local_development_framework_policy/2677/community_infrastructure_levy_cil/3)

All of the above are available to view via the links to the Council's website.

**Call-In Waived by the  
Chairman of Overview  
and Scrutiny  
Committee**

**NOT APPLICABLE**

*[Call-in applies]*