

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 06 March 2023

Portfolio:	Planning and Development
Subject:	Planning Obligations SPD Review
Report of:	Director of Planning and Regeneration
Corporate Priorities:	Providing Housing Choices Protect and Enhance the Environment Dynamic, Prudent and Progressive Council

Purpose:

To seek approval to consult on a review of the Planning Obligations Supplementary Planning Document – setting out the Council's approach to financial and non-financial obligations on planning applicants, to be secured via legal agreement.

Executive summary:

The Council adopted its current Planning Obligations Supplementary Planning Document (SPD) in 2016, and it is used by planning applicants who are seeking guidance on the types of obligations, financial or non-financial, that the Council, as local planning authority, may require of them to ensure their proposals are acceptable in planning terms.

This report provides a draft of the revised Planning Obligations SPD and seeks approval to progress the draft document to statutory public consultation. It is the intention consult over a six-week period in mid-March to April 2023, following which the approval to adopt the revised SPD will be sought. Once adopted, this SPD will replace the existing Planning Obligations SPD which will in turn be revoked.

The context for the review is the progression of the emerging Fareham Local Plan 2037 which is reaching the end of the examination process and will soon be before Council for adoption. The Local Plan outlines how the borough's housing and employment targets will be met over the plan period and sets out the scale and type of infrastructure required to support the planned growth.

Developer contributions through planning obligations are one of the most significant mechanisms through which this will be funded. The new SPD will provide supplementary planning guidance to developers, planning officers and

borough residents as to how the Council will seek developer contributions, the extent and nature of these contributions (both financial and non-financial), the justification for this approach and, in some cases, how these contributions will be spent.

Recommendation:

It is recommended that the Executive:

- (a) approves the Draft Planning Obligations Supplementary Planning Document, as set out at Appendix A to the report, for public consultation; and
- (b) delegates authority to the Director of Planning and Regeneration, following consultation with the Executive Member for Planning and Development, to make any minor amendments to the document following consideration by the Executive, prior to the consultation.

Reason:

To consult on a Planning Obligations SPD which sets out the obligations required in relation to considerations and matters required to make development acceptable in planning terms.

Cost of proposals:

It is not considered that there are any cost implications to the Council of undertaking the consultation on the draft Planning Obligations Supplementary Planning Document.

Appendices: **A: Draft Planning Obligations Supplementary Planning Document**

B: Strategic Environmental Assessment Screening Report

Background papers: **None**

Reference papers:

Fareham Community Infrastructure Levy Review – Viability Assessment 2023

Infrastructure Delivery Plan

Fareham Borough Council Local Plan 2037

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Executive Briefing Paper

Date:	06 March 2023
Subject:	Planning Obligations – SPD Review
Briefing by:	Director of Planning and Regeneration
Portfolio:	Planning and Development

INTRODUCTION

1. Supplementary Planning Documents provide guidance on policies set out in a Local Plan, such as site-specific information, or specific matters such as Planning Obligations. They provide a material consideration in planning decisions and are pivotal in helping to shape development in specific areas.
2. The emerging Fareham Local Plan 2037 outlines a target to build 9,556 new homes and 121,000m² of employment floorspace over the next 14 years to 2037. This level of growth will require significant investment in infrastructure, which is outlined in the Council's supporting Infrastructure Delivery Plan alongside the Local Plan.
3. As outlined in Policy TIN4 in Chapter 10 of the emerging Local Plan, the Council and developers have a responsibility, through the planning process, to manage the impact of this growth and ensure that any harm caused by development is mitigated, ensuring that the necessary infrastructure is provided. As such, clear and detailed guidance on developer contributions to achieve this is required.
4. The Executive should note that the Government's new Levelling Up and Regeneration Bill outlines changes to the current CIL and S106 regime in order to bring forward a proposed Infrastructure Levy. This will be kept under review, however, given it is unlikely any new legislation will be come into effect for 1-2 years, it is necessary to press on with the SPD to support the Local Plan and future growth in the borough.

LEGAL FRAMEWORK

5. Planning Obligations are secured through legal agreements. The majority of agreements are secured under Section 106 of the Town and Country Planning Act 1990, and known as Section 106 (S106) agreements, but there are other forms, such as unilateral undertakings or S111 agreements for simple payments to the Council for environmental mitigation.

6. Negotiated between the Council and applicants, these legal agreements can take the form of works, payments or restrictions on the way a property can be used. The Council uses Section 106 to secure important outcomes such as affordable housing provision and sports pitches and open space. The legal agreements usually define where monies contributed must be spent (usually in the vicinity of the development) and what the money must be spent on, with all of this agreed in the legal document.
7. The legal framework for the use of S106 is set out in the Community Infrastructure Levy Regulations (2010) as amended. This requires that anything the Council asks for is:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.

REVIEWING THE SPD

8. The starting point for reviewing the Planning Obligations SPD is the emerging Fareham Local Plan 2037 which articulates the spatial strategy for achieving inclusive growth. The SPD seeks to provide guidance to applicants on obligations in relation to a number of policy areas, including:
 - Securing onsite policy requirements such as affordable housing onsite or payments in lieu;
 - Securing onsite policy requirements for Public Open Space, Outdoor Sport and Children's Play Equipment, including suitable contributions for long term maintenance where land is transferred to the Council;
 - Securing contributions to long term tree maintenance where they are present on land transferred to the Council;
 - Securing contributions to environmental mitigation projects including biodiversity net gain, Solent recreation mitigation, New Forest recreation mitigation, impact of nutrients on designated water bodies, and Solent Wader and Brent Goose Sites; and,
 - Addressing the transport impacts of development.
9. The notable change is a review of the maintenance charge applied to Public Open Space, Outdoor Sports provision and Children's Play Equipment associated with new development that is to be transferred to the Council. The rate in the current SPD is based on an assessment of costs from 2015, and whilst this is subject to indexation each year, is no longer considered reflective of 2023-based service costs. Officers have therefore undertaken an assessment of the costs involved for both capital and revenue elements of maintaining such land and these form the basis for the proposed updated costs in the new SPD. A summary of this work is included in the appendix to the SPD.
10. In order to derive a total cost for managing and maintaining land that is transferred to the Council, officers looked at the cost of providing the service based on a typical per annum cost for a m² and then multiplied this by the number of years considered appropriate for a developer to 'fund'. It is important to consider the

length of time that the Council seeks contributions to cover the liability for the upkeep of the land and assets transferred to it as once the contribution is used, the Council has to find alternative sources of funding, such as from revenue accounts, to fund the ongoing maintenance. It was previously assumed that financial contributions for maintenance should cover a period of 20 years from the point of adoption by the Council.

11. The provision of these spaces and facilities is a direct requirement of new development. Therefore, given the pressures on Council budgets, this is considered an unsustainable position if the Council is to continue to provide the service. There are now statutory requirements for developers to cover the maintenance liability of environment mitigation in perpetuity. With that precedent (developers liable for the lifetime of development), officers feel that a fairer approach to the management of open space, sports pitches and play equipment is to secure maintenance contributions for a longer period than currently sought.
12. The proposed approach in the SPD is to seek maintenance contributions for a period of 50 years. This would be for all amenity land, play areas, sports pitches, and trees transferred to the Council. The proposed rates, based on a 50 year period, are shown in table 1. For comparison purposes, the equivalent new costs are included for 40, 30 and 20 year maintenance periods. The increase in the maintenance costs for trees reflects only a change in the length of maintenance period as the cost of maintaining a tree is considered up to date, having only been calculated in September 2021. The proposed charges in table 1 also include additional revenue costs such as insurance.

Table 1 Existing and New maintenance costs

Maintenance Contribution	Parks and Amenity Open Space	Outdoor Sports provision	Children's Play Equipment	Trees
Existing rates as per 1 st April 2022 (Based on 20 year maintenance period)	£7.81 per m ²	£22.12 per m ²	£119.73 per m ²	£650.70 per tree
<i>New rates based on a 20 year maintenance period</i>	<i>£15.89 per m²</i>	<i>£23.41 per m²</i>	<i>£89.64 per m²</i>	<i>£650.70 per tree</i>
<i>New rates based on a 30 year maintenance period</i>	<i>£23.83 per m²</i>	<i>£35.12 per m²</i>	<i>£134.45 per m²</i>	<i>£976.05 per tree</i>
<i>New rates based on a 40 year maintenance period</i>	<i>£31.77 per m²</i>	<i>£46.83 per m²</i>	<i>£179.27 per m²</i>	<i>£1,301.40 per tree</i>
New rates based on a 50 year maintenance period: *Proposed approach	£39.72 per m²	£58.53 per m²	£224.09 per m²	£1,626.75 per tree

13. All the costs for maintenance and management in table 1 will be updated annually on 1st April using the February Consumer Price Index plus 1%. This is to reflect inflationary increases to the cost of providing services by the Council.
14. It should be noted that a consequence of the switch to a 50 year maintenance period and associated cost increase could be that developers opt not to transfer

land to the Council, rather establish private management companies to provide the maintenance and management service. If this was to occur on a wide scale, it would represent a change in approach of the Council which has traditionally adopted the majority of land, play areas and sports pitches brought forward alongside development. Where an alternative method of management and maintenance is proposed by the developer, evidence of its long-term management and maintenance will be required by the Council as part of the planning process.

15. Also, of note in this revised Planning Obligations SPD is reference to the introduction of a monitoring fee. Local Authorities are able to charge a monitoring fee through planning obligations, to cover the cost of monitoring and reporting on delivery of that obligation. The SPD includes the expectation that the Council will start charging a monitoring fee. The level of which will be the subject of a separate paper tabled to Executive later in the year.
16. Internal consultation has been undertaken in the development of this draft SPD with relevant officers responsible for a variety of areas including planning policy, development management, leisure, and affordable housing delivery.

NEXT STEPS - CONSULTATION

17. It is proposed to undertake public consultation on the draft SPD in line with the statutory requirements set out in the relevant planning regulations. A six week consultation will take place from mid-March to late April. This will be held alongside the consultation on the Draft Community Infrastructure Levy Consultation.
18. It is proposed that the consultation is publicised on the Council's website and emails and letters are sent to all statutory consultees and other relevant individuals and organisations on the Council's Planning Strategy consultation database.
19. Following the public consultation, the Council will consider responses before moving forwards towards adoption of the new SPD and the revocation of the current.

CONCLUSION

20. It is recommended, for the reasons set out in the above paragraphs, that the Executive approves the draft Planning Obligations SPD for public consultation and delegates authority to the Director of Planning and Regeneration, following consultation with the Executive Member for Planning and Development, to make any appropriate amendments to the document following consideration by the Executive, prior to the consultation.

Enquiries:

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