

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive for Decision 05 February 2024

<b>Portfolio:</b>	Planning and Development
<b>Subject:</b>	<b>Planning Obligations Supplementary Planning Document</b>
<b>Report of:</b>	Director of Planning and Regeneration
<b>Corporate Priorities:</b>	Provides Housing Choices Respond to Climate Change and Protect the Environment Leisure Opportunities for Wellbeing and Fun Responsive, Inclusive and Innovative Council

**Purpose:**

To adopt the Planning Obligations Supplementary Planning Document.

**Executive summary:**

Planning obligations are legal obligations used to secure mitigation for the direct impacts of development. They can be used to secure the direct provision or a financial contribution towards the provision of new or improved infrastructure, services, and facilities. Planning obligations can also secure the funding for their ongoing maintenance to ensure that new development is acceptable.

The Planning Obligations Supplementary Planning Document (SPD) provides detailed advice to applicants regarding infrastructure they may be required to deliver and/ or contributions they may be required to pay to mitigate the impact of development.

The draft Planning Obligations SPD was subject to six weeks of public consultation. The version proposed for adoption has been amended in response to the points raised in the representations received during the consultation.

**Recommendation:**

It is recommended that the Executive:

- (a) adopts the Planning Obligations Supplementary Planning Document as set out in Appendix B to this report with effect from 20 February 2024;
- (b) approves the publication of the Companion Cost Schedule as set out at Appendix C to this report alongside the SPD;

- (c) delegates authority to the Director of Planning and Regeneration to review and update the Companion Cost Schedule on an annual basis as necessary;
- (d) 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 adoption; and
- (e) agrees that the Planning Obligations Supplementary Planning Document (excluding Welborne) adopted in April 2016, be superseded on 20 February 2024.

**Reason:**

To enable the Planning Obligations Supplementary Planning Document to be adopted and afforded due weight as a material consideration in the determination of planning applications.

**Cost of proposals:**

There are no direct financial cost implications arising from this report. The adoption of this SPD will enable the Council to secure greater cost recovery where land and facilities are put forward to the Council for adoption.

**Appendices:**

**A:** Planning Obligations SPD Post Consultation Statement

**B:** Planning Obligations Supplementary Planning Document

**C:** Planning Obligations Schedule of Costs

**D:** SEA and HRA Screening Assessment

**Background papers:** None

**Reference papers:** None

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## BOROUGH COUNCIL

### Executive Briefing Paper

<b>Date:</b>	05 February 2024
<b>Subject:</b>	<b>Planning Obligations Supplementary Planning Document</b>
<b>Briefing by:</b>	Director of Planning and Regeneration
<b>Portfolio:</b>	Planning and Development

#### INTRODUCTION

1. Supplementary planning documents (SPDs) build upon and provide more detailed advice or guidance on policies in an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material consideration in decision-making and play a key role in describing and explaining how adopted planning policies should be interpreted and delivered through development management process.
2. Planning obligations are legal obligations used to secure mitigation for the direct impacts of development and are generally secured pursuant to Section 106 of the Town and Country Planning Act 1990. Planning Obligations can be used to secure the direct provision or financial contributions towards the provision of new or improved infrastructure, services, and facilities, and where appropriate, their maintenance to ensure that new development is acceptable.
3. The Planning Obligations SPD provides detailed advice to applicants regarding the infrastructure they may be required to deliver and/ or contributions they may be required to pay to mitigate the impact of development.
4. As outlined in Policy TIN4 of the Fareham Local Plan 2037, 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, through ensuring that the necessary infrastructure is provided. As such, clear and detailed guidance on developer contributions to achieve this is required. The Council currently uses an SPD for this purpose which was adopted in 2016.
5. The Council has for many decades been prepared to take on and manage open space, playing pitches and children's play areas where it has been offered to the Council for adoption. The Council has a good reputation for managing these spaces to a high standard.

6. The SPD now proposed for adoption proposes both an increase to maintenance fees associated with the transfer of land (open space, amenity land, playing pitches, playgrounds) to the Council and an increase in the time period which these costs are sought to cover. Once adopted, this will replace the Planning Obligations SPD adopted in 2016.

## **BACKGROUND**

7. The Council consulted on the draft Planning Obligations SPD in April 2023. The draft SPD reflects the policy requirements of the newly adopted Fareham Local Plan 2037 (April 2023). The Local Plan sets out a framework to assess impacts from development and the SPD provides additional guidance on securing planning obligations in relation to the new development.
8. One area of the existing SPD which has been very carefully reviewed, relates to 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 and adopted by 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, it is no longer considered reflective of 2023-based service costs. Officers have undertaken a thorough assessment of the costs involved for both capital and revenue elements of maintaining such land and these form the basis for the updated costs in the new SPD.
9. Whilst the Council cannot insist that open space, outdoor sports areas and children's play equipment is transferred to it, it has been a common approach in Fareham for many decades and is favoured by many developers as it removes the ongoing burden on them.
10. The 2016 SPD sets out a per square metre maintenance costs figure for land or assets which the Council manage and maintain. Whilst there was no published timeframe in the SPD, the per square metre figure was based on a 20-year maintenance time period.
11. The April 2023 draft SPD continued the same broad approach to maintenance but consulted on a figure based on a 50-year maintenance period. Where land is transferred to the Council, the maintenance of the land and assets would be covered by the contribution. Following completion of the maintenance period, the continued upkeep of the assets will need to be met from within the Council budgets.
12. The resulting 50-year maintenance figure was a considerable increase over the 2016 SPD, as detailed below:

<b>Maintenance Contribution</b>	<b>Parks and Amenity Open Space</b>	<b>Outdoor Sports provision</b>	<b>Children's Play Equipment</b>	<b>Trees</b>
<i>Current SPD (2016) rate</i>	<i>£7.81 per sqm</i>	<i>£22.12 per sqm</i>	<i>£119.73 per sqm</i>	<i>£650.70 per tree</i>
<b>Consultation version SPD proposed rates (based on 50 year maintenance period)</b>	<b>£39.72 per sqm</b>	<b>£58.53 per sqm</b>	<b>£224.09 per sqm</b>	<b>£1,626.75 per tree</b>

## **PUBLIC CONSULTATION**

13. Consultation on the draft SPD was held between 17th March and 1st May 2023; a total of ten responses were received. Three of the comments received focused on the increase to maintenance costs, and how these had been derived.
14. Those three representations raised the question of the validity of the 50-year maintenance period proposed, stating there was no clear evidence of need for a maintenance period of this length, and that there is a real risk that allocated sites may no longer be able to deliver policy compliant viable schemes with such a significant increase in total cumulative costs, especially with the proposed new CIL charge as well.
15. It is noted that the viability and deliverability of sites allocated within the Local Plan were tested via the Examination in Public of the Local Plan and included the increased proposed costs associated with the draft SPD. The conclusions from that study considered that overall viability would not be significantly adversely impacted by the proposed increase to a 50-year maintenance period. It is recognised however that if developers consider maintenance contributions to be too high, then open space and facilities may well be transferred to management companies rather than transferred to the Council.
16. In deriving a new cost for each category, a two-step approach was used. Firstly, an assessment of the costs of providing the service at 2023 prices was undertaken. This showed a considerable increase in the base rate costs associated with providing the service, particularly for open space and to a lesser extent outdoor sports pitches. Secondly, the annual cost is multiplied to cover the long-term maintenance period.

## **MAINTENANCE CONTRIBUTION**

17. There is no planning guidance or legal framework which sets out what is the appropriate maintenance period for contributions where the Council takes on land or assets. Different lifespan periods can be applied to different assets when considering replacement costs, with play areas being considerably shorter than open space assets.
18. Research of other authorities has shown maintenance periods ranging from 25 years down to 5 years with an even split between 25-year, 20 year and 10-year periods. The

five most recent SPD's (all adopted in 2023) are split 2:2:1 respectively between 15 years, 25 years, and 20 years. There does not appear to be a discernible geographic or age of SPD related split in the varying maintenance periods.

19. The Council is keen to find the right balance between covering the costs of providing the long-term service and when it is acceptable to assume the responsibility is no longer the domain of the developer but should fall within the general responsibilities of the Council. Therefore, whilst 50 years may cause viability concerns for developers, it is considered that 20 to 25 years does not adequately consider the increasing demands and pressures on Local Authority budgets. It is there recommended that a maintenance charge equivalent to that of 30 years would be an appropriate approach.
20. Of the Hampshire Authorities identified, 20 to 25 years seems to be average and whilst no Local Authority has moved to a 30-year period at present, it is understood that a couple are looking to move to a 30-year maintenance period from their current 20-year period. In parallel with this work, officers are currently establishing the arrangements for managing and maintaining the specific requirements of Biodiversity Net Gain. This requires maintenance to be secured for a minimum of 30 years.
21. Given the feedback through the consultation process officers consider that seeking a 50-year period for maintenance as consulted upon would be out of step with regional and national approaches and would significantly increase the risk of developers using management companies to hold and maintain assets rather than transferring land and responsibilities to the Council.
22. A 30-year period is considered appropriate, in relation to the generally accepted approach nationally, reflecting a proportionate cost recovery and balancing out the benefits of the Council managing the land. This time also links to the 30-year requirement for BNG provision.
23. The SPD for adoption therefore sets a revised basis for maintenance contributions based on 30 years. Where a maintenance contribution is appropriate it would equate to the following:

<b>Maintenance Contribution</b>	<b>Parks and Amenity Open Space</b>	<b>Outdoor Sports provision</b>	<b>Children's Play Equipment</b>	<b>Trees</b>
<i>Current SPD (2016) rate</i>	<i>£7.81 per sqm</i>	<i>£22.12 per sqm</i>	<i>£119.73 per sqm</i>	<i>£650.70 per tree</i>
<b>Proposed New rates (based on 30 year maintenance period)</b>	<b>£23.83 per sq.m</b>	<b>£35.12 per sq.m</b>	<b>£162.24 per sq.m</b>	<b>£976.05 per tree</b>

## **MANAGEMENT COMPANIES**

24. Alongside the methodology for establishing the maintenance fee, the SPD also sets out the Council's requirements where developers opt to use a management company

to maintain assets in perpetuity. The Council will require a level of guarantee, oversight and enforcement options secured through a Section 106 planning obligation, that ensures land and assets are maintained in perpetuity to the required standards. The SPD sets out the requirement for a management plan to include performance measures and standards against which a bond or commuted sum will be required, to guarantee that the necessary monies are available to ensure that assets are maintained at all times.

25. The Council will also require through the Section 106 planning obligation, the provision of enhanced step in rights. These rights will ensure that under specified circumstances (for example performance measures not being met) that the Council can take over the role of the management company on a temporary basis to enable the provision of the relevant maintenance/ services and ensure recovery of its costs from the owners in the development/of the land.

## **ANNUAL REVIEW**

26. The process of updating the costs associated with providing the streetscene service has also demonstrated how quickly costs can change in excess of simple indexation, for example with the introduction of new technologies or management techniques.
27. The SPD sets out the methodology for calculating a maintenance charge, but the charge itself will be set out in the accompanying Schedule of Costs which will be published alongside the SPD on the Council's website. This allows the SPD to remain valid and provide the basis and framework for how the Council will calculate maintenance fees without it becoming outdated. The Schedule of Costs will be reviewed annually and updated as necessary. The Schedule is attached at Appendix C of this report.

## **CONTENT OF THE DOCUMENT**

28. The SPD also sets out the information associated with other likely section 106 requirements. These cover environmental mitigation and mitigation associated with services provided by Hampshire County Council. The costs associated with these are not determined by the Council, and the SPD signposts where the guidance for those obligations can be found.
29. The format and scope of the SPD is as follows:
  - Section 1 Purpose – Sets out the purpose and scope of the SPD.
  - Section 2 What are Planning Obligations – Provides definition and explanation of the terms.
  - Section 3 Planning Policy Context - Provides references to relevant national and local policy background.
  - Section 4 Open Space Land and Infrastructure Requirements – Provides information and guidance on the requirements and standards.
  - Section 5 Secured Maintenance Delivery Options – Explains the options with regards to future management.
  - Section 6 Obligations to Mitigate Development Impact on Habitats – Provides information and guidance on the requirements for environmental mitigation.

- Section 7 Obligations to Mitigate Development Impact on other service Provision – Provides information and guidance on the requirements for services provided by Hampshire County Council.
- Section 8 Obligations Covered by other Supplementary Planning Documents – Provides information and guidance on other Fareham Supplementary Planning Documents.

## **STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA)**

30. Planning Practice Guidance states that when producing a Supplementary Planning Document an SEA may be required in exceptional circumstances if the content of the SPD is likely to have significant environmental effects that have not already been assessed during the preparation of the Local Plan. This SPD expands upon policies within the adopted Fareham Local Plan 2037 which has undergone appraisal as part of the Local Plan examination processes and has been found to have likely positive effects. The Council therefore determined that an SEA is not required. In accordance with the regulations, the Council prepared a Regulation 9(3) statement confirming this and consulted the statutory agencies. These statutory bodies responded that they agreed with the Council's opinion that an SEA of the SPD was not required. This is provided at Appendix D.

## **APPROPRIATE ASSESSMENT**

31. The Conservation of Habitats and Species Regulations 2017 sets out that, if a proposed plan or project is likely to have a significant effect on a protected habitats site (either individually or in combination with other plans or projects) then an appropriate assessment of the implications for the site, in view of the site's conservation objectives, must be undertaken (regulation 63). The Planning Obligations SPD expands upon policies within the Fareham Local Plan 2037 and those policies have already been subject to an appropriate assessment and were screened out at an early stage as being unlikely to have a significant effect on relevant designated sites (SPA, SAC and Ramsar). The SPD does not introduce new proposals of a type and/or scale outside the parameters of the Local Plan. It is therefore considered that the Self and Custom Build SPD is not likely to have a significant effect on any European sites which means that an appropriate assessment is not required. Natural England agreed with this view, and their response to the Screening Statement is at Appendix D.

## **CONCLUSION**

32. The Planning Obligations SPD supplements the Fareham Local Plan 2037 by providing information, advice, and guidance on Planning Obligations in the Borough.
33. It is recommended that the Executive adopt the Planning Obligations SPD for adoption along with the publication of the Companion Cost Schedule alongside. The Companion Cost Schedule will thereafter be reviewed and updated on an annual basis as necessary.



## **ENVIRONMENTAL CONSIDERATIONS/CARBON IMPACT ASSESSMENT**

34. The subject matter of this report is not anticipated to have an impact on the Council's carbon footprint, nor is it expected to have a detrimental or beneficial impact to the wider environment.

### **Enquiries:**

For further information on this report please contact Lee Smith, Head of Planning (Tel. 01329 824427)