

# Cabinet Report



Listening Learning Leading

Report of Interim Head of Policy and Programmes

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To: CABINET

Date: 10 November 2022

## Developer Contributions Supplementary Planning Document (SPD) - Adoption

### Recommendations

That Cabinet:

(a) Adopts the Developer Contributions Supplementary Planning Document (SPD)

(b) Delegates to the Interim Head of Policy and Programmes, in consultation with the Cabinet Member for Planning, any necessary further minor changes to the document.

### Purpose of Report

1. To consider the representations received during public consultation on the draft Developer Contributions SPD, together with the council's suggested responses and to consider adoption of the revised version of the SPD.

### Corporate Objectives

2. Securing developer contributions through Section 106 Agreements and CIL will contribute towards achieving the corporate objective of 'Homes and Infrastructure that meet local needs' as set out under Theme 5 of the South Oxfordshire Corporate Plan 2020 to 2024.

## Background

3. Funding for the infrastructure necessary to support new development across the district can be sought in a variety of ways. The council currently utilises the following main mechanisms for securing infrastructure contributions from developers:
  - Community Infrastructure Levy (CIL)
  - Section 106 planning obligations (S106)
4. Our current CIL Charging Schedule and Developer Contributions SPD came into effect on 1 April 2016. The council subsequently adopted the South Oxfordshire Local Plan 2035 in December 2020, which included new site allocations and additional infrastructure requirements. There have also been changes to the Community Infrastructure Levy Regulations<sup>1</sup>, including:
  - the removal of pooling restrictions for S106 obligations (i.e. the now cancelled requirement that no more than five S106 obligations can fund a single infrastructure project);
  - removing the need for a Regulation 123 list (i.e. a list of infrastructure projects to be funded by CIL as opposed to S106); and
  - introducing a new requirement to produce an annual Infrastructure Funding Statement.
5. Furthermore, it is evident that the current CIL rates are not generating sufficient funds to help deliver the necessary infrastructure to support planned development. In particular, funding for education is falling short and it is now proposed, in the main, to secure education through S106.
6. In light of all the above, the council considered it was necessary to conduct a review of both the CIL Charging Schedule and Developer Contributions SPD. These reviews have been carried out in accordance with the CIL Regulations 2010 (as amended) and the Town and Country Planning (Local Planning) (England) Regulations 2012 respectively. Cabinet approved draft versions of each revised document, together with associated viability evidence, for public consultation on 3 February 2022.

### Summary of the Consultation Process

7. The council conducted public consultation on the revised draft Developer Contributions SPD for five weeks from 15 February to 22 March 2022, simultaneously with consultation on a revised draft CIL Charging Schedule and associated evidence documents.
8. We made all consultation material available on our website and in hard copies at our offices in Milton Park and at 11 public libraries across South Oxfordshire. We also sent a notification email or letter to 3685 consultees on our planning consultation database, which provided background to the SPD consultation and explained where people could view the documents and the various ways in which they could provide comments. We used the council's social media platforms to advertise the consultation and circulated a poster via email for each of the town and parish councils to display, where appropriate.

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<sup>1</sup> The Community Infrastructure Levy Regulations 2010, as amended by the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019.

9. Overall, there were 26 respondents to the consultation, making a total of 90 separate comments on the draft document. Of these respondents, 5 were community groups/organisations or council departments, 2 were town or parish councils, 7 were statutory consultees, 5 represented the development industry and 7 were individuals. A full list of respondents can be found in the Consultation Statement (**Appendix 1**).

### **Main Issues Raised During Public Consultation**

10. The Consultation Statement also contains a detailed schedule of all comments received during the public consultation period, including summaries, the council's responses and any proposed amendments to the SPD in light of comments raised.
11. Below is a summary of the main issues raised by respondents, together with the council's response. **Appendix 2** is a revised version of the SPD, which includes all the proposed amendments to address the relevant comments raised, together with some additional amendments made post-consultation (see paragraph 51 of this report for further details).
12. Please note that, where the council's responses below set out changes we have made to the SPD, the paragraph references relate to the post-consultation version of the document (as set out in **Appendix 2** to this report) rather than the earlier public consultation version.

### ***Public open space/ children's play requirements***

13. We received a number of comments about DEV5 (Open Space and Play Facilities) and its supporting paragraphs. These sought greater clarity on the council's approach to securing open space and play facilities contributions as part of new development. In particular, Beechcroft Developments were seeking clarification about what the council requires in terms of contributions from developers of schemes for elderly persons accommodation.
14. Oxford Brookes University and Beechcroft Developments also considered that it was not appropriate for a Supplementary Planning Document (SPD) to include new formulae for calculating open space/ play space calculations, because SPDs are not subject to examination.

### **Council's Response:**

15. In order to provide greater clarity on how public open space and play facilities contributions will be calculated, we have made a number of amendments to DEV5 and its supporting text. In the DEV5 blue box, we have confirmed that all new residential development will provide on-site informal open space comprising 1.4ha per 1000 population and that, where commuted sums are sought towards ongoing maintenance, this will apply to play areas as well as open space. We have also confirmed in paragraph 4.35 that developers of specialist accommodation (where children do not reside) would not be expected to provide play space.
16. We have amended footnotes 4 and 5 to confirm that population is based on an average of 2.35 persons per dwelling.
17. Paragraph 4.34 now explains that open space for informal amenity and parks and gardens is in addition to the private amenity space standards set out in the council's

Joint Design Guide (and Local Plan Policy DES5 – Outdoor Amenity Space) and that the need for open space will be based on Policy CF5 of the adopted Local Plan and our Open Spaces Study standards. We have also added new text to state that natural space for biodiversity will, in general, be additional to informal amenity space and that S106 contributions for the enhancement of open space in the vicinity of development may be sought where it is not possible to provide on-site open space (e.g. a re-development scheme). However, all greenfield development will still be required to provide additional new public open space.

18. We have deleted the play space calculation formulae and instead amended the text in paragraph 4.35 to clarify that, whilst all open space, including play areas, should be available for use by the public, for institutional developments such as elderly care, this could be provided as communal private open space.
19. Taking account of the impact that recreational uses can have on biodiversity, we have added an additional sentence to the end of paragraph 4.64 to explain that sufficient space should be identified for both recreation and biodiversity in development schemes and that details need to be set out in a land use budget and drawings accompanying any application for planning permission.
20. The council's Landscape Officer has also provided some additional text on requirements for youth provision for inclusion in Appendix 3 to the SPD (Specifications for Children's Play Provision).

### ***Biodiversity Net Gain***

21. Given that the Chilterns AONB in South Oxfordshire is largely rural in nature, with areas of high biodiversity value, the Chiltern Society wished to see a biodiversity net gain requirement of 20% applied within the AONB. The Society were also seeking clarity on how Section 106 contributions would work alongside the contributions for Biodiversity Net Gain.
22. From a different perspective, Oxford Brookes University and Hallam Land Management considered that it was inappropriate to change local plan policy (i.e. introduce an 10% Biodiversity Net Gain requirement) through the SPD, as they believed that any such requirement should be dictated by national legislation.

### **Council's Response:**

23. In this SPD we cannot introduce Biodiversity Net Gain requirements that are more stringent than those set out in Policy ENV3 of the adopted South Oxfordshire Local Plan 2035, unless more recent Government legislation supersedes it. We are mindful that the Environment Act 2021 sets a national minimum figure for 10% biodiversity net gain and makes this a mandatory requirement for all development. However, this does not take effect until November 2023. We have, therefore, amended paragraphs 4.67 and DEV13 to make this clear, stating that all development must deliver a net gain in biodiversity and that, once the Environment Act 2021 has come into force, this must be at least 10% net gain.
24. As explained in the DEV13 blue box, Biodiversity Net Gain is to be achieved by way of planning conditions attached to planning permissions and, where appropriate, from S106 contributions.

***Relationship between the SPD and adopted Local Plan policies***

25. A number of respondents (including Oxford Brookes University and Beechcroft Developments) considered that the SPD was seeking to introduce more onerous developer requirements for certain types of infrastructure than those set out in the adopted South Oxfordshire Local Plan 2035. They were particularly concerned that, in line with Government's Planning Policy Guidance (PPG), policies covering planning obligations should be clearly set out in local plans and be examined in public and that whilst SPDs should build upon and provide more detailed advice or guidance on policies in an adopted local plan, they cannot introduce new planning policies into the development plan. Overall, respondents expressed concern that these additional developer requirements posed risks in terms of viability, which may not have been fully examined and scrutinised.

**Council's Response:**

26. We consider that the draft SPD is in general conformity with (and provides appropriate supplementary guidance to support) our adopted Local Plan policies. However, we do accept that, with regard to DEV11 (Public Realm, Arts and Heritage), our adopted Local Plan does not contain any specific policy requirements for public art, although paragraphs 8.7 and 8.8 of the Plan do encourage its provision, supporting Local Plan Policy DES1 (Delivering High Quality Development). We have, therefore, amended DEV11 to confirm how we will seek contributions towards enhancement of the public realm as part of new development schemes, stating that infrastructure items (e.g. street furniture, unique public art, signage, wayfinding and accessible links to wider walking and cycling networks) will be secured, where appropriate to the proposal, through the design of the development and secured by conditions.

27. Similarly, we accept that there is no specific policy covering a requirement for developers to prepare Community Employment Plans in the adopted Local Plan, so we have deleted DEV12 (Local Employment, Skills and Training). We have, however, amended paragraph 4.59 to say that, as part of new development proposals for large and strategic residential and employment sites, developers will be encouraged to demonstrate how opportunities for local employment, apprenticeships and training can be created and also encouraged to maximise the opportunities for sourcing local produce, suppliers and services, during both construction and operation. Notwithstanding these changes, the council intends to revisit the merits of Community Employment Plans, when considering appropriate new employment policies in our Joint Local Plan.

***Affordable Housing***

28. Oxford Brookes University said that DEV1 was inconsistent with Policy H9 of the Local Plan (in terms of the thresholds for provision of affordable housing and clustering), whilst Beechcroft Developments considered that, as affordable housing should be indistinguishable from market housing, they saw no reasoned justification as to why there should be a prescribed limit on cluster size or proximity within a perimeter block.

29. Hallam Land Management also requested that DEV1 be amended to allow for alternative acceptable mixes of tenure, with 40% affordable housing as a target, subject to viability, site specific and other material considerations.

30. Beechcroft Developments pointed out that DEV1 required amendment because retirement living development schemes were not required to include 'First Homes' in their tenure mix. Consequently, they sought clarification on what form of low-cost retirement home ownership the council would expect to be delivered in its place. Beechcroft considered discount market sales (DMS) or off-site contributions to be appropriate alternatives.
31. Beechcroft also said that, whilst they fully supported the council's commitment to assessing local need in determining the correct form of retirement affordable housing to be delivered on specific sites, they considered that the council's evidence base was not currently sufficient to assess that need. They, therefore, suggested that DEV1 and its supporting text required further amendment to allow flexibility over retirement housing need, tenure and delivery in circumstances where (at the planning application stage) development proposals could be supported by up to date, site specific Housing Needs Assessments.
32. They (Beechcroft) also asked the council to consider adding reference to a 'cascade mechanism' within Section 106 agreements, to provide greater flexibility for retirement living schemes, in circumstances where affordable housing units within a particular development could not be delivered in their originally intended form. In other words, a developer would seek to agree a specific tenure mix with the council at the planning application stage, based on identified local need. Then, in the event that the council's preferred Registered Provider was unwilling to take on the affordable housing element of the development scheme, provided there was sufficient evidence, the units would automatically revert to Discount Market Sales (DMS) or an off-site contribution.
33. Bioabundance CIC requested an amendment to the DEV1 blue box, to make it clear that the Strategic Sites adjacent to Oxford City (i.e. STRAT11 - Land South of Grenoble Road, STRAT12 - Land at Northfield and STRAT13 - Land North of Bayswater Brook) must provide 50% affordable housing in accordance with Policy H9 of the Local Plan 2035.

Council's Response:

34. Paragraphs 4.9 and 4.10 of the SPD are consistent with 2 (vi) of Policy H9 of the Local Plan, which states that affordable housing should be indistinguishable in appearance from market housing on site and distributed evenly across the site, with these units being clustered in groups of no more than 15 homes. Paragraph 4.9 of the SPD provides further clarification on how to interpret the above, explaining that, for strategic sites, clusters of up to 15 dwellings may be acceptable. This would be determined on a site-by-site basis.
35. Criterion 2(i) of H9 of the adopted Local Plan 2035 states that, in circumstances where it can be adequately demonstrated that the level of affordable housing being sought would be unviable, alternative tenure mixes and levels of affordable housing provision may be considered. Whilst it is not for the SPD to simply repeat Local Plan policy which already applies, we recognise that development viability can be an issue for some sites and have already addressed this in Section 7 (Negotiation and Administration of Planning Obligations) of the SPD.
36. We acknowledge that specialist accommodation (such as purpose-built accommodation for the elderly or students) is exempt from the First Homes tenure requirements, in accordance with paragraphs 64 and 65 of the NPPF. Consequently,

we have amended DEV1 to clarify that retirement housing schemes are exempt from providing First Homes and that, for such schemes, prospective developers and the council will need to agree a suitable tenure mix on a case-by-case basis.

37. We can confirm that, in the absence of any up-to-date local evidence on housing needs for the elderly, the council will seek to be flexible over tenure and delivery of elderly persons accommodation, considering proposals on a case-by-case basis.
38. Whilst noting the request for the council to adopt a cascade approach to tenure mix for retirement developments, there are Registered Providers operating in South Oxfordshire who do provide age restricted housing accommodation and it would be for the applicant to discuss the terms of the Section 106 agreement, on the basis of site specific evidence on viability and deliverability, if it was considered that the intended tenure mix required amendment.
39. We agree that DEV1 required amendment to make it clear that the strategic sites adjacent to Oxford City must provide 50% affordable housing, in accordance with Policy H9 of the Local Plan.

***Education contributions***

40. Beechcroft Developments wanted to see the SPD amended to confirm that education contributions would not be sought from retirement living development schemes.

Council's Response:

41. We agree that it would be helpful to amend the SPD to reflect this point. We have, therefore, amended paragraph 4.20 to confirm that all development which generates pupils will be assessed for providing education contributions, to be secured through S106.

***Timing of new infrastructure provision***

42. A number of respondents (including Garsington Parish Council) wished to see the SPD require all developers to make necessary improvements/upgrades to sewerage water treatment infrastructure before any housing construction commences.

Council's Response:

43. Paragraph 4.85 of the SPD explains that, to ensure timely housing delivery, developers will be expected to engage with the water authority to agree a housing and infrastructure delivery plan so that development does not outpace the delivery of off-site infrastructure and that this is usually secured by condition. Paragraph 4.85 also states that:

*'...necessary improvements to sewerage water treatment infrastructure will be programmed by the water companies and need to be completed prior to occupation of the development.'*

44. It is not, however, possible for sewerage water treatment infrastructure to be completed before any housing construction commences. The provision of such infrastructure must be phased in accordance with the respective development and agreed with the statutory water supplier.

**Concerns over possible 'double-dipping' from S106 and CIL**

45. Oxford Brookes University expressed concern over DEV3 and the possibility that there could be 'double dipping' of developer contributions, in circumstances where contributions towards strategic transport infrastructure projects could be secured both through S106 agreements and also through the CIL receipts allocated to Oxfordshire County Council for transport schemes.

Council's Response:

46. Oxfordshire County Council applies to South Oxfordshire District Council to draw down its funds on an annual basis, when advised of the CIL allocation for the year. We then assess all projects to ensure that they are eligible to be supported by CIL, which would include understanding where other funding for the schemes has come from. Changes to the CIL Regulations in 2019 removed pooling restrictions, so both S106 and CIL can now be used towards the same project. However, we (the district council) would not approve a request from the county council for CIL funds from a specific development towards any transport scheme that was already being funded by S106 contributions from that same development. Other CIL funds could, however, still be used towards a specific transport scheme partially funded by S106, if there was a funding shortfall.

**Climate change mitigation**

47. Bioabundance CIC asked whether, as part of implementing Local Plan policy on the shift to zero carbon for house building, the district council could support the phasing out of gas central heating by requiring new dwellings to incorporate low carbon air or ground-source heat pump heating and water saving features during construction.

Council's Response:

48. The SPD cannot introduce more stringent developer requirements than those already required under adopted Local Plan policy. However, we are currently in the early stages of developing our new Joint Local Plan, which will include policies that will help to address climate change and also ensure that, through planning, the council can respond effectively to the climate emergency (for example through the design and construction of new developments).

**Bonds**

49. Oxfordshire County Council helpfully explained that, in addition to the circumstances already stated, a bond will also be required for direct delivery of infrastructure (for example, a school or library).

Council's Response:

50. We have amended paragraph 7.12 to read:

*'Section 106 agreements often require the payment of deferred financial contributions, which are triggered after the implementation of the corresponding development. As these financial contributions have been identified as necessary to allow the development to proceed, it is reasonable for the council to take steps to secure their payment in the event of unforeseen circumstances resulting in the under/non-payment of the obligations and, in certain circumstances, a bond will be*



*required. In addition, a development may require the direct delivery of a facility of substantial value (such as a school or library) and, in such circumstances, a bond will be required to ensure the facility will be delivered. Consequently, the District and/or County Council may require appropriate security, in the form of a bond, to be provided by the developer and this requirement will initially be identified in the advice from the Council following the submission of a planning application.'*

### **Further Amendments to the Developer Contributions SPD**

51. We have prepared a revised version of the SPD, which includes all the proposed amendments to address the relevant comments raised during public consultation, together with some further amendments made by the council post-consultation. These further amendments are summarised below:
- i. *Planning Conditions* - Paragraph 1.16 amended to read: 'In addition to developer contributions, planning conditions attached to a planning permission may set out details **of provision** or required standards/timeframes for works which must be carried out at set stages..'
  - ii. *First Homes* – The DEV1 blue box amended to confirm that provision of First Homes is not required in specialist development schemes providing elderly persons or student accommodation.
  - iii. *Affordable Housing SPD* – Paragraph 4.12 amended to confirm that further guidance on the calculation of off-site contributions towards affordable housing will likely be prepared as a stand-alone document and progressed alongside the Joint Local Plan.
  - iv. *Sport and Recreation Facilities (including playing pitches)* – New paragraph 4.29 clarifies that:  
  
*'The area in hectares of sport and recreation, open space and play facilities should be identified in applications for planning permission (outline and full applications) and set out in a land use budget and drawings accompanying the planning application.'*
  - v. *Open Space and Play Facilities*– DEV5 and supporting paragraphs amended to reflect how 'open space' is categorised in the Open Spaces Strategy (Jan 2017), prepared by Nortoft Partnerships Ltd on behalf of the council. Glossary also expanded to include definitions of different types of open space.
  - vi. *Location of open space* – Paragraph 4.36 amended to explain that open space should not be located where users would be subject to unacceptable noise levels or in areas of drainage attenuation which are unusable as open space.
  - vii. *Outdoor sport and play design principles* – Paragraph 4.39 amended to include reference to the Councils' own recently adopted Joint Design Guide.
  - viii. *Allotments* – The DEV6 blue box amended to state that, where allotments are to be transferred to the district council, town or parish council or other management body, a commuted sum for sufficient funds for ongoing maintenance will be required.

- ix. *Public Realm, Arts and Heritage* – The DEV11 blue box and supporting text amended to confirm that, where outline planning applications require further details on design (e.g. design codes, public art proposals or detailed design of public thoroughfares and open space), the Council may seek planning obligations requiring the developer to carry out community engagement on placemaking and design.
- x. *Section 5 (Management and Maintenance of Infrastructure)* – Under the sub-heading of ‘Open Space’, paragraph 5.2 amended to explain that, in relation to commuted sums for the long term maintenance of open space, this should cover a 20 year period and appropriate fees will be set out in the council’s Fees and Charges schedule, updated annually and displayed on our website. The council also recognises that each site will have unique proposals and that, consequently, fees could vary from site to site.
- xi. *Maintenance of equipped play areas* – Paragraph 5.14 amended to read: ‘...The maintenance and management must address safety inspections, including weekly visual inspections and 3 monthly RoSPA standard inspections..’
- xii. *Appendix 2 (Approach to Negotiating Planning Obligations)* – Additional text in paragraph 1, to explain that consultation with town and parish councils during pre-application discussions on large and complex sites will be encouraged. Also, confirmation in paragraph 3 that the district council will identify the impacts expected to arise from development proposals on infrastructure, in co-operation with other bodies (including town or parish councils) as well as with Oxfordshire County Council.
- xiii. Further minor amendments following a grammar/Plain English sense check, for readability and accuracy.

**What Happens Next?**

- 52. Following public consultation on the draft SPD, Officers have prepared a Consultation Statement, which summarises the consultation process undertaken, provides a summary of the main issues raised by respondents and includes a detailed schedule of all the consultation responses received. The Consultation Statement can be found at **Appendix 1** to this Cabinet Report and will need to be uploaded onto the council’s website as a record of the consultation undertaken, in line with the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 53. The above Regulations do not require the draft SPD to be subject to independent examination (as was the case for the draft CIL Charging Schedule) and the remaining key milestones for both the SPD and CIL reviews are as shown in Table 1 below.

**Table 1 – Next Steps**

Milestone	Expected Dates
Cabinet – Adoption of the Developer Contributions SPD and consideration of the CIL Charging Schedule for adoption by Council	10 November 2022
Council - Adoption of the CIL Charging Schedule	8 December 2022

## Options

54. Not updating the Developer Contributions SPD is an option, but this would mean relying on the 2016 version and the council not having an improved, up-to-date document to assist developers and communities. It would also mean that the consultees' efforts submitting responses and the officer time involved in updating the document would have been wasted.

## Climate and ecological impact implications

55. The SPD will help to reduce the negative carbon impact of development through the provision of infrastructure and facilities that are on-site or within walking distance of new developments. CIL will be the appropriate mechanism for securing off-site and wider carbon reduction initiatives. The SPD also sets out where on-site and off-site developer contributions will be sought for biodiversity net gain, to mitigate the impacts of specific developments (see DEV13 of the SPD at **Appendix 2** to this report).

## Financial Implications

56. Once adopted and implemented, the revised Developer Contributions SPD will continue to help the council secure significant funding towards necessary infrastructure in the district.

## Legal Implications

57. The Developer Contributions SPD has been prepared and consulted upon in line with the provisions of the Town and Country Planning (Local Planning) (England) Regulations 2012. There are no wider legal implications.

## Risks

58. As due process has been followed, any risk of a legal challenge following the council's adoption and implementation of the Developer Contributions SPD is limited.

## Other implications

59. The 2016 Developer Contributions SPD will be superseded upon the adoption of the revised SPD (see Appendix 2).

## Conclusion

60. Officers recommend that the Developer Contributions SPD is adopted by Cabinet on 10 November 2022 so that it can come into force alongside the revised CIL rates within the council's CIL Charging Schedule and help us to deliver the necessary infrastructure to support development across the district, as set out in the South Oxfordshire Local Plan 2035.

## Background Papers

- Appendix 1 – Consultation Statement (September 2022)
- Appendix 2 - Revised version of the Developer Contributions SPD