

Scrutiny Committee



Report of Head of Planning

Author: Heike Wetzstein

Telephone: 07717 271 938

E-mail: heike.wetzstein@southandvale.gov.uk

Cabinet member responsible: Cllr John Cotton

Tel: 07796 951 968

E-mail: leader@southoxon.gov.uk

To: Scrutiny Committee

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Section 106 Planning Obligations Supplementary Planning Document (SPD)

Recommendation(s)

Scrutiny is requested to

- (a) consider the comments received on the consultation draft Section 106 Planning Obligations Supplementary Planning Document and consider the recommended changes.

Recommend to Cabinet

- (b) to adopt the amended Section 106 Planning Obligations Supplementary Planning Document, 1 April 2016;
- (c) and to publish the associated SPD documents (e.g. Consultation report and Statement, Sustainability Appraisal, Equality Impact Assessment).

Purpose of Report

1. To report and respond to the consultation comments received on the draft S106 Supplementary Planning Document (S106 SPD), recommend changes to the SPD and the adoption of the amended S106 SPD on 1 April 2016 to supplement the South Oxfordshire CIL Charging Schedule. The S106 SPD's key purpose is to set out the council's approach to seeking planning obligations once CIL is being collected.
2. To publish associated SPD documents such as Consultation report and Statement, Sustainability Appraisal and Equality Impact Assessment.

Corporate Objectives

3. Meeting housing need and securing sufficient financial contributions from developments to deliver essential infrastructure is an objective set out in the council's Corporate Plan (2012-2016). The S106 SPD will help to achieve this objective by setting out the council's approach to seeking planning obligations once CIL comes into effect.

Background

S106 Planning obligations

4. Planning obligations, also known as Section 106 agreements, are legal agreements made between a developer, landowners and the local planning authority. Planning obligations enable a development's impact to be mitigated and are intended to make a development acceptable when it would otherwise be unacceptable in planning terms.
5. Officers currently use the Interim Planning Guidance in connection with negotiating planning obligations. This guidance was approved by Cabinet for development management purposes on 18 September 2008, together with spreadsheets identifying costs per size of dwelling. The S106 Planning Obligations SPD will replace the Interim Planning Guidance and sets out the council's approach towards seeking planning obligations when the Community Infrastructure Levy (CIL) Charging Schedule takes effect. Planning obligations will also still continue to be used on individual sites to mitigate the direct impact of a proposed development and they will be the primary mechanism for securing affordable housing, which, together with self-build, lie outside the remit of CIL. The SPD provides a general guide and development proposals will continue to be assessed on a case-by-case basis with the individual circumstances of each site being taken into consideration.
6. The overarching justification for requiring planning obligations to secure appropriate forms of development are set out in policy CS11 of the South Oxfordshire Core Strategy and saved policies of the South Oxfordshire Local Plan 2011.

Community Infrastructure Levy

7. Community Infrastructure Levy is a levy that local authorities can choose to charge on new development in their area. The money raised can be used to fund a wide range of infrastructure. CIL is the government’s preferred mechanism for pooling contributions from numerous development sites. With effect from 6 April 2015 councils were no longer allowed to pool more than five planning obligations for an infrastructure project or type of infrastructure and this applied to obligations dating back to April 2010.
8. The CIL is intended to provide infrastructure to support the development of an area rather than making an individual planning application acceptable. As such, CIL will not fully replace Section 106 planning obligations, which will continue to be used on individual sites to mitigate the direct impact of a proposed development and will still be the primary mechanism for securing affordable housing.
9. The Examiner’s report on our CIL Charging Schedule was received on 17 December 2015 and we are progressing towards adoption with a target date of implementing the levy from 1 April 2016. .

Consultation

10. We published and consulted on a draft S106 SPD for seven weeks, between 24 September and 13 November 2015. The document sets out the policy framework and the council’s approach towards seeking planning obligations, alongside the CIL Charging Schedule. The overall approach as to which types of infrastructure will be funded by CIL or by S106 agreements is set out in Table 2 of the S106 SPD (attached as Appendix 1).
11. We received 23 representations. A breakdown of the type of responses is set out in the table below. Detailed information can be found in Consultation responses (Appendix 2). A summary of the responses and statement is set out at Appendix 3.

Group of respondent	No
Statutory consultee	4
Service provider	4
Town/parish council	6
Developer/agent	7
General public	2
Total	23

Statutory consultee response

12. We received four responses from statutory consultees. Natural England and Highways England raised no comments.

13. Historic England commented that they would like to see a reference to “heritage infrastructure” in the document, and agreed that a Strategic Environmental Assessment (SEA) of the S106 SPD is not required.

Council response - an amendment is suggested under the heading ‘public realm’ and in Table 2 of the S106 SPD. Contributions will therefore be sought towards the conservation, restoration and enhancement of the historic environment and archaeological sites and monuments where an impact is directly linked and a consequence of a proposed development that requires mitigation.

14. Oxfordshire County Council requested an amendment to the SPD to provide flexibility to optimise funding mechanisms that will deliver local infrastructure. In particular the County suggested that where land is sought for schools on a specific (major) application, S106 contributions should also be sought. The County also wish to see the reference to documents in the SPD altered or removed so that the SPD remains relevant and up to date (e.g. the Pupils Places Plan and, build costs in relation to new schools or extensions)

Council response - the Core Strategy strategic housing sites are exempt from CIL and where appropriate will secure land and contributions under S106 for education. However, CIL is the funding mechanism towards secondary education from all other development sites. The County’s suggestion would result in funding being collected from CIL and S106 for the same type of infrastructure, unless a specific piece of infrastructure is named as being S106 funded. This approach was not accounted for in the CIL viability and there is a risk that seeking CIL and S106 contributions (for education) would render development unviable. We can seek to secure land for school provision without affecting viability by negotiation under a S106 and have therefore added this aspect to Table 2 of the S106 SPD.

To avoid the S106 SPD becoming out of date In respect of the reference to documents we have amended the wording and omitted the table (which provided build costs for schools).

15. The County requested specific transport projects that have been attributed to the Core Strategy strategic housing sites of North-East Didcot and Ladygrove-East should also be attributed to site B in Wallingford. These infrastructure projects are the Science Bridge, Didcot Northern Perimeter Road Phase 3, the A4130 widening, Jubilee Way roundabout, the Culham river crossing scheme and strategic bus network.
16. Council response - site B in Wallingford is exempt from CIL, hence infrastructure requirements will be secured through a S106 agreement. Section 11 (Transport) and Table 2 of the S106 SPD have been amended to respond to this request with a caveat ‘where appropriate’.

Service provider response

17. Scottish and Southern Energy Power Distribution had no comments to make. Thames Water supported the need for developers to demonstrate that there is

adequate water supply, surface water drainage, foul drainage and sewerage treatment capacity both on and off site to service their development, as set out in the S106 SPD.

18. The Chiltern Clinical Commissioning Group queried the circumstances in which CIL or S106 would be used.

Council response - the circumstances when CIL or S106 will be used is stated in paragraph 1.10, page 7 of the S106 SPD. The council will be limited by the pooling restriction in the use of S106 and thus CIL will be the main mechanism to fund infrastructure.

19. Thames Valley Police (TVP) seek infrastructure through both CIL and S106 planning obligations (subject to pooling), recognising that there cannot be duplication. TVP request that 'policing' is added to community safety in the SPD and to include the need for on-site police facilities on some of the Core Strategy strategic housing sites.
20. Council response – Section 15 (Community safety) has been revised to include reference to 'policing'. We will only seek pooled S106 contributions as well as on site infrastructure where appropriate from the strategic housing sites. A new entry has been added to Table 2 of the SPD with regard to on and off site provision to community safety and policing associated with development at strategic sites has also been added.

Town/parish council responses

21. Five town and parish councils (Rotherfield Peppard, Thame, Henley, Swyncombe and Chalgrove) responded but made no substantive comments.

Development industry/agents

22. We have received representations from seven developers or agents acting their behalf. These are RPS on behalf of Taylor Wimpey (land south of Great Western Park), Archstone Estates Ltd, Woolf Bond Planning on behalf of Croudace and the University of Reading (North East Didcot), Blandy & Blandy Solicitors on behalf of University of Reading, Pegasus Group on behalf of Graftongate Developments and Clowes Developments, Savills on behalf of Grainer PLC and Blue Cedar Homes. Appendix 2 provides a summary of each representation and the council's response. The key matters are highlighted below.
23. The main concern is about double counting (funding by CIL and S106 for the same piece of infrastructure). In addition there is concern over some inconsistencies between Table 2 of the SPD (mechanism to secure funding for different infrastructure types), Appendix 1 of the SPD (which sets out the infrastructure requirements for the three strategic sites) and the Infrastructure Delivery Plan (Core Strategy).

Council response - Table 2 has been revised and simplified. Where inconsistencies occurred the wording has been corrected.

24. Representations submitted on behalf of the University of Reading requested the greater use of conditions rather than planning obligations to include the provision of affordable housing. They added the SPD should emphasise a better relationship between CIL, S106 planning obligations, planning conditions and S278 agreements.

Council response - the section (paragraphs 1.4 to 1.15) in the SPD setting out the relationship between various planning mechanisms has been strengthened. The council will consider the best mechanism to secure infrastructure to allow development to be properly implemented in the public interest and ensure its delivery is enforceable.

25. Concerns have been expressed over the terminology 'Health care' and 'Health and Wellbeing provision'. An inconsistency was pointed out between Table 2 and Appendix 1 in relation to Health and Wellbeing requirements.

Council response - 'Health care' refers to GP surgeries provision, whereas 'Health and Wellbeing' refers to Adult Day Care provision. The heading Health and Wellbeing has been extended to include "Adult Day Care". Oxfordshire County Council have advised that a new resource centre in Didcot and Wallingford is required to meet the needs of population growth from the allocated strategic sites. This should be delivered as an integral part of the Extra Care Housing development. Financial contributions from the strategic sites will be sought. Section 16 - Health and Wellbeing and Appendix 1 of SPD has been revised to reflect the County Council's latest response.

26. Representations suggests there is no distinction between what constitutes strategic sports and local sports to be delivered under CIL and question how this differs from the provision of sports and recreation facilities to make a development acceptable (which is based upon the provision standards set out in draft Appendix 5 SPD) or associated with development at strategic sites.

Council response - site related sports, recreation and leisure facilities in accordance with policy requirements to make the development acceptable in planning terms will be secured through S106. Off-site sports, recreation and leisure facilities will be funded through CIL. Table 2, SPD has been updated to reflect this approach. Draft Appendix 5 has been deleted as infrastructure requirements for the strategic sites have been set out in Appendix 1 of the S106 SPD and policy requirements for sports, recreation and leisure (provision standards) are imbedded within the S106 SPD under the relevant section.

27. Representations on behalf of the University of Reading and Croudace queried infrastructure requirements for the North East site, Didcot.

Council response – these matters will be considered through the planning application process.

28. The definition of terminology such as 'Green infrastructure', 'biodiversity' and 'in perpetuity' was requested.

Council response – The definitions have been added to the Glossary.

General public response

29. We received two consultation responses from the general public. One respondent had no comment and the other indicated self-build and broadband projects should be secured under planning obligations.

Council response - self-build is exempt from CIL. The council is working with the county council and service providers to provide better broadband to residents and businesses. Planning obligations can deal with broadband where appropriate.

Other matters

30. We are not pursuing the provision of a shop mobility facility due to uncertainty around the number of potential users. However to assist accessibility to town centres we have suggested improvements are made to the public realm. Therefore section 17 'Shop mobility' has been omitted from the S106 SPD and section 9 'public realm' has been expanded to include improvements to the public realm in town centres to increase accessibility. This can be funded by CIL, except site related provision which will be secured through S106.
31. Reference to documents, policies and fees have all been updated and available for viewing on the council's website.

Options

Business as usual

32. CIL Regulation 123 places a limit on the number of S106 planning obligations that can be collected to fund infrastructure. Since April 2015 no more than five S106 obligations can be pooled towards a type of infrastructure or infrastructure project. Without a CIL Charging Schedule and S106 SPD in place the council will be limited in providing/funding infrastructure as set out below under 'Risks'.

Financial Implications

33. There are no direct resource implications. Monitoring will be covered by the CIL budget.

Legal Implications

34. There are legal issues to consider in drafting and completing S106 planning obligations in relation to satisfying the necessary CIL regulations (satisfying the CIL tests and considering S106 pooling limitations). Following the adoption of CIL the length of S106 planning obligations will reduce as infrastructure will be funded in the main by CIL. However the number of obligations will remain approximately the same as affordable housing will still be secured via S106 planning obligations.

Risks

35. Since April 2015 S106 planning obligations have to be considered in light of the CIL Regulations. It is important for the council to continue with implementation of the CIL Charging Schedule to ensure infrastructure can be provided/funded in the connection with future developments. With the introduction of a charging schedule the council needs to ensure that CIL and planning obligations do not overlap and will not be open to challenge.

Other implications

36. A Strategic Environmental Assessment (SEA) screening has been undertaken to consider the environmental effects of the proposed SPD. Consultation with the three statutory bodies has been undertaken and no objections were raised. The outcome of the screening is that a SEA is not required (see Appendix 4).
37. An Equality Impact Assessment (EIA) has been undertaken to ensure the proposed SPD does not create barriers to people accessing our services (see Appendix 5).

Conclusion

38. Following consultation on the draft S106 SPD some changes have been suggested which help improve the clarity and usability of the document. The SPD will complement the CIL Charging Schedule and help ensure customers and stake holders are clear about the council's approach towards seeking S106 planning obligations once CIL is in place, when their main purpose will be to secure affordable housing and on site mitigation or infrastructure not covered in the Charging Schedule.

Background Papers

Appendix 1 - S106 Supplementary Planning Document including Appendices 1- 5
(attached)

Appendix 2 - S106 SPD Consultation responses

Appendix 3 - Consultation Report/statement

Appendix 4 - Strategic Environment Assessment

Appendix 5 - Equality Impact Assessment

(Appendices 2 – 5 available by contacting report author)