

## **Developer Contributions Supplementary Planning Document (SPD)**

### **Report by the Director for the Economy**

#### **1.0 Summary**

- 1.1 Worthing Borough Council adopted a Community Infrastructure Levy (CIL) in February that will act as a transparent means of securing money from development to fund the infrastructure required to support growth. Whilst CIL will form the principle mechanism for the collection of developer contributions when it is implemented from October 1<sup>st</sup> 2015 there will still be a role to play for other developer contributions / planning obligations.
- 1.2 To explain the approach that will be taken by the Council and the relationship between the CIL and other contributions a draft Developer Contributions Supplementary Planning Document (SPD) was published for consultation in 2014.
- 1.3 Comments received on the draft, alongside changes made to the planning system at the national level, have informed the changes that have now been made to the SPD. Officers are recommending that the revised document is now adopted to ensure a clear and robust framework for the collection of developer contributions is in place by the time the Council starts to collect CIL in the autumn. When adopted, the SPD will form a material consideration when assessing planning applications in the Borough.

#### **2.0 Background**

- 2.1 In order to create sustainable communities the Council wants to ensure that the necessary infrastructure is put in place to meet the needs of the local community. As such, developers are expected to fund or contribute directly to the necessary improvements so as to mitigate or compensate for the impact of their proposal. These measures are known as 'developer contributions'.
- 2.2 The purpose of the Developer Contributions SPD is to provide guidance to all interested parties about the types of contributions that will be sought and the basis for the charges. The document brings together the Council's approach to seeking contributions from new development to address the cumulative impacts on infrastructure and to deliver affordable housing. It will enable a developer to work out at an early stage what contributions will be required in association with their development.

- 2.3 The Council's ability to collect developer contributions will now be largely achieved through two key mechanisms: the Community Infrastructure Levy (CIL) and Planning Obligations (Section 106 Agreements / Unilateral Undertakings).
- 2.4 On implementation of CIL the regulations restrict the use of Planning Obligations (Section 106 Agreements) to ensure that individual developments are not charged twice for the same infrastructure items. Although CIL will be the dominant means for securing financial contributions from development in Worthing (excluding the South Downs National Park), Planning Obligations, (despite being 'scaled back') will continue to play a key role in relation to affordable housing and certain site specific requirements.
- 2.5 Further information on both CIL and Planning Obligations and an explanation of the relationship between them was set out within the draft Developer Contributions SPD (March 2014). The key aim of the document was to provide interested parties with clarity as to what the Council's approach to developer contributions will be when CIL is in place. It also provided much greater detail on the Council's affordable housing requirements.

#### Consultation

- 2.6 The draft Developer Contributions SPD was published for consultation alongside the draft Charging Schedule for CIL in spring 2014. Consultation was undertaken in line with the Council's adopted Statement of Community Involvement. Although a number of comments were received relating to CIL only four representations were received on the draft Developer Contributions SPD.
- 2.7 Appendix A sets out in a table a summary of the comments received and officer's responses to these. Of the four representations received one supported the document and one simply provided a summary of relevant guidance. Officers agreed with a request from West Sussex County Council to include 'Green Infrastructure' within the list of infrastructure types that may be required through a planning obligation.
- 2.8 The final representation raised a disagreement with regards to the text relating to the provision of off-site affordable housing. It is considered that the existing wording is clear in that it explains that it is agreed that an element of affordable housing could be delivered on an alternative site then this would be in addition to the contribution towards affordable housing that the alternative site would be expected to deliver in its own right. The approach will ensure that there is no net loss in the level of affordable housing delivered across all sites that meet with policy requirements.

#### Affordable Housing Threshold

- 2.9 In addition to explaining the relationship between CIL and planning obligations a key aim of the SPD is to provide greater detail and clarity with regards to affordable housing. As explained within the draft SPD it was intended that the requirement for affordable housing would be applied in accordance with Core Strategy Policy 10 which sets a stepped requirement for affordable housing either through on-site provision or by financial contribution depending on set thresholds.

- 2.10 However, since the publication of the draft SPD the Government has introduced changes at the national level that have impacted on this policy. In November 2014 the Government amended Planning Policy Guidance to introduce a threshold of 10 or less dwellings under which S106 contributions can no longer be sought. As a consequence, the Council is no longer able to seek contributions from developments of 6 to 10 dwellings as had previously been required under Core Strategy policy 10. In order to achieve consistency with the new national threshold the policy (as amended) is now incorporated within the SPD.

#### Consideration at Planning Committee

- 2.11 Worthing Planning Committee considered the revisions that had been made to the Developer Contributions SPD. Following the Principal Planning Officer's outline of the report and appendices, the Members raised a number of queries which were answered in turn and noted by the Officer. These largely clarified points and, other than the section referred to below, did not necessitate any further amendment to the document.
- 2.12 As drafted, the SPD set a figure of £150 per hour for the Council's legal costs relating to the preparation and agreement of Section 106 Agreements. Given that the SPD may be in place for a significant period of time Members felt that it was not sensible to fix the rate in this manner. Therefore, to provide the appropriate level of flexibility, the SPD has now been revised to state: 'For Section 106 Agreements, legal costs are usually charged at the hourly rate of the solicitor having conduct of this matter. An estimate of the legal costs will be provided to the applicant's solicitor at the outset.'
- 2.13 Subject to the amendment outlined above, Members resolved to forward the revised Developer Contributions SPD to the Executive Member for Regeneration for approval.

### **3.0 Proposals**

- 3.1 The revised Developer Contributions SPD is attached to this report. This incorporates the revisions outlined above that have been made to the previous version. In addition to the minor changes made in response to comments that were received on the draft document the most significant amendment relates to the affordable housing threshold which has had to be made to reflect changes to the planning system at the national level. Further minor amendments have been made to provide added clarity.
- 3.2 It is acknowledged that the time it has taken to adopt the SPD following earlier consultation is greater than would usually be the case for this type of document. This is as a result of the timetable for the Examination and adoption of CIL. To ensure that the Council's proposed approach was understood there was clear benefit in consulting on the draft SPD at the time that the Charging Schedule for CIL was published.

3.3 The implementation of CIL in October 2015 will change the way in which developers contribute to the provision of infrastructure in the Borough. The adoption of the SPD in advance of that date is important as it will help interested parties understand the different mechanisms which can be used. When adopted, the document will sit alongside the CIL Drafting Schedule and will form a material consideration when assessing relevant planning applications in the Borough.

#### **4.0 Legal**

4.1 The Planning Act 2008 provides powers for local authorities to apply a Community Infrastructure Levy (CIL) to development proposals to support infrastructure delivery in an area. This came into effect with the CIL Regulations 2010 (as amended). The Department for Communities and Local Government CIL Guidance (April 2013) is statutory guidance that the authority must have regard to.

4.2 A fundamental effect of the legislation is that when CIL is implemented Planning Obligations, secured through Section 106 Agreements or Unilateral Undertakings, cannot be used where there have been five or more Planning Obligations in relation to the same infrastructure or type of infrastructure, entered into on and since 6 April 2010. Agreements and Unilateral Undertakings pursuant to Section 106 Town and Country Planning Act 1990 may still be utilised however to secure Planning Obligations not covered by CIL, such as Affordable Housing.

4.3 Planning policy (including the Council's affordable housing policy – as amended) is prepared in accordance with the Planning and Compulsory Purchase Act 2004, the Town and Country Planning (Local Planning) (England) Regulations 2012, the Localism Act 2011, and the National Planning Policy Framework (NPPF) 2012 and Planning Practice Guidance.

#### **5.0 Financial implications**

5.1 There will be a cost for each Council in setting up CIL and associated processes. This will largely relate to staff time and the commissioning of consultancy advice to assess viability. In this regard, it should be noted that once the levy is in place the regulations permit up to 5% of the revenue arising from the levy to be used on admin expenses. Costs relating to the setting up of CIL and associated documents have been budgeted for within the Worthing Planning Policy budget.

5.2 Once CIL is adopted (alongside new guidance on Developer Contributions) it is expected that the total funding for infrastructure projects will increase as more developments contribute than those currently liable to pay under the current system.

#### **6.0 Recommendation**

**6.1 It is recommended that the Executive Member for Regeneration approves the revised Developer Contributions document and that it is adopted by the Council as Supplementary Planning Guidance.**

## **Local Government Act 1972**

### **Background Papers:**

- Appendix A – Summary of Consultation responses
- Appendix B - Revised Developer Contributions SPD (July 2015)
  
- Report to Joint Strategic Committee – 6<sup>th</sup> February 2014
- Report to Planning Committee – 22<sup>nd</sup> July 2015
- Draft Developer Contributions SPD (March 2014)
- Charging Schedule for CIL (Feb 2015)

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## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 The efficient collection and distribution of money collected through developer contributions will help to ensure that infrastructure is delivered alongside development to meet the identified needs of new and existing residents and businesses. This will help to contribute towards meeting many Council priorities.

### **2.0 Specific Action Plans**

- 2.1 Matter considered and no issues identified.

### **3.0 Sustainability Issues**

- 3.1 Developer contributions will be collected from developments that are brought forward in line with the Core Strategy and any subsequent review. The Core Strategy, which has been the subject of a formal Sustainability Appraisal, will play a fundamental role in the delivery of sustainable development.

### **4.0 Equality Issues**

- 4.1 Issues relating to race, disability, gender and equality have been considered and it is not felt that the introduction of CIL and the approach to be taken in collecting developer contributions will have an adverse impact on any social group. The infrastructure and services that developer contributions can provide could enhance liveability for all sectors of society and could help to deliver new infrastructure that serves different needs within the community.

### **5.0 Community Safety Issues (Section 17)**

- 5.1 If present facilities are not able to accommodate the additional need generated by development then developer contributions can be used to help fund and support crime prevention measures.

### **6.0 Human Rights Issues**

- 6.1 Matter considered and no issues identified.

### **7.0 Reputation**

- 7.1 The 'early' adoption of a CIL and the associated Developer Contributions SPD for Worthing, when compared to the majority of local authorities in the surrounding area, will help to enhance the Council's reputation.

### **8.0 Consultations**

- 8.1 Consultation was undertaken on the draft Developer Contributions SPD in spring 2014 in line with the Council's Statement of Community Involvement. As set out in this report, the responses received have helped to inform the amendments that have been made to the document.

## **9.0 Risk Assessment**

- 9.1 The forthcoming implementation of CIL will, in some respects, make the collection of developer contributions more complex. Clarification of the Council's approach to the collection of developer contributions (both CIL and S106 agreements) will facilitate understanding for developers, stakeholders, Members and officers.

## **10.0 Health & Safety Issues**

- 10.1 Matter considered and no issues identified.

## **11.0 Procurement Strategy**

- 11.1 Matter considered and no issues identified.

## **12.0 Partnership Working**

- 12.1 Although working to slightly different timetables every effort has been (and will be) made to ensure that, where possible, the documents produced by Worthing BC and Adur DC are aligned and that they are progressed in an efficient and expedient manner through joint working. Efficiency and financial savings have been through the appointment of the same consultants to undertake the viability assessments.