

<b>Item No.</b> 10.	<b>Classification:</b> Open	<b>Date:</b> 4 February 2014	<b>Meeting Name:</b> Planning Committee
<b>Report title:</b>		Draft Section 106 Planning Obligations and Community Infrastructure Levy Supplementary Planning Document	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Director of Planning	

## RECOMMENDATIONS

1. That planning committee comments on the Draft Section 106 Planning Obligations and Community Infrastructure Levy Supplementary Planning Document (Appendix A) which is currently available for public consultation in accordance with Regulation 12 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

## BACKGROUND INFORMATION

### Section 106 planning obligations

2. Planning obligations are used to address negative impacts of a development. They are legally binding and comprise either an agreement between a council and a developer or a unilateral undertaking made by a developer. They can be used to specify the nature of developments (for example, requiring a given portion of housing to be affordable), compensate for loss or damage created by a development (for example, loss of open space), or address a development's impact (for example, through a contribution towards public realm improvements in the local area). They can involve a financial or non-financial obligation. Southwark's current guidance on section 106 planning obligations is set out in the 2007 Section 106 planning obligations supplementary planning document (SPD).
3. The adopted SPD sets out a number of standard charges which the council uses to calculate section 106 planning obligations. These charges cover a range of types of infrastructure, including school places, open space, strategic transport improvements, sports development and play facilities. Funding which is generated is often pooled as individual obligations are often not sufficient to pay for large infrastructure items. However, the introduction of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) has changed the way that developments contribute towards the funding strategic infrastructure. They introduce an alternative mechanism for funding strategic infrastructure, which is the community infrastructure levy (CIL).
4. Once a CIL has been adopted or by April 2015 (whichever is the sooner) local authorities will not be able to pool more than five separate planning obligations to pay for one item of infrastructure. The intention of the CIL Regulations is that section 106 planning obligations should mainly be used to secure site specific infrastructure which is needed to directly mitigate the impact of development. Examples might include an access road or public realm improvements around

the site. This restriction will make it very difficult for the council to apply the standard charges in the existing s106 Planning Obligations SPD which are based on the principle of pooling funding. If the council does not introduce a CIL by April 2015 it will potentially lose a significant amount of funding that is needed to contribute to strategic infrastructure which is required to promote growth and development.

5. Affordable housing is an exception and will continue to be secured through s106 planning obligations.

### **Community infrastructure levy**

6. After April 2015, the council will only be able to fund new strategic infrastructure through the adoption of a borough-wide CIL. CIL will be charged when planning permissions are implemented and will be based on a rate per square metre that can be varied by the type, size and location of development.
7. In order to implement CIL, the council must first adopt a charging schedule which sets out the method of calculating the amount of each contribution. The process for preparing a CIL involves a number of stages. The council consulted on a draft CIL between February and April 2013. The methodology and practice of preparing a CIL are still evolving and there have been some changes in requirements since the council consulted on the draft. The council has undertaken further viability work to test the impact of CIL charges and in the light of this further work, officers are recommending some changes to the draft CIL which require a re-consultation on the draft CIL (see agenda item 9 on CIL). It is anticipated that the CIL will be submitted to the Planning Inspectorate in early 2014 and an examination-in-public will follow in summer 2014. The council expects to adopt the CIL charging schedule in autumn 2014.
8. The current Section 106 Planning Obligations SPD (2007) will be out of date when the council adopts its community infrastructure levy in 2014. The new draft SPD will supersede the adopted SPD and provide detailed guidance on the use of planning obligations alongside Southwark's CIL. The draft SPD explains the circumstances in which the council will seek to negotiate section 106 obligations. This includes circumstances where public realm or site specific transport improvements are required and where developments do not meet on-site policy requirements for amenity space provision, play facilities and carbon dioxide reductions.
9. This is the first full stage of consultation on the draft SPD. Following 6 weeks informal and 6 weeks statutory public consultation on the draft SPD, officers will review the responses received, and a report will be brought back to Cabinet in summer 2014 to formally adopt the draft SPD. Once adopted, the draft SPD will be used to help determine planning applications and will replace the existing adopted 2007 SPD. The new SPD must be consistent with Southwark's Core Strategy and in general conformity with the London Plan.

### **Sustainability appraisal**

10. Under the Town and Country Planning (Local Development) (England) Regulations 2009 (as amended), sustainability appraisals which examine the social, economic and environment impacts of policies are no longer required for SPDs. This is because SPDs do not normally introduce new policies which have not already been appraised by development plans, such as the Core Strategy or

relevant area action plans. However, government guidance advises that local planning authorities will still need to screen their SPDs to ensure that legal requirements for sustainability appraisal have been met and to ensure that an assessment is not required by the EU Directive on Strategic Environmental Assessment Directive (EU Directive 2001/42/EC).

11. A screening assessment was prepared to determine whether or not the draft SPD is likely to have a significant effect on the environment. The assessment also considers whether there are likely to be any significant economic or social effects. The screening assessment concluded that it is not necessary to carry out a Sustainability Appraisal of the SPD because it does not introduce new policies. The council is required to make a determination on whether a sustainability appraisal is required and publish its reasons. This determination will be made at the point when the SPD is adopted.

### **Consultation**

12. The Town and Country Planning (Local Planning) (England) Regulations 2012 and the council's Statement of Community Involvement (SCI) (2008) set out the consultation requirements for planning documents. The SCI encourages consultation to be informal and ongoing as well as the formal consultation required by the regulations. Consultation will take place over a period of 12 weeks between December 2013 and February 2014 and including a formal period between 14 January 2014 and 25 February 2014.

### **KEY ISSUES FOR CONSIDERATION**

#### **Scope of the SPD**

13. As CIL will be used to help fund the strategic infrastructure which is needed across the borough, its introduction places restrictions on the future use of section 106 planning obligations. As of the time when Southwark's CIL is adopted or April 2015 (whichever is the sooner) the use of section 106 planning obligations will be restricted. The standard charges which are set out in the council's adopted Section 106 planning obligations SPD will become very difficult to apply.
14. The draft Section 106 planning obligations and CIL SPD explains how section 106 will operate alongside CIL. It provides planning applicants with guidance on the most commonly negotiated site specific section 106 planning obligations and also provides a clear process for calculating these obligations. It sets out the threshold at which obligations will be sought and the mechanism for calculating charges. It also recognises that there will be occasions when a development proposal below the threshold size, or a very large scheme, create impacts which justify an exception to this process.
15. The draft SPD also explains the Mayoral Crossrail planning obligation and the Mayoral CIL (the Mayor is a CIL charging authority as well as Southwark) to make sure that applicants include these additional payments.
16. Finally the draft SPD explains how funding, including the funding of local projects, will be spent by the council.

## **Differences between the adopted SPD and the draft SPD**

17. A number of parts of the adopted 2007 SPD have been retained, expanded or enhanced and new sections have been added so as to explain site-specific development requirements and to secure on-site or local improvements arising from development. The draft SPD provides specific guidance on how the council will deal with the most commonly negotiated site specific section 106 planning obligations, which include standard charges and detailed guidance addressing the following areas:

- Affordable housing
- Archaeology
- Carbon dioxide offset – green fund
- Children’s play space
- Employment and enterprise – jobs during construction and final development
- Outdoor amenity space
- Public realm
- Student Housing – university schemes
- Transport: Site specific measures
- Wheelchair accessible housing.

### **Affordable housing**

18. There is a need for more affordable housing in the borough, especially for families. Affordable housing lies outside of CIL and will continue to be secured through a section 106 planning obligation in line with Policy 5 of the Core Strategy (2011) and the adopted and draft Affordable Housing SPDs (2008 and 2011 respectively).

### **Archaeology**

19. Given its historical setting, Southwark has very important archaeology. Planning obligations will continue to be asked for to support the council’s monitoring and supervisory role in archaeological matters to ensure that archaeology is properly managed and preserved. A contribution will continue to be secured from developments within the archaeological priority zones in the borough, on the basis of the likely officer time required to carry out a desk-based assessment, archaeological evaluation, and archaeological excavation.

### **Carbon dioxide offset – Green Fund**

20. Southwark’s Sustainable Design and Construction SPD (2009) states that where planning policy energy targets cannot be met, any short-fall should be provided off-site or through a cash in lieu contribution to the borough. This is consistent with the Mayor’s draft Sustainable Design and Construction SPG (2013) which states that boroughs should establish a carbon dioxide reduction fund and set a price at which the carbon dioxide short-fall will be calculated.

21. Section 106 planning obligations would be asked for where developments do not meet the on-site carbon dioxide reduction targets set out in the development plan (a 40% improvement over the Building Regulations). Any shortfall against the target would be charged at £46 per tonne, which is in line with the national

charge identified by the Zero Carbon Hub. Any payments collected would then contribute to a green fund containing a list of projects for energy improvement schemes in council owned buildings, such as schools, libraries, housing etc. and which would not otherwise be funded.

### **Children's play space**

22. New developments are expected to provide play space for children in line with the Core Strategy Policy 7 and the London Plan, with further detail set out in Southwark's Residential Design Standards SPD (2011) and the Mayor's Supplementary Planning Guidance on Shaping Neighbourhoods Play and Informal Recreation (2012). In exceptional circumstances where this cannot be secured on site, the council will seek a section 106 planning contribution to improve play space elsewhere in the vicinity of the development.

### **Employment – jobs during construction and final development**

23. Maximising employment and employability amongst Southwark's population is another key priority for planning obligations and also the council's economic wellbeing strategy (2010-2020). The council will continue to seek to secure a planning obligation for the placement of unemployed jobseekers from the local area into jobs within the construction phase of a development and the final development, either through an existing on-site work programme, or through setting up a new programme to target the employment sector of the final development.
24. The current SPD standard charges for employment during construction and general end phase employment have been reviewed and updated as appropriate.
25. It will also be important to secure planning obligations where appropriate to maintain and enhance the supply of appropriate employment space, and also support new inward investment opportunities and growth in the existing business base. To that end, the council will require a planning obligation from developers to contribute towards skills and employment programmes where employment floorspace in protected employment locations set out in the Core Strategy is lost. A local supply side procurement obligation in addition to the intention to secure the provision of affordable business space where appropriate have also been included in the draft SPD.

### **Outdoor amenity space**

26. All new residential development must provide an adequate amount of useable outdoor amenity space. Southwark's Residential Design Standards SPD (2011) sets out the minimum standards which must be met in new developments.
27. In exceptional circumstances where the required provision of amenity space for a development cannot be provided on site, the council will seek a section 106 planning contribution to improve open space elsewhere in the vicinity of the development site. Any shortfall in the required provision of amenity space will be subject to a charge per square metre.
28. In general, funding for the provision, enhancement and maintenance of open spaces required as a result of incremental population growth, will be provided as part of CIL contributions and other capital funding.

## **Public realm**

29. High quality public realm is an important aspect of any development and ensures that a building or site is integrated into the existing built fabric and street scene. The council will continue to expect developments to mitigate the impact on the public realm in the vicinity of the development. Contributions will either be secured through a commitment by the applicant to carry out a schedule of works under a section 278 agreement, or a contribution to works to be carried out by contractors employed by the council.
30. The draft SPD also recognises that the council may use CIL to fund or part fund strategic projects to improve the streetscene and built environment, such as the improvements to the public realm at the Elephant and Castle northern roundabout or the Camberwell Green town centre improvements.

## **Student housing – university schemes**

31. There are two distinct types of student accommodation available in Southwark. This has been identified in the BNP Paribas Real Estate's Student Housing Study: Implementation (March 2011) and has also been confirmed in the representations to the consultation on Southwark CIL by the major student accommodation providers in the borough. One type of accommodation is direct let student housing which charges unrestricted rents. The other, usually tied to a university, is nomination schemes which charge restricted rents at lower than market levels.
32. Given there is a viability consequence of offering restricted rents, it is proposed that Southwark's CIL is not applied to restricted rents university student accommodation. A corresponding planning obligation will be sought to ensure that the reduced rental level is provided. This obligation will be optional for a university. In the event that the option is not taken, the development would become liable to pay CIL.

## **Transport measures – site specific**

33. The current standard charge for strategic transport infrastructure has been removed from the draft SPD as CIL funds and other mainstream funding programmes will be used to address the cumulative impacts of development on the transport network. However, individual developments may cause a site-specific impact which should be directly addressed through measures provided in the development itself, or where that cannot be achieved the council will use section 278 agreements under the Highway Act 1980 or section 106 planning obligations. Such measures can include new pedestrian crossings, cycleways, and car club parking spaces. The draft SPD also recognises that larger developments may need to directly contribute to wider transport improvements where required to enable the delivery of the site.

## **Wheelchair accessible housing**

34. Planning policy requires all new major residential developments to provide at least 10% of the number of habitable rooms to be wheelchair accessible. However, there are some locations where site constraints make it difficult or impossible to provide disabled car parking spaces. In exceptional circumstances where development proposals demonstrate that it is not viable or feasible to

meet the wheelchair accessible unit policy requirement and requisite on-site disabled car parking spaces, a commuted sum can be secured through a section 106 planning obligation to mitigate the impact of the development.

35. In these circumstances the council would seek £30,000 per wheelchair accessible unit not being provided. This level of contribution is based on the expected cost for Southwark to make adaptations to existing properties to meet the needs of disabled occupiers.

### **Implementation of CIL**

36. The final section of the draft SPD explains what CIL funds can be spent on which is much wider than the current section 106 standard charging approach. This includes the provision, improvement, replacement, operation or maintenance of infrastructure to support the growth identified throughout the borough, which will be set out in a CIL spending protocol.
37. The Localism Act requires local authorities to spend a meaningful proportion of CIL locally. The government recently confirmed that this proportion should be either 25% of CIL funds where a neighbourhood plan is in place and 15% elsewhere. Where there is no parish council in place, such funds should be spent in consultation with the local community. Southwark anticipates that local CIL funds will be spent on projects identified in the Community Infrastructure Project List (CIPL). The CIPL will take over from the section 106 project banks and will contain projects agreed by community councils or through a neighbourhood plan. The CIPLs will be updated at regular intervals.
38. The draft SPD signals that Southwark will spend at least 25% of CIL funds locally, irrespective of whether a neighbourhood plan is in place. The council will use the following sequence of areas to identify relevant projects, depending on the location of the development site:
  - Areas with an adopted neighbourhood plan
  - Opportunity areas
  - Action areas
  - SPD areas (other than individual sites/buildings)
  - Community council areas (for those areas which are not covered by any of the above).

### **Community impact statement**

#### **Equalities analysis**

39. Before adopting the SPD, the council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not. A draft equalities analysis has been carried out to assess the impact of the draft SPD on the nine protected characteristics set out in the Equality Act 2010. It is recognised that the SPD guidance may have many similar impacts on these different groups of people who have protected characteristics, and that the overall impact of the SPD will be positive on all residents and people who work in and visit the borough. For example, a key aspect of the guidance is the creation of an enhanced public realm that is safe, well-lit and inclusive, in accordance with the

parent local plan policies. This would improve accessibility for those with a physical disability and also promote wider community inclusion. We also carried out equalities analysis for all of the current adopted and draft documents in the planning policy framework. The findings of these analyses have helped to inform the guidance that we have prepared in the draft SPD.

### **Sustainability appraisal**

40. Section 19 of the Planning and Compulsory Purchase Act 2004 originally required a local planning authority to carry out a sustainability appraisal of new development documents covering social, economic and environmental issues. This appraisal would also extend to meet the requirements of EU Directive 2001/42/EC in relation to the environmental assessment of the effect of certain plans and programmes.
41. The Planning Act 2008 removed the automatic requirement for an SPD to have a sustainability assessment. This is because such documents do not normally introduce new policies or proposals or modify a planning document which has already been subjected to a sustainability assessment at a higher level.
42. The government does however advise local planning authorities to screen documents to ensure the requirements of an SA have been considered in a higher level policy document. The requirements of the environmental assessment of plans and programmes, which incorporates the requirements of the Directive, still need to be considered.
43. A screening assessment has been prepared to determine whether or not the draft SPD is likely to have an impact on sustainability or a significant effect on the environment. The assessment concluded that it is not necessary to carry out a sustainability appraisal or an environment assessment in this case because the SPD does not introduce new policies, determine the use of land or constitute a minor modification to a plan. It simply provides guidance on policies contained in the London Plan, Core Strategy, Canada Water AAP, Aylesbury AAP and draft Peckham and Nunhead AAP and supplements the guidance contained in supplementary planning documents that relate to sustainable development, infrastructure and affordable housing.
44. The policies referred to in the draft SPD have been sufficiently appraised in parent documents. The council considers that the draft SPD will not result in any additional significant effects to those already identified at a higher level. It will provide more detailed guidance to developers to ensure that the potential positive effects identified in the sustainability appraisals of the parent plans are realised.
45. In accordance with Regulation 9 (2) (b) the council consulted on the screening assessment with the "consultation bodies" (English Heritage, Natural England and the Environment Agency). A copy was also made available on the council's website. The consultation bodies agreed that a sustainability assessment and environmental assessment were not required. This will be confirmed and a Statement of Reasons published at the point when the council adopts the SPD.

## BACKGROUND DOCUMENTS

Background paper	Held at	Contact
Southwark Statement of Community Involvement 2008 <a href="http://www.southwark.gov.uk/info/856/planning_policy/1238/statement_of_community_involvement_sci">http://www.southwark.gov.uk/info/856/planning_policy/1238/statement_of_community_involvement_sci</a>	Southwark Council, 160 Tooley Street, London SE1 2QH	Sandra Warren 0207 525 5471
Saved Southwark Plan 2007 <a href="http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan">http://www.southwark.gov.uk/info/856/planning_policy/1241/the_southwark_plan</a>	Southwark Council, 160 Tooley Street, London SE1 2QH	Sandra Warren 0207 525 5471
The Core Strategy 2011 <a href="http://www.southwark.gov.uk/info/2002/10/core_strategy">http://www.southwark.gov.uk/info/2002/10/core_strategy</a>	Southwark Council, 160 Tooley Street, London SE1 2QH	Sandra Warren 0207 525 5471
The consultation plan <a href="https://www.southwark.gov.uk/downloads/download/3669/draft_section_106_planning_obligationscommunity_infrastructure_levy_spd">https://www.southwark.gov.uk/downloads/download/3669/draft_section_106_planning_obligationscommunity_infrastructure_levy_spd</a>	Southwark Council, 160 Tooley Street, London SE1 2QH	Sandra Warren 0207 525 5471
Draft equalities analysis <a href="https://www.southwark.gov.uk/downloads/download/3669/draft_section_106_planning_obligationscommunity_infrastructure_levy_spd">https://www.southwark.gov.uk/downloads/download/3669/draft_section_106_planning_obligationscommunity_infrastructure_levy_spd</a>	Southwark Council, 160 Tooley Street, London SE1 2QH	Sandra Warren 0207 525 5471
Strategic Environmental Assessment Screening Report <a href="https://www.southwark.gov.uk/downloads/download/3669/draft_section_106_planning_obligationscommunity_infrastructure_levy_spd">https://www.southwark.gov.uk/downloads/download/3669/draft_section_106_planning_obligationscommunity_infrastructure_levy_spd</a>	Southwark Council, 160 Tooley Street, London SE1 2QH	Sandra Warren 0207 525 5471

## APPENDICES

No.	Title
Appendix 1	Draft Section 106 Planning Obligations and Community Infrastructure Levy SPD (circulated separately, available online at: <a href="http://www.southwark.gov.uk/info/200151/supplementary_planning_documents_and_guidance/3243/section_106_planning_obligationscil_spd">http://www.southwark.gov.uk/info/200151/supplementary_planning_documents_and_guidance/3243/section_106_planning_obligationscil_spd</a> )

## AUDIT TRAIL

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