

Council – 18 December 2008

PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

Report of Head of Community Regeneration

Statutory Powers: Town and Country Planning Act 1990,
Planning and Compulsory Purchase Act 2004
Circular 05/2005 Planning Obligations.

Financial Implications: The Planning Obligations Supplementary Planning Document (SPD) presents an opportunity to raise funds to help meet requirements for community infrastructure and service provision associated with new developments. There are also resource implications for the Council from preparing and monitoring the legal agreements and the SPD should enable these costs to be met.

Purpose of report: To set out for Members recommended changes to the SPD and seek agreement for its adoption.

Link to Council Priorities: The Planning Obligations SPD links to all Council Priorities and Commitments.

RECOMMENDATION:

That Council RESOLVES that:

- a) the amended Planning Obligations Supplementary Planning Document be adopted, and**
- b) minor word changes are delegated to the Head of Community Regeneration prior to formal publication.**

Introduction

1. The Planning Obligations SPD is an important document in the South Hams Local Development Framework (LDF) portfolio. It is urgently required to ensure that the Council has an approved policy framework through which to process, seek and secure planning obligations.
2. Government guidance set out in PPS12 states that SPDs should provide additional information to support development plan policies and proposals. This SPD is in accordance with national policy and guidance, builds on the adopted South Hams LDF Core Strategy and will support other LDF documents. It was published in draft form in August 2008 and was subject to consultation in accordance with the requirements of the adopted Statement of Community Involvement, but is not required to undergo Examination. Once adopted the SPD should be given 'substantial weight' as a material consideration in planning decisions.

Background

3. The SPD provides a framework for planning obligations to ensure that it is developers and not the local community that are responsible for taking the measures required to mitigate the impact of new development. Planning obligations are often referred to as Section 106 agreements. They are dealt with as part of the development control process and form part of the planning permission.
4. Circular 05/2005 defines planning obligations as legally binding agreements which can require the developer to:
 - carry out certain works; and/ or
 - provide, or contribute towards, the provision of facilities and services; and/or
 - take measures to mitigate against any negative impact of the development; and/or
 - make a financial contribution to enable the LPA to address any of the above.
5. The objective of the SPD is to make clear to developers, public bodies, local residents and other stakeholders the basis upon which planning obligations will be sought. It also stipulates that developers will have to pay not only the Council's costs of preparing the legal agreement but also a management fee.
6. On 26 June 2008, Council resolved to publish the Draft Version of the PO SPD for consultation (Min.29/08). To reduce costs and the Council's carbon footprint, the SPD has not been reproduced as an appendix to this report, but is available on the website or from the forward planning office. A total of 20 responses were received during the six week consultation period. A full summary of these responses is available from the forward planning office and will be published on the Council's website. The two most significant concerns raised through the consultation were:

a) **The management fee**

Objection was raised in respect of the management fee of 5% of the total value of the financial contributions (capped at £60,000) or £100 for non-financial matters. However, the local authority is entitled to charge a reasonable fee and this level is considered appropriate in order to cover the administration costs involved in securing planning obligations. Other local authorities charge similar amounts.

b) **The order of priority given to individual site requirements**

Objections were raised by public and private bodies, including parish councils, to the order of priority given to community infrastructure provisions such as affordable housing, open space, sport and recreation. These objections have been carefully considered and it is recommended that the SPD be amended to ensure that the provisions for each site are prioritised with regard to relevant local needs and circumstances. The

recommended changes to the SPD in respect of this matter are attached as **Appendix 1**.

Strategic Risk Assessment

7. The following are the significant risks and opportunities identified:

Opportunity	Issues / Obstacles	Benefits
Progression of the Planning Obligations SPD, in line with the programme set out in the LDS, to add clarity for all users.	Failure to maintain progress on the Planning Obligations SPD document would have significant consequences in that the Council needs an up to date, robust and effective mechanism to help deliver planning policies.	To provide a robust basis for securing developer contributions towards necessary infrastructure and community facilities to support new development and when appropriate mitigate any adverse impacts.

Conclusion

8. The Planning Obligations SPD will guide the process of agreeing planning obligations. It will help ensure that the impacts and costs of development, including legal and management fees, are appropriately met. It is therefore recommended that the SPD be revised to incorporate the changes shown in **Appendix 1**, resulting from comments received during the public consultation, and adopted for use as part of the planning process.

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Council
18 December 2008

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Background Documents:

Approved Local Development Scheme (April 2007)
Circular 05/2005 – Planning Obligations
Affordable Housing – Submission Stage (January 2008)
Development Policies – Preferred Options (July 2007)
Adopted Core Strategy (December 2006)
Devon Structure Plan to 2016 (October 2004)
Draft Regional Spatial Strategy (June 2006)
South Hams Local Plan (1996)
South Hams Local Plan Review (January 2002)
The Town and Country Planning (Local Development) (England) Regulations 2004
Planning Policy Statement 1: Delivering Sustainable Development (2005)
Planning Policy Statement 12: Local Development Frameworks (2004)
Draft Version SPD Planning Obligations (August 2008)

Appendix 1: Planning Obligations SPD

Paragraphs relating to Policy Requirements and Prioritisation

As recommended to be amended for adoption

- 6.6 A development may need to meet a range of provisions in order to conform to policy and make it acceptable in planning terms. The full range of policy requirements should be addressed, although viability considerations may sometimes make it difficult to meet all of these.
- 6.7 Certain essential infrastructure may be necessary in order for development to proceed. This may include elements such as highways and drainage. Elements of community infrastructure may also be required and will be highlighted in pre-application discussions on a site.
- 6.8 The relative priority to be accorded to competing community infrastructure and service requirements associated with development will be assessed with regard to:
- their bearing on the Council's corporate priorities,
 - their standing in relation to the Sustainable Community Strategy,
 - the needs of the locality, and
 - the characteristics of the site and its setting.

In view of the very high levels of need in South Hams it is anticipated that affordable housing will normally be the first priority element of local community infrastructure. Unless it can be demonstrated that local circumstances require otherwise, the Council will normally allocate second priority to the provision of open space, sport and recreation, education and accessibility.

- 6.9 The Council will aim to secure measures to directly address the purpose for which the planning obligation is deemed to be needed. However, where this cannot be achieved a financial contribution will be sought.

As published in draft form (August 2008)

- 6.6 A development may need to make certain provisions in order to conform to policy. These may include affordable housing and open space, sport and recreation provision. It is the aspiration of the Council that the full range of policy requirements should be considered and addressed, although it is recognised that on occasions the viability of the proposal may be undermined by the full set of requirements in the planning obligation. Such instances are expected to be a rare occurrence.
- 6.7 However where it can be demonstrated that the planning obligation being sought would make the development unviable the Council will normally seek to address areas of provision in the following order of priority:
- Affordable Housing
 - Open Space, Sport and Recreation
 - Other requirements
- 6.8 The relative priority to be accorded to competing community infrastructure and service requirements associated with development will be assessed with regard to their bearing on the Council's corporate priorities and available evidence of need.
- 6.9 The Council will aim to secure measures to directly address the purpose for which the planning obligation is deemed to be needed. However, where this cannot be achieved a financial contribution will be sought.