

Council – 26 June 2008

DRAFT PLANNING OBLIGATIONS SPD

Report of the Head of Community Regeneration

Statutory Powers: Town and Country Planning Act 1990, Planning and Compulsory Purchase Act 2004 and 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: To set out for Members the content of the draft Planning Obligations SPD and seek agreement for its publication.

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

RECOMMENDATION:

That Members RESOLVE that the draft Planning Obligations SPD be published for consultation purposes.

Introduction

1. The Planning Obligations SPD is an important document in the South Hams Local Development Framework (LDF) portfolio. SPDs were introduced by the Planning and Compulsory Purchase Act 2004 to replace Supplementary Planning Guidance and form part of the LDF.
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 Core Strategy and will support other LDF documents. It will be subject to consultation in accordance with the requirements of the adopted Statement of Community Involvement. Once adopted the SPD should be given 'substantial weight' as a material consideration in planning decisions.
3. This SPD is urgently required to ensure that the Council has an approved policy framework through which to process, seek and secure planning obligations. It deals with the process of securing planning obligations and will effectively act as an umbrella document to other SPDs.

Background

4. The LDF Local Development Scheme indicates that the Council will prepare a Supplementary Planning Document on planning obligations.
5. Planning obligations provide a legal framework 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 (in reference to the section of the Planning Act that enabled them). They are dealt with as part of the development control process and form part of the planning permission.

6. A planning obligation is a legally binding agreement entered into between a developer and the Local Planning Authority (LPA). It requires 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.
7. Circular 05/2005 emphasises that the principal objective of the planning system is to act in the public interest to deliver the Government's objectives for sustainable development.
8. The circular also states that planning obligations will not be appropriate for all development and should only be sought where they meet all the following tests:
 - relevant to planning;
 - necessary to make the proposed development acceptable in planning terms;
 - directly related to the proposed development;
 - fairly and reasonably related in scale and kind to the proposed development; and
 - reasonable in all other respects.
9. The objective of the SPD is to provide clarity to developers, the local authority, local residents and other stakeholders regarding the basis on which planning obligations will be sought.
10. Planning obligations are legally binding agreements and the obligations created run with the land in perpetuity so they may be enforced against both the original covenantor and anyone acquiring an interest in the land unless the agreement specifies otherwise. The obligation is registered as a Local Land Charge and is enforceable by the LPA.
11. A clear, definite and upfront approach should help developers and the Council to bring sites forward from the Local Development Framework and inform discussions about windfall sites. It sets out the circumstances in which planning obligations may be sought and how competing requirements will be prioritised to ensure schemes remain deliverable. It also sets out the mechanisms that will be used and how contributions will be managed, including standardised legal agreements.
12. The draft SPD was considered by the Community Policy Development Group on 22nd May 2008, where matters raised included:

- a. Alignment with neighbouring LPAs' SPD. Only Plymouth has any similar document at present, and alignment has been attained, for example, in the management fee recommended.
- b. Clarification as to whether planning obligations are always in the form of a financial contribution. The SPD makes it clear that on site provision is generally preferred.
- c. Clarification as to how a planning obligation can help to enable a development which might otherwise have been refused. The SPD addresses this.
- d. Greater clarity concerning pre-application discussions and the validation process. The SPD has been amplified in this respect.

Strategic Risk Assessment

13. 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 and when appropriate mitigating any impact of new development.

Conclusion

14. The Planning Obligations SPD is a key document in the South Hams LDF portfolio. It is urgently required to ensure that there is an approved Council process and procedure in place to follow when securing planning obligations. This will help ensure that the impacts and costs of development, including legal and management fees, are appropriately met.

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Council
 26 June 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)