

# REPORT TO CABINET

**REPORT OF:** Portfolio Holder for Portfolio: Grow the Economy and Economic Development

**REPORT NO:** PLA 931

**DATE:** 11<sup>th</sup> June 2012

<b>TITLE:</b>	<b>Planning Obligations SPD: Adoption as a Supplementary Planning Document</b>	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	Key Decision	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Cllr Frances Cartwright Grow the Economy and Economic Development Portfolio	
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<b>INITIAL IMPACT ASSESSMENT:</b>	Carried out and Referred to in paragraph (7) below	Full impact assessment Required:
<b>Equality and Diversity</b>	No	
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Your Council and Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	Cabinet Report PLA914 dated 7 <sup>th</sup> November 2011	

## 1. RECOMMENDATION

### 1.1 That:

- a) Cabinet notes the comments received in response to the public consultation on the Draft Planning Obligations SPD
- b) the proposed changes to the Draft Planning Obligations SPD set out in Appendix 1 to the report are approved
- c) the Planning Obligations SPD, as amended in accordance with recommendation b) above, is adopted as a Supplementary Planning Document

**d) the Planning Obligations SPD take effect following the end of the call in period and it be applied to all qualifying planning applications registered as valid after this date**

## **2. PURPOSE OF THE REPORT/DECISION REQUIRED**

- 2.1 To enable the Cabinet to consider the issues raised in the representations made during the public consultation on the draft Planning Obligations SPD, to consider proposed changes and for the document to be adopted as a Supplementary Planning Document (SPD).
- 2.2 The adoption of the Planning Obligations SPD would support the Grow the Economy, Keep South Kesteven clean, green and healthy, Promote leisure, Arts and Culture and Support Good Housing for All priority themes.

## **3. DETAILS OF REPORT**

- 3.1 The Draft Planning Obligations SPD was approved for the purposes of public consultation by the Cabinet on the 7<sup>th</sup> November 2011 (Report PLA 914).
- 3.2 The Planning Obligations SPD is intended to help ensure development proposals make a positive contribution to sustainable development by providing social, economic and environmental mitigation which considers the community as a whole. In addition to this it will help to increase understanding of Planning Obligations and enable applicants to take the potential costs of a proposed development into account at the earliest opportunity.
- 3.3 The SPD aims to:
- Give an indication of the requirements that are likely to be needed to make development acceptable which would be otherwise unacceptable in planning terms
  - Set out guidance on standard formulae for calculating contributions wherever appropriate
  - Set out a framework for securing planning obligations and encourage early negotiation
  - Ensure that unnecessary burden is not added to development and ensure that contributions will only be sought where there is insufficient existing spare capacity to cope with the demand arising from new development
  - Establish the Council's process for determining development viability in relation to planning obligation requirements
  - Comply with the National Planning Policy Framework
- 3.4 Public consultation on the draft Planning Obligations SPD took place between Friday 2<sup>nd</sup> December 2011 and Friday 27<sup>th</sup> January 2012. Widespread consultation was carried out with developers and landowners active in the local

area, Lincolnshire County Council, relevant local service providers, Town Councils and relevant national, regional and local organisations. The SPD, Statement of Consultation and other relevant consultation material were also made available at the District Council offices and the library in Grantham, as well as the Area Offices and Libraries in Stamford, Bourne and The Deepings. In addition to this they were also available on the Councils website and publication was advertised by way of a statutory notice published in the Grantham Journal, Stamford Mercury and Bourne Local and issuing of a press release.

- 3.5 At the end of the consultation period, a total of 25 representations were received from individuals, landowners, businesses and organisations. Some of the responses were general comments whilst others were more specific in respect of a particular aspect of the SPD. The appendix attached to this report summarises the representations received together with a response, and where appropriate, recommended changes to the SPD. The relevant service providers have been notified of the proposed changes.
- 3.6 In addition there will also be a need to update the text of the SPD to reflect changes since it was prepared i.e. publication of the National Planning Policy Framework. These minor changes are also set out in the report appendix.
- 3.7 The main issues raised, the more contentious areas of the SPD and how it is proposed to respond to these are set out below.

### **3.8 SECTION ONE**

- 3.8.1 In March 2012 the Coalition Government published the National Planning Policy Framework (NPPF). This replaces the previous Planning Policy Statements (PPS) and Planning Policy Guidance Notes (PPG) as well as replacing Circular 2005/05 which governed Planning Obligations.
- 3.8.2 The Policy Framework section of the SPD therefore required updating to reflect this change in national policy with all references to PPSs and PPGs removed and replaced with the relevant references to the NPPF. There are no major changes proposed to the content of the SPD as a result of the NPPF other than ensuring that national policy references are in line with this.
- 3.8.3 Lincolnshire Police Force submitted a representation requesting that a section be added to the SPD to secure contributions from development towards Policing. On consideration it was felt that this was not an appropriate contribution to levy upon development given that this would be covered through the Police's precept levied upon Council Tax and these funds should be used towards providing additional policing to cover new development.

- 3.8.4 The text of the SPD has been amended to provide clarification on the circumstances in which developer contributions will be sought and spent, both in Section 1 and throughout the document where relevant.
- 3.8.5 The proposal to require Heads of Terms for a Section 106 Agreement to have been agreed prior to submission of a planning application was challenged as being an unreasonable requirement. However it was felt that undertaking pre-application advice and consultation with the Council would ensure that this was not a major issue and would also help to speed up the planning process by removing protracted negotiations over Section 106 Agreements during the determination period following submission of a planning application.
- 3.8.6 There was concern raised about the principle of refusing an application when the Section 106 Agreement has not been signed six weeks post committee date. It was felt that the principle was entirely reasonable, however, clarification has been given that where the delay is out of the applicants control e.g. the delay is caused by a third party (such as the PCT), or the delay is caused by no fault of the applicant, then the application would not be refused in such circumstances.
- 3.8.7 A number of representations received highlighted that requiring payment of planning obligations upon commencement of development could adversely impact upon cash flow and therefore the viability of development. It was felt that this was a reasonable argument and it is proposed that the SPD be amended to require contributions to be paid upon first occupation, or at the point at which the impacts of the development occur, whichever is the sooner. An example of this would be the trigger point for payment of an education contribution based on practical completion of a number of dwellings. The SPD would, however, still allow for situations where payments may be required at other times.
- 3.8.8 There was also some concern over the SPD stating that repayment clauses would only be inserted into Section 106 Agreements at the applicants express request. On reflection this was an unreasonable position to take and therefore, in line with the Regulations, it is proposed that the SPD clearly states that the Council will repay to the applicant any unspent funds at the end of the time period for expenditure at the applicants written request and that such repayment clauses will be inserted into Section 106 Agreements as standard.
- 3.8.9 The SPD proposed that index linking should be charged from the date at which Heads of Terms are agreed. However, representations received felt that this was unreasonable as there could be an unreasonably long delay between agreement of Heads of Terms and consent being granted. On reflection it was considered that it would be more appropriate for the SPD to state that index linking would apply from the date at which planning consent is granted.
- 3.8.10 The proposal to change the current position of securing a sum equivalent to the cost of a 25 year maintenance period levied on facilities, which the Council would

take ownership of, to 30 years was challenged as being unreasonable as facilities normally become self financing within such a time period. This was felt to be a reasonable argument and therefore it is proposed that the SPD reverts back to the standard 25 year maintenance period sum that the Council currently utilises.

- 3.8.11 There was some concern expressed that as currently worded the requirement for the applicant to cover the Council's legal fees allowed for this to be without limitation. This concern was accepted and it is proposed that the SPD be amended to clarify that the Council's "reasonable" legal fees be paid by the applicant.
- 3.8.12 In respect of several types of contribution, it is proposed to amend the repayment period to 5 years rather than 10 years in response to a number of representations made.

## **3.9 SECTION TWO**

### **3.9.1 AFFORDABLE HOUSING**

- 3.9.2 It was highlighted that the SPD did not make it clear that stand alone affordable housing schemes would be exempt from other Section 106 contributions, therefore, it is proposed that an additional paragraph be added to clarify that this is the case.
- 3.9.3 The policy of grouping no more than five affordable dwellings together was challenged as being unreasonable and potentially problematic from a management point of view. It is considered that this is a reasonable position to take, and the wording in the SPD provides sufficient flexibility where it states that "affordable homes are to be grouped in clusters of no more than 5 properties unless otherwise agreed with the Council". Additional wording is proposed to enable the Council to encourage the location of certain types of affordable housing in certain locations e.g. affordable homes for the elderly close to local services and public transport.
- 3.9.4 There were concerns raised about the default position of requiring the completion and transfer of all affordable housing prior to the completion of 50% of the open market value properties being too prescriptive and adversely impacting upon cash flow. However, it is considered that the SPD provides sufficient flexibility as it states that this is the requirement "unless otherwise agreed with the Council".
- 3.9.5 The requirement for an increased number of units to be provided when affordable housing is to be provided off-site was challenged by consultees. It is considered however that this is not an unreasonable position for the Council to take given that off-site provision of affordable housing enables the applicant to provide a greater number of open market value dwellings on-site.

3.9.6 The application of overage provisions is challenged under the claim of being contrary to the provisions of Circular 2005/05 which governs planning obligations. It is considered that this is no longer relevant given that Circular 2005/05 has been replaced by the National Planning Policy Framework, in addition to which, overage is common practice among numerous local authorities and this section of the SPD merely expands upon the application of Core Strategy Policy SP4

### **3.10 PUBLIC OPEN SPACE**

3.10.1 The application of the open space standards in the SPD was challenged on the basis that these were derived from the Council's PPG17 Study of Open Space, Sport and Recreation and the Submission Grantham Area Action Plan (SGAAP) which is yet to be tested in public and therefore not yet found to be sound or the standards justified. Neither of the Submission DPDs received any representations in respect of the policies containing the open space standards. However, should the standards be amended through the examination process then the SPD can be amended to reflect this.

3.10.2 It was suggested that balancing lagoons and flood attenuation ponds be included as part of the calculation of open space requirements. However, it is considered that these are not "usable" areas of public open space due to their flood management function and therefore it is proposed that these should not be included within any calculation of open space requirements.

3.10.3 The draft SPD used three separate figures for the provision of financial contributions towards the provision of children and young people's equipped space. This was considered to be over complicated and therefore a single standard figure of £93 per sqm is proposed.

### **3.11 HIGHWAYS**

3.11.1 The consultation process brought forward the suggestion of making reference to the need to consider the strategic highway network as part of this chapter of the SPD. This was considered to be an appropriate addition, particularly in light of the fact that this could be applied to the need to deliver the Grantham Southern Relief Road. It is therefore proposed that a new paragraph be added to reference the importance of the strategic highway network. In addition to this, it was suggested that reference should be added at paragraph 2.3.1 to the need to consider Travel Plans as a way of addressing highway and transportation issues arising from development and it is considered that this would be an appropriate addition to this chapter.

### **3.12 PUBLIC REALM AND PUBLIC ART**

3.12.1 Concerns were expressed about this chapter failing to ensure that contributions secured for public realm and/or public art were required to be spent where they would be reasonably capable of serving the application site from which they were secured. It is proposed that the wording of paragraph 2.4.11 be amended to ensure that this principle applies.

3.12.2 There was some confusion over paragraphs 2.4.25 and 2.4.26 as these appeared to suggest that there would be a requirement of 1% for public art and then an additional 1% requirement for public realm. It is proposed that the SPD be amended to clarify that the 1% requirement applies to a combined contribution for public realm and public art.

### **3.13 EDUCATION**

3.13.1 The County Council's representation suggested that it would be appropriate for the updated education contribution multipliers that were utilised during the Manthorpe Appeal Inquiry to be used in the SPD. This was considered to be a sensible suggestion and it is proposed that these be used in the SPD.

### **3.14 LIBRARY FACILITIES**

3.14.1 Lincolnshire County Council also proposed an amendment to the 5 dwelling threshold set out in the consultation draft SPD to seeking schemes of 100 dwellings or more to be highlighted to the library service so that they may assess the impact of such developments on the provision of library services, including the cumulative impacts of development. It is proposed that this amendment be included in the SPD.

### **3.15 SPORTS FACILITIES**

3.15.1 A challenge was made to the quantity and access standards set out in this chapter on the basis of them being too prescriptive and on the basis that the cost per person rates were not justified. It is considered that this is not the case as the standards are based upon the evidence from the Council's PPG17 Study of Open Space, Sport and Recreation and that the cost per person rates were derived from Sport England's Sports Facility Calculator, using a Lincolnshire cost weighting.

### **3.16 HEALTHCARE FACILITIES**

3.16.1 A number of representations referred to the SPD seeking contributions towards pharmaceutical provision and argued that this was unreasonable as pharmacy operates as a commercial enterprise so should not be subject to provision through planning obligations. A similar argument was made for dentistry provision. In the case of both dentistry and pharmacies these were considered to

be credible arguments and it is proposed that the SPD is amended to remove the requirement for contributions towards pharmaceutical and dentistry provision.

### **3.17 CHILDCARE PROVISION**

3.17.1 The requirement for childcare contributions was challenged on the basis that childcare should be provided privately with no public subsidy, and if any contributions were to be sought then these should relate solely to the element of childcare for which the Council has a duty to provide. It is considered that the requirement for contributions towards childcare is reasonable and justified as the Council's obligation to secure sufficiency does not mean that Council must provide childcare themselves, but provide market facilitation and support across the sector to enable parents to work. Where sufficiency is not met and there is nothing projected to come forward then the expansion of existing or new build facilities to deliver childcare by providers from the private, voluntary or independent sectors will be sought.

### **3.18 FIRE AND RESCUE**

3.18.1 The representation received by the County Council proposed considerable amendments to this chapter so as to include the ability to secure contributions towards fire stations and appliances from new development. On consideration, it was not felt that this was an appropriate or justifiable contribution to be seeking from new development and that the thresholds of 10 dwellings and 1,000 sqm commercial floor space that they proposed were inappropriately low. Therefore it is not proposed that any amendments be made to enable contributions towards fire stations and appliances to be sought.

### **3.19 LIFETIME HOMES**

3.19.1 Representations received challenged the requirement for lifetime homes on the basis that the provision of lifetime homes can have a considerable financial impact upon development viability and it was suggested that thought should be given as to its relative priority against other infrastructure items. It was also suggested that there is insufficient policy basis for lifetime homes to be a "requirement" and that they more appropriately be an "aim"

3.19.2 Given that the provision of lifetime homes is a Council corporate priority under the priority area of supporting good housing for all, it was felt that the current wording of this section was appropriate. As with all elements of the SPD there is room for negotiation depending upon individual circumstances as well as demonstrable viability issues by the developer. However, it was not felt necessary to amend the wording of this section to reflect this, as this principle is set out in Section One of the SPD.

### **3.20 WASTE AND RECYCLING FACILITIES**

3.20.1 Following the decision of the Council to charge for the green bin service, it is considered that it would be unreasonable to continue to seek contributions for green bin provision through planning obligations. It is proposed that the requirement for green bins is removed from this chapter, but the requirement for the provision of silver bins through planning obligations will remain.

### **3.21 SPD APPENDIX E**

3.21.1 There were a number of suggested amendments to the template Section 106 Agreement within Appendix E. However, it is proposed that Appendix E is removed from the SPD as the template Section 106 Agreement is currently under review to ensure compliance with the new obligations in the SPD and may be subject to further amendments. In order to ensure accuracy both now and in the future it is considered more appropriate to remove it from the SPD completely.

## **4. OTHER OPTIONS CONSIDERED**

4.1 Do not adopt as SPD – the alternative would be to continue to rely on the informal process of negotiating Section 106 Agreements. The preparation of the SPD is more positive in that it provides a framework that sets out the Council's approach, policies and procedures for Planning Obligations and in doing so allows applicants to take into account the potential costs of development proposals at the earliest opportunity whilst also increasing understanding.

## **5. RESOURCE IMPLICATIONS**

5.1 There will be some resource implications arising from the adoption process primarily costs associated with the publication of a statutory notice and printing of the document, although this will be kept to a minimum through the provision of electronic as opposed to hard copy versions. Costs can therefore be accommodated within this financial years Planning Policy budget.

## **6. RISK AND MITIGATION**

6.1 None identified.

## **7. ISSUES ARISING FROM EQUALITY IMPACT ASSESSMENT**

7.1 When adopted, the SPD will 'hang off' policies contained in the Core Strategy Site Allocation and Policies DPD (when adopted) and Grantham Area Action Plan (when adopted), which have been the subject to equality impact assessments.

## **8. CRIME AND DISORDER IMPLICATIONS**

8.1 None arising out of this report.

**9. COMMENTS OF FINANCIAL SERVICES**

9.1 Any specific costs associated with the development of the Local development Framework will be met from within existing budgets supported by allocated Housing and Planning Delivery Grant award.

**10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES**

10.1 The purpose of the report to Cabinet is to consider the Planning Obligations SPD for adoption, taking into account relevant representations and proposed amendments to the consultation draft Planning Obligations SPD.

**11. APPENDICES:**

Appendix A Responses to consultation and proposed changes