

# Cabinet Report

Report of Head of Planning

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Wards affected: All

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To: CABINET

Date: 1 October 2021

## Developer Contributions Supplementary Planning Document (SPD) – Adoption

### Recommendations

That Cabinet:

- (a) Adopts the Developer Contributions Supplementary Planning Document (SPD)
- (b) Delegates to the Head of Planning, in consultation with the Cabinet Member for Corporate Services and Transformation, any necessary further minor changes to the document.
- (c) Agrees the proposed approach to preparing a separate Section 106 internal protocol document, for use by councillors and officers.

### Purpose of Report

1. To consider the representations received during public consultation on the Developer Contributions SPD, together with the council's suggested responses and to consider adoption of the revised version of the SPD.

### Corporate Objectives

2. Under Theme 1 (Providing the Homes People Need) of the Vale Corporate Plan 2020 to 2024, developing a Section 106 obligations strategy and updating the council's CIL procedures are listed as actions to achieve the corporate objective of adopting a policy framework that ensures the homes people need can be delivered in a way that supports the environment and people living healthy lives.

## Background

3. Funding for the infrastructure necessary to support new development across the District can be sought in a variety of ways. The council currently utilises the following main mechanisms for securing infrastructure contributions from developers:
  - Community Infrastructure Levy (CIL)
  - Section 106 planning obligations (S106)
4. Following the adoption of Part 1 of the Local Plan 2031 in December 2016, the council adopted its current CIL Charging Schedule and Developer Contributions SPD in September 2017, with the commencement of CIL in November 2017. The council subsequently adopted Part 2 of the Local Plan 2031 in October 2019, which included new site allocations and additional infrastructure requirements. There have also been changes to the Community Infrastructure Levy Regulations<sup>1</sup>, including:
  - the removal of pooling restrictions for S106 obligations (i.e. the now cancelled requirement that no more than five S106 obligations can fund a single infrastructure project);
  - removing the need for a Regulation 123 list (i.e. a list of infrastructure projects to be funded by CIL as opposed to S106); and
  - introducing a new requirement to produce an annual Infrastructure Funding Statement.
5. Furthermore, it is evident that the current CIL rates are not generating sufficient funds to help deliver the necessary infrastructure to support planned development. In particular, funding for education is falling short and it is now proposed, in the main, to secure education through S106.
6. In light of all the above, the council considered it was necessary to conduct a review of both the CIL Charging Schedule and Developer Contributions SPD. These reviews have been carried out in accordance with the CIL Regulations 2010 (as amended) and the Town and Country Planning (Local Planning) (England) Regulations 2012 respectively. Draft versions of each revised document, together with associated viability evidence, were approved by Cabinet for public consultation on 18 Dec 2020.

## Summary of the Consultation Process

7. Public consultation on the draft Developer Contributions SPD was conducted from 11 January to 8 February 2021, simultaneously with consultation on a revised draft CIL Charging Schedule and associated evidence documents.
8. The council made all consultation documentation available on its website and in hard copy at its offices<sup>2</sup>. A notification email or letter was sent to around 2,200 consultees on the council's planning consultation database, which provided background to the SPD consultation and explained where people could view the documents and the various ways in which they could provide comments. The council also used its social media

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<sup>1</sup> The Community Infrastructure Levy Regulations 2010, as amended by the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019.

<sup>2</sup> Due to Covid restrictions the Council offices were closed to the public. Respondents were asked to contact the Council if they wished to view hard copies, so appropriate options could be discussed.

platforms to advertise the consultation and circulated a poster via email for each of the town and parish councils to display, where appropriate.

9. Regulation 12 of the Local Planning Regulations states that, before a local planning authority can adopt an SPD, it must first prepare a statement setting out the persons consulted during the preparation of the document, with a summary of the main issues raised and how they have been addressed in the SPD. This report addresses these requirements.
10. Overall, there were 27 respondents to the consultation, making a total of 84 separate comments on the draft document. Of these respondents, 5 were local community groups/organisations, 5 were town or parish councils, 10 were statutory consultees, 4 were district councillors and 3 were individuals. A full list of respondents can be found in **Appendix 1** to this report.

### **Main Issues Raised During Public Consultation**

11. A detailed schedule of all comments received during the public consultation period, including summaries, the council's responses and any proposed amendments to the SPD in light of comments raised is attached as **Appendix 2**.
12. Below is a summary of the main issues raised by respondents, together with the council's response. **Appendix 3** is a revised version of the SPD, which includes all the proposed amendments to address the relevant comments raised, together with some additional amendments made post-consultation (see paragraph 37 of this report for further details).

### ***Role of councillors and town/parish councils in negotiating S106 agreements***

13. A number of respondents raised concerns about lack of clarity in the SPD over the role of town/parish councils and district councillors in negotiating Section 106 agreements, both under the separate development typologies discussed in Section 4 and also in Appendix 2 to the SPD (Approach to Negotiating Planning Obligations).

Council's response:

14. We have amended the draft SPD to include a new paragraph at the beginning of Section 4, which explains that it is good practice to involve town and parish councils, local community and access groups and District ward councillors at an early stage in discussions over infrastructure provision, prior to drawing up Section 106 agreements. This is particularly true in instances where they may have detailed knowledge of local infrastructure needs and costs.
15. Appendix 2 in the adopted 2017 Developer Contributions SPD has proved useful in discussions between officers and developers over specific planning applications. However, it is not considered appropriate to include more detailed information on Section 106 protocol within the supplementary planning document. Consequently, rather than making additions to Appendix 2 to reflect the concerns raised by respondents, it would be preferable to produce a separate internal Section 106 protocol document (**see Recommendation c**). This protocol document would provide clarity for district councillors and town/parish councils on their roles and responsibilities in Section 106 negotiations and could also include detailed information on the procedure for the

signing of S106 agreements. An advantage of having a standalone document is that there is scope for procedural information to be quickly updated, as and when necessary.

### ***Local play areas and grass playing pitches***

16. Two parish councils suggested that the SPD required amendment to reflect the current 'Fields in Trust' guidance relating to the hierarchy of play areas to be provided in association with new housing development.
17. East Hendred Parish Council sought confirmation that, in instances where a series of small sites are being developed but a play area threshold is not reached on one site, developer contributions would still be required. The parish council also requested that Appendix 3 of the SPD (Distance Standards) be amended to state that the District's population should be within 700m walking distance of a multi-use games area (MUGA) and 1200m walking distance from grass playing pitches (football, rugby and cricket).
18. Sport England suggested that there should be reference in the SPD to the requirement of a maintenance sum for grass playing pitches of at least 10 years.

Council's response:

19. The SPD needs to reflect Development Policy 33 and Appendix K of LPP2, which set out the council's standards for play provision. On reflection, we consider that inclusion of Table 3 (Children's Play and Youth Provision) is confusing for developers, as it is based on non-statutory 'Fields in Trust' guidance rather than adopted Plan policy. We have, therefore, removed Table 3 from the SPD and replaced it with text to explain that play area requirements will be dependent on existing provision in the area and the demands from other development and may be in the form of financial contributions rather than on-site provision.
20. Additional text now clarifies that town/parish councils can use their proportion of CIL receipts towards the enhancement of existing play areas in situations where either: there are a number of small sites being developed where, individually, each site would not reach the dwelling threshold required to trigger developer contributions towards play areas; or where there is no suitable local site to locate play facilities. Furthermore, it now explains that, where a site cannot accommodate its on-site play requirement due to exceptional site constraints, S106 contributions may be sought towards off-site mitigation.
21. The distance standards in Appendix 3 reflect those in adopted Local Plan policy (as set out in Appendix K to Part 2 of the Vale Local Plan) and cannot, therefore, be revised in the SPD. However, we have amended the accessibility standard for MUGAs to be consistent with Appendix K.
22. We have amended Section 5 to confirm that developers will be required to pay a maintenance sum for a period of at least 10 years for grass playing pitches.

### ***Carbon reduction measures***

23. Three respondents expressed concern that there was no reference to carbon reduction measures to address the global climate emergency in the draft document.

Council's response:

24. Core Policy 37 (Design and Local Distinctiveness) of LPP1 requires proposed new development to address sustainability and climate change intrinsically through location and design, by taking into account landform, layout, building orientation, massing and landscaping to minimise energy consumption and mitigate water run-off and flood risks. Planning conditions can achieve improved provision of carbon reduction measures (such as EV charging points) and CIL is the appropriate mechanism for securing developer contributions towards off-site and wider carbon reduction initiatives that are not directly related to a specific development, including renewable energy and energy storage infrastructure. We have reflected all the above in a new paragraph 4.60 in the SPD.

### ***Healthcare infrastructure needs***

25. One GP practice felt that the council's consideration of housing growth had failed to take account of increasing medical infrastructure needs.
26. Oxfordshire NHS Clinical Commissioning Group (CCG) also said it would like to see developer contributions towards healthcare facilities explicitly set out as monetary calculations, as an appendix to the SPD.

Council's response:

27. The relevant CCG and GP practices are consulted on all major development proposals involving sites over 50 dwellings. In the SPD, each infrastructure type for which S106 contributions are sought is given a unique reference number (DEV1, DEV2 etc). Under DEV9 (Health Care), the SPD explains that new or increased capacity of health facilities will be sought through S106 from developments on allocated sites that are exempt from CIL. Also, that development contributions for healthcare will be sought through S106 from all extra care, nursing and care home developments. We take account of feedback from health care providers to inform the S106 contributions sought in relation to new development.
28. We do not propose that specific monetary calculations for developer contributions towards healthcare provision are included in the SPD, as this type of information can become quickly out of date. Instead, text has been added to confirm that the council will continue to liaise with the relevant CCG to obtain their latest financial information for calculating contributions towards health facilities from specific developments.

### ***Affordable extra care and specialist housing***

29. Oxfordshire County Council suggested that the SPD should make explicit reference to securing S106 contributions towards affordable extra care and specialist housing.

Council's response:

30. We agree that text should be added to explain that affordable housing provision may include affordable extra care and specialist housing for vulnerable groups (such as the

elderly with care needs and people with physical and learning disabilities or complex autism). We have done this and also explained that the council will work with Oxfordshire County Council and developers to secure and deliver this provision, in accordance with local needs.

### ***Affordable housing monetary calculations***

31. Several respondents suggested that it would be helpful and more transparent to include information within the SPD (possibly as an Appendix) which sets out how developer contributions towards affordable housing (including off-site provision) are calculated.

Council's response:

32. We agree that such information would be helpful for developers. However, we propose that this is included in the forthcoming Affordable Housing SPD, to be produced jointly by Vale of White Horse and South Oxfordshire District Councils. Until that SPD is in place, the council will continue to engage with developers regarding affordable housing contributions on an individual site basis.

### ***Development viability***

33. Oxfordshire County Council asked whether there was more recent guidance from RICS on assessing development viability.

Council's response:

34. We have updated Section 6 of the SPD to reflect the latest guidance in *Assessing Viability in Planning Under the National Planning Policy Framework 2019 for England* (RICS, 1<sup>st</sup> Edition, March 2021), particularly the paragraph on 'site value', which required replacing with the latest definition of 'land value' and an explanation of the 'Existing Use Value Plus' approach to defining land value for any assessment of development viability.

### ***Other infrastructure provision***

35. A number of respondents put forward suggestions for other infrastructure items that they would like to see referenced in the SPD. These included: retention and maintenance of hedgerows/mature trees; mobile air quality stations; Household Waste Recycling Centres; and contributions towards police/security infrastructure.

Council's response:

36. We have included references to additional infrastructure items, where appropriate, throughout the document.

### **Further Amendments to the Developer Contributions SPD**

37. Post consultation, the council has made further amendments to the SPD (for example to reflect recent changes to Government policy guidance or in response to further internal officer consultation). These are summarised below:

- i. Clarification under DEV1 (Affordable Housing) on how affordable housing should be distributed across a development site and inclusion of the dwelling threshold that will trigger affordable housing contributions. Also, reference to footnote 23b of LPP2 (which confirms that the affordable housing policy CP24 will apply to sites of ten dwellings or more, in line with the NPPF).
- ii. Removal of reference to the council seeking affordable housing contributions from sites of 6-9 dwellings in the Area of Outstanding Natural Beauty (AONB), as there is currently no adopted Vale Local Plan policy which allows the council to apply this lower threshold in designated rural areas.
- iii. Reference to Core Policy 25 (Rural Exception Sites) of the Vale Local Plan 2031 Part 1 under DEV1 (Affordable Housing)
- iv. Additional text under DEV1 (Affordable Housing) to highlight Government's new First Homes scheme, including the requirement for at least 25% of all Section 106 Affordable Homes to be First Homes (i.e. sold at a minimum discount of 30% of market value, with the discount secured in perpetuity);
- v. Confirmation in paragraph 4.11 that, where there is a fractional requirement for affordable housing (e.g. 4.5 dwellings), the fractional portion (i.e. the 0.5 in this example) will be secured as an off-site contribution.
- vi. Amendments to DEV6 (Play Areas) and supporting text to ensure it accurately reflects adopted Plan policy in Appendix K of the Vale Local Plan 2031 Part 2.
- vii. Rewording of DEV11 (Cemeteries) to clarify that, where the Local Plan or a neighbourhood plan identifies a need for an allocated site to provide or contribute towards cemetery space, this will be secured through S106.
- viii. Rewording of paragraphs 4.63 and 4.64 to ensure consistency with the adopted policy wording on biodiversity net gain, as set out in Core Policies 45 and 46 of the Vale Local Plan 2031 Part 1. Also, reference to the forthcoming Environment Act, which is likely to supersede CP46 and set a national mandatory minimum of 10% biodiversity net gain.
- ix. Amendments to DEV12 (Public Realm, including Public Art) and its supporting text to place greater emphasis on seeking developer contributions towards improvements to the wider public realm, as opposed to the SPD's current focus which is primarily on the provision of public art.
- x. Amendments to Section 5 to provide greater clarity on the potential options for the future management and maintenance of various types of infrastructure (i.e. open spaces and buildings).
- xi. A new Section 6 covering how the CIL Regulations and S106 agreements relate to self and custom-build homes.
- xii. Clarification in paragraph 7.10 that the council will include a clause in most S106 agreements stating that £500 will be charged for each site inspection that the council is required to undertake in order to check dwelling occupancy in instances where the developer has failed to notify us of a trigger threshold being reached.

- xiii. New text (at paragraph 7.12) to explain why, in some circumstances, the council may seek appropriate security from a developer, in the form of a 'bond', to cover any unforeseen circumstances resulting in the under/non-payment of deferred financial contributions.
- xiv. Further minor amendments following a grammar/Plain English sense check, for readability and accuracy.

### **What Happens Next?**

38. The Local Planning Regulations do not require the draft SPD to be subject to independent examination (as was the case for the draft CIL Charging Schedule) and the remaining key milestones for both the SPD and CIL reviews are as shown in Table 1 below.

<b>Table 1 – Next Steps</b>	
<b>Milestone</b>	<b>Expected Dates</b>
Cabinet – Adoption of the Developer Contributions SPD and consideration of the CIL Charging Schedule for adoption by Council	1 October 2021
Council - Adoption of the CIL Charging Schedule	6 October 2021

### **Options**

39. Not updating the Developer Contributions SPD is an option, but this would mean relying on the 2017 version and the council not having an improved, up-to-date document to assist developers and communities. It would also mean that the consultees' efforts submitting responses and the officer time involved in updating the document would have been wasted.

### **Climate and ecological impact implications**

40. The SPD will help to reduce the negative carbon impact of development through the provision of infrastructure and facilities that are on-site or within walking distance of new developments. CIL will be the appropriate mechanism for securing off-site and wider carbon reduction initiatives. The SPD also sets out where on-site and off-site developer contributions will be sought for biodiversity net gain, to mitigate the impacts of specific developments (see DEV14 of the SPD at Appendix 3 to this report).

### **Financial Implications**

41. Once adopted and implemented, the updated Developer Contributions SPD 2021 will continue to help the council secure significant funding towards necessary infrastructure in the district.



## **Legal Implications**

42. The Developer Contributions SPD has been prepared and consulted upon in line with the provisions of the Town and Country Planning (Local Planning) (England) Regulations 2012. There are no wider legal implications.

## **Risks**

43. As due process has been followed, any risk of a legal challenge following the Council's adoption and implementation of the Developer Contributions SPD is limited.

## **Other implications**

44. The 2017 Developer Contributions SPD will be superseded upon the adoption of the 2021 SPD (see Appendix 3).

## **Conclusion**

45. Officers recommend that the Developer Contributions SPD is adopted by Cabinet on 1 October 2021 so that it can come into force alongside the revised CIL rates within the council's CIL Charging Schedule and help us to deliver the necessary infrastructure to support development across the District, as set out in the Vale of White Horse Local Plan 2031 (Parts 1 and 2).

## **Appendices**

- Appendix 1 – List of respondents to the draft SPD public consultation
- Appendix 2 – Schedule of consultation responses
- Appendix 3 – Amended version of the Developer Contributions SPD
- Appendix 4 – Consideration of the Cabinet report and appendices by Scrutiny Committee on 26 July 2021