

**OPEN FOR PUBLICATION**

By virtue of paragraph(s) X of Part 1 Schedule 1 of the Local Government Act 1972.

**Environment and Communities Committee**

**[09 November 2023]**

**Developer Contributions Supplementary Planning Document**

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**Report of: Jane Gowing, Interim Director – Planning**

**Report Reference No: EC/29/23-24**

**Ward(s) Affected: All**

**Purpose of Report**

- 1 This report seeks approval to carry out a minimum of four weeks public consultation on the final draft Developer Contributions Supplementary Planning Document (“SPD”).
- 2 The document provides guidance on policies held in the Development Plan related to the delivery of a range of infrastructure across the borough.

**Executive Summary**

- 3 Cheshire East Council’s Corporate Plan sets out three aims. These are: to be an open and enabling organisation; to be a Council that empowers and cares about people; and to create thriving and sustainable places. In striving to create thriving and sustainable places, a key objective is to improve the physical and social infrastructure that supports sustainable and inclusive growth across the borough.
- 4 As such, this SPD (Supplementary Planning Document) sets out guidance on policies contained in the Local Plan Strategy (LPS) that support these aims and, through clarifying how development plan policies will apply, will support funding and delivery of a range of physical, social and green infrastructure across the borough.
- 5 Via requirements set out in the local plan, development in Cheshire East provides a crucial source of funding for investment in infrastructure. Since the adoption of the Local Plan Strategy in 2017, over £15 million has been spent on infrastructure projects through S106 financial contributions related to development.

- 6 Developer contributions, or planning obligations, can be required to mitigate the impacts of development and make a proposal acceptable in planning terms. Section 106 legal agreements are used to allow the Planning Authority to enter into a legal agreement with a developer to secure a commitment related to planning approval. This may relate to how development is carried out or the direct provision of infrastructure on site. Where on-site delivery is not possible, a financial contribution in lieu of on-site provision can be secured via S106 agreements. To be lawful, S106 agreements must meet certain tests set out in the CIL (Community Infrastructure Levy) regulations (See para.15 below).
- 7 Contributions levied through legal agreements will set out specifically what funding should be secured and for what purpose that funding should be spent. Once agreed, funding must be spent in accordance with the agreement, however S106 agreements may be varied where the applicant and Local Planning Authority (LPA) agree the change and a 'Section 73' Application is submitted, or a new planning application can be submitted and allow the renegotiation of the S106 agreement

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## RECOMMENDATIONS

The Environment and Communities Committee is recommended to:

1. Agree to the publication of the final draft Developer Contributions SPD (appendix 2) and report of consultation (appendix 1) for public representations for a period of a minimum of four weeks.
2. Publish the associated Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report ("SEA") (appendix 3).
3. Publish the associated Equalities Impact Assessment Screening Report ("EQIA") (appendix 4).

## Background

- 9 The Final Draft Developer Contributions SPD provides additional guidance to applicants on how they should respond to the policy requirements in the Local Plan Strategy and Site Allocations and Development Policies Document (SADPD). It also 'signposts' sources of information, including relevant documentation and Council services.
- 10 This SPD aims to give greater clarity to developers, landowners, communities, and decision makers on matters related to the circumstances when contributions are likely to be required, how such contributions are calculated, the type of information that will be required

at submission stage and the process within which S106 agreements will be established. Some contributions are levied based on formulaic calculations which the SPD sets out in detail, and some contributions are established through negotiation taking into account variable factors related to the site, and the impact of development on the wider location. In these circumstances guidance in the SPD is based on providing clarity on the relevant factors that will be considered during negotiations.

- 11 The final draft SPD has been jointly prepared by Strategic Planning and multiple services in the council.
- 12 Developer contributions, or planning obligations, can be required to mitigate the impacts of development and make a proposal acceptable in planning terms. For example, providing a financial contribution to education facilities where a proposal would lead to an increase the number of school age children in an area.
- 13 Contributions are made via legal agreements and paid to the council at various trigger points related to the build out of development (for example, financial contributions to off-site affordable housing may be levied at the completion of the 100<sup>th</sup> house on a scheme).
- 14 The council will hold such funds until the requirements of the legal agreement can be met.
- 15 There are various ways in which contributions from development can be secured. The three most common mechanisms to secure developer contributions are:
  - (a) Community Infrastructure Levy (CIL): this is a fee, paid by the developer, which is fixed, dependent on the location of development, it's use and floorspace. CIL is primarily used to fund infrastructure identified in the Councils Infrastructure Plan
  - (b) Section 278 agreements: these allow developers to enter into a legal agreement with the council, in its capacity as the Highway Authority, to make permanent alterations or improvements to a public highway as part of a planning approval.
  - (c) Section 106 agreements: Section 106 (S106) agreements are legal agreements between the council and a developer, that commit the developer to undertake certain obligations or development, or to restrict something, and/or pay the council a financial contribution toward measures that would mitigate the impact of development and make a proposal acceptable to meet policy requirements. S106 are usually written up to ensure a payment is received at a 'trigger point' in the development process, for example on completion of the 100<sup>th</sup> house, and reserved specifically for the

investment identified in the S106 legal agreement. The ability to vary what S106 funding is spent on is very limited.

- 16 Section 106 contributions must be levied in accordance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 which establishes that contributions must be:
  - (a) Necessary to make the development acceptable in planning terms
  - (b) Directly related to the development; and
  - (c) Fairly and reasonable related in scale and kind to the development
- 17 Developer contributions are therefore a very regulated area of planning practice, designed to mitigate specific impacts of development and once the funds are received, the investment must be carried out in accordance with the terms of the legal agreement under which they were agreed.
- 18 In Cheshire East, multiple projects are invested in annually across a range of infrastructure. For example, S106 has funded, or part funded, projects including the expansion of Mablins Lane primary school in Crewe, Congleton Link Road, grassland improvements in multiple locations across the borough, improvements to Hall Wood green way at Handforth, play area improvements at Little Lindow in Wilmslow and temporary homeless accommodation in Congleton.
- 19 The Developer Contributions SPD primarily provides additional guidance on S106 agreements, setting out the Council's approach to these agreements over a range of issues including contributions to affordable housing, highways, education, leisure and recreation, green space, public health, blue light services, ecology and other matters such as surface water management, heritage and design.
- 20 The Developer Contributions SPD does not provide further guidance on the application of CIL as these matters are covered by advice held in the [CIL Charging Schedule 2019](#).

The Development Plan for Cheshire East sets the framework within which developer contributions will be levied. Cheshire East is a large unitary authority with unique and diverse communities and therefore, because needs and priorities vary across the borough the Development Plan does not establish a hierarchy of that prioritises the purpose for which S106 will be levied. Rather, the approach is tailor agreements to be site specific and respond to the specific needs of host communities. The SPD provides guidance on:

- (a) The mechanics of the S106 process, including the types of fees the council will charge for monitoring and, in some cases, administration of legal agreements.
- (b) Climate Change: The Development Plan includes policies that seek to tackle climate change. This SPD clarifies the type of information that applicants must submit and the circumstances where offsite or financial contributions may be required.
- (c) Ecology: guidance is provided primarily in relation to Biodiversity Net Gain contributions and fees which are covered in further detail on the Biodiversity Net Gain SPD.
- (d) Urban Design and Regeneration: Many towns across Cheshire East have plans for town centre investment and public realm improvements through both locally produced neighbourhood plans, Strategic Regeneration Frameworks, Town Centre Vitality Plans or other local strategies. The SPD highlights that contributions may be required from development to support delivery of the ambitions set out in these plans.
- (e) Highways and Transport: advice is included in relation to major development and the delivery of mitigation identified in transport plans, required levels of parking and in relation to finding for strategic infrastructure.
- (f) Recovery of Infrastructure Costs: Policy GEN4 of the SADPD (Site Allocations and Development Policies Document) provides the policy basis for the council to recovery of funding for infrastructure that has already been invested but which development may rely upon. The SPD provides guidance on how this will be applied.
- (g) Education: The SPD sets out the approach to how contributions regarding education will be levied, including various financial formula the council base their calculations on.
- (h) Health Infrastructure: The Council will seek contributions to new or enhanced health or social care facilities (including care homes) where development results in a shortfall or worsening of provision. The SPD clarifies how Health Impact Assessments (HIA) should be used to identify such needs (and others) and inform the approach to scheme design. In instances where a direct link between a proposed development and appropriate health care needs can be demonstrated, the SPD provides advice on the type of information that applicants are required to submit to

underpin how contributions are calculated for provision of health-based services.

- (i) Sport facilities, public open space and green infrastructure: the council regularly levies contributions toward delivery and long-term maintenance of these facilities and the SPD sets out the financial formula used to calculate contributions and the detail on information that applicants should submit.
- (j) Affordable housing: most of the detail on how contributions are levied regarding affordable housing is set out in the Affordable Housing SPD. Therefore this document summarises that approach and signposts to the primary SPD.
- (k) Cheshire Constabulary: guidance is provided on when contributions are likely to be sought to support the constabulary, and how such contributions will be calculated.
- (l) Other matters: the SPD provides some guidance on matters which would not normally trigger the need for financial contributions but may be secured by S106 or conditions on planning applications. Matters such as flood risk, heritage and public rights of way are covered in the SPD, which provides guidance on the type of commitments that may be required and the type of information that applicants should submit.

21 Recently, an audit has been carried out into the Council's processes around CIL and S106. The audit identified a need to better communicate processes around S106. This SPD helps to clarify the processes that are in place to manage the collection and investment of developer contributions and provides guidance to all stakeholders to ensure that practices are carried out in a consistent way across services within the council.

22 The first draft of the Developer Contributions SPD was published for consultation during August and September 2022. It has been amended in response to comments received during that consultation. The report of consultation summarises the feedback received and how the Council has responded to that feedback (Appendix 1).

23 A screening exercise has been carried out to determine whether the final draft Developer Contributions SPD gives rise to the need for further Sustainability Appraisal or Appropriate Assessment (under the Habitats Regulations). This screening assessment was consulted upon and concludes that further assessment is not necessary (Appendix 3). No feedback on these conclusions was received from the relevant statutory bodies.

- 24 Subject to the approval of the recommendations of this report, the SPD will be consulted on in accordance with the Council's Statement of Community Involvement for a period of four weeks.
- 25 Once adopted, the effectiveness of this SPD will be monitored as part of the Authority Monitoring Report, using information from planning applications and decisions. The outcome of this ongoing monitoring work will help inform future decisions about the SPD and the development of planning policy.

### **Consultation and Engagement**

- 26 During August and September 2022, the first draft SPD was consulted on. Multiple matters were raised, and 254 comments were received from 36 consultees. The full extent of representations is included at Appendix 1a of this report and a summary at Appendix 1b.
- 27 Some of the key changes that have been made to the SPD since its first consultation include:
  - (a) Further explanation of the administrative processes related to S106 contributions
  - (b) Additional guidance on education contributions
  - (c) More explanation on the council's approach to public health infrastructure and the Cheshire Constabulary
  - (d) Additional sections are included to address matters related to climate change, public realm and town centres
- 28 It is proposed that the final publication draft SPD will be subject to a minimum of four weeks consultation to take place during November and December 2023. Following this, all comments will be considered, and reported back to the Environment and Communities Committee to consider, prior to adoption of the SPD.

### **Reasons for Recommendations**

- 29 An SPD is not part of the statutory development plan. It is a recognised way of putting in place additional planning guidance and is a material consideration in determining planning applications in the borough.
- 30 Providing clear, detailed guidance on policy expectations should enable applicants to better understand policy requirements. The SPD should assist applicants when making relevant planning applications, and the Council in determining them.

- 31 Providing improved guidance on how contributions will be levied, particularly through the provision of financial formula, allows site promoters to integrate policy compliant approaches within the viability envelope of their sites.
- 32 Providing such guidance should assist the Council to secure sustainable development and improve a range of infrastructure provision.

**Other Options Considered**

33 The Council could choose not to prepare a SPD on Developer Contributions or not to progress the first draft document to completion. Any relevant planning application would continue to be assessed against existing planning policies. However, this would not allow the Council to provide additional practical guidance on how contributions will be approached that should be employed by all parties in a consistent way that gives certainty to applicants and decision makers.

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Option	Impact	Risk
Do not nothing / not progress the first draft	The Developer Contributions SPD could not progress through the stages required by legislation and therefore could not be adopted.	The improved outcomes and clarity on process and expectation that could be achieved through additional guidance on how developers are expected to address policies of the local plan, would not be achieved.

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**Implications and Comments**

*Monitoring Officer/Legal*

36 The Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Development) (England) Regulations 2012 provide the statutory Framework governing the preparation and adoption of SPDs (Supplementary Planning Document). These include the requirements in Section 19 of the 2004 Act and various requirements in the 2012 Regulations including in Regulations 11 to 16 that apply exclusively to producing SPDs.



- 37 Amongst other things, the 2012 regulations require that an SPD contain a reasoned justification of the policies within it and for it not to conflict with adopted development plan policies.
- 38 The National Planning Policy Framework and the associated Planning Practice Guidance also set out national policy about the circumstances in which SPDs should be prepared.
- 39 SPDs provide more detailed guidance on how adopted local plan policies should be applied. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. SPDs are capable of being a material consideration in planning decisions but are not part of the development plan.

#### *Section 151 Officer/Finance*

- 40 There are no significant direct financial costs arising from consultation on the SPD. The costs of printing and the staff time in developing the SPD are covered from existing budgets of the planning service.
- 41 The SPD will help to improve the process through which financial contributions are secured and provide further clarity for developers and decision makers in relation to the policy requirements of the Development Plan. If S106 is not secured appropriately, in a timely manner, there could be a risk that monies do not come forward and delivery of infrastructure may be delayed.

#### *Policy*

- 42 The SPD will provide guidance on the application of existing development plan policies related to the provision of funding for infrastructure and developer contributions through S106. The SPD will give additional advice to applicants on how they can show they have followed relevant policies of the development plan related to this matter.
- 43 It should be noted that as part of the government's planning reform, the Levelling Up Bill includes proposals to replace SPDs with Supplementary Plans, which are documents that are prepared in a more onerous way than SPDs, and which are reliant on examination much like a local plan. If this proposal happens any adopted SPDs will automatically expire.
- 44 The reforms also propose to replace both S106 agreements and CIL with a single 'infrastructure levy' capturing all contribution requirements in a single mechanism. Should this proposal happen, the guidance in the Developer Contributions SPD will be superseded. However, implementation of planning reform is likely to take considerable time and continuing developing this SPD will ensure the council has a single

document that summarises contribution requirements across a wide range of issues, helping to clarify processes for applicants, staff and members.

- 45 Therefore, although the SPD may ultimately be superseded by measures set out in the proposed planning reforms, it will be useable for some time before such reform is implemented and can inform the Council’s future work on an Infrastructure Levy and the review of the Local Plan Strategy.

<p><b>An open and enabling organisation</b></p> <p>The SPD helps improve transparency in relation to how funding is calculated and the process through which such funding is agreed. The SPD also provides clarity on how such funding may be spent.</p>	<p><b>A Council which empowers and cares about people</b></p> <p>Whilst the SPD is not related to this objective, some funding elements, especially related to education, would support the objective.</p>	<p><b>To reduce our impact on our environment.</b></p> <p>Better guidance on how developer contributions are levied helps the Local Planning Authority secure delivery of improved design, habitats, transport and flood risk measures in new development schemes.</p> <p>The SPD helps the authority collect the correct level of financial contributions required, reducing risk to the LPA (Local Planning Authorities) and increasing certainty in the development process across the borough.</p>
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*Equality, Diversity and Inclusion*

- 46 The Council has a duty under Section 149 of the Equalities Act to have due regard to the need to: eliminate discrimination; advance equality of opportunity between persons who share a “relevant protected characteristic” and persons who do not share it; foster good relations between persons who share a “relevant protected characteristic” and persons who do not share it.
- 47 The final draft Developer Contributions SPD provides further guidance on the approach that is expected from developers on this matter and provides clarity on how the Council will apply policies of the Development Plan. The SPD is consistent with the LPS (Local Plan Strategy) which was itself the subject of an Equalities Impact Assessment (EqIA) as part of an integrated Sustainability Appraisal. A draft EqIA on the draft Developer Contributions SPD has been prepared (appendix C) and will be published alongside the draft SPD for comment.

*Human Resources*

- 48 The subject matter of the report does not give rise to any particular risk management measures because the process for the preparation of an SPD is governed by legislative provisions (as set out in the legal section of the report).

#### *Risk Management*

- 49 The subject matter of the report does not give rise for any particular risk management measures because the process for the preparation of an SPD is governed by legislative provisions (as set out in the legal section of the report).

#### *Rural Communities*

- 50 The final draft Developer Contributions SPD seeks to provide further guidance on the financial mechanisms to secure infrastructure funding. Infrastructure has a wide definition and includes provision of assets and services that will benefit many rural communities, whether directly or indirectly.

#### *Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

- 51 The final draft SPD does not have direct implications for children and young people or cared for children but will assist in securing growth that is properly serviced and inclusive for all. Guidance in the document will support the provision of education services that children and young people will access.

#### *Public Health*

- 52 Through clarifying the role of Health Impact Assessments in the development process, the final draft SPD may assist in securing contributions to essential services that indirectly improve public health (the delivery of walking and cycling measures in a new road scheme for example) as well as direct funding for health and social care provision.

#### *Climate Change*

- 53 The final draft SPD does not have any direct climate change implications but may indirectly help reduce the impacts of climate change through providing funding or more sustainable travel options (for example) or helping clarify the process through which contributions toward other climate mitigation measures would be levied.

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Appendices:	Appendix 1a: Summary of Representations Appendix 1b: Draft DC SPD – Full Log of Representations Appendix 2: Final Draft Developer Contributions Supplementary Planning Document Appendix 3: SEA (Strategic Environmental Assessment) / HRA Screening Report Appendix 4: Final Draft Equalities Impact Assessment Screening Report
Background Papers:	N/A

## Appendix 1

### **OPEN/NOT FOR PUBLICATION**

By virtue of paragraph(s) X of Part 1 Schedule 1 of the Local Government Act 1972.

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**Approvals trail: to be removed before Committee**

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Name	Title	Comments	Date
Contributors:			
Approvers:			