

## **OPEN FOR PUBLICATION**

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



## **Environment and Communities Committee**

**11<sup>th</sup> March 2024**

## **Developer Contributions Supplementary Planning Document**

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**Report of: Peter Skates, Acting Executive Director - Place**

**Report Reference No: EC/41/23-24**

**Ward(s) Affected: All**

### **Purpose of Report**

- 1 This report seeks approval to adopt the Developer Contributions Supplementary Planning Document ("SPD").
- 2 The document provides guidance on policies held in the Development Plan and contributes 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 sets out guidance on policies contained in the Local Plan Strategy (LPS) and the Site Allocations and Development Policies Document (SADPD) that support these aims and, through provide further guidance and clarity on 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 social physical and green infrastructure. Since the adoption of the Local Plan Strategy in 2017, over £15million 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 secure contributions and 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, the direct provision of infrastructure on site, or where on-site delivery is not possible, a financial contribution in lieu of on-site provision.

## RECOMMENDATIONS

The Environment and Communities Committee is recommended to:

1. Consider the Report of Consultation (Appendix 2); the Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report (Appendix 3); and the Equalities Impact Assessment Screening Report (Appendix 4)
2. Adopt the Developer Contributions Supplementary Planning Document (Appendix 1)
3. Revoke the Macclesfield Borough Council Supplementary Planning Guidance on s106 (Planning) Agreements (2004); and Congleton Borough Local Development Framework Interim Policy Note - Public Open Space Provision for New Residential Development (2008).
4. Delegate to the Head of Planning the introduction of the detailed charging regime for s106 Monitoring Fees by 1 April 2024
5. Delegate to the Head of Planning the authority to make minor changes and corrections to the SPD prior to publication.

## Background

- 7 The 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. It also 'signposts' sources of information, including relevant documentation and Council services.
- 8 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.
- 9 This SPD has been jointly prepared by Strategic Planning and the multiple services in the Council.

- 10 Developer contributions, or planning obligations, can be required to mitigate the impacts of development and make a proposal acceptable in planning terms. They are not limited to financial contributions and S106 may be used to secure direct delivery of mitigation measures by the developer.
- 11 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).
- 12 The Council will hold financial contributions until the requirements of the legal agreement can be met.
- 13 There are three main mechanisms to secure developer contributions:
  - (a) Community Infrastructure Levy (CIL): this is a fee, paid by the developer, which can vary dependent on the location of development, its use and floorspace. The fee is set out in the CIL charging schedule and does not vary. CIL is primarily used to fund infrastructure identified in the Council's Infrastructure Plan
  - (b) Section 278 agreements: 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 identified works or to pay the Council a financial contribution both going toward measures that would mitigate the impact of development and make a proposal acceptable. S106's are usually written up to ensure a payment or beneficial works are 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 financial contributions are spent on is very limited.
- 14 Section 106 developer 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

- 15 Developer contributions are therefore a regulated area of planning practice, designed to mitigate specific impacts of development and once monetary contributions are received by the Council, the investment must be carried out in accordance with the terms of the legal agreement under which they were agreed.
- 16 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.
- 17 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.
- 18 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.
- 19 The SPD provides guidance on a range of matters:
  - (a) Ecology: guidance is provided primarily in relation to Biodiversity Net Gain contributions and fees which are covered in further detail in the emerging Biodiversity Net Gain SPD.
  - (b) 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 funding for strategic infrastructure.
  - (c) Recovery of Infrastructure Costs: Policy GEN4 of the SADPD (Site Allocations and Development Policies Document) provides the policy basis for the Council to recover funding for infrastructure that has already been invested but which development may rely upon. The SPD provides guidance on how this will be applied.
  - (d) 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.

- (e) Health Infrastructure: 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 and the financial formula that are used to underpin how contributions are calculated.
  - (f) 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 detail on information that applicants should submit.
  - (g) 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.
  - (h) Cheshire Constabulary: guidance is provided on when contributions are likely to be sought to support the constabulary.
  - (i) 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.
- 20 The monitoring of planning obligations is vital to ensure that any obligations entered into are complied with by developers and the Council. This includes various processes from the initial data entry on to systems, monitoring of trigger points for receiving payments, developer liaison, undertaking site visits to check commencement, through to chasing payments and ensuring appropriate spend within necessary time-frames.
- 21 The SPD highlights that monitoring fees are permitted in respect of the cost of such monitoring. The actual charge must be proportionate and reasonable to reflect the cost of monitoring. Officers are currently working on the detailed scheme which will adopt either a fixed percentage or a set amount per obligation, and a fee based upon actual costs. The Council will introduce these from 1 April 2024.
- 22 Guidance held in this SPD updates and replaces legacy guidance from other Supplementary Planning Documents and guidance adopted by the legacy planning authorities. The legacy guidance to be revoked is the Macclesfield Borough Council Supplementary Planning Guidance on s106 (Planning) Agreements (2004); and the Congleton Borough Local Development Framework Interim Policy Note - Public Open Space Provision for New

Residential Development (2008). To avoid confusion for stakeholders, on adoption of this SPD, it is recommended that the superseded guidance is revoked.

- 23 A screening exercise has been carried out to determine whether the Developer Contributions SPD gives rise to the need for Sustainability Appraisal or Appropriate Assessment (under the Habitats Regulations). This screening assessment was consulted upon at both stages and concludes that further assessment is not necessary (Appendix 3).
- 24 Should the SPD be adopted it must be published and made available, along with an adoption statement, in line with the 2012 Regulations. The adoption of the SPD may be challenged in the High Court by way of judicial review within three months of its adoption.
- 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.

### **Consultation and Engagement**

- 26 The first draft of the Developer Contributions SPD was published for consultation during August and September 2022 and the final draft SPD was consulted on during November and December 2023, receiving 142 comments from 15 consultees.
- 27 The document has been amended in response to comments received during these consultations. Key themes that were raised were related to:
  - (a) Viability concerns.
  - (b) Detailed matters focused on the calculation of various financial obligations related to green space and education.
  - (c) Providing clarity related to the internal process of establishing S106 and the type of information required to submit alongside planning applications.
  - (d) The relationship of the SPD to guidance held in the National Planning Practice Guidance.
- 28 The consultation was promoted via direct email notification to consultees held on the Council's local Plan Consultation database. This source includes statutory consultees, local town and parish councillors, all members, special interest groups, developers and members of the public. The document was also promoted via press release and social media updates.

- 29 Multiple changes have been made to the document in response to the consultation feedback. The report of consultation summarises the feedback received (Appendix A), and the changes made to the document.
- 30 A screening exercise has been carried out to determine whether the 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 at both stages and concludes that further assessment is not necessary (Appendix C).

### Reasons for Recommendations

- 31 An SPD is not part of the statutory development plan. It is a recognised way of putting in place additional planning guidance and advice and is a material consideration in determining planning applications in the borough.
- 32 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.
- 33 Providing improved guidance and transparency on how contributions will be levied, including through the provision of financial formula, allows site promoters to integrate policy compliant approaches within the viability envelope of their sites. Setting out the Council’s approach in this guidance is intended to enable a sensible starting point for S106 negotiations to take place.
- 34 Providing such guidance should assist the Council to secure sustainable development, improve a range of infrastructure provision, and improve its processes related to planning obligations.

### Other Options Considered

- 35 The Council could choose not to adopt the SPD. 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.

Option	Impact	Risk
Do not progress the SPD.	The Developer Contributions SPD could not progress	The improved outcomes and clarity on process and

	through the stages required by legislation and therefore could not be adopted.	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 guidance 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.
- 40 Monitoring fees may be charged through section 106 planning obligations to cover the cost of monitoring and reporting on delivery of that section 106 planning obligation following amendments to the Community Infrastructure Levy Regulations.

### *Section 151 Officer/Finance*



- 41 There are no significant direct financial costs arising from adoption of the SPD. The costs of printing and the staff time in developing the SPD are covered from existing budgets of the planning service.
- 42 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.
- 43 The SPD will also assist the Council to be more transparent and efficient in managing the business processes related to planning obligations, their monitoring and review.

### *Policy*

- 44 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.
- 45 It should be noted that the government's planning reforms include 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.
- 46 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.
- 47 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 Council's new Local Plan.

<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*

- 48 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.
- 49 The 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. An EqIA on the Developer Contributions SPD has been prepared (appendix C).
- 50 An Equality Impact Assessment has been carried out at each stage of the process and has not identified any equality issues that have needed to be addressed.

### *Human Resources*

- 51 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*

52 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*

53 The 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)*

54 The SPD provides guidance on how education provision will be secured for SEND children and 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*

55 The 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 healthcare.

### *Climate Change*

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

<b>Access to Information</b>	
Contact Officer:	Tom Evans Neighbourhood Planning Manager Tom.Evans@cheshireeast.gov.uk 01625 650023
Appendices:	Appendix A: Developer Contributions Supplementary Planning Document Appendix B: Report of Consultation Appendix C: SEA (Strategic Environmental Assessment) / HRA Screening Report

	Appendix D: Equalities Impact Assessment Screening Report
Background Papers:	N/A