

## **Environment and Communities Committee Report**

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<b>Date of Meeting:</b>	09 September 2021
<b>Report Title:</b>	Draft Recovery of Forward Funded Infrastructure Supplementary Planning Document
<b>Report of:</b>	Paul Bayley, Director of Environment and Neighbourhood Services
<b>Report Reference No:</b>	EC/09/21-22
<b>Ward(s) Affected:</b>	All

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### **1. Executive Summary**

- 1.1.** This report seeks approval to carry out four weeks of public consultation on the draft Forward Funded Infrastructure Supplementary Planning Document (“SPD”).
- 1.2.** Cheshire East Council’s Corporate Plan sets out three aims. These are to be an open and enabling organisation, 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 strategic infrastructure that supports sustainable and inclusive growth across the borough. As such, this SPD sets out guidance on policies contained in the Local Plan Strategy and SADPD that will support funding and delivery of strategic infrastructure.
- 1.3.** Forward Funded Infrastructure (FFI) is infrastructure that development relies upon, but has not yet contributed to funding. It is infrastructure that is built and funded, or part funded, by public money and where there is an expectation (and requirement) that future development, reliant on the infrastructure, will contribute to its funding through retrospective financial contributions.

### **2. Recommendations**

- 2.1.** To approve the draft Forward Funded Infrastructure Supplementary Planning Document (Appendix A) for four weeks of public consultation.

- 2.2. To publish the associated Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report (“SEA”) (Appendix B).
- 2.3. To publish the associated Equalities Impact Assessment Screening Report (“EQIA”) (Appendix C).

### **3. Reasons for Recommendations**

- 3.1. An SPD is not part of the statutory development plan. It is a recognised way of putting in place additional planning guidance and a material consideration in determining planning applications in the borough.
- 3.2. Providing clear guidance up front about 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.
- 3.3. Further, Policy GEN4 of the SADPD commits the Council to provide further guidance on this issue, through the preparation of an SPD.

### **4. Other Options Considered**

- 4.1. The Council could choose not to prepare an SPD on forward funded infrastructure. 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 this matter or give clarity to the approach that should be employed by all parties in a consistent way that gives certainty to applicants and decision makers.

### **5. Background**

- 5.1. The preparation of an SPD involves two stages of public consultation. This first consultation stage will be followed by another opportunity to comment on a final draft version of the SPD. The final draft of the SPD will be accompanied by a consultation statement setting out the feedback from stage one, and how the document has been altered in response to that feedback. Having also considered comments made at stage two, the SPD may then be considered for adoption by the Council.
- 5.2. Once adopted, the SPD will provide additional planning policy guidance on the implementation of Local Plan Strategy policies IN1 ‘Infrastructure’, IN2 ‘Developer Contributions’ and the Site Allocations and Development Policies Document (SADPD) Policy GEN4 ‘Forward Funded Infrastructure’. The SPD, once adopted, will be a material consideration in decision making and support the delivery of key policies in the Development Plan.
- 5.3. One of the key objectives of the Cheshire East Local Plan Strategy (CELPS) is for the Plan to support and ensure the provision of sufficient

appropriate infrastructure to support and enable economic development and underpin a jobs-led growth strategy.

- 5.4.** Policy IN1 'Infrastructure', of the CELPS sets out the approach the Council will take to infrastructure delivery in the borough and IN2 'Developer Contributions' provides guidance on the mechanisms that will be used to secure funding contributions from development.
- 5.5.** SADPD Policy GEN4 'Forward Funded Infrastructure' establishes the approach that the Council will take to 'claw back' public funding that it has invested up-front in infrastructure delivery, and upon which future development is reliant. For example, the Congleton Link Road has been funded through a variety of public and private investment, including the Council's own capital budget and will enable future residential and commercial development to take place. Given that future development will be reliant on the existence of the link road, contributions, through s106 agreements, will be required to make retrospective contributions to the infrastructure already in place and paid for through public funds.
- 5.6.** Policy GEN4 of the SADPD sets out the circumstances when the Council will seek to recover costs associated with forward funded infrastructure and this SPD provides further detailed guidance on:
  - 5.6.1.** The overall amount to be recovered
  - 5.6.2.** The individual sites, areas or types of development that will be required to contribute; and
  - 5.6.3.** The mechanism to be used for proportionately calculating the cost of contributions.
- 5.7.** This SPD provides greater clarity to developers, landowners, communities and decision makers on the approach the Council will take to securing contributions toward Forward Funded Infrastructure and provides additional guidance to applicants on how they should respond to the policy requirements in the LPS and SADPD. It also 'signposts' sources of information, including relevant documentation and Council services.
- 5.8.** The SPD identifies existing schemes that the council has already forward funded and is actively recovering costs for and sets out how the Medium Term Financial Strategy will be used to identify future schemes that will be subject to policy GEN4 and the recovery of investment.
- 5.9.** The draft SPD has been prepared by the Strategic Planning Team with key input from the Strategic Infrastructure Team.

- 5.10.** Subject to the approval of the recommendations in this report, the SPD will be consulted on in accordance with the Council's Statement of Community Involvement for a period of four weeks.
- 5.11.** The process for preparing an SPD is similar in many respects to that of a local plan document. However, they are not subject to independent examination by the Planning Inspectorate. There are several stages in their production:
- 5.11.1.** Publish the initial draft SPD for four weeks public consultation;
  - 5.11.2.** Consider feedback received and make any changes necessary;
  - 5.11.3.** Publish the final draft SPD, along with a consultation statement setting out who has been consulted in its preparation, the main issues raised in feedback and how those issues been addressed in the final draft SPD;
  - 5.11.4.** Having considered representations, the SPD may then be adopted;
- 5.12.** Following adoption, the SPD 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.
- 5.13.** 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.

## **6. Consultation and Engagement**

- 6.1.** It is proposed that the draft SPD will be subject to four weeks consultation. Following this, all comments will be considered, and changes made to the SPD, as appropriate, before a final version of the SPD is prepared for approval and further consultation.

## **7. Implications**

### **7.1. Legal**

- 6.1.1** 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. 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.

- 6.1.2** 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.
- 6.1.3** 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.
- 6.1.4** 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.

### **Strategic Environmental Assessment**

- 6.1.5** Strategic Environmental Assessment (SEA) involves evaluation of the environmental impacts of a plan or programme. The requirement for SEA is set out in the European Directive 2001/42/EC adopted into UK law as the “Environmental Assessment of Plans or Programmes Regulations 2004”.
- 6.1.6** The SEA Directive sets out a legal assessment process that must be followed. Often within the planning context, the SEA requirements are met by incorporating it within a Sustainability Appraisal (“SA”), which is a requirement for development plan documents.
- 6.1.7** There is no legal requirement for SPDs to be accompanied by SA, and this is reinforced in Planning Practice Guidance (PPG ref: 11-008- 20140306). However, “in exceptional circumstances” there may be a requirement for SPDs to undertake Strategic Environmental Assessment where it is felt they may have a likely significant effect on the environment that has not been assessed within the SEA/SA of the local plan.
- 6.1.8** A screening assessment has been undertaken (in Appendix B) which has determined that a SEA (or an appropriate assessment under the Habitats Regulations) is not required for the SPD.

### **7.2. Finance**

- 7.2.1.** 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.
- 7.2.2.** The SPD will help to improve the process through which financial contributions are secured and recovered towards infrastructure

investment. If not secured appropriately there could be a risk that monies do not come forward and infrastructure may get delayed.

### **7.3. Policy**

- 7.3.1. The SPD will expand and amplify existing development plan policies related to the provision of funding for infrastructure. An SPD will give additional advice to applicants on how they can demonstrate they have complied with relevant policies of the development plan related to this matter.

### **7.4. Equality**

- 7.4.1. 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.
- 7.4.2. The draft Forward Funded Infrastructure SPD provides further guidance on the approach that is expected from developers on this matter. The SPD is consistent with the LPS which was itself the subject of an Equalities Impact Assessment (EqIA) as part of an integrated Sustainability Appraisal. A draft EqIA on the draft Forward Funded Infrastructure SPD has been prepared (appendix C) and will be published alongside the draft SPD for comment.

### **7.5. Human Resources**

- 7.5.1. There are no direct implications for human resources.

### **7.6. Risk Management**

- 7.6.1. 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).

### **7.7. Rural Communities**

- 7.7.1. The draft Forward Funded Infrastructure 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.

### **7.8. Children and Young People/Cared for Children**

- 7.8.1. The draft SPD does not have a direct implication for children and young people or cared for children, but will assist in securing growth that is properly serviced and inclusive for all.

## 7.9. Public Health

- 7.9.1. The draft SPD does not have any public health implications but may assist in securing contributions to other essential services that indirectly improve public health (the delivery of walking and cycling measures in a new road scheme for example).

## 7.10. Climate Change

- 7.10.1. The draft SPD does not have any direct climate change implications but may also indirectly help reduce the impacts of climate change through providing more sustainable travel options (for example).

<b>Access to Information</b>	
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Appendices:	Appendix A: Draft Forward Funded Infrastructure Supplementary Planning Document Appendix B: SEA / HRA Screening Report Appendix C: Draft Equalities Impact Assessment Screening Report
Background Papers:	N/A