

Environment and Communities Committee Report

Date of Meeting:	04 August 2022
Report Title:	Draft Developer Contributions Supplementary Planning Document
Report of:	Jayne Traverse, Executive Director – Place
Report Reference No:	EC/15/21-22
Ward(s) Affected:	All

1. Purpose of Report

- 1.1. This report seeks approval to carry out a minimum of six weeks of public consultation on the draft Developer Contributions Supplementary Planning Document (“SPD”).
- 1.2. For Supplementary Planning Documents, the Council is required to hold consultation for a period of a minimum of four weeks, However, recognising the timing of this decision comes within the school and summer holidays period, it is proposed that a six-week consultation period is carried out, beginning in mid-August (15th August) and extending to the end of September (26th September).

2. Executive Summary

- 2.1. 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 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 but will also be relevant to applying policies of the emerging SADPD, and will support funding and delivery of a range of physical, social and green infrastructure across the borough.
- 2.2. Developer Contributions are secured through two mechanisms. The Community Infrastructure Levy (‘CIL’) is a financial contribution based on the square meterage of a development. Different rates are applied in different parts of the borough, and for different types of development. The CIL is spent on

infrastructure identified in the Council's Infrastructure Delivery Plan and set out in the Medium-Term Financial Strategy.

- 2.3. Section 106 agreements ('S106') are legal agreements entered into between the Council and developers to secure financial or other contributions to mitigate the impact of development and make such development acceptable in planning terms. Such agreements may include financial payments in lieu of direct provision, for example a financial contribution to education in order to fund additional school places necessitated by the delivery of new homes in an area.
- 2.4. 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.
- 2.5. 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](#).

3. Recommendations

- 3.1. That the Environment and Communities Committee:
- 3.2. Approve the draft Developer Contributions Supplementary Planning Document (Appendix A) for six weeks of public consultation starting 15th August. This includes publication of the associated Strategic Environmental Assessment and Habitats Regulations Assessment Screening Report ("SEA") (Appendix B); and the associated Equalities Impact Assessment Screening Report ("EQIA") (Appendix C).
- 3.3. Authorise the Head of Planning to make any other non-material changes to the consultation documents or supporting information ahead of the consultation and prepare any additional explanatory information to support the consultation.

4. Reasons for Recommendations

- 4.1. 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.
- 4.2. 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.

5. Other Options Considered

- 5.1. The Council could choose not to prepare an SPD on Developer Contributions. 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 ensuring that expectations are clear from the outset and assisting developers to comply with relevant policies of the Development Plan.

6. Background

- 6.1.** The preparation of an SPD involves two stages of public consultation. This first consultation stage will be followed by a period where comments will be reviewed and the SPD will be updated accordingly, followed by publication of a final document and 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.
- 6.2.** Once adopted, the SPD will provide additional planning policy guidance on the implementation of Local Plan Strategy (LPS) policies IN1 'Infrastructure', IN2 'Developer Contributions' and various other policies.
- 6.3.** The SPD also is also relevant to the application of policies held in the emerging Site Allocations and Development Policies Document (SADPD).
- 6.4.** Although the SADPD is not yet finalised and adopted, this does not prevent the Council from beginning to prepare additional policy guidance, in readiness for the eventuality that the SADPD is adopted. Should the Council choose not to adopt the SADPD, this SPD will be reviewed and updated accordingly.
- 6.5.** The SPD, once adopted, will be a material consideration in decision making and support the delivery of key policies in the Development Plan.
- 6.6.** 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 physical, social and green infrastructure. The provision of such infrastructure is essential to support and enable the proposed growth set out in the Local Plan Strategy.
- 6.7.** 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.
- 6.8.** This SPD provides greater clarity to developers, landowners, communities and decision makers on the approach the Council will take to securing contributions toward a range of 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.

- 6.9.** For examples, the SPD sets out the Council's approach to securing contributions toward recreation and green space. LPS Policy SE6 sets out the amount of space required per new home, but the SPD provides guidance on how this provision of space may be calculated as a financial contribution toward provision of offsite leisure and recreation facilities.
- 6.10.** The key LPS policies that the SPD provides guidance on are:
- 6.10.1.** Policy IN1 Infrastructure
 - 6.10.2.** Policy IN2 Developer Contributions
 - 6.10.3.** Policy SC1 Leisure and Recreation
 - 6.10.4.** Policy SC2 Indoor and Outdoor Sports Facilities
 - 6.10.5.** Policy SC3 Health and Wellbeing
 - 6.10.6.** Policy SC5 Affordable Homes
 - 6.10.7.** Policy SE6 Green Infrastructure
 - 6.10.8.** Policy CO1 Sustainable Travel and Transport
- 6.11.** 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.
- 6.12.** 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:
- 6.12.1.** Publish the initial draft SPD for four weeks public consultation;
 - 6.12.2.** Consider feedback received and make any changes necessary;
 - 6.12.3.** 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;
 - 6.12.4.** Having considered representations, the SPD may then be adopted;
- 6.13.** 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.
- 6.14.** 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.

7. Consultation and Engagement

- 7.1. 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.

8. Implications

8.1. Legal

- 8.1.1. 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.
- 8.1.2. 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.
- 8.1.3. 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.
- 8.1.4. 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

- 8.1.5. 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".
- 8.1.6. 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.
- 8.1.7. 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.
- 8.1.8. 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.

8.2. Finance

- 8.2.1.** There are no significant 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.
- 8.2.2.** 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.

8.3. Policy

- 8.3.1.** 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 demonstrate they have complied with relevant policies of the development plan related to this matter.
- 8.3.2.** It should be noted that as part of the governments planning reform, the Levelling Up Bill includes proposals to replace both S106 agreements and CIL with a single 'infrastructure levy' capturing all contribution requirements in a single mechanism. Should this proposal come to pass, 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. Therefore, although the SPD may ultimately have a short shelf life it will be useable for some time ahead of implementation of planning reforms and can inform the Council's future work on an Infrastructure Levy.

8.4. Equality

- 8.4.1.** 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.
- 8.4.2.** The 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 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.

8.5. Human Resources

8.5.1. There are no implications for human resources.

8.6. Risk Management

8.6.1. 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).

8.7. Rural Communities

8.7.1. The 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.

8.8. Children and Young People/Cared for Children

8.8.1. The draft SPD does not have implications for children and young people or cared for children but will assist in securing growth that is properly serviced and inclusive for all.

8.9. Public Health

8.9.1. The 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 healthcare.

8.10. Climate Change

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

Access to Information	
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Appendices:	Appendix A: Draft Developer Contributions Supplementary Planning Document Appendix B: SEA / HRA Screening Report Appendix C: Draft Equalities Impact Assessment Screening Report
Background Papers:	N/A