

**Meeting** Executive  
**Portfolio Area** Environment and Regeneration  
**Date** 18 November 2020



## DEVELOPER CONTRIBUTIONS SUPPLEMENTARY PLANNING DOCUMENT: PUBLIC CONSULTATION

### KEY DECISION

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### 1 PURPOSE

- 1.1 To provide Members with an overview of the draft Developer Contributions SPD (Appendix A).
- 1.2 To seek Members' approval to carry out public consultation on the draft Developer Contributions SPD.
- 1.3 To maximise the delivery of affordable housing from private developers and to ensure the provision of, or funding for, infrastructure in Stevenage, whilst promoting community wealth building by creating jobs and training opportunities for Stevenage residents.

### 2 RECOMMENDATIONS

- 2.1 That the content of the Developer Contributions SPD be noted.

- 2.2 That delegated powers be granted to the Assistant Director: Planning and Regulation, following consultation with the Portfolio Holder for Environment and Regeneration, to make amendments as are necessary in the final preparation of the draft SPD prior to its consultation.
- 2.3 That the Executive approve publishing the draft Developer Contributions SPD for consultation from 30 November 2020 to 25 January 2021.

### **3 BACKGROUND**

- 3.1 Developer contributions are provided by developers of proposed built developments which have been granted planning permission. They are intended to mitigate against the impacts that the development will cause. They can be provided by direct provision, by financial contribution or by land transfer. Using education mitigation as an example, the three options are for the developer: to build and provide a school; to provide money to the Council to help fund a school or school expansion, and/or; to provide a plot of land for a school to be built on.
- 3.2 Developer contributions are negotiated and agreed as part of planning applications. They can be a vital part of any planning permission being granted and a Decision Notice confirming that planning permission has been granted for a proposal will not be issued by the Council until an agreed legal agreement with the details of the developer contributions, commonly known as a Section 106 agreement (S106), has been signed.
- 3.3 Each contribution within a S106 must meet the three tests specified in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended):

*“A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*

  - (1) necessary to make the development acceptable in planning terms;*
  - (2) directly related to the development; and*
  - (3) fairly and reasonably related in scale and kind to the development.”*
- 3.4 Developer contributions can cover a wide range of items related to different infrastructure and/or service provision. Each type of contribution (and public body requesting them) has its own way of quantifying the requirement for mitigation for an individual development and how much that mitigation should cost. S106s are often subject to long negotiations as the developer seeks a justification that each contribution is required and a demonstration that each contribution meets the three tests.
- 3.5 In January 2020, the Council adopted a Community Infrastructure Levy (CIL), which came into effect on 01 April 2020. CIL is a form of developer contribution which is calculated simply based on the location, size and type of development. It is non-negotiable and isn't subject to the same negotiation, scrutiny and planning considerations as S106 agreements.

- 3.6 Any development in Stevenage that meets the legal criteria for CIL is required to pay a CIL charge. The criteria are either: 100 sqm of new built development or providing one or more dwelling.
- 3.7 Whilst many of the S106 obligations sought by the Council are actually sought on behalf of Hertfordshire County Council (HCC) and other public bodies, CIL receipts remain in the control of Stevenage Borough Council. Funding priorities will be set out by the Council in an annual statement called the Infrastructure Funding Statement, and organisations such as HCC or local community groups will be able to bid for CIL funds.
- 3.8 CIL replaces the need for S106 agreements in many instances. It is a faster, clearer and simpler system of developer contributions than S106s and it also raises receipts from a greater proportion of developments, reducing the reliance on major applications (those of 10 or more dwellings) to fund infrastructure. CIL receipts are not limited to be spent on a specific project, linked to a specific development. They can be combined and spent more strategically on infrastructure across the borough.
- 3.9 However, in some instances, as well as paying a CIL charge, the Council may consider that a developer should also enter into a S106 with the Council to provide for site-specific mitigation required by their development.
- 3.10 Officers across the Development Management and Planning Policy Teams have worked hard to implement a consistent approach to the use of S106 since CIL was adopted and it is considered important to produce a Developer Contributions SPD to ensure that this consistent approach continues into the future. The SPD will ensure that developers understand what financial obligations they will be expected to provide through S106 contributions in addition to a CIL charge.
- 3.11 By producing a Developer Contributions SPD, the Council will maximise the provision of affordable housing in the town from private developers, will ensure the delivery of much needed infrastructure and will promote community wealth building in Stevenage by supporting Stevenage Works and creating jobs and training opportunities for Stevenage residents.
- 3.12 Put simply, the adoption and implementation of CIL ensures that requesting contributions towards borough-wide infrastructure is a fair, simple and transparent process, and the use of S106 in line with the SPD will ensure the Council maximises contributions towards site-specific mitigation.

#### **4 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS**

**Recommendation 2.1: That the content of the draft Developer Contributions Supplementary Planning Document be noted.**

- 4.1 The draft Developer Contributions SPD is included in Appendix A. The contents of the SPD cannot be seen as an exhaustive list of what may be required through a S106 agreement due to the potential for ad-hoc, one-off impacts to require mitigation. However, an overview of some of the key contents of the draft SPD is presented below.

### *Community Infrastructure Levy (CIL)*

- 4.2 A brief explanation of CIL is included to state the procedures involved with CIL payments and how CIL is being used instead of S106 agreements.

### *Commutated Sums where developments are not Policy-compliant*

- 4.3 The Stevenage Local Plan has policy requirements for new developments. Developments are expected to provide many elements to ensure the development is considered 'sustainable development' as specified by the Local Plan and as agreed by an independent Planning Inspector through the Local Plan Examination process. This includes provision of affordable housing, open space, cycling links, and/or community facilities amongst many other requirements.
- 4.4 Where a development does not provide these on-site sufficiently to be policy-compliant, the developer will be required to pay a commuted sum so that the Council or a third party can provide these necessary requirements elsewhere, off-site but to serve the local population.
- 4.5 These potential requirements are laid out in the SPD with an explanation of how the sought financial contribution will be calculated.

### *Regulation 122 interpretation*

- 4.6 Some proposed developments will have a specific impact that must be mitigated for the proposal to be acceptable in planning terms. In these instances, it is likely a financial contribution will be sought. These contributions would have to meet the requirements of Regulation 122 as previously explained in paragraph 3.3.
- 4.7 A development could have a direct impact on a neighbouring building or piece of land and should not be left to be mitigated by the non-certain borough-wide CIL funding, which is open to a wide variety of applicants and is subject to Cllr agreement to finalise funding. In these instances, in planning terms, the impact must be mitigated for the development to be approved and to gain planning permission.
- 4.8 An example could be where an applicant proposes to build over a section of a cycleway or open space, either preventing a through-route for sustainable transport or causing the loss of much-needed and valued public infrastructure. In these hypothetical instances, whilst in practice the proposals may well be refused due to the impacts, if planning permission was approved, the applicants would have to enter into a S106 agreement with the Council to re-provide the impacted cycle route or open space (to an appropriate standard) or provide a financial contribution to cover the Council's (or third party's) costs to re-provide the cycle route or open space.
- 4.9 Another example of this could be where a proposed development places a demand on a specific service which cannot be met through borough-wide mitigation but must be mitigated in a specific manner to avoid the impacts of development being unacceptable. An example could be the impacts on primary education by proposed development near to the town centre. Here, developments will create a demand for education places that cannot be met

at existing schools in the vicinity due to a lack of capacity, or the expansion of existing schools in the vicinity due to the lack of space, or other limiting factors which prohibit expansion projects.

- 4.10 In this instance, the only mitigation is the provision of a new school in the town centre. This is to be provided within the Town Centre Regeneration plans but is needed to serve demand from a wider range of future developments and should be contributed to by other nearby developments.

#### *Affordable Housing – Review Mechanisms*

- 4.11 It is common for developments, particularly schemes on previously developed land, to be able to demonstrate that they are unviable in line with the National Planning Policy Framework (2019) and the accompanying Planning Practice Guide. When this is the case, the applicant is permitted to negotiate a reduced provision of financial contributions or affordable housing.
- 4.12 Viability assessments have historically been undertaken on a one-off basis at the planning application stage so, whilst Stevenage is clearly a location with great promise, this potential is not taken account of in viability assessments.
- 4.13 The SPD introduces a requirement for viability assessments for developments which were originally demonstrated to be unviable to be reviewed part way through construction. The review will give the Council an opportunity to recalculate the potential provision of affordable housing that a development can afford, based on more up to date information to take account of the expected uplift in prices that could occur as the town centre and neighbourhood centre regeneration schemes come forward. If reviews show an increased viability, the Council will, as a priority, be able to request higher provision of affordable housing or additional financial contributions.
- 4.14 The SPD also adds a requirement for financial contributions related to affordable housing to be subject to long term expenditure deadlines of 10 years or more. This will reduce the risk of the Council having to refund unspent contributions which is a common problem with financial contributions in-lieu of on-site affordable housing provision, due to the length of time it can take to deliver affordable housing schemes. This will help to maximise the potential for the Council to deliver affordable housing in light of the potentially long timeframes involved with: identification and procurement/disposal of suitable plots of land; design and determination through the planning system; and completion of the actual project.

#### *Stevenage Works*

- 4.15 The Council is keen to ensure that the significant amount of growth due to occur in the borough leads to opportunities for local people and young people to gain employment.
- 4.16 The SPD contains a requirement of developments above a certain size to agree to make a set number of construction jobs or apprenticeships available for Stevenage residents and/or students. The developer will have to set targets based on the expected level of employment on their site at the outset of the scheme and will have to report back to the council how it, or its contractor, met or missed the targets.

- 4.17 If a developer fails to achieve their targets, they will be expected to make a payment in lieu of the missed target. The money will go towards a Local Training Fund to be controlled by the Council to fund training opportunities for Stevenage residents, or to fund short-term employment opportunities for Stevenage residents at Stevenage micro-businesses.
- 4.18 This initiative could be linked to the Stevenage Works partnership which is an agreement between the Council and North Hertfordshire College to provide training and job opportunities including apprenticeships for young and unemployed people with local candidates identified by Jobcentre Plus.

#### *Parking*

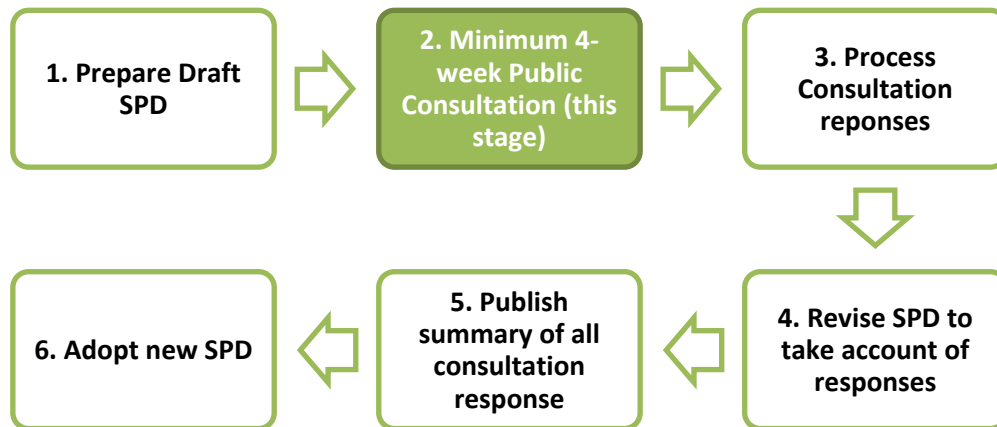
- 4.19 Parking continues to be an emotive and important aspect of development. The Council's promotion of sustainable transport through the Local Plan, Parking Provision & Sustainable Transport SPD, and Future Town, Future Transport means that we are requesting the provision of fewer parking spaces in the more accessible locations in the borough.
- 4.20 It is important to ensure that the reduced level of parking does not result in an overflow of parking issues to nearby areas. As such, the SPD seeks financial contributions towards the management of parking in nearby locations to proposed development where parking is provided under the levels advised by the Parking Provision and Sustainable Transport SPD. This could be to fund increased parking controls by wardens or to fund the pursuit of formal Restricted Parking Zones.
- 4.21 In addition, to promote sustainable development, developers are encouraged to fund items such as electric vehicles for car clubs (and the management of) or above-requirement quantities of EV charging points at the expense of additional parking spaces for non-electric, privately-owned cars.

**Recommendation 2.2: That delegated powers be granted to the Assistant Director: Planning and Regulation, following consultation with the Portfolio Holder for Planning and regulation, to make amendments as are necessary in the final preparation of the draft SPD prior to its consultation.**

- 4.22 The draft Developer Contributions SPD is appended to this report. However, it may be necessary to make minor changes prior to the consultation start date. This might include cosmetic adjustments, the correction of typographical errors and any minor factual changes.
- 4.23 It is recommended that any such amendments be approved via delegated powers.

**Recommendation 2.3: That the Executive approve publishing the draft Developer Contributions Supplementary Planning Document for consultation from 19 October to 30 November 2020.**

- 4.24 The procedure to adopt a new SPD is set out in the Town and Country Planning (Local Planning) (England) Regulations 2012. Roughly, it is as follows:



4.25 The Council must first undertake a consultation for a minimum four week period, however this has been extended to eight weeks to allow for the Christmas period. Following this, the Council must consider the consultation responses, produce a document stating the main issues raised by respondents, and summarise how the issues have been addressed by the Council.

4.26 The timetable for consultation and adoptions is currently as follows:

Stage	Date
8-week public consultation	30 Nov 2020 – 25 Jan 2021
Consider and address responses	Winter/Spring 2021
Adopt SPD through Executive	March 2021

4.27 As with any consultation exercise, it is not known how many responses will be received so the post-consultation stages will not be known for definite until a later date.

## 5 IMPLICATIONS

### Financial Implications

- 5.1 The costs associated with producing and consulting on the draft Developer Contributions SPD will be met from the agreed departmental budget.
- 5.2 The aim of the SPD is to gain provision of, financial and/or land contributions towards identified infrastructure or service needs so the subsequent adoption of a Developer Contributions SPD should have positive financial implications of developments.

### Legal Implications

- 5.3 Consultation on the draft Developer Contributions SPD will be undertaken in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 5.4 The outcomes of any consultation must be conscientiously taken into account in finalising the SPD to take responses into account prior to approval by the Executive.

- 5.5 The subsequent adoption of the Developer Contributions SPD will guide the contents of legal Section 106 agreements for individual developments, where needed to mitigate against the impacts of a development.

#### **Risk Implications**

- 5.6 There are no significant risks associated with producing the draft Developer Contributions SPD.

#### **Policy Implications**

- 5.7 The draft Developer Contributions SPD accords with, and has been produced to supplement policies in, the adopted Stevenage Local Plan (2019).

#### **Planning Implications**

- 5.8 The draft Developer Contributions SPD will supplement the recently adopted Stevenage Local Plan (2019).
- 5.9 If adopted after consultation, the document will not form part of the Development Plan for Stevenage. However, it will be a material consideration for planning applications.

#### **Climate Change Implications**

- 5.10 If adopted, the draft Developer Contributions SPD has the potential to have a positive impact on climate change, by securing developer contributions, either through direct provision or financial obligations, for infrastructure requirements including but not limited to sustainable transport, open spaces and biodiversity net gain.

#### **Equalities and Diversity Implications**

- 5.11 The draft Developer Contributions SPD does not have any direct equality or diversity implications. When implementing any of the contents of the SPD, the delivery body will need to consider the potential impacts on different community groups, in particular those who are less mobile or disabled.

#### **Community Safety Implications**

- 5.12 Whilst the draft Developer Contributions SPD does not have any direct community safety implications itself, when implementing any of the proposals the delivery body will need to consider the potential impacts on community safety.



## **BACKGROUND DOCUMENTS**

**All documents that have been used in compiling this report, that may be available to the public, i.e. they do not contain exempt information, should be listed here:**

BD1 [Stevenage Borough Local Plan \(adopted 2019\)](#)

## **APPENDICES**

A Draft Developer Contributions Supplementary Planning Document