North Somerset Council

REPORT TO THE COUNCIL

DATE OF MEETING: 12 JANUARY 2016

SUBJECT OF REPORT: DEVELOPMENT CONTRIBUTIONS SPD

TOWN OR PARISH: ALL

OFFICER/MEMBER PRESENTING: EXECUTIVE MEMBER FOR STRATEGIC PLANNING, HIGHWAYS, TRANSPORT, HOUSING AND ECONOMIC DEVELOPMENT

KEY DECISION: N/A

RECOMMENDATIONS

It is recommended that the Development Contributions Supplementary Planning Document is adopted as council policy.

1. SUMMARY OF REPORT

1.1 The proposed Supplementary Planning Document (SPD) sets out planning guidance on development contributions within North Somerset. Its purpose is to provide detailed guidance on both operational matters and general principles as well as how planning obligations for a range of services will be calculated. It provides further detail to the policy approach set out in Core Strategy Policy CS34.

1.2 Public consultation took place between 9 July and 4 September 2015, where representations were received from 27 respondents. A summary of their comments and NSC responses is provided at Appendix A.

1.3 Following consideration of the comments received, a number of changes are proposed to the draft document. The revised version of the Development Contributions SPD following consideration of the representations received is attached at Appendix B.

2. POLICY

2.1 The proposed SPD provides additional guidance to support delivery of policy CS34 of the Core Strategy: Infrastructure Delivery and Development Contributions and to other Core Strategy policies relating to infrastructure and service provision.

2.2 The proposals in this report are consistent with the Community Infrastructure Levy (Amendment) Regulations 2014, the National Planning Policy Framework and National Planning Policy Guidance.
2.3 Once adopted, the current SPD will supersede the November 2014 Development Contributions: Principles and Operational Guidance SPD.

3. DETAILS

3.1 SPDs provide further detail on local plan policies to guide decision making on future development proposals. Upon adoption, the Development Contributions SPD will carry weight as a material consideration in planning decisions.

3.2 In November 2014 the Council adopted the Development Contributions: Principles and Operational Guidance Supplementary Planning Document (SPD). This provided an overall framework for the process of agreeing development contributions. It was intended that the Principles and Operational Guidance SPD would be followed by a separate Planning Obligations SPD setting out how development contributions would be calculated for each infrastructure category.

3.3 Due to various legislative changes, the Principles and Operational Guidance SPD required updating. For this reason, it was decided to amalgamate the two proposed SPDs into a single ‘Development Contributions SPD’. The new combined document will, following adoption, supersede the Principles and Operational Guidance SPD.

3.4 The purpose of the Development Contributions SPD is to:

- Provide a more robust basis for negotiating planning obligations that will withstand planning appeals.
- Provide clarity for developers, services, members and the public as to how planning obligations are worked out and spent.
- Start preparing for a CIL examination, at which the Council will have to demonstrate how the package of CIL and S106 obligations work together and that they are affordable in their totality.

3.6 Part 1 of the proposed SPD covers a range of operational matters and general principles relating to development contributions. These include guidance on:

- The national and local planning policy context.
- Which planning applications might be liable for planning obligations and who decides what planning obligations will be required.
- The steps to be taken if a developer feels that a requirement is unjustified or if they cannot afford all the obligations. These include our approach to development viability issues, opportunities for public sector grant and how market recovery mechanisms will work.
- Requirements if a developer is directly delivering infrastructure through works-in-kind rather than financial contributions. These include requirements for supervision fees and in relation to the public adoption of infrastructure.
- Procedural issues relating to drawing up legal agreements to secure planning obligations.

3.7 Part 2 of the proposed SPD sets out how the planning obligations for a range of services will be calculated. This is focused on the methodology that will be used, as national legislation prevents local authorities from using standard ‘tariff-style’ rates. It includes a range of ‘worked examples’, however these are hypothetical and the
reality for an individual application may vary significantly from the figures that are quoted.

3.8 The methodology for calculating planning obligations is constrained through national legislation, but can be summarised in three main steps:

- When a planning application comes forward, a calculation is carried out to work out the impact of the development. For many services, this calculation will be based on the number of residents likely to live at the development, but for others it may be something different – for example transport assessments will look at the number of vehicle trips that will be generated.

- Existing infrastructure / service capacity in the area is assessed. For example, in the case of education, officers will look at how many spare places (if any) are available in nearby local schools. The Council can only consider capacity deficits created as a direct result of the proposed development and cannot use planning obligations to respond to pre-existing unrelated problems.

- Once the extent of the capacity gap is known, projects are identified to mitigate the problems that are caused and it will be agreed how the developer should contribute towards this. Regulations state that any contributions must be reasonable and proportionate.

3.9 The Council also has to take into account the deliverability of projects and restrictions on the number of Section 106 planning obligations that can be pooled towards the same infrastructure.

3.10 Councillors, members of the public and partner organisations such as Town and Parish Councils can suggest requirements needed as a result of a planning application. These should be submitted during the consultation period for the planning application in question and will be taken into account in the normal way. Any proposals should demonstrate how they comply with national legislation. A template to assist with this is available from planning case officers.

3.11 Once a set of planning obligations has been agreed in principle, this will be subject to approval by the Planning & Regulatory Committee or through delegated officer authority where appropriate. The details of the required planning obligations are secured through a legal agreement, normally a Section 106 agreement. Once this has been signed, the details of the planning obligations cannot normally be changed without the consent of both parties and the monies that are received must be spent on the specified projects.

3.12 The SPD focuses mainly on Section 106 style development contributions known as ‘planning obligations’. It is intended that in the future the Council will implement a Community Infrastructure Levy (CIL) that will partially replace and supplement the planning obligations system. The introduction of a CIL is on hold pending resolution of issues relating to the Core Strategy, but it is hoped that work will re-start early in 2016 for implementation in around 12 – 18 months’ time. The SPD provides initial guidance on how it might operate in North Somerset.

3.13 The response to consultation is detailed in the table at Appendix A. This identifies the points raised and the proposed amendments to the document. A copy of the proposed revised SPD can be viewed at Appendix B.

3.14 A summary of the key issues and suggested responses is set out in the table below:
<table>
<thead>
<tr>
<th>Subject</th>
<th>Key issues raised</th>
<th>NSC response / suggested changes</th>
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<tbody>
<tr>
<td><strong>Part 1: Principles &amp; Operational Guidance</strong></td>
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<tr>
<td>Relationship to planning conditions</td>
<td>Clarify when planning conditions should be used rather than S106 agreements.</td>
<td>Some additional guidance has been provided in the text providing an indication of when infrastructure might be dealt with through conditions.</td>
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<tr>
<td>Pooling of planning obligations</td>
<td>SPD should be clearer about how restrictions on pooling regulations will be monitored and dealt with.</td>
<td>An explicit reference to monitoring the obligations has been added.</td>
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<tr>
<td>Relationship to Community Infrastructure Levy (CIL)</td>
<td>Various respondents asked about the timeline for introducing a CIL or expressed concern that this SPD should take greater account of a future CIL.</td>
<td>The timeline for the CIL is dependent on the Core Strategy process so cannot be confirmed at this stage; it is hoped that work will re-commence early in 2016. Officers have attempted to 'future-proof' the SPD in the way that it is written so that it can be used whether or not a CIL is in place. Some minor amendments have been added to make this clearer.</td>
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<td>Involvement of Town and Parish Councils</td>
<td>A number of Town and Parish Councils have asked for greater involvement in determining planning obligations.</td>
<td>A paragraph has been added emphasising that anyone can suggest planning obligations, provided that the requests meet the statutory tests and are submitted as part of the consultation on the application (not post-consent). However the final decision on the package of obligations has to remain with NSC.</td>
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<td>Viability</td>
<td>A number of respondents argued that the draft SPD did not take sufficient account of national requirements to take a flexible and pro-active approach to resolving viability issues. Various detailed issues about viability processes were also raised.</td>
<td>Additional references to relevant sections of the NPPF and NPPG have been added acknowledging that viability is a material planning consideration in determining applications. This has been balanced by the addition of a reference to paragraph 19 of the NPPG which emphasises that planning applications that do not adequately mitigate their impacts should be refused. Amendments have been made to clarify aspects of the viability process where felt that this would be helpful.</td>
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<td>Market recovery mechanisms</td>
<td>Applicants suggested that if market recovery mechanisms are required, there should also be provision to allow for a reduction in obligations if viability decreases.</td>
<td>Not agreed: certainty is needed in relation to the package of obligations. However - national legislation allows developers to appeal their obligations in certain circumstances. To ensure completeness a section has been added to the SPD setting out the processes involved (&quot;what happens if a developer cannot deliver obligations after planning consent has been issued&quot;).</td>
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### Changes to infrastructure cost
The draft SPD included provision that if the costs of a certain item of infrastructure increased above inflation, developers could in some cases be required to pay for the increase in costs, subject to a cap of 15%. This was challenged on two grounds: firstly, the basis for the 15% cap; secondly, the potential impact of increased costs on development viability.

The 15% cap has been deleted as there was no particular rationale for that figure and costs might increase above 15%. In line with requirements that councils must give due regard to viability, an acknowledgement has been made that if costs increase, there may be an impact on viability and other obligations may need to be reviewed.

### Part 2: Guidance on planning obligation requirements

<table>
<thead>
<tr>
<th>Strategic Development Areas</th>
<th>Respondents felt more clarity was needed on how infrastructure for these areas would be dealt with.</th>
<th>Paragraph added encouraging a collaborative approach and stating that the Council will seek to produce further guidance where SDAs are expected to come forward.</th>
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<tr>
<td>Affordable housing</td>
<td>The threshold for contributions towards affordable housing has changed back from 10 to 5 dwellings.</td>
<td>Agreed. References to the 10 dwelling threshold have been removed or changed to 5 dwellings.</td>
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<tr>
<td>Broadband</td>
<td>This should be dealt with through planning conditions rather than S106 agreements (some respondents also argued that it was a matter for the private sector and should not be included at all).</td>
<td>Broadband remains a requirement, but is now dealt with through the ‘Sites &amp; Policies Part 1: Development Management Policies’ DPD, which has greater policy weight than the SPD. The DPD states that broadband will be secured through planning conditions (not S106). References to broadband being required through S106 agreements have therefore been deleted.</td>
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<td>Community capacity and youth services</td>
<td>Questions were asked about how the costs of these services had been calculated.</td>
<td>The costs are estimates based on recent experience. The text has been amended to emphasise that this is guidance only and that the requirements of a particular site may vary dependent on local circumstances.</td>
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<td>Economic development &amp; employment-led requirements</td>
<td>The policy basis has been questioned, in particular in relation to contributions from sites outside of Weston.</td>
<td>The policy basis is CS20 which remains extant. However CS20 does not provide for contributions from sites outside of Weston, and this cannot legally be introduced through an SPD. The text has therefore been changed to the wording used in the Employment-Led SPD.</td>
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<td>Education – school expansions</td>
<td>The main issue raised related to a requirement that developments triggering a need for more than 70% of a new school expansion should pay for 100% of the costs. This was questioned on the grounds that it did not meet the legal tests of mitigating the direct impacts of the development or of being proportionate. On reviewing the text it also became clear that it could potentially be</td>
<td>The text has been amended to make it clearer that financial contributions would be calculated either on the basis of DfE per place ratios or on the costs of work estimated by NSC (if different). Advice was sought from a planning law specialist who agreed that an automatic assumption that developers creating 70% of need would pay 100% of costs was not in line with regulations. The wording has been</td>
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misinterpreted as meaning that developments creating less than 70% need would not be required to contribute at all. softened to retain reference to class sizes but stating that such scenarios would be looked at on a case-by-case basis taking into account for example what other developments might come forward in an area and reasonably be expected to contribute.

| Flood mitigation and sustainable drainage | The North Somerset IDB requested a greater acknowledgement of the role they play in maintaining drainage infrastructure and that their costs should be met. | Wording has been added to emphasise the IDB role and potential contributions required. Corresponding amendments have been made to the chapter on commuted sum amendments. |
| Green infrastructure | Respondents challenged a statement that sports facilities and play areas should not be located in floodable areas, citing National Planning Policy Guidance which permits and even encourages such locations. | NSC’s preference is that facilities should not be located in such areas, however national guidance does not support this approach. The wording has been amended to discourage rather than prohibit the location of such facilities in floodable areas and to require flood resilience measures if so located. |
| Libraries & information services | Contributions are based on the cost of new stock, but reference is then made to spending the contributions on a variety of other uses. | Wording amended to set out that the calculation of the contribution is guidance and that the specific uses and costs of the funding will be assessed on a case-by-case basis. |
| Transport, highways & sustainable travel | Elements of this section were based on outdated guidance from 2007. | Section updated to reflect and refer to recently adopted North Somerset Highways Development Design Guide. |
| Additional Fees | (i) Administration fees challenged on the grounds that a court ruling has deemed flat-rate monitoring fees to be illegal; (ii) Highways fees: justification and rates were queried. | (i) Wording amended to emphasise that quoted rates are guidance and assessments will be made on a case-by-case basis. (ii) Tables of rates for highways fees deleted and readers directed to website guidance which should be kept more up-to-date. |

### 4. CONSULTATION

**4.1** The SPD has been subject to very extensive internal consultation. Relevant sections have been shared with delivery partners including the NHS.

**4.2** Public consultation on the draft document took place between 9 July and 4 September 2015.

### 5. FINANCIAL IMPLICATIONS

**5.1** The SPD will help to clarify the process for requiring and securing contributions and to ensure that this is compliant with council policies and relevant legislation, and will support the introduction of CIL in the future.
6. **RISK MANAGEMENT**

6.1 The purpose of the SPD is to reduce risks by ensuring a transparent and robust approach to the negotiation and collection of development contributions and to ensure that areas experiencing development are properly provided for in terms of physical, social and economic infrastructure. The introduction of the SPD in itself carries minimal risks.

7. **EQUALITY IMPLICATIONS**

7.1 The SPD provides detailed guidance on the delivery of Core Strategy policies – the higher level document was subject to equalities assessment.

8. **CORPORATE IMPLICATIONS**

8.1 The SPD has significant implications for service areas and infrastructure delivery across the Council and with its partners. A wide range of services and partners has been involved in drawing up the draft document.

9. **OPTIONS CONSIDERED**

9.1 Options related to document production were considered by Executive Committee when approving the draft document for consultation. The responses received have been assessed and the document is recommended for adoption. Not proceeding to adoption would reduce the weight accorded to the SPD in the planning process and heighten the risk of failing to secure appropriate obligations.

**AUTHORS**

Jenny Ford, Regeneration Manager, x 6609
Michael Reep, Planning Policy Manager, x 6775

**BACKGROUND PAPERS**

Development Contributions SPD: Executive Committee 23 June 2015.
North Somerset Core Strategy 2012.
Appendix A: Consultation report.
Appendix B: Revised draft Development Contributions SPD.