
**DARLINGTON PLANNING OBLIGATIONS
SUPPLEMENTARY PLANNING DOCUMENT**

**Responsible Cabinet Member - Councillor Chris McEwan, Economy and
Regeneration Portfolio**

Responsible Director - Richard Alty, Director of Place

SUMMARY REPORT

Purpose of the Report

1. This report identifies how the key issues raised during the stakeholder and public consultation in June-July 2012 for the draft Darlington Planning Obligations Supplementary Planning Document (Planning Obligations SPD) (Cabinet 12 June 2012 C10 (3)) have been addressed.
2. It seeks Cabinet's agreement for the finalised Planning Obligations SPD to be presented to Council on the 31 January 2013 for adoption as Council policy, following which it will be a material consideration, having weight when assessing planning applications and considering development proposals.
3. The report also seeks agreement for proposed transitional arrangements to be adopted. These will apply where developers are already engaged with the Council as part of pre-application negotiations. This will ensure the effective and consistent implementation of the Planning Obligations SPD.

Summary

4. The Planning Obligations SPD sets out a new consistent and transparent approach to efficiently and effectively secure planning obligations from new development. It takes account of local land values Borough-wide and other costs associated with development, so that the impact of new development is mitigated whilst ensuring that landowners and developers can still secure competitive returns from the delivered development.
5. The SPD sets out when planning obligations will be sought, how they will be calculated and delivered and the likely costs involved, to ensure the type and mix of obligations secured meets the needs of those occupying the new development, or affected by it. It sets out community infrastructure targets for each locality; where a development is likely to impact on a specific type of community infrastructure,

planning obligations funding may be used to help deliver an associated project identified on a new Infrastructure Projects List.

6. The draft Planning Obligations SPD was subject to stakeholder and community consultation from the 29 June-20 July 2012. All responses have been considered and where appropriate, changes to the draft Planning Obligations SPD made. Details of the key issues raised and changes proposed are detailed in this report.

Recommendation

7. It is recommended that :-
 - (a) The contents of the Planning Obligations Supplementary Planning Document be agreed for recommendation to Council.
 - (b) Cabinet recommend to Council that the Planning Obligations Supplementary Planning Document be adopted.
 - (c) The transitional arrangements to accommodate developers already in pre-applications discussions with the Council, as outlined in paragraph 46 of this report, be agreed.

Reasons

8. The recommendations are supported by the following reasons:-
 - (a) To help deliver the Local Plan.
 - (b) To help deliver new and improved infrastructure in the Borough.
 - (c) To fulfil the regulatory requirements of Supplementary Planning Document preparation.

Richard Alty
Director of Place

Background Papers

- (i) Darlington Planning Obligations Supplementary Planning Document January 2013
- (ii) Darlington Draft Planning Obligations Supplementary Planning Document Consultation Statement January 2013
- (iii) Darlington Draft Planning Obligations Supplementary Planning Document Equalities Impact Assessment June 2012
- (iv) Darlington Draft Planning Obligations Supplementary Planning Document Disabilities Equalities Impact Assessment June 2012

Karen Johnson: Extension 2047

S17 Crime and Disorder	The SPD will have a neutral impact on the Council's ability to consider issues of crime and disorder.
Health and Well Being	The SPD contains guidance for matters such as green infrastructure, sustainable transport provision, sport and recreation facilities that will encourage and enable people to lead more active lifestyles and improve health and well being.
Sustainability	Securing renewable energy generation and/or contributions to the carbon management fund can be achieved through new development. Both can help reduce the Borough's carbon footprint.
Diversity	The SPD contains general and detailed design guidance for matters such as homes for older people, affordable housing and improving access to education facilities for children with disabilities so that the wider community can live easily in the Borough.
Wards Affected	All
Groups Affected	All
Budget and Policy Framework	The implementation of the SPD could affect the level and timing of capital receipts arising from the sale of Council owned land. The costs of planning obligations would effectively be a deduction off the capital receipt for Council-owned land.
Key Decision	Yes
Urgent Decision	No.
One Darlington: Perfectly Placed	Delivering infrastructure at the right time to meet the needs of the new community strongly reflects the vision, themes and work strands of One Darlington: Perfectly Placed.
Efficiency	The SPD emphasises the importance of pre-application negotiations and establishes a planning obligation system which should lead to savings in officer time and workload later in the planning application process, particularly for significant schemes. It will help plan for, fund and coordinate infrastructure to support the Core Strategy's growth strategy.

MAIN REPORT

Information and Analysis

9. The Local Plan will guide the development and use of land in Darlington. The Planning Obligations SPD (draft in Members Rooms and at www.darlington.gov.uk/planningpolicy) will help to deliver it, providing essential, detailed guidance on the operation of several Core Strategy policies:-
 - (a) Key policy CS4: Developer Contributions, that applies to all forms of development; and
 - (b) Criteria based policies where planning obligations are one element of the policy, relating to a specific form of development (Policies CS3, CS11, CS12, CS15, CS17, CS18 and CS19).
10. Once adopted, the SPD will become the basis for securing developer contributions, known as planning obligations or a Section106 agreement, for infrastructure from new development. It will be a material consideration, having weight when considering planning applications for new development.
11. Promoting viable development in Darlington today is extremely challenging. Build costs and infrastructure costs (provided by each Council service) have increased, whilst land and sales values have fallen. As a result, there is only limited funding available for planning obligations, at a time when there are increasing expectations from services that funding for more things will come from this source. The SPD takes into account local land values Borough-wide and other costs associated with development, to ensure that the impact of new development is mitigated, whilst still ensuring that landowners and developers can secure competitive returns from delivered developments.
12. The Planning Obligations SPD will set out interim guidance on how planning obligation matters should be addressed in Darlington until Autumn 2014, when the Community Infrastructure Levy (CIL) is programmed to be introduced. This new planning charge will be a key way of providing, operating, maintaining, improving and replacing infrastructure as part of new development. After 2014, planning obligations will remain in use but their focus is expected to change slightly but the overall approach is likely to remain the same.
13. The Planning Obligations SPD is closely linked to the themes in One Darlington: Perfectly Placed. Its aim is to provide the right amount of infrastructure at the right time to help create a high quality, distinctive, safe and sustainable built and natural environment for Darlington's residents and those who wish to visit or invest in the Borough.

Community and Stakeholder Consultation Undertaken

14. In accordance with the Council's Statement of Community Involvement and to meet regulatory requirements regarding public participation in the preparation of a supplementary planning document, Cabinet agreed (12 June 2012 (C10 (3))) that the draft SPD be the basis for carrying out community and other consultations

between the 29 June and the 20 July 2012.

15. The consultation was widely publicised in the local media and letters were sent to 650 interested organisations, agencies and residents providing information about the draft SPD. Published information included the document itself, a publicity leaflet, the Equalities Impact Assessment and the Disability Equalities Impact Assessment. All these documents were available on a dedicated page about the draft Planning Obligations SPD on the Council's website.
16. Several individual meetings and discussions were held with different stakeholders, particularly housebuilders and developers, who will be the main users of the SPD, relating to specific infrastructure issues. In addition a public 'drop in' session was held at the Dolphin Centre, and a Members' briefing was also held before the start of the consultation.

Consultation Statement

17. A full summary of comments made, the officer response and any proposed changes to the draft Planning Obligations SPD, including changes made as a result of the Equalities Impact Assessment and Disabilities Equalities Impact Assessment, are set out in a Consultation Statement, prepared to meet the regulatory requirements for a SPD (see the Council's website www.darlington.gov.uk/planningpolicy). The Statement also provides further details on paragraphs 14-16 above. Given the range of issues on which comments were made, only the key changes are covered in this report. A copy of the finalised Planning Obligations SPD is attached (**Appendix 1**).

Key changes to the Planning Obligations SPD

Proper use of planning obligations

18. The draft SPD emphasised the need to use planning obligations more efficiently and effectively, particularly to supplement other funding to help deliver community infrastructure projects that new development were likely to have an impact upon. Housebuilders were concerned that the use of planning obligations as 'gap funding' could be interpreted as the Council securing planning obligations to deliver a 'wish list' of projects that were not needed to mitigate the impact of new development, contrary to Government guidance.
19. The National Planning Policy Framework (para. 204) is clear that planning obligations can only be used where they meet the following three tests:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the proposed development; there must be a functional or geographical link between the development and the infrastructure being sought; and
 - (c) fairly and reasonably related in scale and kind to the development.

20. The Planning Obligations SPD states that planning obligations will not be used to fill existing infrastructure gaps or to achieve wider objectives that are not necessary to grant planning permission. But, to reflect the responses, the approach to securing planning obligations, particularly community infrastructure, has been clarified to ensure that it is clear and remains consistent with Government policy. Planning obligations will be used to secure infrastructure to overcome fundamental planning objections. Firstly to:-
- (a) prepare a site for development and make it safe and sustainable e.g. new junction to access the site; and then
 - (b) to help deliver other relevant local and/or strategic community infrastructure identified on the Infrastructure Projects List; where a development would have an impact on a particular type of community infrastructure, planning obligations funding would be sought to help deliver that project.
21. Once the site related infrastructure needs have been addressed (Step a), it is anticipated that there will only be a small amount of funding remaining for community infrastructure (Step b) in most parts of the Borough. The SPD identifies a range of community infrastructure targets (to be updated annually) for five localities covering the Borough (North West, Central, South West, South East, North East and Rural Area) that would be unable to cope with the demand from different size and types of new development to 2014. Where a development would have an impact on that type of community infrastructure, planning obligations funding would be sought to help provide or improve it. The community infrastructure targets will be translated into projects on a new Infrastructure Projects List (see paragraphs 36-38) so that developers can clearly see where their funding has been spent.
22. This clear approach should give developers and housebuilders confidence that the Planning Obligations SPD is entirely consistent with the three tests set out above. The use of locality specific community infrastructure targets and the Infrastructure Projects List will ensure that planning obligations funding are only being used to provide or improve infrastructure that the development will have an impact upon, in that locality.

Section 1.1.3: Commonly Sought Planning Obligations

23. Planning obligations are currently sought by the Council as part of new development. These have generally been limited to affordable housing, transport facilities and green spaces. But as new development can also impact on things like schools and sports facilities, the draft SPD (elaborating on Core Strategy policy CS4: Developer Contributions) provided more details on the types of infrastructure that are most likely to be commonly sought from new development in the future.
24. The Environment Agency and English Heritage want the content of the draft SPD to be expanded to include provision of flood mitigation and sustainable drainage systems, and the protection and enhancement of the historic environment respectively. Durham and Darlington Primary Care Trust (PCT) suggested planning obligations could be used to secure match funding for health facilities which may need improving and/or extending in the long term to meet the needs of a growing

and ageing population.

25. While all important, these matters are not likely to be frequently sought as part of a planning application or if they are, e.g. sustainable drainage systems, then planning conditions rather than planning obligations would be commonly used to secure provision. In addition, the SPD is worded so that planning obligations can also be sought for 'other' types of infrastructure to address the specific infrastructure needs of a development, which could include the matters raised. Furthermore, dialogue is underway and continuing with these agencies through the preparation of the new site allocations and development management policies document (Making and Growing Places DPD) to ensure that the right amount of infrastructure is available in the right place, at the right time to meet the needs of new development.
26. However, over the next few months, the Flood and Water Management Act 2010 is expected to introduce the requirement for most new development to incorporate sustainable drainage systems (SuDS), usually found next to highways, in the public realm or in green infrastructure. While the provision of SuDS will not commonly be sought by planning obligations, a financial contribution towards their maintenance could be, as the Act will require the Council or another body to adopt and maintain the majority of SuDS in the future. Therefore to address the Environment Agency's concerns, maintenance requirements for SuDS have been added to the SPD, but the details will be determined on a site by site basis, to reflect the type of SuDS provided, the requirements of emerging Government guidance as well as the viability of the development.
27. Housebuilders stated that providing planning obligations guidance for a wider range of infrastructure was inappropriate in the current financial climate, when the difference between viable and non viable development is so narrow. At Place Scrutiny Committee on the (14 June 2012 (P6)), Members also expressed concern that the expanding list could result in limited funding being spread too thinly.
28. While the SPD provides guidance on a wider range of infrastructure, it is clear that planning obligations will only be sought where existing infrastructure is unable to cope with the demand from new development. The use of annually updated thresholds, assumptions, requirements and costs will ensure that there is a balance between prioritising infrastructure to meet the needs of development and delivering viable development. The introduction of the Infrastructure Projects List (see paragraphs 36-38) will help ensure that limited planning obligations funding is directed to priority projects that development will impact upon.

Section 2: Community and Member Involvement

29. The National Planning Policy Framework indicates as essential 'early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses ... [so that] a wide section of the community [are] proactively engaged, so that Local Plans, as far as possible, reflect a collective vision and a set of agreed priorities for the sustainable development of the area'. The CPRE, housebuilders and residents emphasised the importance of involving the impacted community and their representatives in making decisions about the type of infrastructure needed in their area, particularly when putting together the Infrastructure Projects List. This was also highlighted by Members at the Place

30. It is important that the local community, Members and Parish Councils are involved in identifying the right type and amount of infrastructure needed to support new development. In accordance with the Statement of Community Involvement, developers will be encouraged to hold a pre-application consultation event for significant planning applications, inviting the community and relevant local Members, and Parish Councillors, where applicable to comment. Any impacts on the local community and the planning obligations proposed to address them should be identified at that stage. Further opportunities to comment will be provided as part of the planning application consultation.
31. Additionally, over the next two years, the Council will be preparing the Making and Growing Places DPD. This will show where most new housing, employment, shops and services are expected to go in the Borough to 2026, and what key pieces of infrastructure will be required to bring forward the sites in a timely fashion. The community and other stakeholders will have several opportunities to engage in the plan preparation process, and the feedback from these consultations will also help inform the community infrastructure targets in the SPD as well as the content of Infrastructure Projects List in the long term.
32. Following consideration of the responses, further guidance has been added to the SPD to identify the different ways the community, Members and Parish Councils can get involved in deciding how planning obligations can be used in their local area. Planning Committee members, in determining significant planning applications, will be able to see if the proposed planning obligations satisfactorily mitigate the impact of the development, and will be able to ensure that financial contributions are used to deliver appropriate projects on the Infrastructure Projects List, consistent with national policy.

Section 4.4: Cumulative Impact of Development

33. Planning obligations can also be used to help deliver strategic infrastructure in the Borough, and elsewhere, if it is required to mitigate the impact of new development. Redcar and Cleveland Borough Council suggested that the SPD should refer to the use of planning obligations to help deliver sub regional strategic infrastructure. Under the Localism Act 2011, the Council has a duty to cooperate on planning issues crossing administrative boundaries, including those which relate to infrastructure provision. It will continue to work closely with the other Tees Valley authorities, as well as those in Durham and North Yorkshire, to ensure that strategic infrastructure priorities are properly addressed and coordinated using a range of delivery mechanisms.
34. It is not anticipated that the amount of development over the next two years will generate obligations of a sufficient scale to support sub-regional infrastructure. But the use of developer funding to help deliver sub regional infrastructure has been discussed several times, in different forums by Officers. Progress is ongoing and Officers will use discussions to inform the preparation of the Local Plan, particularly the forthcoming Making and Growing Places DPD.

35. In the meantime, the SPD will refer to the potential in the medium to long term to use planning obligations to help deliver appropriate sub regional infrastructure. However, given the demands placed upon limited planning obligations funding in the Borough, the SPD will require strategic infrastructure projects to be clearly justified and costed, so that funding can be apportioned fairly between all affected developments across the Tees Valley, and where appropriate in Durham and North Yorkshire. This will ensure that early developments do not provide infrastructure to the benefit of later developments.

Section 4.5: Infrastructure Projects List

36. The Infrastructure Projects List will include a range of community infrastructure projects that are required to deliver the infrastructure necessary to meet the needs of new development in each locality over the next few years. Where a development is expected to impact on a specific type of community infrastructure, funding sought will be used to help deliver the associated project in that locality.
37. Several consultees pointed out that the List was not available during the consultation and so it was difficult to work out the likely planning obligation costs from a new development. But the total planning obligation costs are based on the number of dwellings or amount of floorspace in a scheme, the costs of different infrastructure and the community infrastructure targets identified in the SPD. The SPD allows the cost of obligations to be calculated, whereas the Infrastructure Projects List identifies exactly where and on what it will be spent.
38. So that developers can see where their funding will be spent, it is expected that the Infrastructure Projects List will be available on the Council's website from February 2013. A framework for the operation, governance and implementation of the Infrastructure Projects List is currently being prepared (due to be considered by Cabinet in January 2013). In the meantime further guidance has been added to the SPD on the general approach and operation of the Infrastructure Projects List.

Section 6.3: Education and Section 6.8 Public Art

39. Through discussions with developers and housebuilders and based on evidence from viability assessments submitted in the last 12-18 months for proposed developments, it became clear that planning obligations for education and public art were placing unrealistic costs on new development, that were unachievable in the current market.
40. The focus for education was to secure sufficient primary school places to meet the needs of new development. The draft SPD identified a standard charge of £14,486 per primary school place, or a proportion of that cost, where viability was an issue. But developers requested that the 'proportion' be clarified, as this could have an impact on the deliverability of a scheme, as to date, no financial contributions for school places have been secured, as a result of the total cost associated with provision.
41. Following consideration of these comments and to ensure greater transparency, a standard charge of £3055 per market dwelling (to be updated each financial year), from appropriate schemes will be sought by the SPD, from viable development that

is expected to have an impact on local primary education. Provision will be sought in accordance with the requirements of the Infrastructure Projects List (see paragraphs 36-38) and is based on the predicted level of new pupil generating market homes to be built over the next two years (63) taken from the Council's housing trajectory, the DFE cost of a new school place (£14,486) and the school places expected to be required from that amount of development (15). Based on this robust and clear evidence, this is considered to be a viable and realistic charge that can be secured from most new developments, helping to deliver school places to meet an identified need.

42. Public art is an important part of delivering environmental quality in new development. The charge for public art was based on a percentage of the construction costs of the capital project; at least 0.5% for residential and at least 1% for non residential development. However this cost was not considered by developers to be feasible alongside other planning obligation requirements.
43. As a result of comments made, for appropriate, viable schemes, the SPD will use a sliding scale, reflecting broad land values for residential development, up to the value of 0.5% of the gross development value, e.g. Bank Top and Lascelles have lower land values so development there would contribute up to 0.1% of the gross development value, whereas development in wards with higher land values e.g. College, Park West would contribute between 0.4- 0.5% of the gross development value. This should give developers and housebuilders confidence that planning obligations requirements are being fairly set, taking account of local land values, but are at an affordable level to deliver quality development in Darlington.

Equalities Impact Assessment and Disabilities Equalities Impact Assessment

44. A generic Equalities Impact Assessment (EQA) found that equality is being promoted by the SPD. Specifically, it recognises that the type of infrastructure to be provided by developer contributions varies by geographical area and will help ensure more equal infrastructure provision across the Borough, regardless of where someone lives. The SPD can benefit specific age groups in different ways; public transport and affordable housing could benefit older and younger people more, whereas providing primary education provision and children's play space could benefit younger people more.
45. A Disabilities Equalities Impact Assessment (DEIA) has also been carried out to specifically look at the impact of the Planning Obligations SPD on disabled people. The provision of affordable housing, including homes designed to accommodate disabled people, the provision of public and sustainable transport and children's play areas will be designed to ensure equality of access for all across the Borough, including those with disabilities.
46. None of the proposed changes from the draft SPD are considered to impact specifically on the areas identified in the EQA and DEIA.

Transitional Arrangements

47. Since the start of the consultation period, Officers have been referring developers to the draft Planning Obligations SPD, particularly in relation to the new approach,

requirements and costs. However, in those cases where developers have been engaged with the Council in pre-application discussions, prior to the adoption of the Planning Obligations SPD, and where the details of the new planning obligations requirements have not been mentioned, it would be unreasonable of the Council to require it at a late stage in negotiations. These instances are now likely to be exceptional, but where developers have made irreversible financial commitments on the basis of previous advice, this would be reflected in any planning obligations sought and would be stated in Officers' reports to Planning Applications Committee.

Monitoring and Review

48. To provide greater accountability and so that the local community and developers can see what infrastructure is being funded from planning obligations, the Council will publish an annual report (for the financial year) at the Council's Place Scrutiny Committee showing:-
- (a) How much funding has been collected;
 - (b) How much has been spent;
 - (c) The items of infrastructure provided;
 - (d) The amount of funding used to cover administrative expenses;
 - (e) The amount of funding retained at the end of the financial year;
 - (f) Planned provision for the following year;
 - (g) Changes to the Infrastructure Projects List.

This information will also be included in the Local Plan Annual Monitoring Report.

49. A review of community infrastructure targets will be undertaken each April. This will involve Council services, other infrastructure providers and where appropriate Parish Councils and Community Partnerships/Residents Associations. Ongoing discussions with developers active in the area will help identify their infrastructure requirements and priorities and build-out timescales, particularly through the preparation of the Making and Growing Places DPD. The results will update the Infrastructure Delivery Plan and will inform changes to the Infrastructure Projects List.

Next Steps

50. Subject to Cabinet agreeing the recommendations, the Planning Obligations SPD will be presented to Council on the 31 January with a recommendation for adoption as Council policy. Once adopted it will be a material consideration, having weight when assessing planning applications and considering development proposals. Training sessions will be held for Members to discuss the content and approach of the Planning Obligations SPD and its use when considering planning applications.

Financial Implications

51. Planning obligations are currently sought by the Council. Financial systems are currently in place to manage planning obligations received. Finance Officers confirmed this approach was appropriate to manage the new approach proposed by the SPD.

Legal Implications

52. This report and the SPD are fully compliant with the Town and Country Planning (Local Planning)(England) Regulations 2012, the Localism Act 2011 as well as the Community Infrastructure Levy (Amendment) Regulations 2011 and the Community Infrastructure Levy Regulations 2010. All guidance is also consistent with the National Planning Policy Framework.

Corporate Landlord Advice

53. The implementation of the SPD could affect the level and timing of capital receipts arising from the sale of Council owned land. The Property Asset Management Team were satisfied with the approach, content and costs identified in the draft SPD; the finalised SPD remains consistent with this.

Equalities Considerations

54. This report has been prepared in consideration of the Equalities Impact Assessment requirement referred to in paragraphs 44-46.

Consultation

55. The consultation carried out and its outcomes are described earlier in the report.