
DARLINGTON LOCAL DEVELOPMENT FRAMEWORK
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 summarises the approach and content of the draft Local Development Framework (LDF) Planning Obligations Supplementary Planning Document (Planning Obligations SPD), as the basis for securing developer contributions, known as planning obligations or a S106 legal agreement, for infrastructure from new residential and non residential development. It has regard to the current economic conditions and seeks to balance the need for community infrastructure arising from new development with securing quality, safe, sustainable development in Darlington. It seeks Cabinet's agreement to the contents of the document and for public and other consultations to be carried out on the draft document.
2. A copy of the document is attached as **Appendix 1**, and is available on the Council's website www.darlington.gov.uk

Summary

3. The draft Planning Obligations SPD provides further detail and clarification on several Core Strategy policies, setting out interim guidance on how planning obligation matters should be addressed in Darlington until 2014, when the Community Infrastructure Levy will be introduced. It identifies broad infrastructure targets for different parts of the Borough, which funding from planning obligations could help deliver. Detailed planning obligations guidance is set out for a range of different types of infrastructure including affordable housing, transport facilities, green infrastructure, education and sport and recreation facilities.
4. The draft SPD emphasises that planning obligation requirements will apply equally to all developments across the Borough, including those on Council owned land. Like other landowners, the Council will need to be aware of the potential implications of planning obligation costs on the level and timing of land receipts.
5. Carrying out community and stakeholder consultations on the draft SPD during June-July 2012 will be an important step towards fulfilling the regulatory requirements for preparing a LDF Planning Obligations SPD.

Recommendations

6. It is recommended that :-

- (a) The content of the draft LDF Planning Obligations Supplementary Planning Document (at **Appendix 1**) be agreed.
- (b) The draft LDF Planning Obligations Supplementary Planning Document be agreed as the basis for carrying out public and other consultations, in line with regulatory requirements and the Council's commitments to community engagement set out in the adopted Statement of Community involvement.

Reasons

7. The recommendations are supported by the following reasons :-

- (a) To continue to progress towards fulfilling the statutory requirements to have an up to date Local Development Framework in place.
- (b) To fulfil the regulatory requirements of local development document preparation.

Richard Alty
Director of Place

Background Papers

No Background papers were used in the preparation of this report.

Karen Johnson: Extension 2047

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| S17 Crime and Disorder | The proposed arrangements will have a neutral impact on the Council's ability to consider issues of crime and disorder. |
| Health and Well Being | The Planning Obligations SPD contains general and detailed 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. |
| Carbon Impact | Securing renewable energy generation and/or securing contributions to the carbon management fund can be achieved through new development. Both can help reduce the Borough's carbon footprint. |
| Diversity | The Planning Obligations 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 that will enable the wider community to live easily in the Borough. |
| Efficiency | The Planning Obligations SPD emphasises the importance of pre-application negotiations and establishes the planning obligation requirements for new development. This should lead to savings in officer time and workload later in the planning application process, particularly for major and significant schemes. It will inform the Council's capital spending planning process and help properly plan for, fund and coordinate infrastructure to support the level of growth identified in the Core Strategy. |
| Wards Affected | All |
| Groups Affected | All |
| Budget and Policy Framework | This report does not recommend a change to the Council's budget or policy framework. However, implementation of the draft SPD could affect the level and timing of capital receipts arising from the sale of Council owned land. |
| Key Decision | Yes. |
| Urgent Decision | Yes. To fulfil the regulatory requirements of Local Development Framework document preparation |
| 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. |

MAIN REPORT

Purpose of the Report

8. The purpose of this report is to outline the content of the draft Local Development Framework (LDF) Planning Obligations Supplementary Planning Document (draft Planning Obligations SPD), and to seek Members' agreement to it being used as the basis for public and stakeholder consultations.
9. Once finalised, the SPD will become the basis for securing developer contributions, known as planning obligations or a Section106 agreement, for infrastructure from new development.

Context

10. The LDF guides the development and use of land in Darlington. One of its more detailed policy documents will be the Planning Obligations SPD (draft attached as **Appendix 1**), providing detailed planning guidance on the operation of several Core Strategy policies:-
 - (a) Key policy CS4: Developer Contributions, 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).
11. Once adopted by the Council, the Planning Obligations SPD will carry considerable weight in making decisions on planning applications.
12. Planning obligations are currently sought by the Council as part of new development, but this has generally been limited to affordable housing, transport facilities and green spaces. As new development can also have an impact on a wider range of infrastructure, like schools and sports facilities, this draft SPD provides more details on securing such community infrastructure from new development via planning obligations.
13. At present, planning obligations are negotiated on a site by site basis. A key aim of the draft SPD is to make the planning obligations process more efficient and effective, by setting out consistent and transparent guidance for all developers and landowners that takes into account Borough wide land values and other costs associated with development (see paragraphs 12-17).
14. The draft SPD will only be used until April 2014, when the Council will introduce the Community Infrastructure Levy (CIL). This new planning charge will then become the main way of securing funding for the provision, operation, maintenance, improvement and replacement of infrastructure as part of new development. CIL will not replace planning obligations, but it will reduce their scope. So that the draft SPD remains relevant in the long term, it has been designed so that only small parts of the document, including costs, will need revising in 2014, to avoid duplication with CIL.

What are planning obligations?

15. New development should not place any additional unacceptable impacts on the Borough's infrastructure including:
 - (a) Physical infrastructure: transport facilities, renewable energy and public art;
 - (b) Social infrastructure: education facilities, affordable housing, employment skills and training placements, sport and recreation facilities; and
 - (c) Green infrastructure: open spaces and children and young people's play provision.
16. Where new development is promoted in parts of the Borough where infrastructure provision is insufficient, planning obligations can help ensure that a complementary, coordinated programme of infrastructure is delivered at the right time. Usually they secure infrastructure away from a development site, financial contributions and/or the provision of complex arrangements, such as affordable housing and travel plans. Planning obligations can also be used for community infrastructure that reduces the impact of development in a local neighbourhood, e.g. to provide a new children's play area, or can be for a larger piece of community infrastructure e.g. sports facilities, to which many different developments may contribute.
17. Planning obligations can only be used to fill funding gaps that remain once existing funding sources have been taken into account. By looking across all funding streams available, the Council will therefore have flexibility to decide how best to use planning obligations to deliver the Borough's infrastructure requirements.
18. Planning obligations can only be used to seek infrastructure necessary to allow the granting of planning permission and must meet all of the following tests set out in national policy:-
 - (a) necessary to make the development acceptable in planning terms, to create a sustainable development;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development to support the demand generated by the development.

Current Economic Market Conditions

19. Promoting viable development in Darlington today is extremely challenging. Build costs and infrastructure costs (provided by each Council service) have increased, while land and sales values have fallen. The result is that there are even less funds available than before for planning obligations, at a time when there are increasing expectations from services that funding for more infrastructure will come from this source.
20. Landowners (including the Council) are having to reduce their expectations as to the amount they would receive if they sold their land, and then decide whether they are still willing to sell their land for development. Developers are having to decide whether, once planning obligation requirements and other costs have been taken into account, they can still promote profitable developments.
21. To meet the LDF Core Strategy objectives, development needs to continue to come forward. The Council's economic viability model assumes that there will only be sufficient incentive for a developer/landowner to bring forward land if the residual land value (the

amount left that could be used to buy land) is 25% of the gross development value (amount a developer could get from selling/renting the development) for medium to low density sites and at least 17% for high density sites. When assessing how much value remains for planning obligations, this puts all developers and landowners on an equal footing, regardless of whether the land had been bought or valued at a higher level. Publishing this SPD should help ensure that planning obligation costs are factored in at an early stage in the development process when land is bought, so that the impact on viability can be minimised.

22. Wider economic conditions are not expected to improve much between now and 2014. As a result, relatively little development is expected to come forward in the Borough in the next two years. To ensure that this development is viable and deliverable, and to make sure that the type and mix of planning obligations secured meets identified community needs, certain targets and assumptions (to be updated annually) relating to the detailed operation of all planning obligations have been made in the draft SPD; for example, up to 20% affordable housing provision (instead of up to 30% as set out in the LDF Core Strategy) will be sought. These targets and assumptions reflect evidence from viability assessments submitted in the last 12-18 months for proposed developments, supported by information in the LDF Infrastructure Delivery Plan.
23. Using these targets, assumptions and updated planning obligation costs, in the current economic market, the 2012 Addendum to the Economic Viability of Housing Land Study 2010 shows that the viability of development will vary across the Borough; in the south western and outer north western parts of the urban area new housing development would be viable with planning obligations. In contrast, in the central, eastern and south eastern parts of the urban area, housing development with planning obligations is generally unlikely to be viable.
24. Elsewhere viability varies by size of development. For example, smaller schemes up to 14 dwellings could be marginally viable with up to £25,000 planning obligation costs, but this is significantly less than the costs of all planning obligations identified by the Council. This means that in these areas, it is unlikely affordable housing will come forward as part of a viable private development scheme. Retail, office and hotel development could provide some planning obligations, but this varies by site. Viability will continue to be monitored annually.

Planning Obligations Supplementary Planning Document: Approach

25. The draft Planning Obligations SPD (**Appendix 1**) formalises and streamlines the planning obligations system so that all development makes fair and reasonable contributions on a consistent basis to mitigate their impact on infrastructure. It sets out:-
 - (a) the procedures for the use of planning obligations;
 - (b) when they will be sought;
 - (c) how obligations will be calculated; and
 - (d) how the Council expects planning obligations from new development to be delivered.
26. The draft SPD will only apply to new development outside the Core Strategy strategic development locations (Town Centre, Town Centre Fringe, Central Park, North Western Urban Fringe, Eastern Urban Fringe and Durham Tees Valley Airport). Given the extent of infrastructure required in those locations, it is expected that a 'per unit of development' tariff will be set up to secure infrastructure fairly and equally from new development

planned there. Further details will be set out in the LDF Making Places/Accommodating Growth DPD (adoption expected 2014). Where development comes forward in these locations before 2014, this SPD will form the basis for negotiations.

27. The draft SPD will outline three distinct but reinforcing steps:-

- (a) Step 1: Conform with general planning obligations guidance;
- (b) Step 2: Address locality specific community infrastructure targets;
- (c) Step 3: Incorporate detailed infrastructure guidance.

28. Firstly, all new development must be consistent with adopted planning policies for the Borough. Proposals should then accord with the general planning obligations guidance. Then, under this new approach, the Council will expect developers to identify the locality their development falls within (North West, South West, South East, Central, North East or Rural Area). The locality specific community infrastructure targets will set out the requirements for each part of the Borough. The detailed guidance will provide information about how to deliver each type of infrastructure.

Step 1: Conformity with general planning obligations guidance

29. The general guidance in the draft SPD explains how the Council expects relevant national and local planning policy and guidance to be addressed in Darlington for a range of detailed development management matters. Planning obligation requirements could change over time to reflect improving economic conditions. Where a site is expected to be developed out over several years, a review mechanism for planning obligations will be incorporated into the S106 legal agreement to allow for the re-assessment of viability, linked to the delivery of the scheme or phases of a scheme to a specified timetable. This will allow re-negotiation at a specified date later to amend planning obligation requirements.

Step 2: Address locality specific community infrastructure targets

30. In those parts of the Borough where there is insufficient value in land to fund all planning obligations (see paragraphs 16-17), the draft SPD proposes using planning obligations to help deliver locality specific community infrastructure that a development is likely to impact upon. Infrastructure requirements may vary in different parts of the Borough and/or by size and type of development and are likely to change over time.

31. The infrastructure requirements for each part of the Borough have been derived from a wide range of evidence including the Joint Single Needs Assessment, One Darlington: Perfectly Placed and the LDF Infrastructure Delivery Plan. The ability of existing infrastructure to cope with increased use from new development, as well as committed infrastructure projects and the availability of funding from other sources have all been taken into account.

32. A two stage approach will be used:-

- (a) Stage 1: fund essential community infrastructure to prepare a site for development, make it safe and overcome fundamental planning objections e.g. new junction to access the site;
- (b) Stage 2: help deliver each locality's community infrastructure targets to deliver projects on the Infrastructure Projects List e.g. Blackwell Meadows sporting hub.

33. The size and type of development, the assumptions discussed above and design requirements (particularly for larger sites) will influence the essential infrastructure required, generally on site, to create a sustainable, mixed community (Stage 1). Remaining funding would then be used to deliver the Infrastructure Projects List (Stage 2). This publicly available list (to be updated annually) will identify different infrastructure projects for each locality that planning obligations funding can help deliver within the appropriate timescale. It will be available in Autumn 2012 and will be adopted alongside the SPD.
34. In those parts of Darlington where development is unlikely to be viable with planning obligations, the draft Planning Obligations SPD proposes that planning obligations should not be sought for locality specific community infrastructure (Stage 2) in 2012-13. This acknowledges the difficulties that will be faced in collecting enough planning obligations to support new development in the current economic climate, and the need to maintain developer confidence in the Darlington market. Planning obligations may still be required under Stage 1 to make a development acceptable in planning terms. Where the Council has sufficient evidence of economic viability on a particular site, planning obligations will be negotiated on a site by site basis.
35. This proposed approach has many benefits. Not only does it lead to an improved quality of development that secures appropriate levels of infrastructure, it addresses local needs, so could receive more support from the local community. Importantly, it provides a more level playing field for developers and landowners to operate within, generating a more certain climate for investment. Although the range of potential planning obligations has increased, this approach will ensure that the overall costs associated with planning obligations do not rise to an unreasonable level and impact upon scheme viability to such an extent that it stifles development.

Step 3: Incorporate infrastructure specific detailed guidance

36. The infrastructure specific guidance provides specific technical details including formulas, charges and delivery mechanisms so that comparable levels of infrastructure can be sought for:
 - (a) Affordable Housing
 - (b) Transport: Sustainable Transport, Public Transport and Highways
 - (c) Education
 - (d) Green Infrastructure
 - (e) Sport and Recreation
 - (f) Off Site Renewable Energy and the Carbon Management Fund
 - (g) Employment Skills and Training
 - (h) Public Art

Financial Implications

37. Adopting a coordinated, robust and consistent planning obligations system will provide the Council with several benefits:-
 - (a) it will inform the Council's capital spending planning process and help other infrastructure providers, developers and local communities to be able to properly plan for, fund and coordinate infrastructure to support the level of growth identified in the Core Strategy. Obligations could be used to inform other decisions relating to capital

investment across the Council and help organisations apply for funds by providing a source for match funding;

- (b) it will permit up to a 3% fee to be charged, proportionate to the value of the planning obligation, to help fund part of an officer's time to administer and monitor the use of planning obligations;
- (c) it will provide greater transparency for developers, Members and the community; an annual report will be taken to Place Scrutiny to show how planning obligations have been used.

- 38. Planning obligation requirements apply equally to all developments across the Borough, including those on Council owned land. Like other landowners, the Council should be aware of the implications of planning obligation costs on the level and timing of land receipts and should value land accordingly. However, there may be cases where, to make a development acceptable in planning terms, planning obligation costs will have a significant impact on land receipts, and if the Council wants to ensure the delivery of the scheme, it may have to accept a lower than anticipated land receipt.
- 39. Where viability remains an issue, the Council, as a landowner/developer, should submit a viability assessment to aid planning application negotiations. This will ensure that planning obligation requirements can be negotiated to a reasonable level so that development can proceed.

Next Steps

- 40. Subject to Cabinet's agreement of the recommendations, public and other consultations will take place on the draft LDF Planning Obligations SPD from June to July. After that, the consultation responses will be considered and the SPD will be revised accordingly, with a recommendation to adopt the finalised SPD being presented to Council in Autumn 2012. The Infrastructure Projects List will be adopted at the same time. Work is expected to begin on CIL in January 2013.