



**Draft Planning Obligations Supplementary Planning Document**

**Key Decision No. NH Q31**

**CABINET MEETING DATE (2019)**

**20 January 2020**

**CLASSIFICATION:**

**OPEN**

**WARD(S) AFFECTED**

**All**

**CABINET MEMBER**

**Cllr Nicholson**

**Planning, culture and inclusive economy**

**KEY DECISION**

**Yes**

**REASON**

**Affects two or more wards**

**GROUP DIRECTOR**

**Ajman Ali , Group Director of Neighbourhoods and Housing**

## **1. CABINET MEMBER'S INTRODUCTION**

- 1.1. The Council is now at an advanced stage of developing a new borough-wide Local Plan 2033, known as LP33, which will be the key strategic planning document used to direct and guide development in the borough up to 2033. Following examination hearings in Summer 2019, the Council is now awaiting the Planning Inspector's report before the Plan can be adopted.
- 1.2. Upon adoption of LP33, the Council's existing supplementary planning documents or 'SPDs' (which set out additional and detailed guidance that supplements planning policies) will need to be updated to reflect the new planning policies, such as requirements for affordable housing contributions of schemes of less than 10 units. This provision is particularly important in Hackney where small residential development accounts for a significant proportion of delivery.
- 1.3. Planning Obligations (or S106 contributions) apply only to mitigate impacts that directly relate to an individual development and includes affordable housing, affordable workspace, employment and skills, carbon offset and public realm/transport improvements specific to an individual site. It is used alongside the Community Infrastructure Levy (CIL) - a charge applied to new development in the borough and paid by the developer. CIL helps to fund strategic borough-wide and neighbourhood based infrastructure to address the needs arising from new development.
- 1.4. This update to the Planning Obligations SPD will provide clarity for developers on the requirements of planning obligations for different types of development as set out in the new Local Plan. It must be stressed that this update does not provide details about the process and decision making protocols for the allocation and spend of S106 contributions and CIL. A report to Cabinet in September 2019 proposed the next steps for this work stream and this work will commence in the first quarter of 2020.
- 1.5. I commend this report to Cabinet.

## **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1. This report seeks Cabinet approval of the draft Planning Obligations Supplementary Planning Document.
- 2.2. The draft Planning Obligations SPD is an important document which sets out the Council's requirements for planning obligations from developments. Once adopted it will be a material consideration in the determination of planning applications in Hackney.
- 2.3. The SPD sits alongside Hackney's Community Infrastructure Levy (CIL) Charging Schedule which charges developers for contributions towards strategic infrastructure. CIL rates are set at a level which balances the need to bring forward development,

having regard to costs of development including S106 contributions, with the need to bring forward infrastructure required to mitigate the cumulative impacts of development and support growth.

- 2.4 The draft SPD sets out the requirements for S106 requirements arising from the policies in the Local Plan. The report does not provide details on the spend of S106 contributions or CIL. Details regarding the spend of S106 and CIL were set out in the report agreed by Cabinet in September 2019.
- 2.5 Approval is sought to consult Hackney's residents, businesses, stakeholders and statutory bodies on the draft Planning Obligations SPD.

### **3. RECOMMENDATION**

3.1 Cabinet is asked to:

1. Approve the draft Planning Obligations Supplementary Planning Document (Appendix 1) for public consultation.

### **4. REASONS FOR DECISION**

4.1 Consultation with stakeholders and the public is integral to producing a supplementary planning document. It is also required in line with Regulations 12 and 13 of the Town and Country Planning (Local Planning) (England) Regulations 2012. Responses to the consultation will help inform and influence the final version of the Supplementary Planning Document.

### **5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

5.1 There are no alternative options. The scope of the draft Supplementary Planning Document is defined by policies in the emerging Hackney Local Plan, LP33.

### **6. BACKGROUND**

- 6.01. Planning obligations are a key tool to 'secure' the vision for Hackney set out in Hackney's new Local Plan (LP33), including the delivery of affordable housing and better education and health services among others. Planning obligations are secured through using Section 106 legal agreements with the grant of planning permission.
- 6.02. Updates to national planning guidance and the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 have been taken into account in drafting the revised draft SPD. It should be noted that these amendments explicitly allow for fees to be charged to monitor the implementation of s106 agreements.

#### **6.1 Policy Context**

### 6.1.1. **The draft London Plan**

The draft London Plan sets out a policy framework for viability and planning obligations to ensure the delivery of infrastructure needed to maintain London as first and foremost an economic centre, both as the UK's engine for growth and to maintain its position as a globally competitive city. As such, it explicitly states a priority list of infrastructure delivery. Policy DF1D "Delivery of the Plan and Plan Obligations" prioritises the spend of planning obligations as affordable housing and transport as the top priority, followed by health and education and then by cultural and leisure facilities.

### 6.1.2 **Local Plan 2033**

The vision of LP33 also prioritises affordable housing but takes a different approach to place-shaping. This approach adopts a more balanced approach to meeting the needs of its existing and new residents and providing for economic growth. This is reflected in the draft Planning Obligations SPD which supports this vision and approach.

### 6.1.3 **The draft Planning Obligations SPD**

The draft Planning Obligations SPD requirements meet the legal test for use of Section 106, they are clearly linked to requirements explicitly set out in the LP33 and are underpinned by the associated viability evidence. The Council undertook extensive viability testing to support LP33 policies with a particular focus on new requirements for affordable housing in small schemes and extending the current approach to securing low cost and affordable workspace (these are set out in the Proposed Submission Local Plan, and the Community Infrastructure Levy Viability Assessment - October 2018).

6.1.5. The draft guidance briefly outlines the legal and national policy context for s106 requirements and provides the approach to securing both financial and non-financial planning obligations. This includes the process for determining how S106 requirements are identified and when they are to be paid. The draft also sets out requirements and calculations for developer payments to cover the Council's monitoring fees - £555 per non-financial obligations and £555 or 5% (capped at £5,550) of financial settlement per Heads of Term. A bespoke approach will be taken to very large applications to ensure charges are fair and reasonable. The guidance then provides for requirements for planning obligations, including:

- Affordable housing
- Affordable and low-cost workspaces
- Social and community infrastructure
- Jobs, skills and training
- Open space and play space
- Sustainable transport: transport mitigation measure
- Carbon offset and other environmental mitigation measures
- Managing town centres and entertainment impact

- 6.1.6. Each section provides the justification for the requirements, linked to LP33 policies and with reference to underlying evidence. Where possible, it gives an indication of costs for any payments that might be required to be secured through S106. This is typically linked to cases where it is not feasible to meet policy requirements on site.
- 6.1.7. The draft Planning Obligations SPD rolls forward many of the approaches established in the existing 2015 Planning Obligations SPD. The key updates relate to:
- setting out the new requirements for affordable housing or a payment in lieu for schemes of 9 or less homes of £60,000 per unit in Shoreditch / 'City Fringe Area' and £50,000 per unit in the rest of the borough. These sums have been informed by LP33 viability testing. This is comparable with rates in the neighbouring Borough of Islington.
  - signposting the requirements for 10 % affordable/low cost workspace which include capped rental levels at 40% market rent in Shoreditch and 60% in the rest of the borough.
  - updates to s106 monitoring fees and fees for travel plans and construction and logistic plans to reflect monitoring costs.
  - setting requirements for carbon offset payments (for all developments) where standards are not met on site including for small scale residential development where the option of a bespoke payment based on an energy assessment or a flat fee payment is required. Again, this is comparable with rates in neighbouring islington.
  - updating the guidance to refer to LP33 and, where relevant, the new London Plan policies.
- 6.1.8. The methodology for calculating contributions in the draft SPD is in line with the 2015 Planning Obligations SPD however there have been minor updates made to the source data to respond to changes in Census/ population data or employment densities. The projected, index-linked, costs underpinning the contributions sought are maintained at the levels in the 2015 Planning Obligations SPD.
- 6.1.9. The document will be consulted on for six weeks in line with the requirements of the Local Plan Regulations (2012) and the requirements of Hackney's Statement of Community Involvement. Early discussions on approaches and initial input has already been sought from Hackney Clinical Commissioning Group. This engagement will continue and comments will be sought invited from other local stakeholders and from developers to inform any revisions to the draft.
- 6.1.10 Changes to the SPD, where appropriate, will be made in consultation with the Cabinet Member for Planning, Culture and Inclusive economy.

## **6.2 Equality Impact Assessment**

- 6.2.1 The Draft Planning Obligations SPD supplements the Local Plan, LP33 by providing guidance and does not create new policies; these are provided for in Hackney's emerging LP33. An Integrated Impact Assessment which includes an Equalities Impact Assessment has already been undertaken on LP33. This demonstrates

compliance with the public sector duty in the Equality Act 2010 by having due regard to:

- eliminating discrimination; harassment and victimisation,
- advancing equality of opportunity between persons who share a protected characteristic and persons who do not share it; and
- fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

### **6.3 Sustainability**

6.3.1 The Draft Planning Obligations SPD supplements the Local Plan and does not create new policies; these are provided for in Hackney's emerging Local Plan (LP33). A Strategic Environmental Assessment and Sustainability Appraisal (SA) has already been undertaken as part of the Integrated Impact Assessment of the Local Plan to ensure that the plan meets agreed sustainability objectives.

### **6.4 Consultations**

6.4.1 Consultation on the Draft Plan will be undertaken in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) and Hackney's Statement of Community involvement.

### **6.5 Risk Assessment**

6.5.1 A risk assessment has been carried out as part of the project plan produced for the SPD.

## **7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES**

7.1 This report seeks Cabinet to approve the draft Planning Obligations Supplementary Planning Document for public consultation.

7.2 The draft SPD provides guidance on the implementation of policy regarding planning contributions as set out in the new Local Plan 2033. The draft guidance includes the process for determining how S106 requirements are identified and when they are to be paid. It also sets out requirements and calculations for developer payments to cover the Council's monitoring fees. Monitoring fees will fund the cost of staff and IT software associated with implementing and monitoring the Section 106 agreements.

7.4 The draft SPD increases the number of developments where Section 106 contributions are applicable (see paragraph 6 above).

7.5 The total sums payable to the Council in a financial year via Section 106 planning obligations is dependent on the nature and size of the associated developments.

7.6 The spend of S106 contributions and Community Infrastructure Levy (CIL) income (which applies in parallel with S106 payments) will continue to be considered through the S106 and CIL Corporate Board and Lead Members before consideration by Cabinet as detailed in the report to Cabinet in September 2019.

## **8. COMMENTS OF THE DIRECTOR OF LEGAL**

- 8.1 Cabinet is authorised to approve the recommendations in this report pursuant to the Mayor's Scheme of Delegation, which states that the adoption/amendment of policies related to matters including the Local Development Framework are delegated to the Executive (ie Cabinet).
- 8.2 Supplementary Planning Documents are described in regulation 5 of the Town and Country (Local Planning) (England) Regulations 2012 as documents prepared by a local authority that are not Local Plan documents but are local development documents containing statements regarding matters including the development and use of land which the local planning authority wish to encourage during any specified period and any environmental, social, design and economic objectives relevant to the attainment of the development and use of such land.
- 8.3 Under regulation 8 of the Town and Country (Local Planning) (England) Regulations 2012, any policies in a Supplementary Planning Document must be consistent with the adopted development plan.
- 8.4 Under regulation 12 of the Town and Country (Local Planning) (England) Regulations 2012 before the Council can adopt a supplementary planning document it must undertake a public consultation for a minimum period of four weeks.

## APPENDICES

<b>Appendix 1</b>	Draft Planning Obligations SPD
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### BACKGROUND PAPERS

None

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