



Adopting of the Planning Obligations Supplementary Planning Document

Key Decision No. NH Q84

CABINET MEETING DATE

20 July 2020

CLASSIFICATION:

OPEN

WARD(S) AFFECTED

All

CABINET MEMBER

Cllr Guy Nicholson

Planning, Culture and Inclusive Economy

KEY DECISION

Yes

REASON

Affects two or more wards

GROUP DIRECTOR

Ajman Ali, Acting Group Director of Neighbourhoods and Housing

1. CABINET MEMBER'S INTRODUCTION

- 1.1. Planning Obligations, such as Community Infrastructure Levy or Section106 contributions, are the route through which Planning gain can be raised from new developments. This gain makes an important financial contribution to the Councils capital programme enabling complimentary development to come forward that supports the needs of a growing community. Such development is described in Hackney's new Local Plan (LP33). Section106 is required to mitigate the impacts that directly relate to an individual development and can include affordable housing, affordable workspace, employment and skills, carbon offset and public realm/transport improvements specific to an individual site.
- 1.2 Upon the anticipated adoption of the new Local Plan at Full Council in July, existing Supplementary Planning Documents, which set out additional and detailed guidance that supplements planning policies, will require updating to reflect the new LP33 policies. This includes a need to update the 2015 S106 Planning Contributions SPD which does not include a number of S106 requirements that are in the new LP33 such as the new affordable housing contributions from small sites and the new affordable workspace policies.
- 1.3 This report sets out the updated S106 Planning Contributions SPD to ensure that the Council can legally capture the S106 contributions from developers post the LP33 adoption and through its adoption will provide legal clarity for both developers and the Council on the requirements of Hackney's planning obligations going forward.
- 1.4. I commend this report to Cabinet for adoption.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 Approval is sought to approve the adoption of revised s106 Planning Contributions SPD. The SPD takes into consideration responses received by Hackney's residents, businesses, stakeholders and statutory bodies during the statutory public consultation held between 18 February to 17 April 2020,
- 2.2 Once adopted it will replace the existing adopted Planning Contributions SPD (2015) and will be a material consideration in the determination of planning applications in Hackney. It sets out the requirements for S106 requirements arising from the policies in the Local Plan (LP33).

3. RECOMMENDATION

- 3.1 Cabinet is asked to:

1. Adopt the Planning Obligations Supplementary Planning Document (Appendix 1) to take effect on 23 July 2020 provided Local Plan 33 has been adopted by Council.
2. Delegate authority to the Group Director of Neighbourhoods and Housing to approve administrative alterations, typographical amendments, to improve cross referencing (e.g para numbering, page numbering) and typographical errors prior to the publication of final publication.

4. REASONS FOR DECISION

- 4.1 The current S106 SPD will become out of date on adoption of LP33 so needs to be updated, brought into line with LP33 policies and then adopted to become a material planning consideration while also providing developers with clarity and certainty for submitted proposals.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 There are no alternative options. The existing Planning Obligations Supplementary Planning Document becomes outdated upon adoption of the new borough Local Plan (scheduled for July Cabinet and Council) therefore it is necessary to update and adopt the revised SPD to provide clarity to developers and decision-makers on the requirements of planning obligations for different types of development as set out in the new borough-wide Local Plan (LP33).

6. BACKGROUND

- 6.0.1 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.
- 6.0.2 In February 2020, Cabinet approved the draft SPD for public consultation. Consultation was undertaken for an 8 week period from 18th February to 17th April 2020. The consultation period was 4 weeks longer than the minimum statutory period owing to the Covid-19 pandemic and associated constraints. The comments received have informed the final SPD which is being recommended to Cabinet in July for adoption alongside the new borough-wide Local Plan, LP33.
- 6.0.3 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 SPD.

6.1 Policy Context

6.1.1. The London Plan

The current and associated emerging 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" of the current London Plan prioritises the spend of planning obligations on 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 (LP33)

Local Plan LP33 is the key strategic planning document used to direct and guide development in the borough up to 2033. Supplementary Planning Documents (SPDs) such as the the Planning Obligations SPD provide guidance on how policies in LP33 are to be implemented by developers.

- 6.1.3 LP33 makes clear that it is essential that development in Hackney continues to provide or fund local improvements and infrastructure items needed to mitigate the impact of development. It further states that the provision of affordable housing, local open space improvements and/or additional facilities and requirements (including employment and skills initiatives, affordable workspace, green links and on-site provision of specific infrastructure) and securing appropriate scheme implementation and control of phasing where necessary will be delivered through Section 106 planning obligations as set out in the Planning Contributions Supplementary Planning Document.

6.1.4 The Planning Obligations SPD

The Planning Obligations SPD requirements meet the legal test for use of Section 106 as set out in the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019; including that 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 Local Plan (LP33) and the Community Infrastructure Levy Viability Assessment - October 2018).

- 6.1.5. The Planning Obligations SPD 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 SPD 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 SPD 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 of the SPD 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 a s106 agreement. This is typically linked to cases where it is not feasible to meet policy requirements on site.

6.1.7. The 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 final 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. This latest draft also includes reference to calculation formula for health contributions and the link to automatically calculate the education contributions which were omitted in the consultation draft.

6.2 Equality Impact Assessment

6.2.1 An Integrated Impact Assessment which includes an Equalities Impact Assessment was undertaken on LP33. This was required in order to comply with the public sector equality 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.

6.2.2 The final Planning Obligations SPD supplements the new Local Plan (LP33) by providing guidance and does not itself create new policies. There will not be any detrimental impact to groups with protected characteristics under the Equality Act 2010 caused by the adoption of this updated SPD on planning obligations

6.3 Sustainability

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

6.4 Consultations

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

6.4.2 The document was consulted on for 8 weeks. This is an additional 4 weeks to the consultation timeframes stipulated by the Town and Country Planning Regulations (2012) and the requirements of Hackney's Statement of Community Involvement, in order to provide an additional time due to the Covid-19 pandemic and the associated lockdown.

6.4.3 During the consultation period, 26 responses were received in total, split evenly between residents, and statutory bodies/ other organisations. Consultation feedback on the draft SPD did not raise any material issues and mainly related to the need for clarification around definitions and measures which were incorporated into the final version, including:

- Clarification on definitions of large-scale development
- Clarification of floorspace measurements
- Updated links to transport assessments and other TfL guidance
- Inclusion of references to legislation
- Inclusion of formulae for health and education contributions omitted in the consultation draft

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 There are no direct financial implications as a result of the recommendations to adopt the Planning Obligations Supplementary Planning Document.

8. COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE SERVICES

8.1 The updated s106 Planning Contributions SPD has been prepared and consulted on as a Supplementary Planning Document in line with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

8.2 Part 5 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 sets out the regulations that must be adhered to when preparing an SPD. In summary, the regulations require that Local Planning Authorities;

- Allow any person to make representations about the SPD, make the document available for viewing, and set a date by which this must be received (being not less than 4 weeks).
- Prepare a statement setting out who was consulted, a summary of the main issues, and how these issues have been addressed.
- Prepare an adoption statement setting out the date on which the SPD was adopted, and that any person with sufficient interest may apply to the High Court for permission to apply for judicial review of that decision, no later than 3 months after the adoption date.

8.3 The consultation stages outlined above under section 6.4 of this report above accords with the requirements in the Regulations in that the opportunity for representations was provided for a period exceeding 4 weeks and a consultation statement was prepared.

8.4 If Cabinet approves that the updated s106 Planning Contributions SPD be adopted to take effect following adoption of Local Plan 33, then the Council must subsequently prepare and publish as soon as practicable afterwards an adoption statement setting out the date on which the SPD was adopted, and that any person with sufficient interest may apply to the High Court for permission to apply for judicial review of that decision, no later than 3 months after the adoption date.

8.5 Once the updated s106 Planning Contributions SPD has been adopted as a SPD and forms part of the Council's Local Plan, it will have material weight as a planning consideration when determinations are made with respect to planning applications.

APPENDICES

Appendix 1	Final Planning Obligations SPD
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BACKGROUND PAPERS

The s106 Planning Obligations SPD is the tool to support and implement the policies in Local Plan LP33. Therefore, the relevant background paper is the Cabinet Report and appendix of LP33 (and referenced policies contained within) which will be going to Cabinet jointly with this report.

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