

Taunton Deane Borough Council

Executive – 12 November 2008

Report of the Forward Plan Manager

Planning Obligations Supplementary Planning Document (SPD)

(This matter is the responsibility of Executive Councillor Simon Coles)

1.0 Purpose of Report

- 1.1 This report informs Members of the progress with the Planning Obligations SPD, and summarises the responses received during the statutory consultation period on the draft SPD document. It sets down the proposed amendments to the SPD, and recommends that the SPD be formally adopted with the inclusion of these amendments.

2.0 Background

- 2.1 The Planning Obligations SPD was originally commissioned to provide guidance for securing contributions from developers (planning obligations or Section 106 agreements) towards the major town centre development proposals in Taunton. In practice, developments within the town centre (particularly housing) will also have to contribute to certain other measures, such as open space and sports facilities, which are normally sought from all developments regardless of whether or not they are in the town centre. As far as it can, the SPD reflects this.
- 2.2 In parallel with the production of the SPD, the Government has abandoned its proposals for a Planning Gain Supplement, replacing it instead with a proposed Community Infrastructure Levy (CIL) (contained within the Planning Bill). However, even if the CIL is implemented, it could not be adopted in the absence of an Local Development Framework (LDF) Core Strategy. This means that, without SPD, for a number of years there would be an absence of detailed policy on planning obligations in the Borough. This omission could become important given that the Council has now adopted the Taunton Town Centre Area Action Plan (TCAAP), which the SPD is needed to amplify.
- 2.3 There is also a need for detailed guidance to secure the repayment (via planning obligations) of any monies awarded to the Borough Council under the Regional Infrastructure Fund (RIF). In addition, discussions with the Government Office have made clear that the Borough Council needs to make serious efforts to secure contributions from developers; failure to do so could affect the availability of grant funding for projects.

- 2.4 Taunton's designation as a New Growth Point (NGP), and the scale of development allocated to the Borough in the RSS, mean that a comprehensive policy framework for planning obligations is required. In major urban areas, the days of site-by-site negotiation for each developer contribution have really gone for ever, and other local authorities in growth areas are already well ahead in developing policy.

3.0 **What's happened so far**

- 3.1 A team of consultants (Three Dragons, Roger Tym and Michael Beaman) were appointed in March 2007 to prepare the SPD. Funding for the work was shared between the DCLG, NGP funds, the Borough Council and Somerset County Council. The consultants assembled a range of information on service and infrastructure requirements from numerous stakeholders who might be expected to seek contributions from developers.
- 3.2 The draft SPD document was the subject of a six week statutory consultation period in June – July 2008. This consultation included a workshop for development interests on 3 July and a workshop for other stakeholders on 11 July.

4.0 **Response to the consultation**

- 4.1 While a substantial number of responses were received during the consultation period, the issues raised fall under a number of main headings:
- Collapse of the housing market – impact of contributions on viability
 - Compliance with Circular 05/2005
 - Whether the SPD can be prepared in advance of the Core Strategy
 - Whether contributions should be sought in respect of affordable housing
 - The level of maintenance payments being sought
 - Timing of payment of obligations
 - Outline applications
 - Non-residential developments
 - The SPD does not appear to consider conserving biodiversity or include contributions towards the emerging Green Space Strategy.

- Whether or not an Appropriate Assessment is needed under the Habitats Directive 92/43/EEC
- The document does not deal with the position where on site provision is more appropriate than contributions.
- Impact on deliverability of brownfield sites
- Omission of some services from the SPD e.g. police, libraries, health, waste
- There is a need for an audit trail – contributions cannot be spent flexibly but only in accordance with the purposes specified in the S106 agreement
- Contributions should not be sought from developments outside Taunton town centre to improvements within the centre
- The time horizon of the SPD (to 2016) is too short
- Administration fees, legal charges, timing of payments, planning performance agreements
- The proposed level of contribution to public art is excessive
- Whether a contribution should be required in respect of allotments
- The availability of public funding should be taken into account when setting the charges
- Whether contributions towards education should be sought from all developments or only where there is evidence of need
- Various issues relating to transport

5.0 **Proposed response to issues raised in the consultation**

- *Collapse of the housing market – impact of contributions on viability*

- 5.1 The consultants took care to assess whether the level of contributions being sought from developers would be affordable in the context of land and property values in Taunton Deane. Unfortunately, the crisis in the banking system since 2007 has resulted in a near-cessation of development activity and a fall in land values.
- 5.2 The key point to note, however, is that while development viability has temporarily fallen, the need for infrastructure and community facilities remains the same as before. The SPD makes provision for contributions to be reassessed where the developer can demonstrate

that they are not affordable, and thus can accommodate the current difficult market conditions.

- 5.3 What should be avoided is the temptation to reduce the list of requirements or the scale of charges in the SPD. The danger with this approach is that developers will move to obtain planning permission on the basis of minimal contributions, which they will wait until the market is more buoyant to implement (at a time when a higher level of contributions can be afforded). The community risks losing out very substantially if this course of action were taken.
- *Compliance with Circular 05/2005*
- 5.4 Some respondents argued that an SPD can only relate to adopted policies in a Local Plan or a Development Plan Document (DPD)(such as the Core Strategy). However, paragraph B27 of Circular 05/2005 allows for policies on planning obligations to be included in an SPD as an interim measure in advance of a DPD.
- 5.5 Furthermore, whilst the Council's Core Strategy is still being prepared, there is now an adopted Area Action Plan covering Taunton Town Centre. Policies in the AAP make clear that developers will be required to contribute to the measures listed in the SPD.
- 5.6 In addition, a comprehensive evidence base has been prepared by Leisure in terms of the need for open space, built sports facilities and village/community halls. Developers cannot therefore claim that the SPD's requirements are not based on clear evidence of need.
- 5.7 For these reasons, therefore, it is not accepted that the SPD is in conflict with Circular advice. Moreover, the South West Regional Assembly indicated in their response that the SPD is in general conformity with RPG10 and the draft RSS.
- *Whether contributions should be sought in respect of affordable housing*
- 5.8 A number of Housing Associations (RSLs) and developers objected to the proposal in the SPD to require contributions towards various types of community facility from affordable housing schemes.
- 5.9 The RSLs' argument is that affordable housing is substantially concerned with meeting the needs of the existing population and thus does not add to the demand for services. In addition, the Housing Corporation will not fund community facilities associated with the affordable housing.
- 5.10 The counter argument, put forward by the Council's consultants, is that just because a dwelling is 'affordable' does not mean that less open space, sports provision, school capacity, and other infrastructure is

needed. Also, the introduction of choice-based letting will mean that future tenants may no longer be existing residents within the Borough Council's area.

- 5.11 It needs to be remembered that on the basis of the RSS, 35-40% of all new dwellings in Taunton are likely to have to be affordable. If no contributions to infrastructure and community facilities were secured in respect of these dwellings, a serious shortfall in provision would result.
- 5.12 A meeting with Housing Associations was held on 16th October 2008 to discuss their concerns. It appears that their main concern is in respect of 100% affordable housing schemes, and it is recommended that the SPD be modified to acknowledge that 100% affordable housing schemes may need to be given special consideration. In the case of schemes comprising a mixture of market and affordable dwellings, the SPD should be clarified to state that the overall quantum of community facilities needed for the total number of dwellings, must be provided - it will be for the developer and the RSL to agree how the costs are paid. For example, a scheme of 50 dwellings, of which 30 are market housing and 20 are affordable will require the standard of open space for 50 units, not purely for the 30 market houses.
- *The level of maintenance payments being sought*
- 5.13 It was suggested that the Borough Council has been seeking commuted maintenance contributions towards the upkeep of open space for an excessively long period. One developer suggested that a time period of 10 or 12 years would be appropriate, whereas the Borough Council has been seeking contributions for 20 years.
- 5.14 Paragraph B18 of Circular 05/2005 states that where contributions to be secured are towards the provision of facilities 'which are predominantly for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance. Such provision may be required in perpetuity.' The Council's request for a commuted sum based on 20 years does not therefore appear unreasonable.
- *Timing of payments*
- 5.15 Developers were concerned that the timing of any payments adequately reflected the realities of cashflow within the development process. This was the intention, and it is recommended that the SPD be amended accordingly. For example, it would be appropriate to state that the timing of payments may need to be different for different types of development, and that payments may be staged.

- *Outline applications*

- 5.16 The draft SPD document stated that where a development already has full planning permission, the provisions of the SPD would not apply. A number of developers suggested that the level of planning obligations should be set at the outline stage rather than being amended when details of the 'reserved matters' are brought forward.
- 5.17 Whilst there is no desire to create problems by introducing additional requirements, equally it would seem unreasonable for a developer to be able to make substantial changes to a development proposal at the reserved matters stage, without this being reflected in the level of planning obligations sought. If developers wish to avoid this situation, they need to include enough information about the numbers and mix of development at the outline stage for the obligations to be determined. It is interesting to note that outline applications have been held to be insufficiently detailed in themselves for the purposes of Environmental Assessment.
- 5.18 By definition, for planning obligations to reflect more accurately the differing impact of particular dwelling types – which developers have stated they want – they have to be levied on a specific number and type of dwellings or floorspace, and thus cannot be purely based on an outline proposal. It is recommended that this is clarified in the SPD.

- *Non-residential developments*

- 5.19 Objections were raised that non-residential developments appeared to be exempt from some of the obligations. For example, the draft SPD document did not propose to levy an administration charge on commercial developments, although it was proposed to charge £100 for each dwelling. It is agreed that this is inequitable, and it is recommended that the SPD be amended to ensure that residential and non-residential developments are treated similarly, as far as this is possible.

- *The SPD does not appear to consider conserving biodiversity or include contributions towards the emerging Green Infrastructure Strategy*

- 5.20 At present, the Green Infrastructure Strategy is in the very early stages of production and it is not therefore possible to incorporate any part of it within the SPD. However, the potential to secure contributions towards the Green Infrastructure Strategy will be addressed when the SPD is reviewed in parallel with production of the Core Strategy.
- 5.21 The conservation of biodiversity is something that needs to be addressed at a site-specific level. It would be appropriate in the SPD to refer to this as being a likely requirement when the document is reviewed.

- *Whether or not an Appropriate Assessment is needed under the Habitats Directive 92/43/EEC*
- 5.22 Under the Habitats Directive 92/43/EEC, any plan not directly connected with or necessary to the management of a Natura 2000 site (such as an SAC, SPA or Ramsar site), but likely to have a significant effect thereon, has to be subject to an Appropriate Assessment (AA) of its implications for the site.
- 5.23 The Borough Council has not carried out a specific AA for the SPD because, in terms of Taunton town centre, the SPD is a mechanism to help deliver the proposals in the Taunton Town Centre Area Action Plan (TCAAP) by setting out how they will be funded. It will not in itself have significant effects on the environment.
- 5.24 In partnership with adjoining district councils and the County Council, the Council is undertaking an AA in respect of any potential cumulative impact of the relevant Core Strategies on the Levels and Moors SPA/Ramsar. A separate AA is also being undertaken for Hestercombe. Together, these will address the requirements of 92/43/EEC, in connection with the Taunton Deane Core Strategy.
- *The document does not deal with the position where on-site provision of a facility by a developer is more appropriate than financial contributions*
- 5.25 It is accepted that the SPD does not make adequate reference to contributions in kind. It is recommended that the text be revised to explicitly state that equivalent contributions in kind will be acceptable (and indeed, in some cases may be preferable to making a financial contribution).
- *Impact on deliverability of brownfield sites*
- 5.26 Developers have expressed concern that, where a brownfield site has a significant existing use value, the imposition of planning obligations could render them unviable. This is understood; however, not all brownfield sites have an existing use value (e.g. non-operational land belonging to the rail industry or utility companies). It is therefore recommended that the SPD addresses this by means of viability assessment – where a developer can demonstrate that they cannot afford to make the contributions, these can be waived or reduced.
- *Omission of some services from the SPD e.g. police, libraries, health, waste*
- 5.27 A number of respondents asked why the draft SPD document did not include particular services such as policing, libraries or healthcare. At the time of preparing the SPD, the information necessary for these

services to be included was not available. However, there will be scope to incorporate additional services when the SPD is reviewed to encompass the whole Borough, in parallel with preparation of the Core Strategy. In the case of policing and primary healthcare, there have already been some preliminary discussions about their inclusion.

- *There is a need for an audit trail - contributions cannot be spent flexibly but only in accordance with a previously agreed purpose*

5.28 The draft SPD document proposed that, because of uncertainty over the availability of future funding, contributions might be used flexibly towards an agreed set of priorities in Taunton town centre. In response to objections, it is now recommended that the SPD be amended to state that contributions will only be used for the purposes specified in the relevant S106 agreement.

- *Contributions should not be sought from developments outside Taunton town centre to improvements within the centre*

5.29 A number of developers suggested that development outside Taunton town centre should not be required to make contributions to town centre improvements (such as public realm works). However, it is not correct to suggest that development outside the town centre has no impact on it. The RSS housing allocations will have the effect of increasing Taunton's population by 45%, and it is clear that this will significantly increase the demands on town centre infrastructure and facilities.

5.30 Furthermore, there are already precedents elsewhere for requiring contributions to town centre improvements from peripheral sites (Swindon and Peterborough, for example). The scale of contributions to public realm improvements required by Swindon Borough Council is in fact somewhat greater than that proposed in the SPD. It is therefore recommended that in this respect, no change is made to the SPD.

- *The time horizon of the SPD (to 2016) is too short*

5.31 Planning obligations strategies typically have a short time horizon because the elements within them are subject to regular review. For example, Local Development Frameworks tend to be rolled forward every five years; the availability of Government funding is not known more than a few years in advance; and so on. What matters is not so much the timescale itself but the inclusion of appropriate schemes for carrying out within the chosen timescale, and ensuring that the quantum of development that will be expected to contribute to the schemes is correct.

5.32 Given that the SPD will be subject to review (initially in parallel with preparation of the Core Strategy), the need to include schemes and development beyond the draft timescale of 2016 can be addressed as

part of the review process. As a comparison, Swindon Borough Council's developer contributions strategy and the Milton Keynes tariff both cover a period of 5 years.

- *Administration fees, legal charges, timing of payments, planning performance agreements*

5.33 Developers raised a number of concerns relating to the way in which the Council proposed to charge for legal and administration costs, and the timing of payment of the obligations. Discussions with the Legal Services Manager have clarified the main issues and the suggested amendments to the SPD should address the concerns.

5.34 One developer suggested that the Council should commit itself to Planning Performance Agreements, rather than merely offering them. However, offering them to a developer gives them the choice as to whether or not they wish to use them. No change is therefore recommended to the SPD in this respect.

- *The proposed level of contribution to public art is excessive*

5.35 The draft SPD document proposed that, in line with the long-established concept of 'Percent for Art', developers be required to make a contribution to public art on the basis of 1% of construction costs. This would amount to £800 per dwelling on the basis of an average dwelling size of 80 sq m. While this may seem high, other local authorities have had a similar policy for some years: Swindon Borough Council, for example require a payment of £853 per dwelling.

5.36 The Civic Society have pointed out, correctly, that the primary aim of the Council's Public Art and Design Strategy is not to obtain a payment of money but to secure public art as an integral aspect of better quality design.

5.37 Policy ED2 of the Taunton Town Centre Area Action Plan states that:

All developments in excess of 15 residential units or 2500 square metres (gross) of commercial floorspace will be required to contribute towards the provision of public art and public realm enhancements through either a commuted sum or by commissioning and integrating public art into the design of buildings and the public realm to the value of one percent of development costs. Locational decisions for public art will be informed by the Design Code SPD.

5.38 It is therefore recommended that the SPD is amended to reflect Policy ED2 of the TCAAP, retaining the 1% figure but incorporating the development size thresholds.

- *Whether a contribution should be required in respect of allotments*

5.39 In principle, there is no reason why development should not have to provide, or finance the provision of allotments (as with other forms of open space or community facility). However, at present a formula to accurately define the level of provision that is required, is not available. It is therefore recommended that the requirement for allotments is removed from the SPD at this stage, and is incorporated when the SPD is reviewed in parallel with the Core Strategy. This will also enable the requirements arising from the proposed Urban Extensions to be accurately assessed. It is proposed to commission consultants to carry out detailed planning work on the Urban Extensions during 2009.

- *The availability of public funding should be taken into account when setting the charges*

5.40 In principle this is a perfectly reasonable suggestion. However, the availability of Government funding is not known very far in advance. Indeed, discussions with the Government Office in December 2007 suggested that the SPD ought not to make any assumptions about the level of public funding that might be available. This issue will, however, be discussed further with Project Taunton in the light of the current New Growth Point bid before setting the level of contributions for public realm works.

- *Whether contributions towards education should be sought from all developments or only where there is evidence of need*

5.41 Some developers argued that education contributions should relate to the actual size of dwelling. This is a reasonable point of view, and the SPD proposes that contributions to other elements, such as town centre public realm improvements, take account of dwelling size (this being a proxy for numbers of people, and thus impact on infrastructure services).

5.42 However, the County Council does not have information on average number of school pupils per dwelling type and it objected to the proposed method of factoring contained in the SPD.

5.43 In essence, one of three things has to happen. One option is for the County Council's costs per place to be factored along with all other contributions to reflect dwelling size. A second possibility would be for the average number of pupils per dwelling type to be established and used to determine a standard charge per dwelling. The third option is that negotiations continue to be conducted as now on a site-by-site basis. Given that the SPD will be reviewed in parallel with production of the Core Strategy, it is recommended that the SPD be amended to state that – at least until the review - contributions towards education will continue to be negotiated on a site-by-site basis.

- *Various issues relating to transport*

- 5.44 For some years, local authorities elsewhere in the UK have been requiring developers to contribute towards an overall package of transport measures within an area. It was thought by the consultants that an attempt should be made to identify schemes which could be funded in a similar way from development in Taunton.
- 5.45 Various difficulties have arisen. Firstly, as drafted, contributions are required primarily from residential development, which does not reflect the transport impact arising from commercial schemes. Secondly, although a list of schemes was produced by the County Council, there has as yet been no discussion with the Borough Council regarding the policy context in which these schemes sit. It would therefore be difficult for the Council as local planning authority to justify requiring developers to make a financial contribution to them.
- 5.46 There is no objection in principle to a policy-led approach to developer contributions to transport projects. Indeed, experience elsewhere suggests that it is essential. It is therefore recommended that (apart from the town centre road schemes and Silk Mills Park and Ride), contributions to transport measures are not included in the SPD at this stage. They will be reconsidered when the SPD is reviewed in parallel with preparation of the Core Strategy

6.0 **Conclusions**

- 6.1 It is felt that the various issues raised during the consultation process on the SPD can be addressed by making the amendments outlined above, and that the SPD can therefore proceed to adoption.

7.0 **Corporate Priorities**

- 7.1 The draft SPD impacts directly on Project Taunton in its regeneration of Taunton town centre, and by providing a means to secure improvements to infrastructure and services, directly or indirectly on every corporate priority.

8.0 **Recommendation**

- 8.1 That the draft SPD be formally adopted, subject to the amendments proposed in this Report, which are as follows:
- (i) The SPD is modified to acknowledge that 100% affordable housing schemes may need to be given special consideration
 - (ii) In the case of schemes comprising a mixture of market and affordable dwellings, the SPD be clarified to state that the overall quantum of community facilities needed for the total number of dwellings, must be provided

- (iii) The SPD is amended to state that the timing of payment of obligations may need to be different for different types of development, and that payments may be staged.
- (iv) The SPD be amended to make clear that planning obligations have to reflect the differing impact of particular dwelling types and floorspace and cannot be purely based on an outline proposal.
- (v) The SPD be amended to ensure that residential and non-residential developments are treated similarly, as far as this is possible.
- (vi) The SPD makes reference to the conservation of biodiversity as something that needs to be addressed at a site-specific level, and that other requirements may be introduced when the SPD is reviewed.
- (vii) The text of the SPD is revised to explicitly state that equivalent contributions in kind will be acceptable
- (viii) The SPD clarifies that where brownfield sites have an established development value, where a developer can demonstrate that they cannot afford to pay planning obligations, these can be waived or reduced.
- (ix) The SPD is amended to state that contributions will only be used for the purposes specified in the relevant S106 agreement.
- (x) The SPD is amended to reflect Policy ED2 of the TCAAP, retaining the 1% figure but incorporating the development size thresholds.
- (xi) The requirement in the SPD to contribute towards the cost of allotment provision is removed
- (xii) The level of contributions sought for public realm works takes account, as far as possible, of the availability of public funding.
- (xiii) The SPD is amended to state that – at least until the review - contributions towards education will continue to be negotiated on a site-by-site basis.
- (xiv) The SPD is amended to remove the requirement for developers to contribute to transport measures (apart from the town centre road schemes and Silk Mills Park and Ride), but to state that these will be reconsidered when the SPD is reviewed.

Contact Officers:

Ralph Willoughby-Foster: tel. 01823 356480 e-mail
r.willoughbyfoster@tauntondeane.gov.uk

Philip Bisatt: tel 01823 356305; e-mail p.bisatt@tauntondeane.gov.uk