

Developer Contributions Supplementary Planning Document

Public Consultation Statement

2018

1 Introduction

- 1.1 This Public Consultation Statement (Statement) has been prepared in support of the Council's Developer Contributions Supplementary Planning Document (SPD) that was publically consulted upon between midday Monday 8th October 2018 and midday Monday 19th November 2018.
- 1.2 In conformity with Part 5 of the 'Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017, this Statement sets out;
 - The persons that the Council consulted during the abovementioned 6 week public consultation;
 - A summary of the main issues raised by those persons who submitted comments during the consultation period; and,
 - How any issues raised during the consultation period have been addressed by the Council.
- 1.3 Appendix One of this Statement sets out a full summary of all of the comments received during the public consultation period and Council officer responses to each of these comments.

2 Public consultation period

- 2.1 A public consultation for the Developer Contributions Supplementary Planning Document was undertaken by the Council during October and November 2018. The specific consultation dates are specified at paragraph 1.1 of this document.
- 2.2 The public consultation was undertaken in conformity with the relevant planning regulations (see paragraph 1.2 of this document) and the Council's Statement of Community Involvement (SCI).
- 2.3 The Developer Contributions Supplementary Planning Document sets out the Council's approach to seeking planning obligations from new developments in the Borough, in the absence of a Community Infrastructure Levy (CIL) Charging Schedule.
- 2.4 In line with statutory and locally determined requirements, the following persons and bodies were notified via letter, of the consultation that was taking place;
- Duty to Cooperate partners
 - Specific Consultation bodies
 - General Consultation bodies, and
 - Other stakeholders held on the Local Plan consultation database.
- 2.5 Due to the content of the SPD, the Council also invited representation from local groups and civic societies, due to the role that they play within the local community.
- 2.6 The notification letter explained;
- The purpose of the consultation
 - How to find further information
 - The consultation period
 - How to make representations, and
 - How a person or body could be added to the Council's Local Plan consultation database.
- 2.7 In addition to the notification letter, the Council; made all elected Council Members aware of the consultation; advertised the consultation on each of the digital display screens throughout the Borough; advertised the consultation on social media; advertised the consultation on the Council's website; made available for inspection hard copies of all relevant information and documentation at the Council's Customer Service Centre in Wigston and the public library in Oadby; and, made available for inspection electronic copies of all relevant information and documentation on the Council's website.

3 Summary of the main issues raised

- 3.1 A total of six persons / bodies submitted representations to the Council relating to the Developer Contributions Supplementary Planning Document, together with internal comments from Officers from Oadby and Wigston Borough Council. Representations were received from Barton Wilmore on behalf of Co-Operative Group Limited; East Leicestershire and Rutland Clinical Commissioning Group (ELR CCG); the Environment Agency; Natural England; Severn Trent Water; and, Sport England.
- 3.2 Representations from the Environment Agency, Natural England and Severn Trent Water made no specific comment.
- 3.3 A summary of the representations received and the Council's Officer response to each of the representations are attached in Appendix One.
- 3.4 In summary, the key issues raised in the submitted representations included:
- The justification for the absence of a specific evidence based assessment, in the form of a viability assessment, underpinning the figures included within this Developer Contributions Supplementary Planning Document;
 - The justification for the Council seeking a Monitoring Fee to cover its administrative costs to monitor the collection and expenditure of planning obligations from new developments;
 - The justification for the Council seeking a contribution towards the capital cost for providing Household and Recycling Waste Bins (two bins) for every net additional new dwelling in the Borough; and,
 - A suggestion by Officers to strengthen references to Sport England's 'Active Design' concept, which encourages developers to facilitate active lifestyles as part of the planning and design phase for all new developments in the Borough.

4 How the issues raised have been addressed

- 4.1 The Monitoring and Enforcement section of the SPD will be amended to reflect representations submitted by Barton Wilmore and to implement fixed Monitoring Fees. These fees will fairly reflect the scale and kind of development, as well as the anticipated cost to the Council to monitor the Local Authority's estimated costs for monitoring the obligations over the lifetime of the development, as opposed to a percentage of the contributions sought.
- 4.2 Appendix 1 and the CIL Compliance Checklist Form, as referenced in several sections of the SPD, will be updated to explicitly state that all planning obligations sought by providers via a Section 106 Agreement must be accompanied by a completed CIL Compliance Checklist Form for the Borough Council to consider and approve via its internal Section 106 Working Group and Senior Management Team.
- 4.3 Paragraph 4.50 within the Open Space, Sport and Recreation Facilities (incorporating Green Infrastructure) section will be amended to make reference to Sport England's 'Active Design' initiative, which seeks to encourage more active lifestyles through good design of new developments.
- 4.4 The 'Waste: Household and Recycling Receptacles' section, together with 'Appendix 2: Household Waste and Recycling Receptacles Unilateral Undertaking' will be deleted. This decision reflects representations submitted by Barton Wilmore, together with a review of legislation contained within the Environmental Protection Act (1990).
- 4.5 To provide applicants / developers with greater levels of clarity about the levels of off-site financial contributions expected of them from new developments, an additional Appendix will be created to illustrate the level of each contribution per dwelling size, in each Ward within the Borough. Reference to this additional Appendix will be added to paragraph 4.72 within the SPD.

Appendix One – summary of comments received during the consultation period and Officer responses

Name of person / body submitting comment	Date on which comment was received	Nature of comment received	Officer response to comment received
East Leicestershire and Rutland Clinical Commissioning Group	09 / 10 / 2018	We would always want Healthcare to be on the agenda for any and all Local Plans. The clauses built into the SPD are satisfactory.	The Council acknowledges East Leicestershire and Rutland Clinical Commissioning Group's comment.
Natural England	25 / 10 / 2018	Whilst we welcome this opportunity to give our views, the topic of the Supplementary Planning Document does not appear to relate to our interests to any significant extent. We therefore do not wish to comment. Should the plan be amended in a way which significantly affects its impact on the natural environment, then, please consult Natural England again.	The Council acknowledges Natural England's comment.
Sport England	31 / 10 / 2018	It is not clear if the community facilities section includes indoor sports facilities. It is recognised that currently the services / facilities required have been provided. However Sport England recommends that a built sports facility strategy is undertaken to fully understand the impacts of future growth and how that additional growth would impact upon existing facilities. This could include	<p>The Council acknowledges Sport England's comment.</p> <p>Whilst preparing the evidence base for the emerging New Local Plan, the Council engaged with Sport England regarding their National Facilities Planning Model and it was agreed, via a Statement of Common Ground, that the projected levels of growth in the Borough up to 2031 could be accommodated by the existing built facilities, including Swimming Pools and Sports Halls.</p> <p>Therefore, the Council is satisfied that it can cater for any additional demand for its existing build</p>

		<p>maintenance, upgrades and additional capacity needs. The BFS should also provide and understand of the full range of sports facilities accessible by the community not just those operated by the council (or a representative body) such as schools, universities, sports clubs and the private sector.</p>	<p>sporting facilities up to 2031.</p> <p>When the Council is in a position whereby it will have to review the New Local Plan and give due consideration to projected levels of growth from 2031 and beyond, the Council will seek to engage with key stakeholders, including Sport England, and will revisit the assessment of whether or not a Built Facilities Strategy will be required. If a Built Facilities Strategy is required, its production will be achieved through close liaison with Sport England.</p>
Sport England	31 / 10 / 2018	<p>The references to and use of the Playing Pitch Strategy is supported as you are aware Sport England believes that the Playing Pitch New Development Calculator is a robust method of calculating the demand created from a residential development which is derived from the locally specific information and evidence provided by the PPS. However we understand the reasons for progressing with your preferred approach at this stage, which involves generating a sum and then applying the PPS to work out the appropriate projects.</p>	<p>The Council acknowledges Sport England's comment.</p> <p>The Council endeavours to continuously work closely with Sport England moving forwards and will seek to ensure that the approach it takes to seeking planning obligations towards sporting facilities is always robust, locally justified and CIL compliant.</p>
Barton Wilmore on behalf of Co-Operative Group Limited	12 / 11 / 2018	<p>Evidence Base</p> <p>We are concerned that the draft SPD is not underpinned by an evidence base in order to support the various figures and assumptions that are</p>	<p>The Council acknowledges Barton Wilmore's comments.</p> <p>In preparation of the Council's new Local Plan, both an Affordable Housing Viability Assessment and a Whole Plan Viability Assessment have been produced. In short, the outcome of these</p>

		<p>made within it. As such, it is unclear how the stated figures can be appropriately justified. The Council must consult on the evidence base that underpins the contributions sought and the assumptions made within the draft SPD in order for the document to be afforded full weight in decision-making once it is adopted, and to comply with CIL Regulation 122. A failure to adequately justify the draft SPD at the consultation stage will reduce the extent to which it can be considered a robust document in the decision-making process.</p> <p>We do, however, note that a caveat has been included which states that all contribution requests need to be adequately justified and must satisfy Regulation 122 of the CIL Regulations (Paragraph 4.2 of the SPD). This is supported by our Client; but does not negate the need to evidence appropriately the content of the SPD, which is currently lacking.</p>	<p>assessments is that the planned levels of growth, together with the policy requirements set out within the New Local Plan, are viable.</p> <p>As the new Local Plan is the key overarching planning policy document for the Borough and the SPD only contains supplementary guidance, it is considered that there is no requirement to undertake any specific additional viability assessment work for this SPD.</p> <p>In addition to this, as per paragraph 4.59 in the draft Developer Contributions Supplementary Planning Document, the costs included in the Council's previously published Developer Contributions Supplementary Planning Document (2011) have not been reviewed since Quarter 4 in 2011. Since that time, the BCIS All-In Tender Price Index has risen by approximately 40.80 per cent from 223 (Q4, 2011) to 314 (Q2, 2018). Therefore, the increase in contributions to be sought from new development in this Borough will now be based upon up to date costs, in accordance with the Council's Grounds Maintenance Supervisor's records of capital and maintenance costs, together with the Building Cost Information Service (BCIS) All-In Tender Price Index Rate, to ensure the costs included fairly reflect the local and national picture.</p> <p>Draft Policy 46 of the Council's new Local Plan is definite in its approach and will only seek contributions that are in accordance with the CIL Regulations.</p>
Barton Wilmore on behalf of Co-Operative Group Limited	12 / 11 / 2018	Section 106 Monitoring Charges	The Council acknowledges Barton Wilmore's comments.

		<p>Our Client's principal concern with the Draft SPD is the proposed charge for S106 monitoring and enforcement, as identified in Paragraph 3.29 of the SPD, which states:</p> <p><i>"the Council will seek a flat rate payment of £500 per legal agreement or 4% of the total value (whichever is the greater) of the planning obligation(s) payable to Oadby and Wigston Borough Council. Where there is no quantifiable monetary value to the planning obligations owed to the Borough Council, a flat rate of £500 will be payable".</i></p> <p>A High Court ruling in 2015 - <i>Oxfordshire County Council v Secretary of State for Communities and Local Government and Others</i> [2015] - concluded that S106 monitoring fees did not meet the statutory tests for planning obligations under CIL Regulation 122 and would rarely be justified. This position has been confirmed in a number of subsequent appeal decisions where this matter has been challenged. The role of monitoring, in accordance with the aforementioned judgment,</p>	<p>The High Court ruling in 2015 between <i>Oxfordshire County Council and Secretary of State for Communities and Local Government and Others</i> has been taken into account by the Council and therefore, the Council has subsequently not sought a monitoring fee to cover its administrative costs for signed legal agreements in recent years.</p> <p>However, in the Ministry of Housing, Communities and Local Government's publication, 'Government response to supporting housing delivery through developer contributions' Paragraph 53 states that: 'The Government also recognises the need to address existing uncertainty around using section 106 planning obligations to collect monitoring sums. The Government therefore intends to take forward proposals to make clear that local authorities can seek a fee from applicants towards monitoring planning obligations. In developing these proposals, the Government will consider how best to ensure that monitoring sums are set at an appropriate level'.</p> <p>Therefore, the Council's rationale for the inclusion of monitoring fee rates of £500 per legal agreement or 4% of the total value of contributions sought by Oadby and Wigston Borough Council (whichever is the greater) is to incorporate a variance in fees sought to recognise that the greater the size of the new development, there will be a higher financial and administrative burden placed upon the Council in terms of Officer-time to monitor, manage and implement expenditure of planning obligations.</p> <p>However, as Barton Wilmore suggest in their submitted representation, the Council has reviewed this and acknowledge that £500.00 or 4% (whichever the greater) could potentially be a</p>
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falls under the administrative process for which LPAs receive funding from general taxation. In the instances where enforcement of S106 provisions is necessary, a LPA can recover any associated costs in any event under existing legislation (subsections (5) and (6) of S106 Town and Country Planning Act (1990)) and it is common practice for S106 agreements to include clauses that make provision for a LPA to recoup the legal and administrative costs of enforcing obligations where reasonably incurred.

Notwithstanding the above, the proposal to seek fees of either £500, where there is no monetary value to the obligations, or 4% of the total value of obligations is arbitrary and is completely unjustified. There is simply no evidence to suggest that the sums are justified as a fee which reflects the actual cost of monitoring or enforcement and, therefore, it is impossible to conclude that such a fee is fairly and reasonably related in kind to the development and necessary to make a development acceptable in

significant additional financial burden placed upon the viability of a new development scheme.

Giving consideration to the amount of Officer(s) time and resources required to monitor, manage and implement expenditure of planning obligations via the Council's monthly Section 106 Working Group and implement the delivery of Community Infrastructure Levy (CIL) compliant infrastructure schemes, the Council considers that the following monitoring fees should be applied to all legal agreements that include monetary and non-monetary planning obligations to be paid to or be of benefit to the Borough Council:

No. of Dwellings (net additional units)	No. of Hours Monitoring at £50.00 per hour	Monitoring fee (£) to be paid to OWBC
0 - 11	Nil	Not applicable.
12 - 25	0 - 5 hours	£250.00
26 - 50	6 - 10 hours	£500.00
51 - 100	11 – 15 hours	£750.00
101 +	16 – 20 hours	£1,000.00

For all new non-domestic developments where planning obligations are to be sought, and / or for all other legal agreements (e.g. Unilateral Undertakings entered into by the applicant) that include monetary or non-monetary obligations to be paid to or be of benefit to the Council, a standard

		<p>planning terms.</p> <p>In the case of large development schemes, where contributions towards such items as education provision, off-site highway infrastructure works and sustainable transport initiatives, can run to many hundreds of thousands of pounds, if not millions, this means that the proposed fee level of 4% could be a significant burden for developers to the detriment of the viability of the scheme. There is <u>no</u> evidence that the Council has undertaken such a viability analysis of the implications of this proposal. On the basis of the matters highlighted above, the proposed monitoring and enforcement charges cannot be considered compliant with CIL Regulation 122.</p>	<p>monitoring fee of £250.00 per agreement will be applied.</p> <p>The rationale behind the monitoring fees sought is that these fairly reflect the scale and kind of development, as well as the anticipated cost to the Council to monitor the Local Authority's estimated costs for monitoring the obligations over the lifetime of the development, as opposed to a percentage of the overall contributions sought.</p> <p>Each Section 106 Working Group, as well as the additional work required by Officers to input and oversee that group; and, Officer time necessary to carry out that function is, on average, calculated at £50.00 per hour (collectively). Having reviewed the number of hours taken to monitor various applications and their associated obligations in the recent past, the Council considers that the larger development schemes with higher levels of planning obligations are more onerous than smaller-scale developments with fewer / lower levels of planning obligations.</p> <p>Therefore, overall, the Council considers that it is appropriate to seek a range of fees, depending on the scale of the development and the expected time to oversee the monitoring and expenditure of planning obligations as agreed as part of the associated legal agreement.</p> <p>The Council is of the view that the revised approach is more reasonable, and that the monitoring fees to be sought directly relate to the scale of new developments proposed and the costs incurred by the Council to monitor the obligations sought from each new development.</p>
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<p>Barton Wilmore on behalf of Co-Operative Group Limited</p>	<p>12 / 11 / 2018</p>	<p>Other Matters</p> <p>It is noted that the draft SPD also seeks to include a requirement for developers to fund the cost of two wheelie bins per dwelling. It is our position that this should not be a requirement for developers, rather it is within the Council's public function to allow for known or expected household formation, for which funds are raised through general taxation and Council Tax receipts. The same applies to large housing developments and waste collection vehicle fleets.</p> <p>We trust the above comments</p>	<p>The Council acknowledges Barton Wilmore's comments.</p> <p>The capital cost per additional new dwelling in the Borough for two new Household and Recycling Waste Bins (£40.00 per net additional dwelling) is not a cost that is funded through general taxation and Council Tax receipts, and therefore, the fee to cover the cost of both Wheeled Bins per additional dwelling is currently being met as an additional cost to the Council.</p> <p>The Environmental Protection Act (1990), c. 43, Part II Waste on Land, Collection, disposal or treatment of controlled waste, Section 46 (3) (a to d) suggests that in circumstances where the Local Authority requires separate compartments or receptacles to be used for waste collection, the authority should either provide these free of charge, or, that in 'agreement with the occupier', the occupier should either pay the Local Authority to</p>

		<p>are of assistance and that our Client's representations will be duly taken into consideration. We would also welcome the opportunity to discuss the matters raised in further detail with Officers in order to assist the process further.</p>	<p>provide the bins or should provide them themselves.</p> <p>https://www.legislation.gov.uk/ukpga/1990/43/part/II</p> <p>Therefore, having reviewed the Environmental Protection Act, the Council is of the view that the £40.00 fee for providing two new Wheelie Bins per net additional dwelling should not be met by the developer and that the Council will continue to provide the new Household and Recycling Waste Wheelie Bins at its own cost.</p> <p>Therefore, paragraphs 4.79 to 4.86, together with 'Appendix 2: Household and Recycling Receptacles Unilateral Undertaking' will be deleted from the Developer Contributions Supplementary Planning Document.</p>
Severn Trent Water	12 / 11 / 2018	<p>Thank you for the opportunity to comment on your consultation. We currently have no specific comments to make, but please keep us informed when your plans are further developed when we will be able to offer more detailed comments and advice.</p>	<p>The Council acknowledges Severn Trent Waters comment.</p>
Environment Agency	19 / 11 / 2018	<p>We have no specific comments to make on the current submission however we do look forward to any further consultations from your Authority in your Plan Making process.</p>	<p>The Council acknowledges the Environment Agency's comment.</p>
Oadby and Wigston Borough	19 / 11 / 2018	<p>Paragraphs 3.3, 4.36, 4.40</p>	<p>The Council acknowledges these Officer</p>

Council – Officer Comments		<p>and Appendix 1: CIL Compliance Checklist Form</p> <p>To ensure that all planning obligations sought via Section 106 Agreements comply with the three CIL Tests as per Regulation 122(2), a CIL Compliance Checklist Form should be submitted by all signatory and non-signatory organisations, and the Council’s internal procedure to verify their compliance must be followed in relation to each obligation sought.</p> <p>Therefore, the wording of Paragraphs 3.3, 4.36, 4.40 and Appendix 1 must be altered to reflect this position.</p> <p>In addition to that, in accordance with the General Data Protection Regulation (GDPR), it is not appropriate to include signatures within the published CIL Compliance Checklist Form, and therefore, this should be replaced with ‘Job Title’ and an additional box for ‘Initials’ should be added to the Form in Appendix 1.</p>	<p>comments.</p> <p>Paragraphs 3.3, 4.36, 4.40 and the CIL Compliance Checklist Form as per Appendix 1 will be amended to reflect these comments.</p>
Oadby and Wigston Borough Council – Officer Comments	19 / 11 / 2018	Paragraph 4.44	The Council acknowledges these Officer comments.

		<p>It would be appropriate to make reference to Leicestershire County Council's emerging draft updated Planning Obligations Policy Document, currently on public consultation.</p>	<p>Noted and agreed.</p> <p>The following sentence will be added to paragraph 4.44:</p> <p><i>'Please note, at the time of drafting this SPD, Leicestershire County Council were undertaking a public consultation on an updated Planning Obligations Policy Document and therefore, applicants are advised to contact the County Council directly when assessing site viability, incorporating anticipated planning obligations.'</i></p>
Oadby and Wigston Borough Council – Officer Comments	19 / 11 / 2018	<p>Paragraph 4.50</p> <p>It may be beneficial to make reference to Active Design by Sport England in the context of how good design can encourage active lifestyles as part of existing and new developments.</p>	<p>The Council acknowledges these Officer comments.</p> <p>A sentence to reflect this comment will be incorporated into paragraph 4.50 to encourage good design to help facilitate more active lifestyles as part of new developments.</p>
Oadby and Wigston Borough Council – Officer Comments	19 / 11 / 2018	<p>Open Space, Sport and Recreation Facilities (incorporating Green Infrastructure)</p> <p>Paragraph 4.72 and suggested additional Appendix (2)</p> <p>To make the required planning obligations per dwelling for this typology of contribution more transparent for applicants, it would be beneficial for all parties if the</p>	<p>The Council acknowledges these Officer comments.</p> <p>Noted and agreed.</p> <p>An additional sentence will be added to 4.72 to read:</p> <p><i>'Reflecting Table 7, Appendix 2 illustrates the off-site financial contributions expected, based upon the specific dwelling size, on a ward by ward basis.'</i></p> <p>An Appendix 2 will be included in the SPD and referenced in the Contents Page as:</p>

		<p>maximum contribution per dwelling size, for each ward, was to be set out in a new Appendix 2 at the back of the document, and that reference to that section be included within Paragraph 4.72.</p> <p>The main benefit of doing so will be that applicants and developers will be able to calculate the likely developer contributions to be sought from their scheme and build those costs into their Site Viability Appraisal from the outset.</p>	<p><i>'Appendix 2: Ward by Ward Open Space, Sport and Recreation Facilities (incorporation Green Infrastructure) contributions per dwelling (based upon number of bedrooms)'</i>.</p> <p>Appendix 2 will illustrate to the reader what the maximum contribution per dwelling size will be, for each Ward, within the Borough.</p>
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