



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for the Built Environment
Date:	7 July 2015
Classification:	For General Release
Title:	Approval to publish and issue for consultation a Draft supplementary planning document on “Use of Planning obligations and other Planning Mechanisms”
Wards Affected:	All Wards
Key Decision:	This report requires an executive decision and is therefore included in the publication of the council’s statutory executive list of Cabinet Member-level decisions.
Financial Summary:	This document updates the council’s planning policies on use of planning obligations, highway agreements and other mechanisms linked to the planning system to secure resources to deliver its wider strategic policies. In particular it gives guidance on steps that will be taken to mitigate the extent of resources which might be foregone as a result of the restrictions on the use of section 106 agreements to pool financial contributions towards the cost of infrastructure imposed by the Community Infrastructure Levy Regulations 2010. It has been estimated that these restrictions, which came into force on 6 th April 2015, could result in the council foregoing up to £2.4 million per annum if left unaddressed.
Report of:	Julia Corkey, Director of Policy, Performance and Communications.

1. Executive Summary

- 1.1 This report seeks approval to publish for consultation a draft supplementary planning document giving guidance and advice on the City Council’s policies regarding the use of planning obligations (commonly known as section 106 agreements), highway agreements under section 278 of the Highways Act 1980 and the powers to impose conditions on planning permissions to support delivery of its strategic policies. In particular, it explains how these mechanisms will be

used following introduction of a Westminster Community Infrastructure Levy (CIL) in accordance with the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 (as amended). It will replace the “Supplementary Planning Guidance on Planning Obligations” published in January 2007.

2. Recommendations

- 2.1 The Cabinet Member for the Built Environment is asked to approve publication for consultation of a draft supplementary planning document on “Use of Planning Obligations and Other Planning Mechanisms” attached as **Appendix 1**.

3. Reasons for Decision

- 3.1 The planning system and related legislation provide a number of mechanisms that can be used to ensure that new development is acceptable in planning terms – that it meets national, regional and local policies to ensure that development and growth is sustainable. These include planning obligations (commonly known as “section 106 agreements”, agreements under section 278 of the Highways Act 1980 for payment to the council of the costs of works on the highway and the use of powers under the planning acts to impose conditions on planning permissions. It is good practice to publish the council’s policies on the use of these mechanisms so that developers can understand the extent of the requirements that will be made of them, and the council published supplementary planning guidance on Planning Obligations in January 2008.
- 3.2 The council is now working towards adoption of a Community Infrastructure Levy (CIL). The CIL is intended to replace tariff-based policies using section 106 to pool contributions from developments across an area to help pay for infrastructure – in Westminster these have been used for things like public realm, education and parking provision. As the CIL legislation prevents pooling of section 106 contributions for particular kinds of infrastructure or infrastructure projects from more than five developments in its area and also prevents CIL, planning obligations and highways agreements under section 278 of the Highways Act 1980 from being used for the same infrastructure types or projects, the council is going to have to change the way it uses the various planning mechanisms mentioned in paragraph 3.1.
- 3.3 In addition, national guidance suggests that it is good practice for authorities to publish alongside their CIL consultation documentation their “proposed policy for the associated scaling-back of section 106 agreements..to provide clarity about the extent of the financial burden that developments will be expected to bear so that viability can be robustly assessed”. At the first round of consultation – on a preliminary draft charging schedule in September-October 2014 – this information was presented in summary form. Consultation is about to begin on a draft charging schedule (the next stage in setting a Westminster CIL). The draft supplementary planning document put forward for approval will sit alongside this document.

3.4 The opportunity has also been taken to take account of changes to law and policy since 2008 in the SPD.

4. Background

4.1 National policy guidance on CIL encourages authorities to publish policies regarding the way in which CIL, planning obligations under section 106 of the Town and Country Planning Act 1990, highways agreements under section 278 of the Highways Act 1980 and other planning issues alongside their CIL proposals to provide clarity for developers about the basis on which the likely financial requirements that will be made of development will be assessed. At PDCS stage, this was done in summary form in the supporting documentation. At DCS stage it is proposed to provide much more detailed information in the form of a draft supplementary planning document (SPD). The draft is attached as **Appendix 1**.

4.2 This document is intended to replace the council's current "Supplementary Planning Guidance on Planning Obligations" which was adopted in January 200. As well as the CIL, it takes account of the changes to national, London and Westminster planning policy since then. In the ordinary course of events, the document would have been produced after completion of the current City Plan review to take account of the new local plan. However changes to legislation and introduction of the CIL have meant that there is a need for an interim document at this stage. It will be kept under review and will in turn be superseded to take account of new City Plan policies as they are developed.

4.3 The document deals with CIL, planning obligations, highway agreements and conditions attached to planning permissions. It sets out the legal basis for each, and explains how they interact. The underlying principle is that after adoption of the Westminster CIL, planning obligations will be used to address site-specific issues and non-infrastructure items. CIL will be used to fund delivery of infrastructure requiring an area-based approach and/or more resources than it would be reasonable to secure from a single developer.

4.4 The document then goes through the City Council's policy requirements in current planning policy (in Westminster's City Plan: Strategic Policies, the saved Unitary Development Plan policies and the London Plan) explaining which of the mechanisms will be used in each case.

4.5 The section on affordable housing includes guidance on how the City Council will apply the vacant building credit announced by the Government. This states that the credit will be considered on a case-by-case basis, with developers claiming a credit having to demonstrate that a building is genuinely vacant (and has not been emptied solely for the purpose of redevelopment and claiming the credit). It makes clear that the credit applies only when an entire building is vacant and that

floorspace will be calculated on the basis of gross external areas. It explains how the credit will be calculated.

- 4.6 The section on “health, safety and well-being: mitigating the environmental impact of development” provides guidance on the operation of the Council’s code of construction practice, which will have an important role in supporting developing policy on basement developments.
- 4.7 The document also includes a section on monitoring and implementation. In February 2015 the High Court decided that on the facts of the particular case before it, a planning inspector had been entitled to come to the conclusion that the contributions towards the cost of administration and monitoring of the specific planning obligations included in the agreement did not meet the test in regulation 122(2) (a) of the CIL Regulations - that it would be necessary to make the development concerned acceptable in planning terms and as such should not be sought in a section 106 agreement.

Procedure for adoption

- 4.8 The procedure for preparing SPDs is set out in the Town and Country Planning (Local Planning) (England) Regulations 2012. Regulation 12 requires that before a local planning authority can adopt an SPD it has to prepare a statement setting out the persons it consulted when preparing the guidance, a summary of the main issues raised and how those issues have been dealt with in the SPD. There must then be a period of consultation (of not less than four weeks) on the draft SPD and the statement about its preparation.
- 4.9 The current consultation will provide the basis of the first part of the preparation process. The intention is that comments expressed at this stage will be taken into account in informing a second draft, which will be available at the public examination of the council’s CIL proposals (the step in the CIL-setting process that follows consultation on the draft charging schedule).
- 4.10 There would then be a further period of consultation after the examination on the final draft, so the SPD can be formally adopted at the same time as the council approves its CIL charging schedule. Once approved, the SPD will be a material consideration that can be taken into account in taking planning decisions.

6. Financial Implications

- 6.1 The costs of preparing, publishing and consulting on the draft supplementary planning document will be met from existing approved budgets.
- 6.2 This document updates the council’s planning policies on use of planning obligations, highway agreements and other mechanisms linked to the planning system to secure resources to deliver its wider strategic policies. In particular it

gives guidance on steps that will be taken to mitigate the extent of resources which might be foregone as a result of the restrictions on the use of section 106 agreements to pool financial contributions towards the cost of infrastructure imposed by the Community Infrastructure Levy Regulations 2010. It has been estimated that these restrictions, which came into force on 6th April 2015, could result in the council foregoing up to £2.4 million per annum if left unaddressed.

- 6.3 The document also seeks to mitigate the impact of the High Court decision in Oxfordshire County Council v Secretary of State for Communities and Local Government which could affect the monitoring and administration contributions currently sought from developers. In 2014-15 the council received £457,170 in contributions of this kind.

7. Legal Implications

- 7.1 This document will be a supplementary planning document for the purposes of Part 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012. It will be prepared in accordance with the procedure set out in regulations 12-14:

- Those with an interest in the issues it covers will be involved in its preparation. This will be done informally initially, in conjunction with the Council's consultation on its CIL draft charging schedule. This is the stage dealt with in this report.
- It will then be one of the documents that will be placed in front of the public examination of the Council's CIL proposals. There will be an opportunity to make further comments at that stage.
- There will then be a further period of more formal consultation.
- The City Council will then formally adopt the document as a supplementary planning document.

On formal adoption the document will be a material consideration that will be taken into account in taking planning decisions.

- 7.2 Paragraph 153 of the National Planning Policy Framework states that supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development. Officers have taken this guidance into account in the preparation of the draft SPD.

8. Consultation

- 8.1 The draft SPD has been informed by the responses to consultation on the CIL preliminary draft charging schedule.

9. Staffing Implications

- 9.1 The SPD is being developed through the use of existing resources.

Appendices

Appendix 1 Draft supplementary planning document on “Use of Planning Obligations and other Planning Mechanisms”

If you have any queries about this Report or wish to inspect any of the Background Papers please contact: Rachael Ferry-Jones / Andrew Barry-Purssell, Policy, Performance and Communications Department rferry-jones@westminster.gov.uk / abarrypurssell@westminster.gov.uk 020 7641 2418 / 5662

For completion by the **Cabinet Member for the Built Environment**
Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

.....
(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled:
Approval to publish and issue for consultation a Draft supplementary planning document on “Use of Planning Obligations and Other Planning Mechanisms”.
and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for the Built Environment

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:
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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal and Democratic Services, Strategic Director Finance and Performance and, if there are resources implications, the Strategic Director of Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.