



City of Westminster

# Cabinet Member Report

<b>Decision Maker:</b>	Cabinet Member for Planning and Economic Development
<b>Date:</b>	28 February 2024
<b>Classification:</b>	General Release
<b>Title:</b>	Adoption of the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD)
<b>Wards Affected:</b>	All
<b>Key Decision:</b>	Yes
<b>Financial Summary:</b>	The main costs associated with formally adopting the POAH SPD have been met within existing budgets
<b>Report of:</b>	Executive Director Regeneration, Economy and Planning

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## **1. EXECUTIVE SUMMARY**

- 1.1 The council adopted a new City Plan in 2021. As part of the up-to-date framework, the council committed to producing a Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD). If adopted, the POAH SPD will support policies in the City Plan (specifically on Housing, Economy and Employment, Connections, Environment and Design and Heritage). With respect to these policy areas, the SPD provides guidance on how a number of policies should be implemented and on the management of Section 106 legal agreements. The SPD also sets out a number of fees and rates the council may try to secure from developers to make sure development is acceptable in planning terms or to cover the costs of managing and monitoring legal agreements. Guidance in the SPD will help applicants better understand what is expected from developments and will lead to a smoother planning application process. It will supplement the council's strengthened planning position relating to a number of issues including affordable housing, employment creation and carbon emissions reductions.
- 1.2 The council published a first draft Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) for consultation in March - April 2022 and a new draft for a second round of consultation in August – September 2023. A range of stakeholders were invited to comment, including the development industry, statutory consultees and local people including Amenity Societies and Neighbourhood Forums. Two Consultation Statements have been prepared in line with Part 5 of The Town and Country Planning (Local Planning) (England) Regulations 2012 to explain how consultation feedback received in 2022 and 2023 has informed the SPD.
- 1.3 This report seeks approval to formally adopt the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD). Once adopted, the POAH SPD will provide guidance for developers on how they can meet a series of policy requirements within the City Plan 2019-2040.

## **2. RECOMMENDATIONS**

- 2.1 That the Cabinet Member for Planning and Economic Development agrees to formally adopt the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) as a Local Development Document.

## **3. REASONS FOR DECISION**

- 3.1 To meet the requirements of the Town and Country Planning Act 1990 (as amended), and the Town and Country Planning (Local Planning) (England) Regulations 2012.
  - 3.2 Adopting the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) will give it full weight as a material consideration in decisions on planning applications.
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- 3.3 To ensure that the policies in the adopted City Plan (2021) contribute effectively to the council's vision for a fairer, more inclusive Westminster. This is ahead of forthcoming changes to the City Plan policies as part of the Partial City Plan Review.

#### **4. BACKGROUND, INCLUDING POLICY CONTEXT**

- 4.1 Supplementary planning documents (SPDs) can provide more detailed advice and guidance on policies than an adopted local plan. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material consideration in decision-making. They should not add unnecessarily to the financial burdens on development.
- 4.2 A number of City Plan policies reference a forthcoming Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD). This includes Policy 9 Affordable Housing and Policy 36 Energy. In line with the City Plan, the SPD provides guidance on how intermediate affordable housing should be provided across different indicative income levels or how carbon off-setting contributions will be calculated. As the SPD deals with issues that may be secured by the council via legal agreements, the SPD also sets out the council's monitoring fees for such agreements. It also provides guidance on the planning decision-making process and on how development viability will be assessed.
- 4.3 In line with regulations, to make sure that the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) does not add unnecessarily to the financial burdens on development, the guidance set out in the SPD was viability tested alongside the adopted policies in the City Plan. The council published the City Plan and POAH SPD Viability Study (BNP Paribas, July 2023) alongside the draft POAH SPD during the second round of consultation to allow stakeholders to scrutinise the evidence. The study concludes that a majority of developments in Westminster will be viable under the framework. It also explains that adopted planning policies and the SPD allow applicants to submit viability assessments when they consider that all obligations cannot be met, so viability can always be assessed on a case-by-case basis.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 All costs associated with adopting the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) are met from existing Policy and Projects budget.

#### **6. LEGAL AND GOVERNANCE IMPLICATIONS**

- 6.1 The preparation of Supplementary Planning Documents is governed by the requirements of the Town and Country Planning Act 1990 (as amended), the
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Planning and Compulsory Purchase Act 2004, the Localism Act 2011, and the Town and Country Planning (Local Planning) (England) Regulations 2012.

- 6.2 SPDs provide further guidance on local plan policy topics. They do not form part of the statutory development plan but are material considerations in decision-making. SPDs must not conflict with the adopted Development Plan, including the London Plan 2021 (regulation 8(3) of the Local Planning Regulations 2012). During consultation in 2023, the Mayor of London raised concerns about whether the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) was in accordance with the London Plan 2021 in relation to the proposed approach to carbon off-setting. Following revisions made to the POAH SPD (including a significant reduction to the price for electricity-based emissions), officers believe the concerns of the GLA have been addressed.
  - 6.3 The Council must prepare SPDs in accordance with its Statement of Community Involvement (section 19(3) PCPA 2004). Before an SPD is adopted, the Council must prepare a consultation statement setting out who was consulted, a summary of the main issues raised and how those issues have been addressed in the SPD (regulation 12(a) of the Local Planning Regulations 2012). The Council must also make copies of the consultation statement available together with details of the date by which representations must be made and where the representations must be sent (regulation 12(b) of the Local Planning Regulations 2012).
  - 6.4 SPDs are not subject to independent examination, and the Council may adopt an SPD either as originally prepared or as modified to take account of any representations received or any other matter the Council considers relevant (section 23(1) PCPA 2004). As soon as reasonably practicable after the Council adopts an SPD, it must make available the SPD and an adoption statement (as defined in regulation 11(2)(a) of the Local Planning Regulations). The Council must also send a copy of the adoption statement to any person who asked to be notified of the adoption of the SPD (regulation 14 of the Local Planning Regulations).
  - 6.5 Following adoption of the SPD, changes to the S106 standard heads of terms will need to be made to reflect the content of the SPD. Legal Services will also be involved in implementing the proposed parking permit restrictions.
  - 6.6 Legal services has reviewed this report and is satisfied that the SPD meets the relevant legal requirements for adoption.
  - 6.7 The Cabinet Member Terms of Reference delegate the powers of this decision to the Cabinet Member. In accordance with Paragraph 33.12 of the Council's Access to Information Procedure, this proposed key decision was entered in the Forward Plan on 24 November 2023 and the necessary 28 clear days' notice has been given. A period of five clear days - the call-in period - must elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.
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## **7. CLIMATE IMPACT**

- 7.1 The Council has declared a Climate Emergency and pledged to achieve carbon neutrality as a local authority by 2030. The adoption itself of the Planning Obligations and Affordable Housing SPD (POAH SPD) will not contribute to an increase in carbon emissions. Both the City Plan and the POAH SPD are reflective of this commitment and show a change of direction for environmental policy for the Council. The POAH SPD shows the council's ambitions for the future of the built environment and shines a spotlight on the issues that all developers must collectively work together to address the Climate Emergency.
- 7.2 The POAH SPD will provide additional detail to the City Plan's environment-related policies, including on Parking, Air Quality and Energy. It will therefore supplement the council's planning position relating to climate resilience and will help to ensure that the highest possible proportion of development requiring planning permission achieves net zero carbon emissions. Amongst other issues, the SPD sets out a new approach to carbon off-setting which should encourage more developments to achieve carbon savings on-site.
- 7.3 Alongside the City Plan policies, the POAH SPD represents a shift in the council's narrative on the environment and provides further guidance on the standards the council expects developers to adhere to. It gives more prominence to environmental issues and represents a significant step forward on issues such as cleaning the city's air and achieving net zero emissions. During consultation, stakeholders raised concerns with some of the guidance set out in the SPD, especially in relation to carbon off-setting and thought the council was going too far. Following consultation, the council has reviewed its approach to carbon off-setting to ensure new guidance does not render development unviable and to make sure it helps more green buildings be developed. As the POAH SPD considers policies in the London Plan and City Plan, the strategic approach ensures development balances environmental factors with economic and social factors, bringing forward sustainable development.
- 7.4 However, the council acknowledges that its policies could be working harder – the Partial City Plan Review (ongoing) and Full City Plan Review (scheduled for 2025) will have climate resilience at its heart. The Mayor of London is also working on new environmental guidance.

## **8. EQUALITIES IMPLICATIONS**

- 8.1 Under the Equalities Act 2010 the Council has a "public sector equality duty". This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act;
- to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage
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and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to

- foster good relations between persons who share a relevant protected characteristic and those who do not share it.

8.2 The City Council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The 2010 Act states that "having due regard" to the need to promote equality of opportunity involves in particular having regard to:

- the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic;
- take steps to meet the needs of persons sharing a protected characteristic that are connected with it;
- take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and
- encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

8.3 The courts have held that "due regard" in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.

8.4 The Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) does not introduce new planning policies, but provides guidance for developers on how they can meet a number of policies within the City Plan 2019-2040. The equalities implications of the policies in the Westminster City Plan 2019-2040 have already been assessed as part of the Integrated Impact Assessment (IIA) which was carried out to inform and guide policy development in the adopted City Plan.

8.5 An Equalities Impact Assessment (EqIA) has been prepared to support the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD), based on the City Plan EqIA. The council published a POAH SPD Equalities Impact Assessment (July 2023) during the second round of consultation and welcomed comments on it. A new POAH SPD Equalities Impact Assessment (February 2024) has been prepared to ensure the impacts of the adoption version of the SPD are considered. Both EqIA show that the POAH SPD is in line with the City Plan EqIA and is not expected to have a negative impact on any of the groups with protected characteristics under the 2010 Act and the Public Sector Equality Duty has

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been met. Where the EqIA concludes that the SPD does have a different impact than the City Plan original assessment, that impact change is positive. The POAH SPD EqIA (February 2024) is attached at Appendix 4.

## **9. CONSULTATION**

- 9.1 The Town and Country Planning (Local Planning) (England) Regulations 2012 requires public participation in the form of consultation prior to the adoption of an SPD. Statutory consultees, local ward councillors, neighbourhood forums, and business improvement districts and other stakeholders must be given the opportunity to comment on the document.
  - 9.2 Statutory consultation on the first draft POAH SPD took place for a period of six weeks between 18 March and 29 May 2022. Alongside the SPD, the council also consulted on a draft Informal Guidance Note on Affordable Workspace (March 2022). Following this consultation, the SPD was updated to reflect the feedback received. A Consultation Statement (July 2023) was prepared in line with Part 5 of The Town and Country Planning (Local Planning) (England) Regulations 2012.
  - 9.3 A second, non-statutory, round of public consultations took place between 15 August and 29 September 2023. This gave consultees an opportunity to review the Consultation Statement (July 2023) and to comment on the revised draft Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD). During the first round of consultations, a number of stakeholders also asked the council to publish the evidence used to inform the guidance set out in the SPD, including viability evidence. During the second round of consultation, the council published other documents for consultation including the City Plan and POAH SPD Viability Study (BNP Paribas, July 2023), the Delivering Net Zero report (July 2023), the POAH SPD Equalities Impact Assessment (July 2023) and the Affordable Workspace Evidence Base (WCC, July 2023). Comments were also welcomed on a new Informal Guidance Note on Affordable Workspace (March 2023).
  - 9.4 All required and appropriate consultation in accordance with the Town and Country (Local Planning) (England) Regulations 2012 has been carried out and in accordance with the Council's Statement of Community Involvement (June 2014 and August 2023). As set out within the Consultation Statements, there is support for the POAH SPD and the direction of travel, and a number of SPD sections have been updated in light of comments received.
  - 9.5 In line with Regulation 12(a) of the Local Planning Regulations, the Consultation Statements prepared before adoption set out who was consulted, a summary of the issues raised, and how these issues were addressed in the SPD. The Consultation Statement for the first round of consultation is attached at Appendix 2 and the Consultation Statement for the second round of consultation is attached at Appendix 3.
  - 9.6 Comments received during consultation have also led to modifications to a number of supporting documents published in August 2023. These documents
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will be published on the council's website, including a new Informal Guidance Note on Affordable Workspace (February 2024).

**If you have any queries about this report or wish to inspect one of the background papers please contact:**

Marina Molla Bolta, Principal Policy Officer (Planning)  
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**APPROVED BY**

<b>Name and Title</b>	<b>Date sent</b>	<b>Date approved</b>
Pedro Wrobel, Executive Director for Innovation and Change	30/01/2024	05/02/2024
David Cookson, Finance	22/1/2024	23/1/2024
Jay Akbar, Legal	22/1/2024	26/01/2024
Maria Burton, Governance	16/02/2024	16/02/2024

**Appendices:**

Appendix 1 – Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD)(Adoption version)

Appendix 2 – Consultation Statement on the POAH SPD (July 2023)

Appendix 3 – Consultation Statement on the POAH SPD (February 2024)

Appendix 4 – Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD) Equalities Impact Assessment (February 2024)

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For completion by the **Cabinet Member for Planning and Economic Development**

**Declaration of Interest**

I have no interest to declare in respect of this report

Signed:  Date: 20 February 2024


NAME: \_\_\_\_\_

State nature of interest if any

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*(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 **Adoption of the Planning Obligations and Affordable Housing Supplementary Planning Document (POAH SPD)** and reject any alternative options which are referred to but not recommended.

Signed  .....

Cabinet Member for Planning and Economic Development

Date ...20 February 2024.....

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 Director of Law, 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.

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