

<b>Committee(s):</b> Planning, Resources and Economic Development Committee	<b>Date:</b> 23 November 2022
<b>Subject:</b> Planning Obligations Supplementary Planning Document (SPD)	<b>Wards Affected:</b> All
<b>Report of:</b> Phil Drane, Director of Place	<b>Public</b>
<b>Report Author/s:</b> Name: Jonathan Quilter, Corporate Manager - Strategic Planning Telephone: 01277 312735 E-mail: jonathan.quilter@brentwood.gov.uk	<b>For Decision</b>

### Summary

This report presents the draft Planning Obligations Supplementary Planning Document (SPD), with associated consultation materials, and seeks approval to publish these documents for public consultation.

The draft SPD will sit alongside the Brentwood Local Plan 2016-2033. It sets out the council's approach towards seeking planning obligations required to make development schemes acceptable in planning terms. It identifies topic areas where planning obligations may be applicable depending on the scale of development and sets out the required obligations or contributions. Once adopted the SPD will be a material consideration in respect of all relevant planning applications.

### Recommendation

**Members are asked to:**

**R1: Approve the publication of the draft Planning Obligations Supplementary Planning Document as set out in Appendix A for public consultation.**

### Main Report

#### **Introduction and background**

1. This report outlines the content and purpose of the new Planning Obligations Supplementary Planning Document (SPD). The draft SPD is attached at Appendix A and it is recommended that this draft document be published for public consultation from 8 December 2022 to 19 January 2023.

2. The draft SPD will sit alongside the recently adopted Brentwood Local Plan 2016-2033. It sets out the council's approach towards seeking planning obligations that are needed to make development schemes acceptable in planning terms. It identifies topic areas where planning obligations may be applicable depending on the scale of development and sets out the required obligations or contributions. Once adopted the SPD will be a material consideration in respect of all relevant planning applications.

### **Preparation of the draft SPD**

3. Following the adoption of the Brentwood Local Plan 2016-2033 in March 2022, work commenced on preparing the Planning Obligations SPD. Early drafts of the document were shared with key infrastructure providers such as Essex County Council, National Highways and the NHS with feedback incorporated into the draft SPD subject of this report.

### **Purpose of the SPD**

4. The Brentwood Local Plan 2016-2033 sets out the strategic objectives and spatial strategy for Brentwood. The council places great importance on delivering its planned growth and on providing appropriate infrastructure to ensure development mitigates its own impact and brings wider benefits to the communities who live and work in the borough.
5. Supplementary Planning Documents (SPDs) supplement Local Development Plans and are intended to provide further detail to policies. SPDs do not introduce new policies or requirements but rather assist in the interpretation and application of existing policies and proposals and should help applicants make successful planning applications.
6. To support the local plan, the draft Planning Obligations SPD serves the following purposes:
  - a) It provides a robust framework to secure the delivery of necessary infrastructure generated by planned and incremental growth in a holistic and coherent manner;
  - b) It sets out detailed guidance and a clear position to developers, landowners and stakeholders, regarding the scope and scale of planning obligations applicable to different types and quantum of development; and

- c) It supports and supplements the local plan policies and once adopted, it becomes an important material planning consideration for the council when determining planning applications.
- 7. It should be noted that if adopted this would sit alongside other SPDs that cover planning obligations. For example, the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy SPD and Essex County Council's Developers Guide to Infrastructure Contributions (DGIC).

### **National Policy Context**

- 8. The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990, as amended.
- 9. Paragraphs 55 to 58 of the National Planning Policy Framework (NPPF) published in July 2021 and Regulations 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) set out the Government's policies on planning obligations.
- 10. The NPPF advises that planning authorities should consider the use of planning obligations where they could make an otherwise unacceptable development acceptable. They should only be used where it is not possible to address unacceptable impacts through planning conditions.
- 11. The CIL Regulation 122 sets out what a planning obligation can constitute and paragraph 57 of the NPPF reiterates that planning obligations should only be sought where they meet all the following tests:
  - a) necessary to make the development acceptable in planning terms;
  - b) directly related to the development; and
  - c) fairly and reasonably related in scale and kind to the development.

### **Corporate Objectives**

- 12. The Corporate Strategy 2020-2025 sets out five priority areas for Brentwood Borough Council:
  - a) Growing our economy
  - b) Protecting our environment
  - c) Developing our communities
  - d) Improving housing
  - e) Delivering an efficient and effective council

13. The provision of planning obligations through this SPD, seeks to address the above priorities, particularly the first four.

### **Brentwood Local Plan 2016-2033**

14. Development proposals should be considered in line with the Brentwood Local Plan 2016-2033. Proposals which require planning obligations should be considered in accordance with the relevant policies.
15. The overarching reasoning and justification for requiring planning obligations are set out in the relevant local plan policies, in particular:
  - a) Strategic Policy MG05: Developer Contributions
  - b) Strategic Policy BE08: Strategic Transport Infrastructure
  - c) Policy BE12: Mitigating the Transport Impacts of Development
  - d) Strategic Policy HP01: Housing Mix
  - e) Policy HP04: Specialist Accommodation
  - f) Policy HP05: Affordable Housing
  - g) Policy PC05: Brentwood Town Centre
  - h) Policy PC11: Education Facilities
  - i) Policy NE02: Green and Blue Infrastructure
  - j) Policy NE05: Open Space and Recreation Provision
  - k) Strategic Policy NE08: Air Quality
  - l) Strategic Policy NE09: Flood Risk
16. In addition, site specific policies in Chapter 9 of the plan set out the amount and type of development provided within each allocation, as well as what specific supporting infrastructure and other requirements are needed for each site.

### **Infrastructure Types**

17. Different types of infrastructure will require different approaches to securing them. The exact approach to securing the mitigations through S106 planning obligations or other legal agreements will be agreed through the development management process on an individual site by site basis. The SPD describes the three main categories of infrastructure types:
  - a) **Strategic transport infrastructure** requirements (category '1' and '2' in the Infrastructure Delivery Plan);
  - b) **Important Borough-wide infrastructure** required for sustainable growth and place-making in the borough (category '3' in the Infrastructure Delivery Plan);

- c) **Site-specific infrastructure** requirements to make development acceptable in planning terms (where these are specific to local plan allocated sites and also support wider objectives, they have been identified and assigned category '2' in the Infrastructure Delivery Plan accordingly; many will only be known as applications come forward and be assessed against the local plan policies).
18. The categorisation of infrastructure types above is informed by the Infrastructure Delivery Plan (IDP) priority ranking, summarised below:
- a) **Category 1:** strategic transport infrastructure that are critical to the delivery of the local plan, the provision of which must be in place at the right time to support development.
  - b) **Category 2:** necessary infrastructure to mitigate the impacts arising from development or to support wider strategic or site-specific objectives which are set out in planning policy or are subject to a statutory duty. It enables development to come forward in a way that is both sustainable and acceptable in planning terms. Development may be able to commence ahead of its provision.
  - c) **Category 3:** important borough-wide infrastructure that is required for sustainable growth and place-making, development may be able to commence ahead of its provision.
  - d) The IDP does not concern site-specific infrastructure unless it falls under category 1 and 2 above.
19. Details of what funding mechanism is expected to apply to required infrastructure is set out within the IDP Part B.

### **Approaches to securing developers' contributions**

20. Funding for strategic transport infrastructure schemes will be secured primarily through S106 agreements to mitigate, support and facilitate planned growth. A number of potential further mechanisms are described in the SPD which would require further consideration as part of the determination of a planning application and any subsequent S106. This includes the potential for retrospective contributions towards forward funded infrastructure and a monitor and manage approach to future transport requirements. In addition, Section 278 agreements may be relevant for specific transport schemes to be arranged through the highway authorities Essex County Council and National Highways.

21. The Council intends to fund place-making infrastructure primarily via CIL. This is because whilst CIL is an effective tool to generate income towards the provision of infrastructure, one notable issue with CIL is that revenue is contingent upon development being brought forward, and payments may be phased so as not to impact negatively upon development cash flow, and in turn, viability.
22. Site specific infrastructure requirements are to make a development proposal (that would not be acceptable otherwise) acceptable in planning terms and will be determined on a case-by-case basis, in consideration of relevant policies, and secured via S106, S278 or other legal agreements. Site specific infrastructure requirements are underpinned by the local plan policies, and its supporting evidence base documents. These requirements apply to development on allocated and non-allocated sites. The SPD sets out the intended approach for various obligation types. In the instances where more detailed guidance for the obligation is set out by another Statutory Body, the SPD signposts towards relevant guidance (e.g. highways, education and flooding would be set in the Essex County Council Developers Guide). A summary of the types of obligations covered in the SPD is set out in Table 1 below.

<b>Table 1: Types of Obligations in the Draft SPD</b>	
<b>Housing</b>	<ul style="list-style-type: none"> <li>- Provision of on-site affordable housing</li> <li>- Off-site delivery</li> <li>- Commuted payment in lieu of on-site provision of affordable housing</li> <li>- Mid and late-stage viability reviews</li> <li>- Provision of Specialist Accommodation</li> <li>- Provision of accessible and adaptable housing, and wheelchair user dwellings</li> <li>- Provision of self-build and custom build homes</li> <li>- Provision for Gypsy, Traveller and Travelling Showperson</li> <li>- Provision of other forms of Specialist Accommodation</li> <li>- Vacant Building Credit</li> </ul>
<b>Transport, Highways and Access</b>	<ul style="list-style-type: none"> <li>- Provision or payment of highway work</li> </ul>
<b>Flood Protection and Water Management</b>	<ul style="list-style-type: none"> <li>- Provision or payment of works relating to flood protection and Sustainable Drainage Systems (SuDS)</li> </ul>

<b>Early Years, Childcare and Education</b>	- Provision or contributions towards education facilities
<b>Health and Social Wellbeing</b>	- Provision or payment of healthcare infrastructure
<b>Carbon Reduction and Renewable Energy</b>	- Carbon reduction and carbon offsetting contribution (allowable solutions contribution)
<b>Natural Environment Mitigation</b>	- Financial contribution for natural environment mitigation - Biodiversity offsetting and biodiversity net gain - Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) - Delivering, or contributing towards air quality
<b>Green and Blue Infrastructure</b>	- Green and Blue Infrastructure (GBI) on-site provision, enhancement and/or restoration - On-site provision of outdoor sport and open space - Green and Blue Infrastructure (GBI) maintenance plan - Improvements to existing open space in the local area of the development - Commuted sum in lieu of on-site provision (including maintenance)
<b>Public Realm and Public Art</b>	- Provision of or contributions towards public realm - Provision or contributions towards public art

### **Consultation on the draft SPD**

1. It is proposed to consult on the draft SPD for six weeks from Thursday 8 December 2022 to Thursday 19 January 2023. This allows for an additional two weeks to account for the Christmas period. This would be in addition to the four week consultation period required for SPDs. The council will issue consultation notifications in accordance with the approved Statement of Community Involvement (SCI) and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended).

2. Following the public consultation, any representations received will be reviewed and where necessary or appropriate amendments will be made to the SPD before it is then brought back to members for a decision on whether to adopt.

### **Reasons for Recommendation**

3. The draft Planning Obligations SPD will provide more detail and clarity in respect of policies within the adopted Brentwood Local Plan 2016-2033 that refer to the circumstances where planning obligations may be appropriate. This in turn will assist the development management process when considering and determining planning applications. It will also provide consistent and clear advice to applicants on what might be required from them. Therefore, the draft SPD is recommended to be published for public consultation so that stakeholder comments can inform the final version of the document.

### **References to Corporate Strategy**

4. The provision of planning obligations, through the draft SPD, seeks to address corporate priorities to grow the economy, protect the environment, develop the community and improve housing.

### **Implications**

#### **Financial Implications**

**Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources) and Section 151 Officer**

**Tel/Email: 01277 312500/jacqueline.vanmellaerts@brentwood.gov.uk**

5. Negotiated Section 106 planning obligations, together with the Community Infrastructure Levy, make up the system of developer contributions used to secure funding towards mitigating the social and environmental effects of development. The value of Section 106 contributions varies depending on the type of contribution.

#### **Legal Implications**

**Name/Title: Steve Summers, Strategic Director and Monitoring Officer**

**Tel/Email: 01277 312500/steve.summers@brentwood.rochford.gov.uk**

6. The council must ensure that the Planning Obligations SPD is in line with the policies of the adopted Brentwood Local Plan 2016-2033 and should not seek to introduce new policies. The draft SPD is required to go out for public consultation with representations taken into consideration before then proceeding to adoption. The decision to adopt will be made separately by members once this process is complete.



## **Economic Implications**

**Name/Title: Phil Drane, Director of Place**

**Tel/Email: 01277 312500/philip.drane@brentwood.rochford.gov.uk**

7. The production of the Planning Obligations SPD will set out clear guidance on the processes and costs for contributions where they are deemed necessary through relevant policies in the adopted Brentwood Local Plan 2016-2033. This is an essential mechanism to secure infrastructure funding that contributes to the health of the local economy.
8. Delays in progressing the Planning Obligations SPD could result in a lack of funding, and therefore a failure to deliver new infrastructure projects in the borough. Ideally, the council would seek to ensure the Planning Obligations SPD is in place as soon as possible to maximise the receipt from local plan allocated sites, many of which are coming forward in early years of the plan period.

## **Equality and Diversity Implications**

**Name/Title: Kim Anderson, Corporate Manager (Communities, Leisure & Health)**

**Tel/Email: 01277 312500/kim.anderson@brentwood.gov.uk**

9. The Public Sector Equality Duty applies to the council when it makes decisions. The duty requires us to have regard to the need to:
  - a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
10. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for b) or c), although it is relevant for a).
11. The proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

**Other Implications (where significant)** – i.e. Health and Safety, Asset Management, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

None

### **Background Papers**

- None

### **Appendices to this report:**

- Appendix A: Draft Planning Obligations Supplementary Planning Document (SPD)