

## DEVELOPER CONTRIBUTIONS SUPPLEMENTARY PLANNING DOCUMENT (SPD)

### REPORT TO THE EXECUTIVE



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PORTFOLIO	Economy and Growth
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### PURPOSE

1. The purpose of this report is to seek the adoption of the Developer Contributions Supplementary Planning Document (SPD).
2. The amended draft SPD (attached at Appendix A) has been prepared to support the implementation of Burnley's Local Plan. It has been the subject of formal statutory consultation and consideration by Scrutiny Committee. Once adopted, it will become a material consideration to be used in the determination of relevant applications.

### RECOMMENDATION

3.
  - (1) That Executive adopt the Developer Contributions SPD attached at Appendix A.
  - (2) That the Strategic Head of Economy and Growth be authorised by the Executive to make any minor typographical corrections to the draft SPD required prior to its publication.

### REASONS FOR RECOMMENDATION

4. To meet the Council's commitment to prepare a Developer Contributions SPD as set out in Burnley's Local Plan and the Council's Local Development Scheme (LDS).

### SUMMARY OF KEY POINTS

#### Overview of the SPD

5. The SPD covers contributions towards:
  - Infrastructure;
  - Affordable Housing; and

- Other matters.
6. Policy HS2 of the Local Plan sets out the policy on affordable housing provision for sites of over 10 dwellings. The SPD is intended to provide supplementary guidance on this policy, including indicative percentages of affordable housing required for mainstream housing sites by type and location.
  7. Policy IC5 of the Local Plan requires the provision of new social and community infrastructure where a development would increase demand for it beyond its current capacity or generate a newly arising need. Policy IC4 sets out the policy for seeking planning contributions. It lists a number of matters for which contributions may be sought; but makes clear that the list is not exhaustive. It requires development to provide or contribute towards the provision of the infrastructure needed to support it. It sets out that planning contributions will be sought where development creates a requirement for additional or improved services and infrastructure and/or to address the off-site impact of development so as to satisfy other policy requirements. It sets out that contributions may be sought to fund a single item of infrastructure or to fund part of an infrastructure item or service; and that contributions may be sought for the initial provision and/or ongoing running and maintenance costs of services and facilities. It sets out that viability may be considered.
  8. The SPD is underpinned by the Local Plan Viability Assessment of March 2017 which has been used to set both the percentages of affordable housing required and a series of contribution 'ceilings' above the levels of which schemes would generally not be viable. The ceilings would only take effect where appropriate requests for contributions exceeded the ceiling. Should an applicant wish to demonstrate that a particular scheme could not make provide affordable housing at the level set and/or make infrastructure contributions (if required) up to the ceiling, they would need to make policy compliant adjustments to improve viability, explain why the assumptions underpinning the ceilings did not apply in their case and/or submit their own viability assessment in line with Policy IC4 clause 7).
  9. The SPD divides contributions into the categorises:
    - **Necessary and critical** - these are contributions which must be provided for a scheme to be approved. Viability cannot be taken into account.
    - **Necessary and important** (including affordable housing and education contributions) - these are contributions which must be provided for a scheme to be approved if viable. Viability can be taken into account.
    - **Desirable** - these are contributions which can weigh in favour of a scheme in the planning balance but are not essential in terms of specific Local Plan policy requirements. Viability can be taken into account.

(For fuller explanation see Table 1, page 17 of the draft SPD)

10. The SPD also takes account of recent changes to legislation and national policy including the key change which means that Section 106 Agreement contributions from any number of schemes may once again be pooled towards the cost of a piece of infrastructure, subject still to all each satisfying the relevant statutory and national policy tests as set out in the SPD (Section 4) and reflected in the Local Plan.

## **Planning Reforms**

11. The SPD is written to support the current adopted local plan and current national policy. It does not take account of the proposed planning reforms set out in the government's consultation documents 'Changes to the current planning system' or the 'White Paper: Planning for the future'. Should the changes set out in these documents be implemented, particularly the White Paper, the SPD content would need to be reviewed or withdrawn. It would need to be kept under review in any event as set out within the SPD itself.

## **Consultation**

12. Following consideration by the Council's previous Executive at its meeting on the 10 December 2019, the draft SPD was issued for consultation. Under the Town and Country Planning (England) Regulations 2012 there is a requirement for a minimum of four weeks public consultation on all SPDs. The Council's adopted Statement of Community Involvement (SCI) however, extends this period to six weeks. Due to the complexity of the issues within the SPD, this was extended to an 8-week period from 17 January to 13 March 2020.
13. 23 duly made responses were received of which 21 included detailed comments. A schedule of the comments made and the suggested responses are attached at Appendix B.
14. Following the closure of the consultation, a further opportunity for the NHS to respond was offered via the East Lancashire Hospitals Trust. No comments were received.
15. In the light of the Department for Education (DfE) response (see Appendix B comment 16b pages 12-13), Lancashire County Council (LCC) was also contacted for its view on a possible change to the methodology in respect of secondary school contributions, and to seek further information on the Lancashire school place provision strategy. LCC responded on 12 October 2020. These comments are also attached at Appendix B (see comment 24i pages 46-49) and are discussed in the conclusion section below.
16. During the consultation period, on the 21 January 2020, the draft SPD was considered by Scrutiny Committee for its views. The Committee resolved to establish an informal Working Group to consider the consultation responses in due course and report back to Scrutiny Committee. Councillors Bea Foster, Lian Pate and Howard Baker were appointed to the Group. The Group met on the 22 of September 2020 and was attended by Councillor Bea Foster. Prior to the meeting members were provided with a brief report, a copy of the responses and a copy of the SPD. The group were advised that a further response was awaited from LCC on the subject of secondary education contributions.
17. Kate Ingram, Strategic Head of Economy and Growth and Elizabeth Murphy, Planning Policy Manager attended the meeting to present the consultation responses and to address questions. The notes of the meeting are attached at Appendix C.

## **Conclusion**

18. A number of minor changes to the SPD were made to address the matters raised in the responses and the ceilings have been updated to 2020 values. The most difficult matter to resolve has been in relation to secondary education construction requests from LCC.
19. As can be seen from LCC's further response, no agreement could be reached at officer level on adopting a more flexible distance for assessing the need for additional secondary school places than the 3 miles radius currently used or in getting LCC officers to recognise the borough's the viability challenges. The response indicates that the Lancashire school place provision strategy is currently being updated. Without access to this up-to-date information (the current strategy is dated 2017 and covers the period to 2019/20) borough council officers are reliant on website information via DfE/Ofsted and need to piece together individual planning application responses from LCC to try to understand the current strategy for school places to meet the borough and adjoining borough's population growth (including through any net in-migration to meet the various local plan targets and commitments).
20. Officers remain concerned that LCC's current education contributions methodology, which restricts the assessment to 3 miles, is too rigid and does not accommodate that fact that there may be school places available elsewhere in the borough. The result is that substantial secondary school contributions being requested and if met in full these will adversely affect other contribution requests e.g. affordable housing and/or scheme quality – or prejudice delivery entirely. However, impact on or lack of school places is a material consideration and the borough council needs to have, or be able to obtain, sufficient information at the planning application stage to understand the wider school capacity issues and likely sustainability impacts to inform its decisions. Officers have therefore considered three options to move this matter forward:
  - a) The first option is for the borough council to do its own assessment for each application of 10 or more units using aspects of the LCC methodology i.e. the pupil yield formula, cost per place but using a 'reasonable distance' of the greater of the borough boundary or 3 miles. Whilst this is the preferred option, there are some practical difficulties with this approach. LCC may not provide the information on existing and planned capacity to enable this calculation to easily be made i.e. the LCC response is likely at least in the short-term stick to its existing methodology.
  - b) The second option is to put secondary contributions in a separate new lower priority category within the SPS i.e. '2d)' meaning that contributions would still need to be paid if viability allows, but would not be paid (or would not be paid in full) if other necessary and important contributions were requested including affordable housing, primary school places, biodiversity offsetting, cycleways etc. There are two difficulties with this option. Firstly, this may not adequately recognise the situation where capacity of all secondary schools within the borough and within a three-mile distance of the site becomes exhausted; and secondly, any payments would not be properly justified if the methodology for calculating them is not considered robust. Legislation requires that (*inter alia*) any contributions must be 'necessary to make the development acceptable in planning terms'.
  - c) The final option is that no requests for secondary education contributions are accepted on the basis that the methodology being used by LCC is not appropriate. This would also fail to recognise a situation in future where the capacity of all secondary schools within the borough and within a three-mile distance of the site

becomes exhausted and developers could have afforded to contribute towards the provision of additional places within these distances.

21. On balance, it is considered that option a) is the most appropriate. If, however, officers are unable to obtain sufficient information to calculate the capacity/impact/payment, then any request for secondary education contributions would not be accepted. This would be equivalent to option c). It is hoped that LCC will provide sufficient information to allow an assessment under option a) to be undertaken to avoid option c). This approach has been incorporated into the revised SPD (paragraph 10.2.12 to 14 page 39).
22. This does not affect requests for primary school contribution requests which would be accepted as per the LCC's current education contributions methodology.
23. Whatever approach the borough council takes, is likely to need to be reviewed in due course as the government White Paper 'Planning for the future' sets out proposals to completely change the system of developer contributions to introduce a new 'Infrastructure Levy' payable on scheme occupation and based on values. Whilst the details of the scheme are not set out in the White Paper, it does set out that there will be a minimum threshold for payment of the Levy and that even if schemes are above the threshold, lower contributions are likely in areas with lower house prices.
24. A revised SPD taking into account the above recommendation and the other officer recommended responses is attached at Appendix A.

## **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

25. The production work will be completed within existing budgets.
26. Whilst the SPD provides guidance on the collection and spending of considerable sums of money, the money received will be spent on new or improved infrastructure, affordable housing and monitoring. The SPD does not introduce entirely new policy but instead supplements the policies of Local Plan. A small fee is proposed to cover the new monitoring duties to be implemented in 2020 (0.25%). This fee will only be payable for applications submitted after the adoption of the SPD and where the amount is within the ceiling set out. Any funding collected would be spent in the development control and planning policy teams where the new responsibilities for monitoring will fall.

## **POLICY IMPLICATIONS**

27. Once adopted, the SPD will be a material consideration when considering relevant applications. Its production fulfils existing commitments in Burnley's Local Plan and the Council's LDS.

## **DETAILS OF CONSULTATION**

28. As set out in the main body of the report.

**BACKGROUND PAPERS**

29. None

**FURTHER INFORMATION**

**PLEASE CONTACT:**

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**ALSO:**

**Elizabeth Murphy**