

Planning Obligations Supplementary Planning Document: Statement of Consultation

This statement has been prepared in accordance with Regulation 12(a) of The Town and Country Planning (Local Planning) (England) Regulations 2012 for the adoption of Bracknell Forest Council's Planning Obligations Supplementary Planning Document (SPD). This statement is required to set out:

1. Who was consulted in the preparation of the SPD;
2. A summary of the main issues raised during the consultation; and
3. How the issues raised have been addressed in the SPD.

Purpose of the Planning Obligations SPD

The Planning Obligations SPD sets out the Council's approach and procedure for securing infrastructure by planning obligations from development in Bracknell Forest either from 6th April 2015 (when the Council will commence charging the Community Infrastructure Levy).

Consultation

In the preparation of the Planning Obligations SPD, officers throughout the Council, including those with a responsibility for planning, open space, education, waste and transport, were consulted in the development of this document.

Following this, the draft Planning Obligations SPD and draft Sustainability Appraisal were published for consultation alongside the Community Infrastructure Levy (CIL) Revised Draft Charging Schedule for a 6 week period from 9am on Friday 4 July to 5pm on Friday 15 August 2014.

Relevant 'specific' and 'general' consultation bodies and 'duty to co-operate' bodies, as defined in The Local Plan Regulations 2012 (Parts 1 & 2), were notified of the consultation. These included:

- Environment Agency
- English Heritage
- Natural England
- Primary Care Trust (as Primary Care Trusts were abolished, the relevant Public Health Authority was consulted)
- Local Enterprise Partnership (the Thames Valley Berkshire LEP)
- Highways Agency
- Utility providers
- Relevant authorities whose area is within or adjoins Bracknell Forest
- Adjoining Parish Councils

Any developers, landowners, planning agents and members of the public who so requested were also notified of the consultations.

Additionally:

- Hard copies of consultation documents were made available at principal Council offices, Town and Parish Council offices and public libraries;
- A notice advertising the consultation was published in the Bracknell and Wokingham Times on Thursday 10 July 2014; and
- All documents were published on the Council's CIL website:
<http://www.bracknell-forest.gov.uk/cil>

A comprehensive consultation document, including the list of documents consulted on, methodology and a list of consultees, will be published on the Planning Obligations website: <http://www.bracknell-forest.gov.uk/planningobligations>

Consultation Responses

Representations on the draft POSPD were made by seven organisations. The main issues raised were:

- Support for taking a flexible approach to S106, especially where there are unforeseen development costs;
- Specific reference should be made to payments in kind in lieu of CIL payments;
- More consultation should be carried out with Parish Councils on specific infrastructure needs;
- Further information and detail should be provided on biodiversity and flood management matters;
- Document should be more concise and the scope scaled back;
- Greater clarity should be provided on transport, community facilities, waste management and open space contributions;
- High levels of education contributions are implied – focus should be on how strategic site requirements will be delivered;
- Health facilities should be included in the viability assessments for CIL setting or put as generic item in the Regulation 123 List;
- Specific reference should be made to the infrastructure requirements for the Warfield strategic allocation; and,
- Reference should be made to the potential transfer of community facilities to Parish Councils in accordance with a recent Council report.

The following table provides a detailed summary of responses and officer recommendations which explain how the issues raised have been addressed.

Consultee	Section	Comment	Officer Response	Recommendation
Boyer Planning (on behalf of Luff Developments)	S106 and CIL	The POSPD satisfactorily explains the relationship between S106 and CIL.	Noted.	No change
	S106 and Viability	Support the POSPD on the basis that the Council takes a 'flexible approach' to section 106 negotiations, particularly where a developer can demonstrate unforeseen development costs or there are changes in the wider economy.	Noted. The draft POSPD (Section 4) already provides guidance on the approach to be taken when it can be clearly demonstrated that viability is an issue.	No change
	Payments in Kind	There will be occasion where a developer may provide land and/or infrastructure in lieu of CIL payment – for Blue Mountain this would include the provision of the 'school land.' The assessment by an independent valuer will then determine how much liability the 'in kind' payment will offset. The POSPD should therefore make provision/specific reference to Payments in Kind.	It is agreed however that the POSPD could usefully include reference to the potential for CIL payments in kind as a mechanism to secure land and/or infrastructure.	'CIL Payments In Kind' will be added under 'Section 2 – Mechanisms for Securing Infrastructure'.
Crowthorne Parish Council	Consultation on POSPD	More consultation should have been made with Parish and Town Councils on the detail on some of the issues, for example Primary Health Care, Police Services, Open Space of Public Value and Flood Management.	<p>The Council has fully complied with all the statutory requirements for consultation on an SPD.</p> <p>The POSPD was developed in tandem with the Draft CIL charging schedule (DCS) and Infrastructure Delivery Plan (IDP). In the preparing the CIL charging schedule the Council was required to consider infrastructure needed to support development, and draw upon the infrastructure assessment undertaken as part of the preparation for the Local Plan. For the Site Allocations Local Plan (July 2013), the Council prepared (in collaboration with infrastructure providers) and consulted widely on, an Infrastructure Delivery Plan (IDP) that identified infrastructure needs and the cost of delivery. Primary Health Care, Police Services, Open Space of Public Value and Flood Management requirements were included in preparing the IDP underpinning the Infrastructure Funding Gap document.</p> <p>The IDP public consultation provided an opportunity for the views of Parish Councils on infrastructure issues to be made, and those received have been taken into account of in preparing the POSPD.</p> <p>Parish Councils will have further opportunities to comment on these issues when an updated IDP is consulted on.</p>	No change
Environment Agency	Biodiversity	Supporting text in the form of policy context/background, as with preceding sections, should be added. It would add more weight to mitigation sought if NPPF paras 109,117 and 118 were	Agreed.	A 'Background' section will be added to the 'Biodiversity' section.

		referenced.		
		The management and maintenance of habitats sought in mitigation should be included. On-going management is necessary to secure mitigation.	Agreed.	Provision for the management and maintenance of habitats will be included in 'Mitigation Sought'.
		A new section should be added with regard to mitigation for development with a negative effect on water bodies, in particular with regard to the Water Framework Directive (WFD). This could be in the Biodiversity section as measures to achieve Good Ecological Status under WFD can and should be combined with proposals to improve the ecological, landscape and aesthetic properties of Green Infrastructure. Could warrant a new section, as there may be site specific impacts on water quality and/or water resources as well as biodiversity.	It is agreed that the POSPD should make explicit reference to mitigation from development that has a negative impact on water bodies. The Biodiversity section will be amended to include reference to water bodies.	Reference to water bodies will be included in the 'Biodiversity' section.
	Flood Management	Should be supported by a policy context/background section, including reference to NPPF para 100.	Agreed.	A 'Background' section will be added to the 'Flood Management' section.
Quod (on behalf of Berkeley Strategic)	Layout	The draft document could be more concise and could show planning obligations in a Table so that any developer can quickly understand the scope and likely cost of any liabilities.	The application of planning obligations in a CIL world is complex, and would not be compatible with a table format.	No change
	Scope	Either the scope of the document should be significantly scaled back, and the specific obligations instead identified on the Regulation 123 List or the potential cost of the obligations should be included in a revised Viability Study and CIL rates. It leaves open the possibility of individual site-by-site negotiation, with continuing significant off-site obligations alongside CIL. It is not therefore consistent with the NPPF or NPPG.	A significant and sufficient s106 allowance has been factored into CIL viability testing. S106 secured infrastructure will continue to play an important part in securing necessary impact mitigation. They will, however, be significantly scaled back with the advent of CIL charging. If it can be demonstrated a scheme is not viable due to planning obligations, POSPD Para 4.4 explains the Council's approach to developments that seek a relaxation of normal planning requirements.	No change
	Transport	Paragraph 5.2.11 does not explain why or in what circumstances contributions might be required, leaving uncertainty for developers and brings into question the £1,000 per dwelling S106 assumption on non-strategic sites and therefore the validity of the CIL viability assessment.	Table 5.2.6 sets out the circumstances when the mitigation of transport impacts will be sought. In line with CIL necessity tests for the lawful use of s106 obligations, s106 mitigation must be determined on a case-by-case basis. Dependent on the nature of the development, magnitude and type of mitigation can vary significantly. The extent to which the Council will be able to secure planning obligations will be significantly scaled back when CIL is introduced. Any requirement will need to be evidence-based and meet the CIL Reg 122 tests for the	No change

			<p>lawful use of planning obligations.</p> <p>Section 1.5 and Section 4 recognise that funding/viability is a material consideration.</p> <p>The draft CIL assumption of a £1,000/dwelling s106 sum for non-strategic sites is considered to be reasonable.</p>	
	Waste Management	There is an open ended potential mitigation in relation to off-site contributions which includes no criteria to assess how a requirement will be tested or what potential levels of contribution would be.	CIL Reg 122 provides tests for the lawful use of planning obligations. Mitigation must be directly related and based on the nature of the development; therefore it is not possible to provide mitigation costs.	No change
	Education	The approach taken is concerning given the high levels of contribution implied in the formulae. Instead this section should focus on how site requirements for strategic sites identified in the Infrastructure Funding Gap report and SALP should be delivered. With the exception of the facilities being delivered by S106, all education contributions should be secured through CIL as a generic item on the Regulation 123 List. If not, planning obligations for residential development should be recalculated on the basis of the formulae in the Appendix and included in the CIL viability assessment to test the impact on CIL rates.	<p>The POSPD seeks to take account of unplanned, windfall development of such a size that it could require additional unplanned school places. This requirement, due to the CIL Reg 123 list and pooling restriction, would be highly unlikely. Other than strategic sites, no planned development is likely to be required to make a s106 contribution towards educational infrastructure, therefore the s106 assumptions in the CIL viability testing are considered appropriate.</p> <p>If all educational infrastructure except those s106 projects already identified was on the Reg 123 list and a significant unplanned site generating enough pupils for an on-site school was approved, the Council would not then be able to secure on site in kind provision by s106.</p>	No change
	Community Facilities	Provision for community centres via S106 should only occur where identified in policy for the site and costed into viability statements. Currently the section allows the Council to require the provision of land and/or physical provision on small and medium sites where this has not been considered in the viability assessment for CIL setting.	<p>The POSPD seeks to take account of unplanned, windfall development of such a size that in theory could require additional unplanned community facilities. This requirement, due to the CIL Reg 123 list and pooling restriction, would be highly unlikely. Other than strategic sites, no planned development will be required to make a s106 contribution towards community facility infrastructure, therefore the s106 assumptions in the CIL viability testing are considered appropriate.</p> <p>The current approach is consistent with and will not undermine delivery of the Local Plan.</p>	No change.
	Primary Health Care	Together with other obligations it is likely contributions will cumulatively exceed the £1,000 per dwelling assumed in the CIL viability study and/or add to the obligations already identified on strategic sites, and should therefore be added to the costs in the CIL viability assessment. If this is not confirmed, health facilities	<p>The POSPD was drafted to take account of the potential need for new primary healthcare facilities in the Borough.</p> <p>The Council is not aware however of any such requirement to deliver the Local Plan, therefore the s106 assumptions in</p>	No change.

		should be added as a generic item on the Regulation 123 List.	the CIL viability testing are considered appropriate. The current approach is consistent with and will not undermine delivery of the Local Plan.	
	Public Realm, SPA, Biodiversity, Public Rights of Way, Flood Management	On site provision or mitigation is acceptable in principle, but for off-site contributions they should be only required where there is a direct and clear impact to mitigate and not simply be based on the proximity of an asset which BFC would wish to see enhanced.	Planning obligations will only be sought where there is evidence and justification in line with the relevant tests for the use of s106 obligations.	No change.
Savills (on behalf of Wilson Developments Limited; Serviced Land No. 2 JV LP; Bloor Homes Limited; Taylor Wimpey West London.	General	Makes no reference to the infrastructure sought in the Warfield SPD and its relationship with CIL/Reg 123 list. The Warfield SPD identifies the infrastructure which is to be sought through planning obligations, although many of the works have been identified within the draft Regulation 123 List. Clarification is required to avoid double counting. Due to the burden of specific mitigation/strategic infrastructure delivery on a site the size of Warfield this should continue to be secured by Section 106 payments.	The purpose of the CIL Reg 123 list is specifically to avoid double-counting, and reflects the Council's strategy to continue to secure s106 for infrastructure directly related to a development e.g. provision of a specific school or bespoke SANG. This approach is set out explicitly in Section 4 of the Infrastructure Funding Gap document. For the purpose of CIL testing, Appendix 1 of the Infrastructure Funding Gap document sets out how infrastructure will be delivered, including infrastructure on the Warfield site.	No change.
Warfield Parish Council	5.5.32 – Phasing and Management of Community Facilities	Reference made to the transfer of the facility to Bracknell Forest Council whereas the Report by the Director of Corporate Services to the Parish & Town Council Liaison Group on 'Community Hubs - Strategic Housing Areas' (dated 9 July 2014), 5.25 (Transferral arrangements) states 'Upon completion, the facilities could be transferred to Bracknell Forest Council or directly to the ownership of a Parish and Town Council or other third party subject to this being written into the S106 agreement.' The Supplementary Planning Document should be amended in accordance with this statement.	The POSPD should be amended to reflect the Council's current position on the transfer of Community Facilities.	Reference to the transferral of Community Facilities directly to a Parish and Town Council or other third party will be included under 'Transfer and management' in section '5.5. Community Facilities'.
	5.10.6 – Infrastructure Mitigation	We are pleased to note that Bracknell Forest Council acknowledges the need for health facilities to be sought in connection with large scale development.	Noted.	No change.
Winkfield Parish Council	General	BFC Staffing levels need to be sufficiently knowledgeable to ensure efficient handling of legal documentation.	Noted.	No change.