

Luton & South Bedfordshire Joint Committee

23 October 2009

Agenda Item No. 7

AUTHOR	Joint Officer Team (Mark Saccoccio)
SUBJECT	Supplementary Planning Document on Planning Obligations (Section 106 Legal Agreements) for Southern Bedfordshire.
PURPOSE	To adopt the Supplementary Planning Document for southern Bedfordshire subject to securing compliance with recommendations as set out below.
RECOMMENDATIONS	That the Joint Committee: 1. welcomes the widespread and broadly positive response and support to the Draft Planning Obligations Strategy following formal public consultation; 2. formally adopts the proposed Planning Obligations Strategy as a Supplementary Planning Document (SPD) constituting part of its Local Development Framework (LDF); 3. that the Director of Sustainable Communities at Central Bedfordshire Council in conjunction with the Portfolio Holder for Sustainable Development be authorised to resolve any minor typographical, calculative and explanatory amendments to the text of the SPD prior to its operation; and 4. note that the SPD will be applied to new development proposals within southern Bedfordshire from 5 January 2010.
REASON FOR RECOMMENDATIONS	In order to meet the requirements of the Town and Country Planning and Compulsory Purchase Act 2004.

1.0 INTRODUCTION & BACKGROUND

- 1.1 As Members will be aware, the joint Local Development Scheme 2007 identifies the aim to prepare a Planning Obligations policy framework for the whole of the Luton/southern Bedfordshire Growth Area. Luton adopted its own Planning Obligations SPD in September 2007, but at the present time, southern Bedfordshire needs to put in place a consistent policy approach to planning obligations. This SPD is intended to address that gap in policy.
- 1.2 When adopted, the SPD will also ensure that there is a consistent approach to dealing with planning obligations across the whole of the new Central Bedfordshire Unitary area, its principles being closely aligned to those in the adopted Mid Bedfordshire Planning Obligations Strategy (February 2008). It remains the intention of Central Bedfordshire to create a single Planning Obligations Strategy as soon as practicable.

The key aims of the SPD are to:

- help deliver the development of sustainable communities;
 - ensure that the additional impacts, including those upon infrastructure, service and facilities which arise from new development are adequately mitigated or compensated for by that development;
 - provide a more transparent, streamlined, practical, consistent and accountable approach to the negotiation of planning obligations;
 - accord with the requirements of Circular 05/2005, national planning guidance, the regional and local development plan and best practice; and
 - contribute towards achieving the aims and objectives of the Community Plan and those of the Local Strategic Partnership.
- 1.3 In looking at how and when the Council should seek to secure planning obligations, officers have taken close account of Government guidance, in particular Circular 05/2005 which sets out the key tests which local planning authorities must consider when securing planning obligations. The fundamental tests to be applied when securing planning obligations are that a planning obligation must be:
- relevant to planning;
 - necessary to make the proposed development acceptable in planning terms;
 - directly related to the proposed development;
 - fairly and reasonably related in scale and kind to the proposed development; and
 - reasonable in all other aspects.

- 1.4 When adopted, the SPD will be a material consideration in the determination of planning applications. Thereafter, the SPD will be reviewed biennially or until such time as it is superseded.
- 1.5 In accordance with the joint LDS, there remains the need to create a Growth Area SPD. It is likely that the framework set out here may well inform that document.
- 1.6 In accordance with the Luton and South Bedfordshire Statement of Community Involvement (Adopted December 2007), the draft document has been the subject of 2 rounds of public and stakeholder consultation. The consultation methods and timetable are set out in Appendix 1 (1A and 1B).

2.0 **WHAT ARE PLANNING OBLIGATIONS?**

- 2.1 Planning Obligations are a recognised delivery mechanism for matters that are necessary to make a development both sustainable and acceptable in planning terms. Planning obligations are legally binding. They can be delivered through either a unilateral undertaking made by the applicant or an agreement made jointly between the local authority and a developer.
- 2.2 Planning obligations may be development specific, stipulating essential infrastructure work, which must take place in order for the development to proceed. They may also contribute towards objectives of national planning guidance and local planning policy, which are relevant to the proposal and which are required to make development acceptable in planning terms.
- 2.3 The Milton Keynes South Midlands Sub-Regional Strategy (MKSMSRS) identifies a need for substantial improvement in the infrastructure capacity and contains specific recommendations relating to education, training, health and social care, community facilities, affordable housing, environment and green infrastructure and utilities, which will need to be considered. It recommends that service providers evaluate in detail that nature and scale of provision needed in light of the scale of development, proximity to existing provision, socio-demographic characteristics, and the size, scale, layout and density of development needed to support such services in new and existing developments.
- 2.4 Cumulatively, even small developments create significant additional demands for new infrastructure, services and facilities within an area. It is important therefore, that new development makes commensurate contributions towards new and improved local infrastructure where that development will add to infrastructure needs and requirements. Further investment from public and private sector will be crucial to help address current and future needs for infrastructure provision.
- 2.5 A Planning Obligations SPD is considered the most appropriate method of securing community and infrastructure provisions at this moment in time.

3.0 RATIONALE AS TO WHY THE SPD RELATES TO SOUTHERN BEDFORDSHIRE ONLY

3.1 The SPD comes before the Joint Committee as the body with responsibility for determining planning policy across Luton and southern Bedfordshire. As set out at para.1.1, the document is relevant to southern Bedfordshire only. Notwithstanding the fact that Luton has its own obligations strategy, it is neither feasible nor indeed appropriate to extend the area it covers to include Luton for the following reasons:

- the administrative areas operate within a differing policy framework meaning that specific local plan policy and objectives prevail;
- the nature of the provision of services in the two administrative areas is different (e.g. education is two tier in Luton and three tier in southern Bedfordshire);
- the cost of the provision of services in the two administrative areas is different (e.g. libraries, sports centres and parks); and
- planning applications and associated obligations/unilateral undertakings would still have to be made/entered into with the authority in which the land or premises are situated.

4.0 COMPONENTS OF THE SPD

4.1 The SPD sets out a wide range of matters which it is proposed to seek planning obligations upon. These matters include Education, Sustainable Transport and Highways Work, Health Care, Environmental Impacts, Mix of Housing, Leisure, Recreational Open Space and Green Infrastructure, Community Facilities and Services, Community Cohesion, Waste Management, Emergency Services, Public Realm and Community Safety.

4.2 One of the key aims when developing the Strategy has been to derive as many standard obligation charges as possible which can be applied equitably to both large and smaller developments where new infrastructure is needed. Considerable work has also been undertaken with service providers such as the Town Councils, Health Authority and other local infrastructure providers including the Green Infrastructure Consortium etc, to confirm what new infrastructure is needed locally. This work is used in the SPD to determine when a development should be accompanied with a particular obligation.

4.3 The result is a SPD which, whilst it still allows local negotiation of planning obligations where appropriate, particularly for larger developments with specific local circumstances to address, now enables southern Bedfordshire to apply planning obligations across a wider range of developments including smaller ones, to properly take account of the cumulative infrastructure needs which arise when those developments take place.

4.4 To help explain the SPD to developers and users, a detailed Background Paper has also been produced which sets out the methodology used for calculating the standard planning obligation charges and costs contained within the SPD.

5.0 REPRESENTATIONS RECEIVED ON THE DRAFT SPD

5.1 The draft SPD and accompanying Sustainability Appraisal has been the subject of 2 rounds of public consultation. For the purposes of expediency and our commitment to reduce unnecessary printing, the Sustainability Appraisal together with the first round of public consultation will be made available on the website. Those responses received to the second round of consultation are scheduled in Appendix 2 together with a suggested response on behalf of the Committee following due consideration.

5.2 The number of representations (35) received is disappointing given the level of public and stakeholder consultation that was undertaken. This in part may be a consequence of the acceptance that planning obligation strategies are not new and that all developments will have to contribute to the needs they generate (where considered appropriate to do so). Moreover, the draft document is founded on the Mid Beds Planning Obligations SPD and the Beds County Developer Contributions Strategy which have both been tested through consultation. Whilst the charges are not the same when compared to the Mid Beds Strategy (by virtue of differing needs), the framework is similar.

6.0 PROPOSED AMENDMENTS TO THE SPD

6.1 The proposed changes to the SPD are incorporated into the complete document at Appendix 3 where they are underlined in the form of tracked changes for ease of reference. Superseded text remains albeit struck out. The substantive changes are as follows:

- Validation of Planning Applications (Page 8; para.9.6)
 - i) A process requirement that all planning applications (where obligations apply) must be accompanied by either a Planning Performance Agreement, Heads of Terms of a Section 106 Agreement or a Unilateral Undertaking. This will assist the administrative process.
- Education
 - i) Further Education (Page 10; para. 11.1.5) – allows where considered necessary for Upper School contributions to be directed toward post -16 education.
 - ii) Main Stream Education (Page 12; Bottom of Table 1) – greater clarity in terms of contribution threshold.

- Health Care Facilities
 - i) For primary buildings and primary land charges, the VAT element has been removed from the calculations. The reason being that VAT is not chargeable in planning contribution agreements. Removing the charge ensures consistency within the Strategy, as VAT has not been charged on other contributions.

- Social and Community Infrastructure (Pages 27 – 29; paras. 11.7.1, 11.7.6 – 11.7.10)
 - i) The building of cohesive, inclusive and sustainable communities will be influenced by the provision of an appropriate range and scale of social and community infrastructure. The provision of both interim community facilities/community houses together with community mobilisers will help achieve this.

- Libraries (Page 31):
 - i) Whilst Dunstable and Caddington have identifiable library needs, contributions to be sought from those villages which look towards them.

- Cost of Preparing and Monitoring Legal Agreements (Page 42; para. 15.4) -
 - i) There is a cost associated for the preparation of and the monitoring of legal agreements. This was inexplicably omitted from the draft but should be included in the adopted document.

7.0 OPERATING THE SPD

- 7.1 Following adoption of the SPD, further preparatory work needs to be undertaken before the SPD is planned to become operative on 5 January 2010. To ensure smooth operation of the SPD, template agreements are being prepared for use by developers and an obligations calculator is being devised for the website so that applicants and other interested parties will be able to see for themselves the planning obligations that will be expected to be delivered with any new development proposed.

8.0 SUSTAINABILITY APPRAISAL

- 8.1 The SPD has been the subject of a Sustainability Appraisal throughout the course of its preparation. The Sustainability Appraisal indicates that the SPD will have positive effects for progressing sustainable development throughout the southern Bedfordshire area. The Appraisal sets out that there will be many positive outcomes for the environment, particularly through the provision of Green Infrastructure and provision of local community facilities that will assist in reducing emissions from vehicles.

9.0 FINANCIAL IMPLICATIONS

- 9.1 Once adopted, it is expected that the mechanism will bring in considerable amounts of money to the Council in addition to that which is already achieved through Section 106 Agreements. However, the amount involved cannot be estimated as it will be dependent upon the number and type of planning permissions granted that will be subject to such agreements. The monitoring and management of S106 Planning Obligations will be the responsibility of the S106 monitoring officer.
- 9.2 The relevant accountant agreed these implications on 1 October 2009.

10.0 LEGAL IMPLICATIONS

- 10.1 There is a legal requirement to prepare an LDF under the Town and Country Planning and Compulsory Purchase Act 2004, the requirements for processing the LDF documents are set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 200 as amended by the Local Authorities (Functions and Responsibilities) (Amendment) (No2) (England) Regulations 2004. This SPD has been produced to accord with this legislation and regulations. It has also been produced to fully conform to Government Circular 05/2005 "Planning Obligations".
- 10.2 The relevant solicitor agreed these implications on 5 October 2009.

11.0 CONCLUSIONS

- 11.1 The Joint Committee is now asked to support and formally adopt the Planning Obligations SPD as part of the Local Development Framework.

APPENDIX

Appendix 1 - Consultation methods and timetable

Appendix 2 - Representations received to the second round of consultation and suggested response on behalf of the Committee

Appendix 3 - Proposed Planning Obligations Strategy and Background Document