

Committee: Borough Plan Advisory Committee

Date: 25 June 2014

Wards: all

Subject: Consultation on Merton's draft planning obligations supplementary planning document (from September 2014)

Lead officer: Director for Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Environmental Sustainability and Regeneration, Councillor Andrew Judge

Contact officer: Future Merton strategic policy manager, Tara Butler

Recommendations: That the Borough Plan Advisory Committee advises the following:

- A. That Cabinet approves six weeks of public consultation on Merton's draft planning obligations supplementary planning document (consultation to start in September 2014).
 - B. That approval of the consultation documents and other matters be delegated to the Director of Environment and Regeneration in consultation with the Cabinet member.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. Merton's Planning Obligations Supplementary Planning Document was adopted in 2006 and is used to guide developer contributions.
- 1.2. However since 2006 there has been substantive changes to the legislation and guidance that affects developer contributions, especially the Community Infrastructure Levy (CIL), the National Planning Policy Framework 2012 and the Growth and Infrastructure Act 2013.
- 1.3. This report recommends the preparation of an up-to-date Planning Obligations Supplementary Planning Document (SPD), which will take account of the latest legislation and guidance, enabling Merton to ensure appropriate planning obligations are applied to support open spaces, healthcare, education and other infrastructure in the borough.

2 DETAILS

- 2.1. "Planning obligations" is the term used to describe legal contracts made under section 106 of the 1990 Town and Country Planning Act. They are generally entered into by agreement between councils and landowners.
- 2.2. Planning obligations are used for three purposes to:
 - prescribe the nature of development to comply with policy (for example, requiring a given portion of housing to be affordable),
 - compensate for loss or damage created by a development (for example, loss of a footpath), or

- mitigate a development's impact (for example, through contributions to mitigate against harm to the local nature reserve).
- 2.3. Planning obligations are linked to a decision on a planning application, and are recorded as a land charge. The planning obligation is tied to the land ownership until the obligation is fully complied with, often indefinitely.
- 2.4. New legislation introduced in April 2010 (Community Infrastructure Levy Regulations 2010), introduced a number of measures affecting planning obligations. These reforms ensure that planning obligations and the CIL operate in a complementary way. The new regulations limit the use of planning obligations in three ways.
- 2.5. Firstly, planning obligations entered into after from 6 April 2010 must meet three legal tests. For developments that are capable of being charged the CIL, planning obligations must be:
- necessary to make the development acceptable in planning terms
 - directly related to the development and
 - fairly and reasonably related in scale and kind to the development
- 2.6. These are also set out as policy tests in paragraph 204 of the National Planning Policy Framework (the NPPF).
- 2.7. Secondly, to ensure that the use of planning obligations and the CIL does not overlap, planning obligations cannot be used to fund infrastructure that the Council has included in its CIL infrastructure funding list (known as its 123 list). Developers cannot therefore be asked to pay twice for the same item of infrastructure.
- 2.8. Merton's CIL infrastructure funding lists are being proposed for consultation as part of another report to this meeting.
- 2.9. Thirdly from 6 April 2015, or sooner if a council introduces the CIL in their area before this date, councils may not use planning obligations as a pooled tariff. This is because from that date, councils cannot pool more than five planning obligation contributions (counted back from April 2010) for infrastructure that is capable of being funded by the CIL. Merton has introduced its CIL Charge from 01 April 2014 so therefore we can't pool planning obligations from lots of different development sites and spend the pooled funds on education, health, parks and open spaces or sustainable transport; this "pooling" must be done via CIL.
- 2.10. Planning obligations will continue to play an important role in making individual developments acceptable through site-specific infrastructure such as highways improvements. Affordable housing will also continue to be delivered through planning obligations rather than the CIL. Councils can also continue to pool contributions for measures that cannot be funded through the CIL.
- 2.11. Therefore it is proposed that Merton updates its Planning Obligations SPD to reflect the new legislation and provide an accurate, robust and up-to-date guide to securing contributions from development to improve the borough.

3 ALTERNATIVE OPTIONS

- 3.1. The alternative option is not to prepare a Planning Obligations SPD and instead use the council's current adopted 2006 SPD. This is rejected as it is considered too risky to continue to use guidance that is so out of date, now that Merton has introduced a CIL charge since April 2014.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. Six weeks of consultation will be undertaken on the draft document, starting in September 2014

5 TIMETABLE

- 5.1. The timetable is as follows:

- July-September 2014 - prepare the Planning Obligations supplementary planning document
- September-November 2014 – six weeks of public consultation on the draft guidance
- November 2014 -January 2015 – consider the consultation results, amend the document and adopt it, replacing Merton's 2006 planning obligations SPD

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. The resources for preparing the guidance will come from with the Sustainable Communities division.
- 6.2. The guidance will support more effective negotiation of planning obligations.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Planning obligations are covered by a variety of legislation, including
- the Growth and Infrastructure Act 2013
 - the Localism Act 2011
 - CIL Regulations 2010 (as amended)
 - the Town and Country Planning Act 1990 (as amended)

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None for the purposes of this report.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None for the purposes of this report.

11 APPENDICES –

11.1. None