

# **Section 106**

# **Developer Contributions**

**Supplementary Planning Document – Consultation Draft**  
January 2007

**Statement of Consultation**



# **Affordable Housing Supplementary Planning Document – Consultation Draft Statement of Consultation**

## **INTRODUCTION**

1. Under the Planning and Compulsory Purchase Act 2004 it is a requirement to prepare and publish a Consultation Statement for a range of planning policy documents, including Supplementary Planning Documents (SPDs), to outline any initial consultation undertaken with key stakeholders and other bodies prior to formal public consultation.
2. This Consultation Statement describes the involvement of key stakeholders, the community, voluntary organisations and statutory consultees in the preparation of the Section 106 Developer Contributions SPD.
3. This statement details who the authority consulted in connection with the preparation of the SPD and how they were consulted. It presents a summary of the main issues raised in these consultations and explains how these issues have been addressed in the consultation draft version of the SPD.

## **CONSULTATIONS CARRIED OUT**

4. A consultation event with Key Stake Holders relating to a Section 106 Developer Contributions SPD took place in May 2006. Details of the consultation responses were reported to the Scrutiny Commission in June 2006 and are set out in Appendix I. The issues raised by this consultation have been taken into account when preparing this SPD.
5. This first draft Section 106 Developer Contributions SPD was considered by Scrutiny Commission on 6<sup>th</sup> June 2006. The Scrutiny Commission raised concerns that, notwithstanding the fact that a tariff-based approach to deciding developer contributions will be simpler and speedier, such an approach is likely to reduce transparency to the public and local linkage of contributions and the Commission's wish that the Cabinet looks at that concern carefully. The item was subsequently removed from the Cabinet agenda for further consideration.
6. A second draft document was written and key stake holders consulted in November 2006. Details of the responses received and reported to Scrutiny Commission and Cabinet are set out in appendix II.
7. The Scrutiny Commission on 21<sup>st</sup> November 2006 resolved that the document be welcomed and that the Cabinet be informed of the Commission's general comments and discussion, and some identified items in particular.
8. Cabinet considered the draft Section 106 Developer Contributions SPD on 23<sup>rd</sup> November 2006. It was resolved:

- I. that the draft Supplementary Planning Document on Section 106 Developer Contributions be endorsed as a basis for public consultation over an eight week period commencing on 7th December 2006;
  - II. 2, that the comments made by Cabinet and the views of the Scrutiny Commission be taken into account in developing the consultation document and that the Scrutiny Commission be thanked for its in depth consideration of the item;
  - III. that the Head of Planning Services be granted delegated authority in consultation with the Lead Member to make textual amendments to the draft Supplementary Planning Document in accordance with (2) above, prior to the commencement of the consultation.
9. The Section 106 Developer Contributions SPD seeks to:
- I. • Expand upon existing Local Plan policies on section 106 requirements and clarify the Council's position;
  - II. • bring together central government advice, regional policy and existing supplementary planning guidance and documents.
  - III. • Ensure that developer contributions sought with a development is aligned to the needs and demands of the development taking into account existing deficiencies in service provision.
  - IV. • Define the needs of Charnwood in terms of demands for contributions.
  - V. • Indicate the issues that developers and land owners need to take into account when considering a proposal
10. The SPD is now published for public comment. Although this is later than the resolution by Cabinet it was considered appropriate with the Christmas holiday period affecting the previous consultation period. Representations should be submitted to the Council by 15th February 2007.

# Appendix I – Summary of Responses to the initial draft SPD

## Environment Agency

David Marsh

Technical Specialist Planning Liaison

Developer contribution be sought for the mitigation of fluvial flood risk for the provision of physical defences or other flood risk measures. The provision of defences does not mean that residual flood risk can be discounted. A contribution should be sought for the maintenance of flood defences for the lifetime of development, typically a 50 year period.

In addition, developer contribution be to secure the long-term maintenance of schemes for the management of surface water run-off.

Contribution be sought for "Flood Risk Management".

Proposed Standard Formula and Charges

Cost will need to be assessed for each proposal.

## Sport England

Ben Hunt

Sport England welcomes the inclusion of contributions towards recreational and sporting needs, and green infrastructure in the general list of matters that can be covered by S.106 obligations – covering both the needs of the development itself, as well as mitigation and compensation for the impact of the development on existing resources.

As a general point, Sport England welcomes the fact that maintenance issues have been recognised. However, we would like to make the following points.

1. document is not transparent in identifying how the thresholds and tariffs have been derived.
2. no particular reason or rationale for setting a lower limit for the size of development below which contributions to community and green infrastructure need not be made.
3. maintenance for good quality playing pitches is likely to be different to that for less formal open space.
4. Do "Community facilities" includes the full range of built facilities for sport and recreation?
5. Does the off-site recreation requirement cover the full costs of compensatory provision?

Want

- Greater transparency, justification and explanation for the areas of requirements, and the detailed tariffs
- Ensuring that the requirements cover both needs of the development itself, as well as mitigation and compensation for the impact of the development on existing resources, as set out in the preamble
- Extending the period for maintenance contributions, and possibly also requirements for future renewal of facilities with a relatively short lifespan

## William Davis Limited

John Coleman

Development Planner

I support the principle of an SPD on planning obligations. It will assist developers in being able to assess likely costs at an early stage and thereby allow informed decisions to be made during land negotiations. However the draft SPD goes beyond what is reasonable under the terms of the circular for the following reasons:

- There is no local plan policy context or justification for a number of the items for standard charge.
- It is not at all clear what is being sought under the "Community Cohesion and Public Realm" item?
- Charges are to be applied on a blanket basis (i.e. as "standard contributions") regardless of impact. This is directly contrary to paragraph B35 of Circular 05/2005. *"Planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision that are not necessary to allow consent to be given for a particular development."*
- A contribution should not be sought for "monitoring and ensuring implementation of legal agreements". Paragraph B34 of Circular 05/2005 allows for charges to be applied for *"preparing and completing the planning obligation itself."* but not for subsequent monitoring and implementation of the agreement.

## Leicestershire County Council

Chris Noakes

Developer Contributions co-coordinator and Team Leader

The clear and plain explanation in your draft is appreciated and we are minded to follow similar approach. However there is real concern that the inclusion of certain criteria and advise on CC requirements in your own document will

conflict and cause confusion/inconsistencies. The use of standard formulae (£/unit) is commendable, where appropriate, but cannot be applied - as intended - to the highways/education/civic amenity/library requirements without some 'tests' for each case. They are misrepresentative of our own 'criteria' based requirements, in any event. Comments were made on matters of detail in the guidance:

On the matter of 'officer costs' for monitoring, etc we have yet to be convinced about the acceptability of this, notwithstanding a desire to extract some contributions. Your figure of 5% of total seems quite excessive!

The CC document should include appendix for standard legal clauses and agreements, yet to be finalised between the legal officers in the CC/DPA's.

## **Leicestershire County Council**

Jane McPhail

Project Officer, Natural Life

We welcome the positive approach of the proposed Supplementary Planning Document regarding Section 106 Developer Contribution requirements.

We recommend that all opportunities to retain and enhance the biodiversity of development sites should be used by the developer including those under the headings of sporting, open Space, National Forest planting, landscaping and screening. These are not as obvious as the opportunities for biodiversity associated with protected species ecology and wildlife habitat but are equally important.

On small sites, such as back gardens, we recommend that habitats, species and suitable portions of the land, be protected to conserve their potential as linking and stepping stone habitat. Such islands and corridors within and through built up sites will become increasingly important as more of the brown field sites and wider countryside is developed.

Management of land within the agreements should also be provided at the cost of the developer.

## **East Midlands Regional Assembly**

Andrew Pritchard

Director of Planning and Transportation

The Regional Spatial Strategy (RSS8) looks to the planning process to reduce inequalities in health and community facilities; improve access to health and leisure facilities; improve accessibility through (sustainable) transport infrastructure and secure the protection and enhancement of the built and natural environments (see Policy 1 – Regional Core Objectives).

Policy 3 – Sustainable Criteria – includes the provision “the likelihood that the site can be viably developed, taking into account the availability of resources (both public and private);”

## **Leicestershire Constabulary**

Stewart H Bradshaw

Force Architectural Liaison Officer

As listed in the table on page 9, Section 106 Developer Contributions should be considered for community safety issues such as a contribution to operational policing infrastructure and specific development requirements such as CCTV

## **Eastern Shires Housing Association**

Anthony Riley

Director of Business Development

The change in threshold and percentage required is welcome although there are examples in other authorities where the Borough/District has introduced a "banding system" with different thresholds in different areas of the authority to reflect local housing need.

Note and agree with your rural exceptions policy (Policy H/6 refers) and assume a survey from a "rural housing enabler" or such like would satisfy part ii) of this policy.

Your requirement for 75% of all affordable developments to be for social rent will be more difficult to achieve than in the past. This is because of the new limits introduced on rental charges for New Build Home Buy (ex Shared ownership). This may reduce the amount RSLs can bring to any price offered to developers & lead to a reluctance from developers to build out in times when the market is flat/depressed.

# APPENDIX II Summary of responses to the draft SPD

## LCC OFFICER COMMENTS

### General Comments

The approach taken by Charnwood Borough Council is commended and it is noted that the SPD is broadly consistent with the 'Statement of Requirements for developer Contributions in Leicestershire'.

Leicestershire County Council reserves the right to comment in subsequent formal consultations and welcomes the opportunity for an initial input into the draft.

### Specific Comments

13.4 Please note that this was stated in the original draft of the 'Statement of Requirements for developer Contributions in Leicestershire' and has since been amended to 'greater'. Please ensure that this is amended as this currently reads as a contradiction to the County Guidance.

Page 17, the table headed 'Education'. The title of this table has been amended in the 'Statement of Requirements for developer Contributions in Leicestershire' to reflect departmental changes since publication of the original document. Please replace the title with 'Children & Young People's Service (Education)'.

The Social Services table (page 28 of the SPD) should be replaced with the 'Adult Social Care & Health' table from page 13 of the 'Statement of Requirements for developer Contributions in Leicestershire'. Discussion with the Adult Social Care department has resulted in an updated table and this should be incorporated in the Charnwood SPD to ensure consistency with the County-wide guidance.

Leicestershire Constabulary are currently reviewing contributions required from developers to offset Police Services within the county. An amended table has been produced with Leicestershire Constabulary for inclusion in the County-wide guidance, it is suggested that the updated table be added to the Charnwood SPD.

### Hugh Knight

Clerk of Birstall Parish Council

The Parish Council generally welcome and accept the proposals.

However, one suggestion was made for possible inclusion or a legally worded acceptable alternative :-

In respect of *approved and agreed* Section 106 Developer *financial* Contributions

" on reaching a stipulated date/event - should any Capital amount become due for payment, Interest should accrue and be due to the beneficiary from the stipulated date until the date of payment at (e.g. -either) a rate of interest linked to the current Rates of Inflation or linked to the ruling Bank rate".

We hope that this will be a practical and helpful suggestion.

### Environment Agency

Suggest standard for flood risk areas and alleviating measures

### Stewart H Bradshaw

Police Force Architectural Liaison Officer

The Police are currently reviewing contributions required from developers to offset Police Services within the County.

To this extent discussions are on-going with Leicestershire County Council and I enclose an interim revised 'Proposed Standard Formula and Charges' page for inclusion in your proposed document.

This page is a copy of the requirements that have been agreed with the County Council and will be included in their 'Draft Statement of Requirements for Developer Contributions in Leicestershire' shortly to be presented to cabinet for approval.

### Tony Noon

Leicestershire Fire Service

Draft plan from Charnwood as agreed.

I asked whether a tariff figure of £29 per dwelling, would be appropriate. This allows for the expansion of our Service with the provision of a new fire station but it does not appear to take account of the capital maintenance program for our fire stations, this can be easily accounted as we have a set amount each year for this ongoing subject.

### Mr RG Lowe

Newtown Linford Parish Council

Has made comments mainly about grammatical construction and jargon which makes the meaning obscured.

### Colin Bailey

Green Spaces Development Manager

9.1 The sentence "As a general rule, where an asset is intended for wider public use, the costs of ongoing maintenance and other recurrent expenditure associated with the developer's contributions should normally be

borne by the Borough Council or relevant public sector body." I assume this refers to facilities such as Leisure Centres and not public parks and playing fields

13 Cost Recovery – this should also include wasted officer time e.g. site visits where many of the issues raised previously with developers have not reasonably been attended to [a common occurrence].

Page 21/22

Service providers – Town councils not included

Type of facilities/contact person – I am not the contact person for community halls and indoor sports facilities

Type of facilities – I would like to see outdoor youth provision included as lack of this provision featured strongly throughout the borough in the recent Play Strategy consultation. – I would also like to see public parks and wildlife habitat specifically mentioned.

Type of development b]– It is important that the provision of new play areas includes the requirement on the developer to transfer sufficient POS land to enable CBC to comply with the minimum buffer zones recommended by NPFA 6 acre standard. There are several examples in the borough of play areas being within a few metres of homes instead of the minimum 20 metres [LEAP] and 30 metres [NEAP]. This creates tensions within neighbourhoods and demands for new play areas to be immediately closed.

NB. I am relatively new to the authority, but I'm not aware that CBC has carried out a PPG17 Open Spaces Strategy. Such a document would help to identify the typology of existing public open space and what is lacking e.g. public parks, allotments,

This is a copy of Reading Council's chosen typology

Parks and gardens

Amenity greenspace

Cemeteries and churchyards

Children's play & teenage areas

Outdoor sports facilities/recreation grounds

Green corridors

Natural/semi-natural greenspace

Allotments, community gardens & city farms

Accessible countryside in urban fringe areas

Waterfronts

Other functional greenspace

Civic squares

Somewhere in the SPD there should be some mention of a willingness to improve off-site recreation provision in preference to creating less accessible and less appropriate on-site provision. Examples include facilities for children's play, ball games and youth provision.

## **Woodhouse Parish Council**

1. Woodhouse Parish Council welcomes the fact that the draft document recognises that section 106 should apply where the environment/ecology is

adversely affected by a development [section 8.2]. Village design

statements are supplementary planning documents that should be referred to in this respect.

2. There is no provision for parish councils to comment on section 106 proposals and as parish councils are often closest to the communities affected by development, they should be involved. Paragraph 7.7 states "The Borough Council will inform any developer or landowner, after consulting with other interested bodies, of the likely requirements...." We request that the words "including Parish Councils where proposed development is in a rural area" be inserted after 'interested bodies' in the above paragraph.

## **John Coleman**

William Davies

1. I am please to see that reference is now made to the fact that the standard charge elements will only be applied where a need exists (paragraph 7.2 refers). However, I note that paragraph 7.1 makes reference to contributions being applied "were there is a known requirement, either existing or because of the development....". Paragraph B9 of Circular 05/2005 reminds us that "Planning obligations should not be used solely to resolve existing deficiencies.....".

2. The section on 'pooled contributions' I note has been drawn from LCC's Developer Contributions document. I did note in my representation on this document that the references to pooling for schemes of five dwellings or less conflicts with policies such as RT3 and 4 of the Charnwood Local Plan which sets a trigger of 10 dwellings for contributions.

3. Paragraph B34 of Circular 05/2005 allows for charges to be levied "for preparing and completing the planning obligation itself." but not for subsequent monitoring and implementation of the agreement.

4. Guidance on education contributions is not clear. I would have expected the scale of contribution to vary dependant on the types of properties proposed or at least with 1 bedroom units excluded from any calculated contribution.