

## **Schedule of material changes to the draft Planning Obligations Supplementary Planning Document**

A schedule of the material changes to the Planning Obligations SPD in response to the public consultation on the draft is summarised below. The reasoning for each of the amendments is summarised in *italics*, as appropriate. The full responses to the consultation comments is summarised in the accompanying consultation report.

### **Contents**

- 1 List appendices as follows:  
Appendix A: Sport and recreation minimum provision standards  
Appendix B: Affordable Housing - Further Guidance

### **Executive Summary**

- 2 Add the following Executive Summary:

The aim of this supplementary planning document (SPD) is to provide clear guidance on the Council' s approach to Planning Obligations, otherwise known as Section 106 Agreements or simply Planning Agreements. The policy basis for this SPD is to be found in Government Guidance on Planning Obligations in Circular 05/2005, and the associated Good Practice Guide of June 2006, together with the Council' s Policy IMP1 in the adopted Local Plan 2007.

The SPD provides guidance on Planning Obligations in respect of 5 key policy areas:

- Affordable housing
- Children' s services and life-long learning
- Sustainable transport
- Green Space and Play Services
- Sport and Leisure

The SPD sets out the procedure which the Council intends to follow, including pre-application discussions about planning obligations, and describes how the Council will examine the viability of projects if a developer considers that the level of obligations required would render their proposal unviable.

The SPD also explains that the drafting of Section 106 Agreements will usually be undertaken by the Council' s legal services team, or by solicitors contracted by the Council to represent them, and in addition to meeting these costs, the Council will also charge an administration fee which varies with the size of the contributions.

The SPD explains how the Council propose to monitor compliance of Section 106 Agreements, and publish an annual monitoring report.

The SPD then deals with each of the 5 topics outlined above, explaining the policy background, and providing links to other Council strategies and documents, which are relevant to that particular topic.

Each section of the SPD then sets out the trigger for obligations in each case, and the Council' s expectations in terms of developer provision or contribution. It explains the basis of contribution for each topic, how contributions are to be calculated for specific development proposals, and what exemptions or exceptions, (if any) will apply.

Finally, the SPD contains, by way of illustration, 3 case studies relating to circumstances typically likely to occur in the Bath & North East Somerset area. These comprise a mixed use urban site, a medium sized brown field site for residential development, and a larger green field site for residential development.

## **Part 1 – Introduction**

3 Para 1.1.2 - update to reflect LDS review, future revision to SPD.

4 Para 1.1.5 - update to refer to public consultation.

### **1.2 Planning policy context**

5 Para 1.2.2 - Add sentence referring to paras B2 and B51 of Circular 05/2005 relating to use of conditions being preferred to planning obligations.

*In response to consultation comments*

### **1.2 Scope and procedure**

6 Para 1.3.3 - add sentence at end paragraph as follows:

Apart from affordable housing, where on-site provision is expected except in very exceptional cases, on-site provision of other facilities will be fully taken into account.

*To ensure consistency with the Local Plan*

7 First sentence, para 1.3.5 - add reference to consultation with statutory consultees.

*As requested by the Highways Agency*

Add additional sentence at end of paragraph.

In addition, where a larger development is to be phased, the Council will consider proposals to phase the contributions in line with the phasing.

*In response to consultation comments*

8 Amend first sentence para 1.3.6, to read:

As shown in Diagram 1, the Council will expect draft Heads of Terms for a Section 106 Agreement to be submitted with planning applications where relevant. This will help to ensure that formal planning applications can be dealt with in a more informed and efficient manner, and assist interested parties in commenting on the application. It will also avoid unnecessary delays over complex negotiations following a Committee decision to approve the application subject to an obligation.

*For clarification, and to link to validation of applications*

9 Para. 1.3.8 Delete financial and add “ usually a Fellow or Member of The Royal Institution of Chartered Surveyors”

10 After first sentence ending “ on an open book basis” add: “ The following information will be required:

- Site or building acquisition cost and existing use value.
- Construction costs and programme.
- Fees and other on costs
- Projected sale prices of dwellings.
- Gross and net margin.
- Other costs and receipts. “

Amend final sentence to read “ ....will expect the developer to agree to an adjudication by an independent person, usually a Fellow or Member of the Royal Institution of Chartered Surveyors, with the cost of the adjudication funded by the developer.”

Add further paragraph following the previous one, stating that “The Council will be able to commission an independent chartered surveyor (or suitably qualified and independent financial professional) to interrogate any economic viability assessment provided by a developer. The costs of this work are to be met by the developer.”

*To require this information only when viability is in issue, and provide for input from Chartered Surveyors in most cases.*

- 11 Para 1.3.10 – Add further sentence at end:

Where the obligation relates to contributions totalling less than £20,000, or to a simple obligations of a non-monetary kind, the Council may be prepared to accept a Unilateral Undertaking. The Council will advise on this issue as part of pre-application discussions.

*To enable a Unilateral Undertaking to be offered by the developer in appropriate cases.*

- 12 Table 1.3.1

Amend starting point for contributions to £20,000

*In response to objections regarding fees for small schemes*

- 13 Para 1.3.12 add final sentence to say “ Monies that are not spent within the agreed timescale and budget provided for in the Section 106 agreement will be refunded by the developer”

1.3.13 Amend introduction to read “ Compliance with Section 106 Agreements will be monitored by the Council. The Council will normally expect payment on commencement of development, but on larger schemes maybe prepared to consider a series of targets tied to milestones, each of which triggers an instalment of the agreed total payment.”

*In response to consultation comments*

- 14 1.3.14 Amend to read:

‘ Planning obligations will be monitored and an annual monitoring report will be prepared and made publicly available’

*For clarification*

## Part 2

### 2.1 Affordable Housing

- 15 2.1.2 - First sentence now to read ‘ The council will seek **to secure** 35% affordable housing **with about** a 75/25% split.

*Wording changed to ensure conformity with the local plan and correct earlier error.*

- 16 2.1.2 Final sentence now to read:

The Council will normally expect affordable housing to be provided on site, but in accordance with para B7.60 of the Local Plan, in very exceptional circumstances the Council will consider provision in other ways (see paragraphs 2.1.5 and 2.1.6).

Delete phrase “ in perpetuity” from para 2.1.2

*To ensure conformity with the Local Plan.*

- 17 Para 2.1.4 add new bullet point “ How the affordable housing provision complies with either HG8, or if relevant HG9”

Para 2.1.4 delete bullet points 4 onwards.

*Taken forward to the general section on viability in Part 1*

- 18 Table 2.1.1 - At foot of table add:  
i.e. 35% of the combined total of 154 units

*For clarification.*

- 19 Commuted sum formula

To read in **very** exceptional cases. Amend step 2 of worked example as follows:

#### Step 2

Total Notional Market value of 54 properties = £10,800,000

(assuming MV of £200,000 per unit)

Less notional price payable by AHP

= £3,800,000

Therefore the commuted sum = £7M

To summarize the comparison of developer contributions between an off-site or commuted sum (CS) approach and on site provision (OS):

	<b>CS</b>	<b>OS</b>
MV of private units	£20M	£13M
No. affordable units	54	35
OMV of affordable	£10.8M	£7M
Price paid for AH	£3.8M	£2.5M
Developer contribution assuming MV of £200,00 per unit	£7M	£4.5M

20 Table 2.1.2 wording amended for clarification. Example updated for clarity and additional explanation added.

## 2.2 Children's services and lifelong learning

This section has been extensively revised.

- 21 Para 2.2.3 - The comments under each bullet point have been revised and extended. Reference to a 5% margin in primary and secondary provision has been removed.

*In response to consultation comments*

- 22 Paras 2.2.4/2.2.5 Additional explanation added regarding calculation of cost of provision.

*In response to consultation comments*

- 23 Para 2.2.9 Regional factor now called location factor and further explanation added.

*For clarification*

- 24 Table 2.2.1 - Process of calculating contributions now more fully explained. First part of table sets out DCSF multipliers, then location factor for Bath and North East Somerset has been inserted to give contribution levels as per previous version of table.

*For clarification*

- 25 Table 2.2.2 Cost of provision updated and location factor added.

*For clarification*

- 26 Table 2.2.3 Reference to 1 bed flats and houses removed.

*Reference to 1 bed units removed in response to representations received, although Children's Services still consider that there is some limited child yield from 1 bedroom flats. Further investigation may be undertaken for SPD review.*

- 27 Para 2.2.16 Bullet points expanded to reflect the changes to yields and sub-division of SEN between secondary and post 16.

Final sentence of paragraph amended to read:

Bedsits, temporary housing and any dwellings designated for restricted use such as student accommodation, sheltered housing for the elderly or adults with learning difficulties etc would not normally be expected to contribute as the number of children

generated will be marginal or nil. All other new dwelling of 2 bedrooms or more will be included in the calculations' .

*In response to consultation comments*

28 Table 2.2.4 Reference to 1 bedroom flats or houses removed.

*In response to consultation comments*

**Trigger for obligation – Lifelong learning**

29 Paragraph 2.2.21 amend final sentence before table 2.2.5 to read:  
The contribution for new households will be calculated using the local plan occupancy table below.

*For consistency*



## 2.3 Transport

30 Paragraph 2.3.3 - add after existing text new line

Three categories have been identified;

1. Access and local impact works.
2. On-site works, services or incentives.
3. Strategic highway and transport works - each of these is considered in detail below'

*To clarify the sub-divisions of works/contributions required. Also note that these have been re-ordered from the draft so that the strategic highway and transport works links directly into the contribution calculation.*

31 Para 2.3.4 Fourth bullet point add (see table 2.3.2 for further details).

*Cross reference to explain relevance of table 2.3.2.*

End of bullet point list add:

Mitigation measures for developments which would result in a material impact on the capacity of the Strategic Road Network would need to be fully funded by the developer

*As requested by the Highways Agency.*

32 Para 2.3.11 Add additional sentence to read:

The Council will expect this matter to be dealt with in the developer' s Transport Assessment carried out in accordance with DfT *Guidance on Transport Assessment* March 2007

*As requested by the Highways Agency.*

33 Para 2.3.11 End of para add additional bullet point:

d equals discount, to be assessed on the basis of the applicants transport assessment.

*For clarification.*

34 Para 2.3.11 i) add:

The funding gap represents the difference between the estimated cost of the projects listed and the public funds already secured or anticipated

*To clarify the position.*

## **2.4 Green Space and Play Services**

Amend title to this section from play space to play services.

- 35 Para 2.4.1 After contributions in respect of green space insert “ and play services” and add date of green space strategy (2007) to end of para.

*For clarification.*

- 36 Para 2.4.1 Add after first sentence:

The Council’ s Green Space Strategy identifies the types of provision where existing facilities are inadequate to meet increased demand created by new development

*To demonstrate the link to the evidence base in the Green Space Strategy.*

- 37 Para 2.4.4 End first sentence at ‘ .....set out above.’ i.e. delete the text in brackets – apart from allotments in the case of non-residential development.

*As requested by Allotment Association.*

- 38 At end of para after ‘ ...off site contribution’ add ‘ for enhancement as shown in Table 2.4.4’

*For clarification*

- 39 Table 2.4.1 Add after table - \* Refers to minimum allotment sites to be adopted by the Council. Other management arrangements may apply for smaller sites.

*As requested by Allotment Association.*

Add the following text to para 2.4.2 after “ planning contributions towards the provision of green space” :

“ Contributions will be reviewed on a case by case basis for non-residential development and will take account of provision of open space or improvements to the public realm that form part of any development proposal.”

- 40 Para 2.4.6 Amend second sentence to:  
Developers will then be required to demonstrate to the Council' s satisfaction that the green space will be permanently maintained and managed (e.g. through a management company) or ....

*In response to consultation comments regarding alternative arrangements for managing green space other than those initially set out.*

- 41 End paragraph 2.4.7 amend 15 years maintenance period to 10 years.

*For consistency, and in response to consultation comments*

- 42 Para 2.4.11 Amend first sentence – substitute ‘ maintenance ‘ for ‘ commuted revenue’

*For clarification*

Amend second sentence to read:

The capital element includes a 6% supervision fee to cover the costs to the Council of supervising/inspecting/monitoring the laying-out, maintaining and transfer of the green spaces to the Council.

*For clarification*

Add to final sentence “ ....**Local Plan**” occupancy rates.

*For clarification and consistency*

- 43 Play Space now to read Play **Services**.

Add following sections before para 2.4.12, and amend paragraph numbering accordingly:

### **Introduction**

Bath & North East Somerset Council is a Play Pathfinder Authority and as such is testing a variety of innovative approaches to supporting and creating play spaces for their local communities.

Financial contribution are to be sought from developers towards Play Services which include:

- Community Play Rangers
- Holiday Play Schemes
- Community Play Projects

Contributions to play services is a key element of delivering quality of play for children (ages 5 – 16 years) will be sought from developers and/or landowners regardless of the size of the development due to the flexible nature of how play services can be delivered by Community Play Rangers, holiday play schemes and community play projects.

*For clarification*

### **Policy Background**

A key objective of PPG17 is to “ promote better use of open spaces” , to this end, the Bath & North East Somerset Council recognises the key role of Play Services in enhancing the quality of the play experience and the use of existing and planned spaces.

Circular 05/2005 also provides justification for contributions to be sought for Play Services. This approach supports the objectives of the *Play Strategy* published in December 2008 by the Department of Children, Schools and Families.

The contribution to play services is sought on the basis of the mitigation of impact on the Play Service which contributes to quality of use of the open spaces and is fairly and reasonably related to the scale of development.

44 Para 2.4.12 - Amend to read:

A contribution to play services should be sought for developers **of residential schemes who like to accommodate children and young people**, regardless of the size of the development, due to the flexible nature of how play services can be delivered.

45 Paras 2.4.15/2.4.16 Play impact assessment requirement – this is now removed.

New text to be inserted under heading ‘ What developer will be expected to provide?’ :

Developers will be expected to contribute to Play Services in respect of children of primary and secondary school age.

46 Continue with previous para 2.4.14.

Calculation at end of section. Delete **gain** and substitute **contribution**.

The likely child yield in the primary and secondary age groups will be assessed using para 2.2.15 above.

Amend Cost of Community Play Ranger as follows:

Cost per annum of Community Play Ranger	£30,000
Number of Children served	382
Cost per child	£78.53
Example calculation:	
Child yield from dwelling of 2 bedrooms or more	0.54
Cost per unit	£42.41

Commuted sum at factor of **10 years** = £424 **per unit**.

*Clarification and updating*

## 2.5 Sport & Recreation

47 Tables all renumbered 2.5.1, 2.5.2 etc to remove previous errors.

48 Para 2.5.1 - Add new sentence at end of paragraph as follows:

In addition, the Council has had regard to a built facilities report by Knight, Kavanagh and Page (May 2009?) which has identified the types of facility where there are existing short falls in provision

*In response to consultation comments regarding lack of background information to this topic*

49 Para 2.5.8 New paragraph inserted as suggested by KKP confirming that contributions will be sought for sport and recreation facilities where new housing will exacerbate on identifying shortfalls i.e. swimming pools, Synthetic Turf Pitches, small halls, and Multi-Use Games Areas.

Calculation clarified and heading in table 2.5.3 column B changed to ' identified shortfalls' .

*In response to consultation comments regarding lack of background information to this topic*

50 Para 2.5.14 - End of paragraph - maintenance period changed from 15 years to 10 years.

*For consistency and as a result of objections to a longer period*

51 Para 2.5.14 and Table 2.5.4 costs updated to second quarter 2008.

52 Para 2.5.14 Exclude references to facilities other than the four for which contributions are sought.

*For simplification*

53 Table 2.5.6 - Notes – first bullet point:

To read – The number of people generated by a development is calculated using the occupancy rates as set out in Table 2.5.1. Remove references to average size as this is not appropriate.

*For clarification*

### **3.0 Case Studies**

The case studies are to be re-presented with annotations so that they are much clearer and relate to the contents of the SPD more directly.