

## Bath & North East Somerset Council

MEETING/ DECISION MAKER:	<b>Cllr Bob Goodman, Cabinet Member for Development and Neighbourhoods</b>	
MEETING/ DECISION DATE:	<b>On or after 2 March 2019</b> (for single Member decision)	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 3126</b>
TITLE:	<b>Planning Obligations Supplementary Planning Document (SPD) amendment and related Community Infrastructure Levy Regulation 123 List amendment relating to new development green space requirements</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<p><b>List of attachments to this report:</b></p> <p>Appendix A – Consultation Document Planning Obligations Supplementary Planning Document (SPD) amendment</p> <p>Appendix B – Proposed Amendment to CIL Regulation 123 List</p>		

### 1 THE ISSUE

- 1.1 Amendments are required to the Planning Obligations Supplementary Planning Document (SPD) and related changes are required to the Regulation 123 List (R123 list) to clarify in particular that where recreational open space (“green space”) provision is not practical on site for new developments, planning obligations (Section 106 agreements) for off site green space provision or enhancement which are necessary for new development to be acceptable in planning terms will be required. Currently, where green space requirements for new development are not provided on site, there is no direct mechanism for mitigating impact of development in terms of required green space provision, as CIL is not intended for allocation to site specific mitigation projects at the planning application stage. Amendments to the SPD and related amendments to the R123 list are required to make this clear.
- 1.2 In addition, there are minor amendments to the section on adoption of green space by the Council and minor factual updates to the Tree Replacement section of the SPD are also included to reflect updated cost information on tree replacement where applicable.
- 1.3 For reference, a minor amendment to the R123 list is also made to allow CIL allocations to be made to Alternative Education Provision (This is subject of a separate decision as part of the Cabinet Agenda 6th February 2019).

- 1.4 The purpose of this report is to obtain approval for a consultation on the changes to the Planning Obligations SPD and R123 list.

## **2 RECOMMENDATION**

The Cabinet Member is asked to;

- 2.1 Agree the Planning Obligations SPD draft amendments for consultation with stakeholders for a six week period from 14 March 2019 to 25<sup>th</sup> April 2019 relating to S106 green space obligations, and updated costs for tree replacement (Refer to Appendix A for proposed amendments)
- 2.2 Agree the Regulation123 draft amendments for consultation with stakeholders from 14 March 2019 to 25th April 2019 relating to off site green space requirements (Refer to Appendix B for proposed amendments).

## **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 The preparation of the Amendments to the Planning Obligations SPD and R123 list for consultation and consideration will be undertaken by the Planning Policy Team and the costs covered within the existing salary budget and the Council's LDF budget (now reduced).
- 3.2 The amendments will have an impact on the Council's income. It is anticipated that the level of Section 106 income will increase. In cases where off site contributions are secured in place of on site provision, this would result in additional S106 contributions. In addition, conversions of in use buildings to new residential apartments that do not currently contribute via CIL (as CIL is based on net additional Gross Internal Area), could be liable for green space planning obligations.
- 3.3 The amendments to the tree replacement costs as set out in the SPD reflect updated costs.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The Planning Act 2008 (Part 11) made provision for the introduction of the Community Infrastructure Levy (CIL). CIL Regulations governing the preparation and operation of CIL Charging Schedule were first introduced in April 2010, and have subsequently been amended a number of times - the CIL (Amendment) Regulations 2011, the CIL (Amendment) Regulations 2012, the CIL (Amendment) Regulations 2013, and the CIL (Amendment) Regulations 2014. In addition, Part 6, Chapter 2 of the Localism Act 2011 has the effect of amending parts of the Planning Act 2008 as it relates to CIL. CIL Charging Authorities are required to prepare a Regulation 123 List (R123 list), which sets out those items of infrastructure, or broad types of infrastructure, that may be wholly or partly funded by CIL.
- 4.2 The legislative basis for the Planning Obligations SPD and s106 planning obligations is contained within the Town and Country Planning Act 1990 (as amended) and the CIL Regulations 2010 (as amended) Regulation 122 and 123. Town and Country Planning (Local Planning) (England) Regulations 2012

Regulations 11 to 16 set out the requirements for preparing Supplementary Planning Documents.

## 5 THE REPORT

- 5.1 Revisions are needed to the Planning Obligations Supplementary Planning Document (SPD) and the Regulation 123 list (R123 list) to ensure that development proposals accord with the development plan in terms of green space requirements. In particular there is a need to maintain a consistent approach to the provision of green space to make new development acceptable in planning terms, and where on site provision is not practical, off site provision including enhancement and maintenance of existing green space should be secured by way of planning obligation to mitigate the impact of development.
- 5.2 Prior to the introduction of CIL, developers were obligated to make tariff based S106 contributions for the provision or improvement of green space where their development did not provide sufficient on site/off site green space to meet the demands generated by an increased population. Planning proposals could therefore be made acceptable in planning terms subject to the Council utilising S106 contributions to deliver a suitable project related to the development.
- 5.3 CIL was introduced in April 2015 and at the same time a revised Planning Obligations SPD was also approved to reflect the scaling back of tariff based approaches to planning obligations under Section 106 of the TCPA 1990 in accordance with the CIL Regulations 2010 (as amended). The R123, which indicates the types of infrastructure to which CIL may be allocated, and the Planning Obligations SPD, which assists developers and applicants to determine the site related planning obligations for new developments, were drafted to ensure that developers avoided paying twice i.e. both CIL and S106 tariff contributions for the same infrastructure.
- 5.4 It is implied in the SPD that Planning Obligations will only be required for on site provision, and CIL will fund the majority of green space and allotment facilities. The R123 list includes all green space typologies potentially enabling CIL to be allocated to new or the enhancement of existing green space across the Bath and North East Somerset Council (B&NES) area, and indicating that S106 will be used for on site provision.
- 5.5 This approach does not properly reflect the B&NES Placemaking Plan (adopted 2017). Policy LCR6 of the Placemaking Plan, and the Green Space Strategy (2015) make it clear that where on site provision is not practical, off site provision or enhancement should be made to make development acceptable in planning terms. Policy LCR6 states:

*'Where new development generates a need for additional recreational open space and facilities which cannot be met on-site or by existing provision, the developer will be required to either provide for, or to contribute to the provision of accessible sport and recreational open space and/or facilities to meet the need arising from the new development in accordance with the standards set out in the Green Space Strategy, and Planning Obligations SPD or successor documents'*

- 5.6 The Green Space Strategy states:

- *New provision. Open space should be provided as part of new development in line with the B&NES standard. Where it is not practical to provide open space on site, there should be new provision off site or enhancement to existing facilities.*
- *Enhanced provision. Key sites for improvement have been identified through the study, and opportunities to improve sites through development and external funding need to be sought.*

5.7 Accordingly, for planning applications to be determined based on the development plan, where the proposed development generates the need for green space, a Section 106 planning obligation should be secured as part of any planning permission. This requires an amendment to the Planning Obligations SPD and R123 statement in order to enable off site provision of green space required to meet the need generated by the proposed development to be secured through a planning obligation.

5.8 In making this amendment to the Planning Obligations SPD and R123 statement the following issues need to be acknowledged:

- a) under the CIL Regulations 2010 (as amended), the ability to pool financial contributions from planning obligations is currently restricted to five obligations per project or type of infrastructure. Therefore this restriction on pooling could potentially restrict the Council's ability to fund off site green space through financial contributions. However projects can be distinct, as parks often have multiple components and functions. In addition, the Government is currently consulting on draft CIL Regulation Amendments to remove this pooling restriction, and the need for a R123 list.
- b) based on the written ministerial statement of 28 November 2014, contributions should not be sought from small developments of 10- units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area). Small developments will continue to contribute to CIL. To date Strategic CIL has been allocated to strategic green infrastructure projects, such as Bath River Avon Park, Keynsham Memorial Park and Midsomer Norton Town Park.
- c) Currently, conversions of in use properties, particularly where change of use to flats, often do not provide any CIL contribution (as CIL is based on net additional Gross Internal Area), however it is clear that new residents in flats have a demand for and impact on existing public green space. Accordingly, through the proposed amendment Planning Obligations for off site green space could be secured from conversions.

5.9 Planning obligations sought for off site green space provision and enhancements will be established at the planning application stage and relate to particular identified projects and will not be reserved for future allocation.

- 5.10 In addition to the above amendments, minor updates to the SPD are also required to the principles of adoption of green space by the Council and to reflect updated tree replacement costs where applicable
- 5.11 The above amendments to green space obligations will require amendments to the Planning Obligations SPD and R123. The proposed changes to the SPD are shown in Appendix A and the proposed changes to the R123 list are shown in Appendix B.

## 6 RATIONALE

- 6.1 The rationale for making the changes to the Planning Obligations SPD and the R123 is to provide consistency for determining planning applications, and to ensure that development which is permitted is acceptable in planning terms. The Town and Country Planning (Local Planning) (England) Regulations 2012 Regulations requires Councils to consult with stakeholders when preparing a SPD. B&NES Council document "My Neighbourhood" updated in 2014 states that draft SPDs will be published for a formal six week period of consultation. The National Planning Policy Guidance states "*When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and subject to appropriate local consultation.*"

## 7 OTHER OPTIONS CONSIDERED

- 7.1 A full Review of the Planning Obligations SPD was considered instead of focusing on the proposed amendments relating to implementation. However on the basis that the draft Joint Spatial Plan is currently being examined, and the preparation of the Local Plan is in progress, a full review of the SPD will be needed in due course to take into account the delivery of infrastructure, particularly in connection with the Strategic Development Locations and non-strategic allocations. It was decided therefore to undertake these focused amendments relating to the implementation of existing adopted policy which is ongoing and affecting current development management practice.

## 8 CONSULTATION

- 8.1 The Council Services were consulted in considering the scope of changes.

## 9 RISK MANAGEMENT

- 9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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**Background papers**

*B&NES Core Strategy adopted 2014*  
*B&NES Placemaking Plan adopted 2017*  
*Green Infrastructure Strategy approved 2013*  
*Green Spaces Strategy 2015*  
*Planning Obligations Supplementary Planning Document approved 2015*  
*Regulation 123 list Approved 2015*  
*Cabinet Agenda 6<sup>th</sup> February 2019*

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