

Bath & North East Somerset Council

MEETING/ DECISION MAKER:	Cllr Tim Ball, Cabinet Member for Housing, Planning and Economic Development	
MEETING/ DECISION DATE:	On or after 27th July 2019 (for Single Member decision)	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3147
TITLE:	Adoption of Revised Planning Obligations Supplementary Planning Document (SPD) and related Revised Community Infrastructure Levy Regulation 123 List relating to new development green space requirements	
WARD:	All	
AN OPEN PUBLIC ITEM		
<p>List of attachments to this report:</p> <p>Appendix A – Revised Planning Obligations SPD</p> <p>Appendix B – Revised CIL Regulation 123 List</p> <p>Appendix C – Consultation Report including Annex 1 Schedule of Representations and Responses</p> <p>Appendix D – Equalities Impact Assessment</p>		

1 THE ISSUE

- 1.1 Currently, where green space is required by and to mitigate the impact of new development and it cannot be provided on site as part of the development there is no direct mechanism provided for in the Planning Obligations Supplementary Planning Document (SPD) (approved 2015) for off-site green space mitigation through planning obligations. Further, CIL is not intended for securing site specific mitigation projects at the planning application stage. The aim of this report is to adopt amendments to the SPD and related amendments to the Regulation 123 list (R123) list to make it clear that 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.
- 1.2 In addition, there are minor amendments to the section on the 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.

2 RECOMMENDATION

The Cabinet Member is asked to resolve that;

- 2.1 The Planning Obligations Supplementary Planning Document (SPD) including amendments (Appendix A) is adopted to supplement the Bath & North East Somerset Core Strategy 2015 and Placemaking Plan 2017. (For clarity, the SPD document will be amended following adoption so that the published version includes the proposed amendments).
- 2.2 The updated Regulation 123 including amendments relating to green infrastructure and social infrastructure is approved. (Refer to Appendix B for updated Regulation 123 list).

3 THE REPORT

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 It is implied in the 2015 approved SPD that Planning Obligations will only be required for on-site provision and adoption, 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.
- 3.5 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'

3.6 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.*

3.7 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.

3.8 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.

- 3.9 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.
- 3.10 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
- 3.11 Public consultation took place on the draft proposed amendments for six weeks between 14th March 2019 and 25th April 2019. A Consultation Report has been prepared (refer to Appendix C) which sets out further minor amendments.
- 3.12 There was broad support for the proposed revised approach to the SPD in relation to mitigation of demand for green space off site. Based on our analysis of the consultation responses to the SPD, in particular from the Allotment Association, changes are proposed to the text on the adoption of green infrastructure to make it clear that allotments will be offered for adoption. There is also a minor amendment to the team contact reference. Refer to the Consultation Report (Appendix C) and the Revised SPD amendments at (Appendix A).
- 3.13 There was broad support for the proposed revision to the R123 list in relation to the Green Infrastructure category. The issue of consistency between the Green Infrastructure category on the list and the Social Infrastructure category, which includes sports, recreational, play infrastructure and youth provision (excluding on site provisions) was raised. For consistency the same approach as for green infrastructure is proposed to enable planning obligations to mitigate the impact of new development on social infrastructure including recreational play and sports infrastructure off site where on site provision is not practical (refer to Appendix B for further amendments).

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, the CIL (Amendment) Regulations 2014, the CIL (Amendment) Regulations 2015, and the CIL (Amendment) Regulations 2018. 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. If they wish to charge 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. The Planning and Compulsory Purchase Act 2004 Section 26 provides that a local planning authority may at any time prepare a revision of a local development document, which includes a supplementary planning document.

- 4.3 Section 149 of the 2010 Equality Act states that a public authority must have due regard to equalities, in particular it must have regard to the relevant protected characteristics of people.
- 4.4 In this case the relevant protected characteristics identified that could be affected are all protected characteristics. It is not considered that people with any protected characteristic will be disadvantaged, but would benefit from this decision as all people including those with protected characteristics should benefit from the provision/enhancement and maintenance of off site green space required to mitigate the impact of new development. An Equalities Impact Assessment has been undertaken in relation to the preparation of these amendments. (Refer to Appendix D)

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 Publishing the updated Planning Obligations SPD and Regulation 123 (R123) list 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).
- 5.2 The revised SPD and R123 list including 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.
- 5.3 The amendments to the tree replacement costs as set out in the SPD reflect updated costs.

6 RISK MANAGEMENT

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

7 CLIMATE CHANGE

- 7.1 The reason 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 mitigates impact and is acceptable in planning terms. The provision/ enhancement and maintenance of off-site green space serves to ensure that development is sustainable and could have a positive impact on addressing climate change for example through the planting of trees.

8 OTHER OPTIONS CONSIDERED

- 8.1 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.

9 CONSULTATION

9.1 Public consultation was undertaken for a six week period between 14 March 2019 and 25 April 2019 in line with Bath and North East Somerset Council's Statement of Community Involvement document "My Neighbourhood". Refer to consultation report attached at Appendix C.

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Background papers	<i>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 Single Member Decision Report E3126 approved 4/3/2019 (approving consultation on Draft Amendments to the Planning Obligations SPD and Reg 123 list.)</i>
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