

DRAFT PLANNING OBLIGATIONS SPD 2012: CONSULTATION RESPONSES

Responses Received From:

Mr. Clive Narrainen (CN); English Heritage (EH); Berkeley Strategic (BS); Barton Willmore (BW); Mr. Brian Swain (B Sw)

SECTION	COMMENT	COUNCIL RESPONSE
GENERAL COMMENTS	Development specific planning obligations continue to offer further opportunities for funding improvements to and the mitigation of adverse impacts on the historic environment, such as archaeological investigations, access and interpretation, and the repair and reuse of buildings or other heritage assets (EH)	All planning obligations requests/requirements must be seen within the limitations for planning obligations as set out in national policy and the SPD
	Berkeley supports the preparation of the Planning Obligations SPD and in particular the inclusion of a development viability review mechanism in Chapter 4 (BS).	Noted
	Para 1.7 - We object to the reference in this paragraph which states that the SPD will form the basis for planning obligations to deliver better infrastructure, environmental enhancements and community facilities <u>where needed</u> if a development goes ahead. A fundamental principle of planning obligations, which has been carried across in paragraph 204 of the NPPF, is that they should meet all of the following tests: <ul style="list-style-type: none"> • 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. They cannot be used to deliver improvements and facilities simply where they are needed and this reference should be amended accordingly (BW).	Paragraph amended to state that planning obligations may be secured where necessary for a development to proceed. The tests in Para 204 of the NPPF are referenced throughout the document as well as the other limitations on planning obligations imposed by the CIL Regulations.
	Second line of paragraph 2.4 – “desired restrictions” is not an appropriate phrase to use and these paragraphs should be re-written and simplified to reflect the guidance in paragraphs 203-206 of the NPPF.(BW)	Paragraph amended
	Para 2.9 - It is not clear how the ‘Regulation 123’ list of infrastructure projects will differ from, or to what extent it will reflect, the infrastructure projects listed in the IDP.(BW)	The Regulation 123 was published on the Council’s website on 1 November 2012. The primary role of the R123 list is for the Council to specify what infrastructure it may fund from CIL and therefore what it will not be funding through planning obligations. Projects in the IDP may be funded through CIL, s106, developer direct or other means of funding. Decisions on the release of CIL and s106 funds will be made annually by Cabinet after appropriate consultation
	Para 2.12 - The Council is reminded of the advice in paragraph 173 of the NPPF which advises that to ensure viability, the costs of any requirements likely to be applied to developments should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable. (BW)	Para 173 of the NPPF is noted but para 2.12 of the SPD is not in conflict with this. However agree it would be beneficial to refer to the section of the NPPF in the “Principles” section of the Viability chapter of the SPD.

	<p>Para 3.11 and 3.13 - The circumstances and criteria governing the payment of administrative costs are not clearly set out. References to “normally seek” and “contribution of at least” should be qualified.(BW)</p>	<p>The administrative functions relating to planning obligations particularly for larger developments are significant. These including monitoring triggers, ensuring all obligations have been adhered to, responding to solicitor queries regarding discharge of obligations and reporting to Members and the public on the use of financial contributions.</p> <p>The paragraphs will be amended to make clear that a fee of £800 to the District Council will be required in relation to each agreement and £500 towards the County Council when there is an education obligation.</p>
	<p>General Comments re:DPOSPD 1)The Process and Guidelines are too Prescriptive in their presentation. 2)The Process and Guidelines are too Restrictive in their nature. 3)The Process and Guidelines are too District Local Authority weighted, Parish and Community Groups should be more involved. (B Sw)</p>	<p>It is considered the guidance in the document is necessary to explain the relationship between CIL and planning obligations, to explain when planning obligations may be sought and explain the processes in assessing and responding to viability issues on individual sites.</p> <p>The views of Parish and Community Groups are considered as part of the Development Management process of determining planning applications and they may have a role in prioritising the use of funds collected and in some instances spending funds collected</p>
AFFORDABLE HOUSING	<p>Support paras 6.21 to 6.25 – encourage the involvement by a developer of a Registered Provider as the most effective way of satisfying our policies (CN)</p>	<p>Noted</p>
	<p>Para 6.5 should be amended to make it consistent with CS Policy CS13 as follows to refer to the level of affordable housing provision on greenfield sites as being a target:</p> <p><i>“on greenfield sites and land last used for business (i.e. ‘B’ use classes) or a similar sui generis employment generating use, the Council will aim to achieve at least 40% of total bedspaces”.</i> (BS)</p>	<p>Paragraph amended</p>
	<p>Rural Exceptions Affordable Housing should include the requirement of Community Led Planning and commitment towards any District identified need (District has ability to provide level and location of any such need if it has not been satisfied within the published plans for Affordable Housing),this is required in view of Rural Exceptions sites being envisualised on Green Belt/AONB. (B Sw)</p>	<p>The details of the Rural Exceptions Affordable Housing policy is set out in Policy H14 of the saved Local plan and reference is also included in paragraph 4.73 of the Core Strategy</p>
	<p>Hughenden Parish is a Rural Parish and the Council recognises Widmer End to be a Rural Village, not an Urban Area as described. (BSw)</p>	<p>Hughenden Parish is a Rural Parish. However, Widmer End is recognised in the Adopted Core Strategy as a distinctive settlement/community either adjoining or closely adjacent to High Wycombe.</p> <p>The SPD is consistent with the Core Strategy Policy CS13 which sets out the site size thresholds for where affordable housing will be sought and for the purposes of applying that policy Widmer End is included within the High Wycombe Area (also including Downley, Hazlemere, Tylers Green, Loudwater and Wooburn Green).</p>

VIABILITY	Berkeley supports the ability that this mechanism provides for developers to negotiate with the Council the level of s106 contributions and the amount of affordable housing to be delivered by development where development viability is an issue. The proposed viability review mechanism set out in the SPD will be critical to the successful delivery of development in the district and the delivery of the associated benefits and infrastructure investment. (BS)	Noted
	In relation to the section of Chapter 4 dealing with the potential to reduce the quantum of planning obligations and affordable housing to secure viability, this section should refer to the opportunity to review the percentage of affordable housing provision and its tenure mix as part of the viability review process (BS)	Agreed – section amended
	Section 4 on viability is overly detailed in setting out the principles, the Council's approach to viability, assessments and possible actions if benefits are identified. However the advice on viability in paragraph 173 of the NPPF is very simple. It states that the sites and scale of development identified should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. Therefore, to ensure viability, the costs of any requirements likely to be applied to development should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable (BW)	Overall the Council considers that its policies, standards and CIL rates will not make the majority of development unviable, therefore adhering to para 173 of the NPPF. The Council must have detailed processes in place to deal with individual cases of marginal or unviable sites that allows the viability issues to be demonstrated in a fair and consistent manner. However agree it would be beneficial to refer to the section of the NPPF in the "Principles" section of the Viability chapter of the SPD.
	The thrust of NPPF is focused on a presumption in favour of sustainable development, which should be the basis for every plan and every decision. Viability is a key aspect of deliverability and the advice in paragraph 153 of the NPPF is clear that supplementary planning documents should not be used to add unnecessarily to the financial burdens on development. In light of this clear policy background, the Council's approach to viability as set out in Section 4 is onerous. The viability of developments can often be border-line and this is particularly the case during an economic downturn such as the one we have experienced over the last few years. The UK is officially in a "double-dip recession" and the Office for National Statistics has said that a sharp fall in construction output was behind the contraction in the economy of the country. Officially, construction is reported to have decreased by 3%. Against this background, and in the context of the NPPF where the Government wants to encourage sustainable growth and has said "planning must not simply be about scrutiny" (Ministerial Foreword of NPPF), the advice in paragraph 4.7 of the Draft SPD is harsh. Viability can be a finely balanced issue that is not always apparent at the start of the planning and development process due to fluctuations in values and costs. The Council's requirement for developers to set out a submission of viability considerations is a further burden which inevitably will lead to more scrutiny (BW)	The SPD will not add unnecessarily to the financial burdens of development. One of the main purposes of the SPD is to ensure that particular acute impacts of individual developments are dealt with by way of planning obligations if necessary. This is supported by para 176 of the NPPF which states that "where safeguards are necessary to make a particular development acceptable in planning terms (such as environmental mitigation or compensation), the development should not be approved if the measures required cannot be secured through appropriate conditions or agreements. The need for such safeguards should be clearly justified through discussions with the applicant, and the options for keeping such costs to a minimum fully explored, so that development is not inhibited unnecessarily". Whilst it is agreed that viability may be a finely balanced issue it is not clear what the respondent is objecting to. If viability is in serious question it must be up to the applicant to demonstrate this in the context of the policy requirements of the Council. If the viability of a scheme is not considered to be in question until late in a planning application process the applicant will still be able to raise this and go through the process outlined in the SPD.
	It is not clear exactly what is meant by "additional benefits of a scheme (over and above for example the delivery of a development per se)".	Permitting development that fails to provide the full policy requirements is by its nature unsustainable to some extent.

	<p>Is the creation of jobs considered to be an “additional benefit” or simply the result of “the development per se”? The same could be asked of visual and townscape improvements where poorly designed and constructed buildings that are 40+ years old are replaced by modern, sustainable, well designed, high quality buildings: is this an “additional benefit” or simply “the result of the development per se”?</p> <p>Clarification is needed on this point as it clearly will be crucial to understand the interpretation of benefits in any and all discussions with officers about viability. In asking these questions, we note that the Council considers that it has “a positive and reasonable attitude in viability negotiations” (Council’s response on page 17 of the CIL Preliminary Draft Charging Schedule Consultation Statement).</p> <p>Whilst paragraph 4.9 refers to matters to be addressed “as a matter of course” and gives the example of high quality design and landscaping, it appears to indicate that this would not be considered to constitute a benefit – a wholly unreasonable position for the Council to take.</p> <p>The Council should clarify the position by setting out a list of examples of both what it considers to be a “benefit” and what it considers to be a “matter of course” in the context of viability discussions. This will be a critical issue in assessing viability and the balance of consideration that will be given to schemes (BW)</p>	<p>To ensure consistency with Policy DM18 of the Proposed Submission Delivery and Site Allocations Plan it is suggested that the paragraph referring to “additional benefits” is amended to refer to “identified planning benefits”. The following paragraph is not necessary and should be deleted, although it is important that when considering the harm resulting from not meeting infrastructure requirements in full this should also refer to considering the impact of not meeting other policy requirements as well as these all, as noted above, contribute towards achieving sustainable development.</p>
	<p>In respect of viability assessments, if developers are to be asked to pay the cost of independent valuation advice to review such assessments, those costs must at least be stated as reasonable and in our view should actually be shared with the Council, given that an application fee will have already been paid to the Council (BW)</p>	<p>The Council will seek to ensure costs are kept at a reasonable level taking account of market rates, and will review it’s processes to ensure that this is achieved. Providing guidance in this SPD on viability assessments helps to ensure this by a consistent approach.</p>
	<p>The reference to concerns about viability needing to be raised at the pre-application stage is unreasonable, given the point made above about viability not always being apparent at the start of the planning process. For the same reason, and depending on the quality and timely provision of officer advice at the pre-application stage, it may not be possible (or necessary) to submit a viability assessment with a planning application. Much depends on the quality of pre-application advice – a matter which does not appear to be covered by the Draft SPD (BW)</p>	<p>Point noted – It is obviously mutually beneficially if concerns are raised at the earliest opportunity but this will be amended to reflect that viability concerns may be raised at a later stage in the planning application process.</p>
	<p>The whole tone of this paragraph is overly and unreasonably negative. The sub-heading of this section is unnecessarily called possible actions and in the first sentence it refers to potential courses of action. Its aim, presumably, is to explain the Council’s position under the circumstances when it is clearly established, and independently verified, that a proposal with benefits is simply not viable when subjected to policy and guidance requirements and CIL charges.</p>	<p>Disagree that the tone of this section is overly negative. The steps that may be taken are ‘possible’ and ‘potential’ courses of action. It is highly unlikely that each course of action will be taken on each case.</p>
	<p>The overall tone is one of negativity and reluctance, entirely contrary to the</p>	

	spirit of Government guidance in the NPPF (BW)	
	As to the various courses of action themselves, the first three that are stated are entirely appropriate under such circumstances and should be regarded as the immediate reasonable response of the Council (BW)	Noted. Each case will be taken on its merits with judgements made on the best course of action
	<p>We are disappointed to see that the Council has decided not to adopt a policy allowing for 'exceptional circumstances' relief. The CIL Regulations identify the specific circumstances where there are exemptions and exceptions from paying CIL, which include charities, social housing and developments where there are exceptional circumstances such that a specific scheme cannot afford to pay CIL. Exceptional circumstances are covered by Regulation 55. In effect, the Government has recognised that some developments may no longer be viable as a result of the CIL charge.</p> <p>The Council's reason for not adopting such a policy is unclear as it states "given the heavily prescribed circumstances within which may apply". It is unclear what this means and the Council has not sufficiently set out its reasons for not adopting such a policy which is clearly recognised as a legitimate and reasonable approach within the Regulations (BW)</p>	<p>The scope for exceptional circumstances relief is extremely limited by virtue of the CIL Regulations and Government guidance. For relief to be allowed a s106 agreement must also exist on the site and the value of this must be greater than the CIL charge. In addition relief must not constitute notifiable state aid – in effect this will mean that the charging authority cannot give relief of over €200,000 to any one party over a three year rolling period.</p> <p>Given the very limited scope in its application, the practical issues involved in assessing any claims, and the fact that it militates against the efficiency, clarity and certainty that are the main benefits of CIL, the Council does not propose to introduce an exceptional circumstances policy.</p>
	In terms of securing additional funding, developers and their partners should only be expected to bid for other funding streams where there is a reasonable expectation of success (BW)	Noted
	The mechanisms to capture any uplift in the market should be a matter for negotiations and should not be imposed unreasonably, especially given the strong likelihood that under circumstances of uncertain viability a number of the other 'courses of action' will have been taken (eg, granting a short planning permission). (BW)	Noted