

REPORT OF THE CABINET

B LEICESTERSHIRE COUNTY COUNCIL PLANNING OBLIGATIONS POLICY

Introduction

1. This report presents the County Council's Planning Obligations Policy for approval.

Background

2. The County Council's Planning Policy Obligations is referred to in the Constitution as being part of the Council's policy framework and, as such, requires the approval of the full Council.
3. The Policy provides the framework for developer contributions towards county-wide services and infrastructure in Leicestershire and is attached as Appendix 2.
4. The purpose of planning is to help achieve sustainable development and support sustainable economic growth. It is important that any development, in order to be sustainable, is in the right place with sustainable transport links and that it provides the social and community facilities that local communities need. Developments that fail to meet those needs run the risk of being unsustainable and will fail the needs of the communities that they seek to create. It is essential, therefore, that appropriate contributions are sought from developers to help to secure sustainable development.
5. The County Council's existing Statement of Requirements for Developer Contributions in Leicestershire (SRDCL) was adopted by the County Council in December 2006 (with an interim review undertaken in December 2007). The policy requires an update and refresh in the light of changes to the planning system, particularly given recent experience of operating the Community Infrastructure Levy (CIL) legal compliance tests on developer contributions and other changes, for example, the introduction of the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (PPG).
6. In addition Leicestershire faces major growth over the next 5-10 years, and to meet the challenges and opportunities this presents, the County Council's developer contributions policy needs to be revised to ensure it is 'fit for purpose' to enable it to secure the necessary and proper provision of infrastructure and services needed to support the areas of growth and its local communities.

The Draft Consultation Document

7. The draft Leicestershire Planning Obligations Policy attached to this report is similar in content and form to the existing SRDCL, with the general sections

being followed by detailed considerations affecting each County Council Service area. The key changes are:

- a. Education:- an enhanced, detailed educational methodology and justification of the requirements for education contributions including Special Needs education and transitional arrangements;
- b. Social Care and Health:- an enhanced social care and health statement which is likely to require further review in the future as the service areas seek to become more integrated;
- c. Economic growth:- introduced for the first time to reflect the County Council's priority to support economic growth (e.g. contributions will be sought for skills training, apprenticeships and land/buildings for employment use). This may overlap with District Council requests;
- d. Sustainable Urban Drainage (SUDs):- Reference to SUDs was included in the original consultation draft but pending the recent Government consultation on SUDs, which may mean the authorising authorities for these schemes would be the District/Borough Councils, it is proposed to amend the document to exclude this section until the situation becomes clearer;
- e. Libraries:- although library provision in the County is currently under review, the revised Policy retains the need to justify library provision from developments that place a demand on library services;
- f. Public Health has been added as a potential area that developments may have an impact on. Although Leicestershire County Council has been responsible for the majority of the public health services previously run by the NHS since April 2013, it was not included in the original consultation as it was difficult to see what contributions may arise. There is an obligation on planning authorities to work with public health leads to ensure that decisions are made to improve the health and wellbeing of communities therefore on reflection it has been added for the sake of completeness but any impacts or requirements will need to be clearly justified;
- g. Community Safety has been added as a potential area that may have an impact on which is focused on community safety partnerships. It is included for completeness and in response to consultation responses;
- h. Highways and Transportation, Civic Amenity/Waste Management and Sports and Recreation:- No significant changes to the approach or methodology of these service areas other than updates of format and

some of the contribution rates e.g. for civic amenity sites and for transportation bus shelters;

- i. Cost recovery:- the consultation draft proposed to increase from 0.5% to 3% the level of contributions to cover monitoring costs incurred by the County Council but in response to the consultation it is proposed to set the rate at 2% which reflects the levels set by some of the District/Borough Councils within Leicestershire.
8. The remaining document updates procedure and the overall approach to planning obligations and Section 106.

Community Infrastructure Levy

9. The new policy considers possible implications for the County Council if a Community Infrastructure Levy (CIL) is introduced across Leicestershire. The County Council will have to play a key role in identifying the infrastructure which will be required through development plan preparation, the level of CIL that could be available to the infrastructure, and the mechanism by which the CIL will be made available to meet those infrastructure requirements. Regardless of whether or not CIL is introduced in any part of the County, Section 106 will continue to play a role in the foreseeable future and this document acknowledges that role.

Local Plan Policies and Obligations

10. In preparing local plans, each District Planning Authority (DPA) will need to address its approach to planning obligations. Along with the infrastructure schedules that accompany local plans, the local plans should set out clear policies as to how developer contributions and the infrastructure delivery will be achieved. The revised County Council policy would assist DPAs in developing those approaches and it is anticipated that this document will be referenced accordingly in local development plan policy documents.
11. It is essential that the appropriate cost of infrastructure and community facilities arising from new development (both major schemes and the accumulative impact of smaller schemes) is met from the development.

Consultation on the draft Policy

12. The formal consultation has been carried out with stakeholders including District/Borough Councils, Parish Councils, other service providers, representatives of the development industry, and house builders. This was originally scheduled to take place between 27th June and 8th August 2014 but was subsequently extended until 7th October 2014, primarily to allow further time for District and Parish Councils to respond. The comments received during the consultation exercise are summarised in Appendix 3.

13. The consultation exercise included publication of the document on the County Council's website and direct contact by email with the following key partners and stakeholders:-
- County Council Services;
 - Other service providers e.g. Health, Fire and Rescue, Police;
 - District Planning Authorities in Leicestershire;
 - Adjacent unitary authorities and County Councils;
 - Leicester and Leicestershire Enterprise Partnership (LLEP);
 - East Midlands Councils;
 - Business interests and representative bodies;
 - Developers, and the Home Builders Federation;
 - Parish Councils;
 - Professional bodies e.g. Royal Town Planning Institute.
14. Prior to formal consultation, District Planning Authorities were invited to comment before the draft was agreed for wider circulation.

Overview of the Consultation Response

15. The draft Policy document was generally well received. There were some concerns expressed as to the status of the document and its value as a material planning consideration and the weight to be given to it in planning application decisions. This has been clarified; as a planning authority in its own right the County Council is legally able to, and does, enter into and enforce Section 106 agreements, and, as a policy of the County Council it is capable of being a material consideration in determining planning applications and the development of planning policy. It is anticipated that reference to the County Council's policy will continue to be made in development plan policy documents and other supplementary planning documents.
16. There was also concern at the explanation of the relationship between Section 106 and CIL charges. The government has set a date by which CIL ought to be introduced of 1st April 2015, after which (regardless of whether a CIL is introduced in a LPA area) the use of Section 106 planning obligations will be restricted in use to five obligations for any individual project. The draft document has been amended to reflect the need for the County Council to work with those authorities in Leicestershire likely to introduce a CIL regime to ensure needed infrastructure is addressed. However, it is clear that the use of Section 106 will continue to have a role but will clearly need to comply with the regulations post April 2015.
17. Responses to the consultation also raised issues regarding development viability, i.e. where development claims are made that it would be economically unviable if some or all of the required infrastructure were to be

met. It has been argued that if infrastructure that is required to make the development acceptable is not available then planning consent should be withheld. If however, the development, in the opinion of the planning authority, will serve a wider planning purpose then permission could be justified despite the lack of necessary infrastructure. The County Council's role is to set out what it considers the impact of the development will be in terms of the demand for necessary infrastructure, properly justified in terms of the CIL tests. In cases where the County Council is being asked to reduce its requirement because of viability issues then it would want to be provided with appropriate evidence and reasoning. In light of the comments received the section relating to this has been amended to clarify the situation.

18. Some comments were received regarding the thresholds at which contributions would be sought and the evidence base for a charging structure. It is important the thresholds are set at a realistic level which captures necessary developments and ensures the impacts from development are mitigated.
19. Industry representatives expressed concerns at the suggestion that the existing monitoring cost contribution would be increased from 0.5% to 3%. Having regard to the Government's view that local planning authorities should not place unnecessary financial burdens on development, the Section 106 cost recovery regime of local planning authorities in Leicestershire and Leicester and the cost of the proper monitoring of requirements, receipts, and spending of developer contributions, it is considered that the increase should be limited to 2% or £300 whichever is the greater of the value per individual contribution/planning obligation.
20. The appendix to the Policy on Adult Social Care and Health identifies the need to consider the impact development will have for the demands on the service particularly provision within the community and the design of homes and spaces to cater for vulnerable people. These demands have been catered for through design standards but may in the future require contributions towards built facilities. The mechanism for that is likely to require further review in the future as the integration of service develops and in the light of experience of the County Council and other local authorities. Any such review could be conducted without affecting the substance of the policy in the remainder of the document.
21. Representations from the Police to include their service requirements in the document have been made. Although the police were listed in the original 2006 developer contributions policy document, today the focus is on community safety partnerships which looks at a combination of reduction and prevention of crime and disorder and the introduction and promotion of social and economic change. In recent years it has been acknowledged that tackling community safety issues cannot be done by the police alone and a multi-agency approach can be more effective. Whilst the matters relating to community safety are more likely to be subject to planning conditions, there may be circumstances when a legal agreement is required. A general statement on community safety has been included in the document but any

planning contributions claims (for example, by the police), would need to be addressed directly through the local planning authorities by the partners concerned.

Consideration by the Scrutiny Commission

22. The Scrutiny Commission's views have been considered and where possible appropriate changes to the documents have been taken on board. For example, links to Section 278 and Section 38 under the Highways Act 1980. The policy primarily deals with Section 106 which is a material consideration as to whether planning permission should be granted. Section 278 and Section 38 have a different function as they are used where works are required to an existing highway network or the provision of new adoptable highway works and are a means of empowering and controlling what happens in the highway. However, for the sake of completeness reference to them have been inserted in the document.
23. Concern was also raised to ensure that library provision was still catered for and the existing document ensures that this is the case. The Commission also stressed that it was important for local planning authorities to know what is to be included in Section 106 agreements before a decision is made particularly if there was a variation to the development. The question of bond payments referred to by the Scrutiny Commission has been considered previously. Bonds have been required for highway requirements but for Section 106 obligations the risk, to a large degree, is mitigated by the fact that the obligations are a charge on the land itself and therefore binding on subsequent owners, i.e. if a developer goes out of business the site could be sold as an asset and the new owner would take on the obligations in the Section 106 agreement. Bonding could also put the development at some viability risk. Default on the payment of a Section 106 obligation is, however, rare. On balance it is felt that bonding arrangements are not normally necessary but there may exceptional circumstances where they may be justified and these will have to be judged on their merits on the particular circumstances of the case.

Summary and Conclusion

24. Leicestershire faces major growth over the next 5-10 years, and to meet the challenges and opportunities this presents, the County Council's developer contributions policy needs to be revised to ensure it is '*fit for purpose*' to enable it to secure the necessary and proper provision of infrastructure and services needed to support the areas of growth and its local communities.
25. The review of the developer contributions policy – *Leicestershire Planning Obligations Policy* - presents an opportunity to ensure the County Council has an up to date document to assist and facilitate the delivery of essential infrastructure and services to support the planned growth of its local communities in Leicestershire.

26. As the document is intended to be used as a guide to developers and decision makers it is important that it is kept up to date and relevant in terms of cost multipliers and indexes, financial and statistical data, changes to national planning policy, guidance or legislation, lessons from best practice and changes to organisational responsibilities and duties. The Cabinet was therefore requested to agree that any required changes to the policy document stemming from these matters be delegated to the Chief Executive in consultation with the Lead Member. Any changes of a more substantive nature that affects the principle or intension of the policy would be a matter for Cabinet and the Council.

Consideration by the Cabinet

27. The Cabinet considered this matter at its meeting on 19th November, 2014 and noted the comments received during the consultation process and the changes made to the draft policy. The Cabinet also agreed to ask the Council to:-
- (i) Approve the revised Leicestershire Planning Obligations Policy;
 - (ii) Authorise the Chief Executive and County Solicitor, following consultation with the Cabinet Lead Member for Planning Matters, to make any necessary future revisions to the Leicestershire Planning Obligations Policy to ensure that it is up-to-date and relevant provided that these do not constitute material changes to the Policy.

(Motion to be moved:-

That the revised Leicestershire Planning Obligations Policy, referred to in Section B of the report to the Cabinet, be approved and that the Chief Executive and County Solicitor, following consultation with the Cabinet Lead Member for Planning Matters, to make any necessary future revisions to the Leicestershire Planning Obligations Policy to ensure that it is up-to-date and relevant provided that these do not constitute material changes to the Policy.)

19 November, 2014

N. J. Rushton
Leader of the Council

Background Papers

Report to the Cabinet, 19 November 2014 - Leicestershire County Council Annual Performance Report 2014

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=3995&Ver=4>

Leicestershire County Council Strategic Plan 2014-18

www.leics.gov.uk/index/your_council/council_plans_policies/our_priorities_and_objectives.htm

Report to the Cabinet, 19 November 2014 – Leicestershire County Council Planning Obligations Policy Consultation Draft

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=3995&Ver=4>

Government Consultation on Planning Gain Supplement Report of the Director of Community Services Cabinet Report 14th March 2006.

[http://politics.leics.gov.uk/Published/C00000135/M00001474/AI00012809/\\$PlanningGainSupplement.doc.pdf](http://politics.leics.gov.uk/Published/C00000135/M00001474/AI00012809/$PlanningGainSupplement.doc.pdf)

Minutes of the Meeting of the Leicestershire County Council Held at County Hall on Wednesday 6th December 2006

<http://politics.leics.gov.uk/ieListDocuments.aspx?CId=134&MId=1503&Ver=4>

Leicestershire County Council Statement of Requirements for Developer Contributions in Leicestershire (SRDCL) December 2006 (interim review December 2007).

http://www.leics.gov.uk/dev_cont_update_121207-2.pdf

Developer Contributions in Leicestershire Report of the Director of Community Services Environment Scrutiny Report 28th February 2008.

[http://politics.leics.gov.uk/Published/C00000443/M00002032/AI00017566/\\$CDeveloperContributions.doc.pdf](http://politics.leics.gov.uk/Published/C00000443/M00002032/AI00017566/$CDeveloperContributions.doc.pdf)

CLG Community Infrastructure Levy: Detailed Proposals and Draft Regulations for reform – consultation outcome

<https://www.gov.uk/government/consultations/community-infrastructure-levy>

CLG: Community Infrastructure Levy Regulations

<https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>

CLG National Planning Policy Framework

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

CLG National Planning Practice Guidance

<http://planningguidance.planningportal.gov.uk/blog/guidance/>