

COUNCIL
25 JULY 2019

Report of the Head of Regeneration and Policy

DRAFT SUPPLEMENTARY PLANNING DOCUMENT: DEVELOPER CONTRIBUTIONS

SUMMARY

This report presents a draft Developer Contributions Supplementary Planning Document (SPD) for Members consideration. The draft SPD provides guidance on the type and nature of financial contributions to be sought from development for the provision of infrastructure. This report seeks Members approval for a period of public consultation on the draft SPD prior to its intended adoption.

RECOMMENDATION

1. That the draft Developer Contributions Supplementary Planning Document (SPD), attached in Appendix 1 be approved for a period of six weeks public consultation.
2. That, in the event that no objections are received during the public consultation, on the day after the consultation ends the Developer Contributions Supplementary Planning Document shall then be deemed adopted.
3. That, in the event of any substantive representations being received during the public consultation on the draft Developer Contributions Supplementary Planning Document, then the policy shall not be deemed adopted and a further report be presented for consideration of the representations received.

WARDS AFFECTED

All wards outside the Peak District National Park

STRATEGIC LINK

The implementation of the Developer Contributions Supplementary Planning Document will support the delivery of the Derbyshire Dales Local Plan and ensure the provision of infrastructure to support future development. The Supplementary Planning Document will also assist with delivering a thriving District, one of the key objectives of the District Council's Corporate Plan 2015-19.

1 BACKGROUND

- 1.1 Council resolved to suspend preparatory work on the Derbyshire Dales Community Infrastructure Levy (CIL) at its meeting on 5th December 2018 (Minute 271/18). Instead, at the same meeting it resolved that a Developer Contributions Supplementary Planning Document (SPD) be prepared, which would have statutory weight, and provide an overview of the policy approach to securing infrastructure necessary to support future development. Members were advised that a Developer Contributions Supplementary Planning Document would provide transparency for developers about the District Council's future requirements in respect of financial contributions for inclusion in Section 106 obligations.
- 1.2 Planning obligations are legal agreements that are generally entered into between developers and the District Council under Section 106 of the Town and Country Planning Act 1990. Planning obligations are sought in order to mitigate the impact of new development and to make development acceptable in planning terms, i.e. without a planning obligation that development proposal should normally be refused planning permission. Planning obligations can be used to secure the delivery of a wide range of on-site infrastructure, services and facilities, including affordable housing, education provision, open space and transport improvements. They can also be used to specify the provision of financial contributions from developers towards off-site infrastructure which is required in order to mitigate the impact of new development.
- 1.3 Planning obligations must comply with the legal tests set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). Section 106 agreements may only constitute a reason for granting planning permission for a development where they meet the following tests¹:
 - (a) Necessary to make the development acceptable in planning terms;
 - (b) Directly related to the development; and
 - (c) Fairly and reasonably related in scale and kind to the development

2 DERBYSHIRE DALES DEVELOPER CONTRIBUTIONS SPD

- 2.1 The purpose of Supplementary Planning Documents (SPDs) are to complement planning policy, and they provide greater detail about the operation of adopted policy than is normally possible in a Local Plan. The Derbyshire Dales Local Plan 2013-2033 (adopted in December 2017) aims to protect the environment of the district whilst enabling sustainable development to take place to meet identified needs. To ensure that sustainable development is achieved, the Local Plan seeks the provision of infrastructure necessary to support new development.

¹ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010

2.2 Policy S10 in the adopted Derbyshire Dales Local Plan sets out the expectation that new developments should contribute to both on-site and off-site infrastructure needs. This policy provides the framework for the preparation of the Developer Contributions SPD. This SPD seeks to provide additional guidance on the following policies in the Derbyshire Dales Local Plan:

- PD1: Design and Place Making
- PD7: Climate Change
- HC4: Affordable Housing
- HC5: Meeting Local Affordable Housing Need
- HC11: Housing Mix and Type
- HC14: Open Space and Outdoor Recreation Facilities
- HC15: Community Facilities and Services
- HC17: Promoting Sport, Leisure and Recreation
- HC18: Provision of Public Transport Facilities
- HC19: Accessibility and Transport
- EC1: New and Existing Employment Development

2.3 The SPD sets out the basis of the calculation for financial contributions and obligations to be sought from development for the provision of infrastructure necessary to support development. This includes affordable housing, open space, community facilities including for sport and recreation, education, health care, traffic and transportation, and broadband. It also includes indicative measures to be provided as part of developments that seek to address the challenges of climate change.

2.4 Once adopted, the SPD will have statutory weight in the decision making process, and can be used in the determination of planning applications as a “material consideration”. A copy of the draft Developer Contributions Supplementary Planning Document is set out in Appendix 1 for Members consideration.

2.5 The SPD sets out the likely scope and scale of planning obligations applicable to different types of development and the District Councils approach to securing them.

Reflecting the Infrastructure Delivery Plan prepared during the preparation of the Local Plan, and more recent national policy guidance, the draft SPD prioritises the following infrastructure necessary to support a sustainable and thriving Derbyshire Dales.

Whilst the infrastructure identified below is prioritised for the district as a whole, the specific infrastructure requirements for each planning application will be assessed on a case by case basis on its own planning merits:

- *Affordable Housing* – **high priority** infrastructure requirement, reflecting high house prices and low incomes across the district
- *Broadband* – **high priority** infrastructure requirement, reflecting comparatively poor provision in the district
- *Tackling Climate Change* – **high priority** infrastructure requirement, reflecting the declared Climate Emergency
- *Traffic and Transportation* – where necessitated to make new development acceptable
- *Health and Wellbeing* – where necessitated to make new development acceptable
- *Education* – where necessitated to make new development acceptable
- *Open Space, Sport and Recreation* – where necessitated to make new development acceptable

Each is described in the following paragraphs, with proposals set out in more detail in the draft SPD in Appendix 1.

Affordable Housing

- 2.6 There is a demonstrable need for affordable housing across the District as a result of high house prices and the relatively low income of local residents. Policy *HC4: Affordable Housing* in the adopted Derbyshire Dales Local Plan states that all new major residential developments will be required to provide 30% of all dwellings to be affordable, of which 80% should be provided as social and affordable rented accommodation and 20% as intermediate housing or discounted starter homes. Policy HC4 sets out that provision should normally be in the form of completed dwellings on site; however in exceptional circumstances it allows for the provision of affordable housing off site or by means of a financial contribution of equivalent value or through the provision of serviced land or a combination thereof.
- 2.7 The District Council adopted an Affordable Housing SPD in 2006, which has formed the basis of the calculation of off-site developer contributions towards affordable housing since that time. This SPD is now outdated, and has no legal status following the adoption of the Derbyshire Dales Local Plan in 2017. The Developer Contributions SPD would supersede this upon adoption. As part of the preparation of this SPD, the approach to off-site financial contributions towards affordable housing has been reviewed. The approach set out in the draft SPD seeks to ensure that any off-site financial contribution is sufficient to cover land acquisition and construction costs for the provision of affordable housing elsewhere in the District. Taking account of land values, build costs, dwelling and plot sizes along with financing costs, it is proposed that where appropriate developers would be required to pay an off-site affordable housing contribution of £46,209 per unit. This proposed contribution is over £20,000 per unit more than the current rate and would include a 3% contribution towards the District Council's enabling role.

Open Space Sport and Recreation

- 2.8 The Derbyshire Dales is fortunate in that it is naturally provided with abundant high-quality open space, which provides opportunities for exercise and social interaction. Quality open spaces not only provide benefits in terms of the health and wellbeing of the wider community; they can support biodiversity, help to reduce flood risk and enhance the environment. Policy *HC14: Open Space and Outdoor Recreation Facilities* and Policy *HC17: Promoting Sport and Recreation* in the adopted Derbyshire Dales Local Plan seek to ensure the quantity and quality of open space, sport, leisure and recreation facilities throughout the plan area are maintained and where possible enhanced. Policy HC14 also allows for off-site contributions to be secured by the District Council to be used to enhance existing or provide new facilities.
- 2.9 The draft Developer Contributions SPD provides guidance for developers, taking account of the updated Built Sports Facilities, Playing Pitch and Open Space Strategy 2018². It provides details of the open space requirements per dwelling, including the minimum sizes for open spaces and any off-site financial contributions for facilities such as parks and gardens; amenity green space, and play space for children and young people. The SPD also provides guidance on how financial contributions will be sought towards the provision of new sport and recreation playing pitches to accommodate additional demand arising from new development.
- 2.10 Following sustained financial investment by the District Council and others, the Derbyshire Dales is well provided with built facilities, as is reflected in the high sport participation rate. Contributions will only be sought for additional provision where there is a demonstrable need occasioned by new development and subject to other priority infrastructure needs.

Health and Wellbeing

- 2.11 The development of sustainable communities requires not only appropriate levels of residential and employment opportunities but also appropriate levels of community facilities, including health care infrastructure. The District Council currently works with the Derby and Derbyshire Clinical Commissioning Group (CCG) to facilitate improvements to health provision within the Plan area to meet the health needs of new residents through the Derbyshire Health and Wellbeing Strategy.
- 2.12 The draft SPD indicates that the CCG will continue to be consulted on all major applications (10 dwellings or more) and as a general rule financial contributions sought on schemes of 50 dwellings or more, but only where there is a demonstrable need for new healthcare related infrastructure. The draft SPD does however recognise that there may be instances where requests for a financial contribution towards health care provision may be made from smaller schemes where it may be linked to one particular premises project.

² https://www.derbyshiredales.gov.uk/images/documents/S/Derbyshire_Dales_PPS_Strategy.pdf

Education

- 2.13 Derbyshire County Council are the provider of education, and social services. They are also responsible for providing, managing and maintaining the highways network, including public rights of way. Derbyshire County Council has adopted a 'Developer Contributions Protocol' which sets out the County Councils approach to seeking planning obligations. The draft Developer Contributions SPD signposts developers to the County Council Protocol as providing relevant information on the requirements for financial contributions towards education, traffic and transportation and other matters.
- 2.14 As Local Education Authority, the County Council has a statutory duty to make education provision available for each young person and where possible to provide a school place for each child in their normal school area. In some instances new development puts pressure on the capacity of existing schools, and in such cases it is reasonable to seek from a developer a financial contribution towards the costs of improving existing educational facilities.
- 2.15 The draft SPD sets out the approach taken by the County Council to assess the likely number of pupils that a development will generate, the net capacity in the normal school area, the current number of pupils on roll and the projected number to be on roll in the next five years. Where such an assessment concludes that the schools would not have capacity to accommodate the pupils arising from development, the County Council will request financial contributions to provide additional capacity. The threshold and level of financial contribution to be sought is set out within the Developer Contributions SPD and is based upon the County Council's standard contribution rates.

Traffic and Transportation

- 2.16 Policy *HC19: Accessibility and Transport* in the adopted Derbyshire Dales Local Plan indicates that the District Council will seek to ensure that new development will only be approved where it can be accessed safely and in a sustainable manner. It indicates support for development proposals that minimise the need to travel, and sets out that where necessary developer contributions will be used to deliver transport and accessibility improvements.
- 2.17 The District Council works in partnership with the County Council as Local Highways Authority to ensure that, as new development is delivered, the associated impacts on traffic and transportation are mitigated. The draft SPD sets out that the thresholds, level and type of contribution sought by the County Council will be determined on a case by case basis. It advises that, as any required mitigation measures would be site and development specific, planning obligations will be secured by legal agreement either through a S106 agreement or an agreement under S278 of the Highways Act 1980 which will be made directly with the Highways Authority. The draft SPD further reiterates that the County Council may request financial contributions towards the costs of reviewing and monitoring the implementation of individual Travel Plans.

Broadband

- 2.18 The District Council's adopted Economic Plan aims to help enable the creation of more higher value jobs in the Derbyshire Dales, and has as one of its priorities investment in providing access to faster broadband speeds along with wider access in rural areas. The National Planning Policy Framework sets out the aspiration for the increased provision of full fibre connectivity with the potential for speeds of up to 1000Mbps. Local Plan Policy *S10: Local Infrastructure Provision and Developer Contributions* states that the District Council will "support improvements to and extension of telecommunications and the provision of superfast broadband infrastructure (where feasible) in accordance with industry standards".
- 2.19 Whilst there has been progress across Derbyshire Dales with the provision of Superfast Broadband (i.e. speeds of at least 24 Mbps) available to approximately 83% of premises, this remains below the national average of 95%. The evidence from the Government is that many developers are not actively pursuing the provision of full Fibre to the Premises (FTTP) or future proofing broadband connections as an integral part of their development. The draft SPD, therefore, sets out that the District Council considers that as a minimum all new development should provide the necessary ducting within a site to facilitate FTTP.
- 2.20 To ensure that full fibre broadband is provided to new developments, the SPD outlines that the District Council will encourage developers of new developments to liaise with broadband service providers in advance of development commencing to ensure that FTTP is available to future occupiers of both residential and commercial development. To support this objective and ensure that development sites are capable of accommodating FTTP, the draft SPD indicates that the District Council will seek to impose a condition on developments of 10 dwellings or more, and commercial development of 465sq metres or more, that will require the provision of ducting capable of accommodating a full fibre network from a suitable entry point into the site and onwards to each dwelling/commercial unit which obtains the benefit of planning permission. For all other developments, the draft SPD indicates that the District Council will add a detailed advisory note which encourages developers to provide ducting within the development site.

Tackling Climate Change

- 2.21 The District Council resolved on 30 May 2019 to declare a Climate Change Emergency. Climate Change is embedded within the adopted Derbyshire Dales Local Plan, with a significant number of its policies requiring specific climate change matters to be addressed in the determination of planning applications. This includes issues such as flood risk, the design and appearance of new development, and biodiversity and the natural environment. As such the District Council already has opportunities to ensure that the impact and mitigation of climate change are addressed in the determination of planning applications.

- 2.22 The draft SPD seeks to reinforce the policy position in the adopted Derbyshire Dales Local Plan on climate change. It suggests that the District Council will use the planning system to encourage EV charging points to be provided on both individual dwellings and in communal locations for visitors – and similarly the incorporation of renewable energy systems into the design and appearance of new development.

3 PUBLIC CONSULTATION

- 3.1 To enable the Draft Developer Contributions SPD to have statutory weight and accord with the District Councils Statement of Community Involvement (SCI), it is necessary for it to be subject to a minimum period of four weeks public consultation. This must be accompanied by a consultation statement that sets out the persons consulted, the time period of the consultation, where the documents can be seen and the details of where to send comments. A copy of the draft consultation statement is contained in Appendix Two.
- 3.2 Unlike a Local Plan, there is no requirement for an Examination in Public.
- 3.3 Given the forthcoming summer period, so as not to disenfranchise anyone from participating, it is recommended that a six week period of public consultation be held from 5th August to 16th September 2019. Targeted contacts on the Local Plan consultation database will be informed by email and letter; and comments will be invited via an online survey. Throughout the consultation period, copies of the Draft Developers Contributions SPD will be made available for comment at the District Councils Offices, leisure centres and local libraries. All relevant documents will be made available on the District Councils website.

4 RISK ASSESSMENT

4.1 Legal

The contents of the draft SPD have been prepared taking into account the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the public consultation will be undertaken in accordance with the requirements set out within The Town and Country Planning (Local Planning) (England) Regulations 2012. The legal risk is therefore low.

4.2 Financial

The costs associated with preparing and adopting the Supplementary Planning Document are contained within current budgets. It is intended that the SPD would be published as an online document with paper versions available on request. The financial risk is, therefore, assessed as low.

4.3 Corporate Risk

A failure to comply with the statutory provisions relating to the preparation and adoption of the Supplementary Planning Document could lead to challenge by developers and/or land owners, and constitute a strategic risk to the District

Council in using the SPD in the determination of planning applications. Failure to implement the requirements of the draft SPD during the determination of planning applications could result in an under provision of the amount of infrastructure required to support the level of development identified in the adopted Derbyshire Dales Local Plan.

5 OTHER CONSIDERATIONS

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

6 CONTACT INFORMATION

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7 BACKGROUND PAPERS

Description	Date	File
The Town and Country Planning (Local Planning) (England) Regulations 2012 Part 5: Supplementary Planning Documents	08-03-12	http://www.legislation.gov.uk/ukxi/2012/767/pdfs/ukxi_2012_0767_en.pdf
The Community Infrastructure Levy Regulations 2010	April 2010	https://www.legislation.gov.uk/ukdsi/2010/9780111492390/pdfs/ukdsi_9780111492390_en.pdf
National Planning Policy Framework	February 2019	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779764/NPPF_Feb_2019_web.pdf
Derbyshire Dales Local Plan	December 2017	http://www.derbyshiredales.gov.uk/planning-a-building-control/local-plan-2015-16

8 ATTACHMENTS

Appendix One: Draft Derbyshire Dales Developer Contributions Supplementary Planning Document

Appendix Two: Consultation Statement