

South Worcestershire Development Plan

Developer Contributions Supplementary Planning Document (SPD)

Statement of Consultation: Revised Draft

August 2016



1. Introduction

- 1.1 This consultation statement has been prepared in accordance with Regulation 12 of The Town and Country Planning (Local Planning) (England) Regulations 2012. The statement sets out who was consulted on the Revised Draft Developer Contributions Supplementary Planning Document (SPD), when and how, and summarises the representations received and how they have influenced the Developer Contributions SPD.

2. Name and Purpose of the SPD

Name

- 2.1 Developer Contributions Supplementary Planning Document (SPD)

Purpose

- 2.2 The purpose of the Developer Contributions SPD is to set out the South Worcestershire Councils' approach to seeking developer contributions via the South Worcestershire development Plan (SWDP) for infrastructure or environmental improvements required as a result of allocated development or additional windfall development. It is intended for use by all interested parties including developers, planning agents and the general public. It seeks to provide an understanding of when planning obligations will be expected and how developer contributions will be used.

- 2.3 The SWDP policies relating to infrastructure provision are;

- SWDP3: Employment, Housing and Retail Provision Requirement and Delivery
- SWDP5: Green Infrastructure
- SWDP6: Historic Environment
- SWDP7: Infrastructure
- SWDP4: Moving Around South Worcestershire
- SWDP5: Green Infrastructure
- SWDP14: Housing Mix
- SWDP15: Meeting Affordable Housing Needs
- SWDP16: Rural Exception Sites
- SWDP22: Biodiversity and Geodiversity
- SWDP23: The Cotswolds and Malvern Hills Areas of Outstanding Natural Beauty
- SWDP24: Management of the Historic Environment

- SWDP25: Landscape Character
- SWDP28: Management of Flood Risk
- SWDP29: Sustainable Drainage Systems
- SWDP30: Water Resource, Efficiency and Treatment
- SWDP37: Built Community Facilities
- SWDP38: Local Green Network
- SWDP39: Provision for Outdoor Community Uses in New Development, and
- SWDP43 to SWDP61 with regard to specific infrastructure requirements associated with site allocations policies.

3. Who was Consulted on the SPD

- 3.1 The Revised Draft SPD consultation, was targeted towards those organisations, agents and developers with an interest in the delivery of infrastructure. The Statutory consultees set out in regulation 4 of The Town and Country Planning (Local Planning) (England) regulations 2012 were all consulted. Appendix 1 provides an overview of the types of organisation consulted. A collaborative approach has been taken to the preparation of the Developer Contributions SPD; relevant internal colleagues have been directly involved in contributing to and reviewing the draft.

4. How Were People Consulted?

- 4.1 A revised draft version of the South Worcestershire Developer Contributions Supplementary Planning Document was the subject of a second round of public consultation from the 1st April to the 16th May 2016.
- 4.2 A notification letter was sent to a wide range of consultees as summarised within Appendix 1 in time for the start of the consultation. The Revised Draft Developer Contributions SPD was also available on three South Worcestershire Councils websites and the SWDP web-site, together with an electronic response form, for the duration of the consultation period. Hard copies of the Revised Draft SPD were placed in the Customer Service Centres throughout South Worcestershire, together with hard copy response forms. A press release was also issued to promote the consultation within the local area.

5. What Issues were Raised and how have these Been Addressed in the Developer Contributions SPD?

- 5.1 28 responses were received (11 more than to the first round of consultation) 11 from representatives of developers, 14 from public sector organisations and 3 from providers of flood defence services. Summaries of the representations, together with officer responses, are set out at Appendix Two.
- 5.2 The 28 responses have been split into 53 separate representations, not including the response received from Worcestershire County Council which was primarily concerned with updating the transport and education sections of the Supplementary Planning Document and minor grammatical improvements. A number of responses are similar or identical to responses received to the South Worcestershire Community Infrastructure Levy Draft Charging Schedule consultation. Some responses were seeking changes to the Community Infrastructure Levy Regulation 123 list included in the Supplementary Planning Document as Appendix One. To avoid this appendix becoming out of date it has been deleted from the SPD and the SPD now just refers to the South Worcestershire Community Infrastructure Levy Charging Schedule rather than the appendix. Several responses from developers agents seek to reduce the size or scope of potential future developer contributions while several responses from public sector bodies seek to widen the scope for future developer contributions.
- 5.3 The most significant change to the SPD as a result of this consultation is the deletion of Appendix one, other changes are numerous but minor in nature and intended to improve the clarity and readability of the document. The SPD has also been amended to take account of changes in Government planning policy for developer contributions. This includes the exemption of developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm from affordable housing and tariff contributions (with the exception of Designated Rural Areas). It has also been agreed that 100% affordable housing schemes should be exempt from all tariff style contributions as it would be illogical to add costs to the provision of more affordable homes when in some cases less affordable homes are exempt from these costs.

Appendix 1: List of Consultees

- Statutory Bodies listed in Regulation 4 of The Town and Country Planning (Local Planning) (England) Regulations 2012
- Parish and Town councils in Worcester city, Malvern Hills and Wychavon Districts
- All adjoining District Councils
- All Parish and Town Councils adjoining Malvern Hills and Wychavon Districts
- Worcestershire County Council
- Developers and architects and their agents
- Libraries
- All District Councillors at Malvern Hills District Council, Worcester City Council and Wychavon District Council
- Economic Development officers/ groups
- Voluntary sector- wide ranging but including national bodies such as the Samaritans, and age concern; local residents groups/ tenants associations
- Health and public services organisations, e.g. NHS, police and Fire service (and adjoining ones)
- The utilities
- District Council officers responsible for the delivery and maintenance of infrastructure, and Development Management

Appendix 2 – Summary of Responses Received and How they have been Considered in the Draft SPD

From Developers	On Behalf Of	Response	Officer Comment	Change/No Change
Jones Lang LaSalle Ltd	Crown Packaging UK	<p>We have reviewed the consultation documents on behalf of our clients and note that the South Worcestershire Councils have responded to our representations on the revised Preliminary Draft Charging Schedule and Developer Contributions Supplementary Planning Document. In particular, further clarity has now been provided on the inter relationship between Section 106 and the draft Regulation 123 List. This was our client's key concern which we set out in our representations dated March 2015.</p> <p>Accordingly, we confirm that our client is content with the approach now proposed by the DCS and Developer Contributions Supplementary Planning Document, based upon our review of the documents and our subsequent discussions with Council officers on 12 May 2016, and the clarity provided.</p>	Noted	No Change

Pegasus Group	Robert Hitchins Limited	The method applied in the SPD is not robust and results in a level of obligations which is not fairly or reasonably related in scale to developments.	As the calculated contributions will be reduced by 25% for two bedroomed properties and by 50% for one bedroomed properties in practice the contributions sought will be "fairly and reasonably related in scale and kind to the development".	No Change
Pegasus Group	Westleigh Partnerships Ltd	Seeking changes to the calculation of open space contributions on the basis that the proposed method of calculation will result in contributions that are not "fairly and reasonably related in scale and kind to the development". There should be flexibility in the calculations to respond to new information.	While the SPD does not account for diminishing household size it does not have an in built cost inflator either. The introduction of flexibility to Developer Contributions is likely to result in uncertainty at the pre planning stage and could impact on the viability of approved development.	
Optimis Consulting Ltd	Carmel Southend Ltd	The Regulation 123 List could give rise to "double dipping" and the Developer Contributions SPD does not comply with paragraph 204 of the NPPF.	Disagree. The Regulation 123 list will be tested at the Community Infrastructure Levy examination and any	No Change

			Developer Contributions that does not comply with national policy could not be collected as para 204 relates to decision taking and not plan making.	
		Developer Contributions for Open Space should be limited to children's play space.	Disagree such an approach would not be in accordance with adopted Local Plan policy SWDP39.	No Change
		Ensure paragraph 5.3.20 reflects the thresholds for transport assessments set in policy SWDP4.	Agree	Change
		Transport Contributions should only be sought when the residual impacts of traffic generation from development is severe.	Agree, however the County Council evidence shows the cumulative impact of most development is severe on many junctions.	No Change
		The Supplementary Planning Document should make clear that apart from site allocations education contributions will no longer be sought via S106 after the	Agree	Change

		Community Infrastructure Levy is adopted.		
Savills	Welbeck Strategic Land	The Supplementary Planning Document should be in accordance with the requirements of the Housing and Planning Act which received Royal Assent on the 12 th May 2016.	Agree	No Change
		Paragraph 4.3.3. should be amended now the provisions of the Growth and Infrastructure Act 2013 have lapsed.	Agree	Change
		The Supplementary Planning Document should identify the extent of existing pooled contributions.	Disagree this information is more appropriate in the Authorities' Monitoring Report or a Developer Contributions Monitoring Report.	No Change
		The SPD should also provide an indication of the Council's approach towards S106A discussions	Discussions and negotiations are individual to the circumstances of a development proposal and any guidance might limit the judgement of the decision maker.	No Change
		Para 3.4.3 should clarify that validation will not be held up if a draft legal agreement is not submitted with an application.	Agree a footnote has been added to Figure One.	Change

David Lock Associates	Hallam Land Management	<p>Hallam Land Management remains concerned that the Draft SPD and hence its subsequent elaboration, does not accord in full with this guidance (Reg 122 and NPPF)not least in relation to the expectations of contributions sought in relation to transport infrastructure – see below. This also applies to public art contributions which are not supported by national planning practice guidance or many aspects of emergency services infrastructure.</p>	<p>Noted. The reference to contributions for public art in a previous version of the National Planning Practice Guidance has been removed and the West Mercia Police have submitted appeal evidence supporting their contention that emergency services infrastructure can be funded by developer contributions</p>	No Change
		<p>To this end the Charging Schedule and Appendix A off the DC SPD should make it plain that the specific requirements set out to be delivered through section 106:</p> <ul style="list-style-type: none"> • are indicative and will be refined through the development management process; • may be met in part or in full through section 106 contributions &/or other mechanisms; • will be defined in more detail in scale and kind in the context of individual 	<p>Noted, appendix A has been deleted from the Supplementary Planning Document and replaced by cross references to the CIL Regulation 123 list. The Supplementary Planning Document makes clear in several places that it cannot override the nationally set tests for all</p>	Change

		<p>applications having regard to the need for such contributions to be necessary, directly related to the development, and fairly and reasonably related to the development.</p>	<p>developer contributions.</p>	
		<p>The reasons advanced in the Statement of Consultation for retaining the Contingent Deferred Obligation (CDO) are not substantive. While market conditions can of course change at any time the land acquisition cannot being a singular event or activity that cannot respond to variations sought by Authorities to planning obligations. Moreover, CDOs would have the effect of stalling development contrary to the suggestion in the Statement of Consultation that this would somehow be a tool for maintaining development volumes. HLM consider that references to Contingent Deferred Obligations within the Draft SPD should be deleted.</p>	<p>Noted. While the purchase price cannot be varied unless the developer makes this subject to achieving the required planning approval other matters can change significantly in the years it takes to build out some developments. Both market changes and changes in government policy can significantly increase the value of development and the local planning authority has a duty to secure affordable housing for</p>	<p>No Change</p>

			those that need it.	
		Open space contributions, on the individual tables, Hallam has raised particular concerns regarding the anticipated costs of providing various elements e.g. children's and young people's play space and other elements offsite. Such concerns remain. The need for and costs of such provision will need to be evidenced in each instance.	Noted.	No Change
		The proposed cost per dwelling of transport contributions must be the subject of public consultation.	The process of mitigating transport impacts is transport project led and therefore no formula can be established to fix a price per journey.	No Change
		For the avoidance of doubt explicit reference should be made to other funding sources being used in combination with S106 funds to deliver infrastructure listed in Appendix A to be funded by S106 contributions.	Agree and this reference is already included in the CIL Regulation 123 list	No Change
		Hallam do not consider that the provision of six football pitches and provision for the emergency services at Worcester west	Noted.	No Change

		passes the Reg 122 and para 204 tests.		
		Para 5.2.2 should refer to estate management charges as the means by which open space maintenance may be secured and make clear that any commuted sums will be negotiated should the developer seek adoption of open space	Agree.	Change
		Section 5.6 should make clear that such contributions will be sought in some instances and that any such contributions will be subject to the usual tests.	Agree.	Change
Gladman Developments Limited		Gladman is unclear why the Council are expending time, money and effort on the production of an SPD for a system whose use is being significantly curtailed, especially when CIL should cover the vast majority of infrastructure funding and s.106 agreements should only be used for very specialist pieces of infrastructure directly linked to development, such as bus stops or the management of open space.	Noted. It is not the case however that the Community Infrastructure Levy will cover the vast majority of essential infrastructure required to implement the South Worcestershire Development Plan. The uses of Community Infrastructure Levy and S106 contributions are set out in the Regulation 123 list.	No Change

		Gladman object to the inclusion of obligations in relation to civic spaces.	Noted, but this requirement is set out in policy SWDP39 of the adopted Local Plan.	No Change
		Gladman object to the requirement to contribute to early years education provision.	Noted but the County Council is required by legislation to ensure sufficiency of pre-school provision to allow all eligible 2, 3 and 4 year olds resident in Worcestershire to access their free entitlement to early education. The County Council is also required to secure sufficient childcare, so far as is reasonably practicable, for working parents, or parents who are studying or training for employment, for children aged 0-14 (or up to 18 for disabled children).	No Change

		Gladman object to the inclusion of community development and indoor sport and recreation facilities within section 5.6.	Noted.	No Change
		Contribution requests for skills development would not be CIL compliant.	Noted and if this is the case then no developer contributions can be collected.	No Change
Cerda Planning Ltd	Bovis Homes	It would be useful if the Council made available a document to monitor the implementation of the infrastructure as set out in Table 2, identifying where pooling of section 106 legal agreement had taken place.	Agree, this information will be published in the Authorities' Monitoring Report or an annual Planning Obligations Monitor and this is explained in para 4.2.2 of the Supplementary Planning Document.	No Change
RPS Planning & Development	Gleeson Developments Ltd & Welbeck Strategic Land LLP	The SPD should make clear that contingent deferred planning obligations will only be used in exceptional circumstances.	Noted. While the use of contingent deferred planning obligations will not be a common occurrence the use of the term exceptional circumstances might be considered an attempt to fetter the judgement of the decision taker.	No Change
		Average household size is projected to decline over the plan period but the SPD	Agree, if these projections turnout to be	No Change

		<p>open space calculations do not factor this change in to the calculation of Developer Contributions.</p>	<p>accurate then the SPD can be updated via a formal review. The SPD however discounts the value of open space contributions for smaller properties therefore ensuring the contributions sought are proportionate to the proposed development rather than using a simple average number from national statistics.</p> <p>If we update the input numbers we will of course need to update the cost multiplier as well to take account of inflation in build costs.</p>	
		<p>RPS disagrees with allocation SWDP56 being linked to the duelling of the A4440. It is considered unlikely that any Developer Contributions would be Reg 122 compliant. The SPD gives no certainty that infrastructure will be viable (<i>delivered?</i>).</p>	<p>Noted.</p>	<p>No Change</p>
<p>Harris Lamb</p>		<p>It is our view that the SPD should explicitly recognise that contributions to the</p>	<p>Agree, and this recognition is contained</p>	<p>No Change</p>

		infrastructure requirements listed in Table 2 of the SPD must satisfy all of the relevant tests set out in the CIL Regulations. If any contribution is to be sought from any individual development proposal, both the need for, and the scale of, the contribution must be fully justified by reference to these tests	in the summary and paragraph 2.2.5	
Boyer Planning Ltd	Bloor Homes Ltd	We welcome that the SPG continues the preference in the SWDP and in policy SWDP15 of the same for on-site mitigation measures as the best solution.	Noted	No Change

From Public Bodies	On Behalf Of	Response	Officer Comment	Change /No Change
The SWCs Economic Development Teams		<p>Seeking additional text to:</p> <ul style="list-style-type: none"> Strengthen the rationale justification for seeking obligations which will stand up to material tests within S106 planning legislation. Broaden the scope of contributions to encompass economic benefits to the local community Secure real and actual outcomes for residents and businesses by setting out clear and targeted measures Ensure provision for negotiating maximum benefits from significant developments e.g. urban extensions Set a scene for mutually beneficial partnership working with developers and contractors active in our districts 	Such a significant change cannot be included without an explicit Local Plan policy for the collection of Developer Contributions for local skills and training schemes. Paragraph 5.6.3 can however be amended as suggested as this just clarifies what the SWCs may seek form larger developments to support local labour markets.	Change
Worcestershire Wildlife Trust		Include policy SWDP22 in the list of policies in paragraph 1.2.4	Agree	Change
Marine Management		No specific Comments	Noted	No Change

Organisation				
Woodland Trust		Include policy SWDP22 in the list of policies in paragraph 1.2.4	Agree	Change
		Add text similar to the policy wording in a range of other local planning authorities Development Plan Documents.	Disagree these suggestions could only be taken forward by a review of the SWDP	No Change
Natural England		Natural England generally welcomes the supplementary planning document particularly the sections on Green Infrastructure and Biodiversity/natural habitats as they will help to ensure that the natural environment is fully considered within the planning process.	Noted	No Change
Malvern Hills AONB		Relating to paragraph 5.6 Other Planning Obligations – the AONB Unit feels that " Landscape protection and enhancements " should also be listed. The landscape character with its elements including orchards, parklands, ridgelines, ponds, quarries, hedgerows and watercourses is part of the special quality of the Malvern Hills AONB which the Unit was established to protect. Any opportunities to protect or enhance these features should be provided through this document.	This would be contrary to the Reg 123 list which indicates that strategic green infrastructure will be funded via the CIL.	No Change
Sport England		Costs in Appendix B for pitches and tennis courts should be updated to 2016 prices.	Agreed	Change

Place Partnership Ltd	Warwickshire & West Mercia Police Hereford & Worcestershire Fire & Rescue	The emergency services should be the subject of a dedicated section in the SPD equivalent to those for education and flood risk contributions	Noted. There is no Local Plan policy to justify generic contributions for emergency services infrastructure therefore there would be no purpose to a dedicated section for this type of infrastructure as contributions could not be collected as they would not comply with Reg 122 or the NPPF tests.	No Change
The Canal & River Trust		The SPD should make clear that necessary improvements to canal towpaths and water way facilities will be secured via S106 agreements rather than CIL contributions.	Disagree? No policy to require generic contributions and this would exclude river and canal corridors from CIL funding for strategic GI.	No Change
Community Services Manager Malvern Hills District Council		Developer Contributions should be sought for playing pitches, community buildings, public off street parking and community development workers	The SPD cannot introduce new policy for contributions not supported by an adopted Local Plan policy. Minor changes, e.g. to include SWDP37 in the list of relevant policies can however be made.	Change
		Para 5.5.6 does not give enough detail of the flood mitigation options available for	Noted, property level	No

		property level protection.	protection does not require Developer Contributions.	Change
Community Development Manager Wychavon District Council		Developer Contributions should be sought for playing pitches, community buildings and early years/pre-school places	The SPD cannot introduce new policy for contributions not supported by an adopted Local Plan policy. Early years provision can be supported from education contributions if a development generates sufficient demand for early years places.	No Change
Environment Agency		Satisfied that revisions made include their previous recommendations and therefore have no further comments to make at this time	Noted	No Change
Historic England		Include policies SWDP6,24,5, 22, 23, 25 and 29 in the list at para 1.2.4	Agree	Change
		Para 3.2.1 replace archaeology with historic environment mitigation.	Agree	Change
		Include a definition of 'civic space' in the glossary.	There is no single definition of civic space and any Developer Contributions will be related to the specific circumstances of a development proposal.	No Change
		It is not clear where public realm fits with the list in para 5.6.1 it should be	Agree	Change

		included as part of the list for the avoidance of doubt.		
--	--	--	--	--

From Others	On Behalf Of	Response	Officer Comment	Change /No Change
UK Flood Barriers		Advert for flood defence equipment suitable for retro fitting to residential property.	Noted	No Change
Flood Professionals Ltd		Para 5.5.6 does not give enough detail of the flood mitigation options available for property level protection.	Noted, property level protection does not require Developer Contributions.	No Change
Flood Advisory Service		Para 5.5.6 does not give enough detail of the flood mitigation options available for property level protection.	Noted, property level protection does not require Developer Contributions.	No Change