

Meeting: Council

Date: 8 December 2016

Wards Affected: All Wards

Report Title: Adoption of Planning Contributions and Affordable Housing Supplementary Planning Document

Is the decision a key decision? Yes

When does the decision need to be implemented? Immediately

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1. Proposal and Introduction

- 1.1 Following adoption of the Torbay Local Plan 2012-30 and submission of Community Infrastructure Levy (CIL), the Council needs to review its Planning Contributions and Affordable Housing Supplementary Planning Guidance (SPD). The existing SPD was adopted in 2008, and has been updated several times (most recently in 2011). It is therefore in need of refreshing to reflect the priorities of the Corporate Plan and Local Plan.
- 1.2 The SPD sets out the Council's approach to developer contributions. The SPD cannot make policy but sets out how the policies in the Adopted Local Plan can be implemented. The SPD covers both residential and commercial development.
- 1.3 The Draft Planning Contributions and Affordable Housing SPD was the subject of public consultation between 19 September and 31 October 2016. This report recommends that the SPD is adopted with a number of modifications. These modifications are relatively minor in nature and do not affect the structure of the SPD.
- 1.4 A consultation statement setting out representations to the SPD, and the Council's response is set out at Appendix 3. The main issue to arise from the development industry is that S106 Obligations must meet the "test of lawfulness" and must not be applied as a roof tax.
- 1.5 The second major issue is whether the Council should adhere to the Local Plan threshold of 3 dwellings for greenfield sites or apply a higher threshold of 11 dwellings as per Government's Written Ministerial Statement of 28 November 2014. There is more information on this below and in Appendix 1.

- 1.6 The Council is proposing to implement CIL primarily on smaller sites. When CIL is implemented s106 Obligations will be scaled back for sites paying CIL. Wider “sustainable development” s106 contributions will not be sought from such sites. However they will still need to address matters necessary to direct site delivery, which may entail s106 Obligations.
- 1.7 The CIL Examination is still underway. Subject to the CIL Examiner’s Report, it is intended to seek infrastructure s106 contributions from large sites (15+ dwellings) within Future Growth Areas, and potentially other strategic sites.
- 1.8 The draft SPD prioritised S106 Obligations into three bands. This retains the broad approach of the existing (2007) SPD. It is recommended that this approach is retained. This respects the Council’s Corporate Priorities as well as the regulations governing the use of S106 Obligations.
- 1.9 **Priority 1: Site Delivery Matters:** (Note that this was formerly called “site acceptability” but it is recommended that it should be renamed “deliverability” following representations). This covers essential site-specific matters to mitigate the impact of development, without which planning permission should not be granted. Site delivery matters apply to all development. They cover matters such as access, flooding, drainage/sewer capacity, direct biodiversity and landscaping. In some instances, improvements to the public realm and urban regeneration will be central to the delivery of a site, particularly in town centres, conservation areas and community investment areas (see Local Plan Policies SS10 and SS11).
- 1.10 Planning conditions will be used for site delivery matters wherever possible. Works to the highway are often achieved through s278 Agreements, which are not subject to all of the restrictions affecting s106 Obligations. If the development is sufficiently viable, then issues in the next priority band are considered.
- 1.11 **Priority 2: Affordable Housing, employment and health infrastructure:** This includes employment provision and healthcare on developments giving rise to additional care needs. Affordable Housing is governed by Policy H2 of the Local Plan, and the SPD provided additional guidance on it. Affordable housing is generally given the highest priority after site delivery matters.
- 1.12 This category applies to housing developments above the threshold for affordable housing. The threshold for affordable housing is set out in Policy H2 of the Local Plan, which is 3 dwellings for greenfield sites and 15 dwellings on brownfield sites. The (previous) government has sought to impose a higher threshold of 11 dwellings. A full discussion of this is set out in Appendix 1. The Draft SPD recommended following a threshold of 11 dwellings, which the Government set in a Written Ministerial Statement (WMS) in November 2014. However representations argued that the Local Plan threshold should be binding and is not overwritten by the WMS. These also point out the high level of affordable housing need in Torbay. Officers agree with this view.
- 1.13 However, there is a legitimate alternative view, expressed by the Mayor, that the Council should apply the higher threshold of 11 dwellings, given that this is the view of Government.

- 1.14 This section of the SPD also seeks contributions to mitigate the loss of employment from applications which entail the loss of jobs. It also promotes local labour agreements to maximise the employment benefit arising from development.
- 1.15 Development giving rise to potential healthcare/social service demands, such as sheltered housing, will be expected to contribute towards the additional care needs arising from the development (although affordable housing will generally be prioritised).
- 1.16 This category has the next highest level of priority after site acceptability matters. If the development is sufficiently viable, then issues in the next priority band 'sustainable development' are considered.
- 1.17 **Priority 3: Sustainable development infrastructure from larger developments.** This applies to developments where CIL is not sought (i.e. larger residential developments in Future Growth Areas) and all commercial developments that have an impact which needs to be mitigated. These matters are still required to make development acceptable in planning terms, but are not essential to render the development physically safe or legal. Examples include education, lifelong learning, open space, recreation, wider environmental/green infrastructure, and waste management. As noted above, it is intended to clarify the SPD to emphasise that they cannot be sought as a "roof tax" but must relate to specific projects.
- 1.18 Where development creates a particular need to monitor its impacts, the SPD seeks a monitoring contribution towards the cost of this. Again this must relate to specific costs borne by the Council and cannot be applied as roof tax.
- 1.19 The approach to s106 Obligations is set out in Figure 1.

Figure 1: S106 Themes and prioritisation. This is the recommended approach.

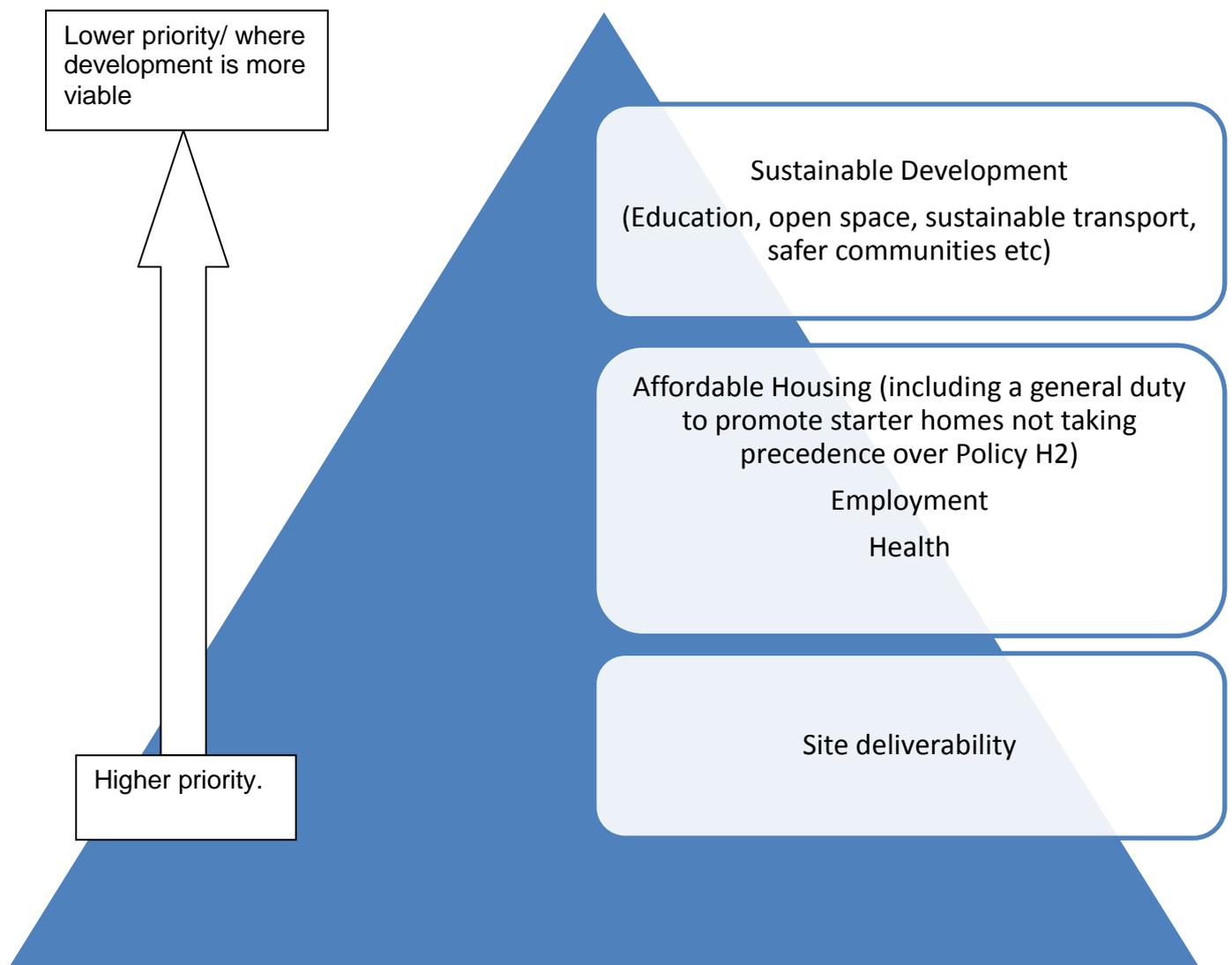


Figure 1

Notes to Figure 1

Note 1 - Affordable Housing. Affordable housing is defined in the National Planning Policy Framework. The Council will have regard to a general duty to promote starter homes but this will not take precedence over Policy H2 unless required to do so by Regulations or other legislation.

Note 2 - Community Investment Areas. Policy H2 and Policy SS11 of the Local Plan indicates that the Council may agree reduced affordable housing provision where this would secure significant benefits to disadvantaged areas, including enhancement of the local natural or built environment.

- 1.20 The SPD also sets out guidance on implementation, including the commissioning of independent viability assessments where developers seek to negotiate reduced s106 contributions to those set out in the SPD. It also sets out instances where mitigation of s106 obligations will be offered, and provides advice on clawback arrangements and timescales for renegotiation of Agreements.
- 1.21 The review of the SPD provides formulas for calculating the impact of development, for example upon the need for school spaces. The current SPD (Update 3, approved in 2011) formulas add up to about £5,800 for a 3-4 bedroom house (excluding affordable housing). The draft SPD indicates that contributions will be higher than this at around £10,000 for a 3-4 bedroom house. However the full range of contributions can only be applied to larger sites where CIL is not being levied. Moreover they must comply with the tests of lawfulness. In practice this means that specific projects must be identified that relate to the development and do not breach pooling limits.

2. Reason for Proposal

- 2.1 S106 Obligations are governed by a number of factors, including legislation, government policy, the Torbay Corporate Plan, the Local Plan, and proposals for CIL.
- 2.2 The structure recommended in Section 1 above sets a priority for seeking S106 Obligations, which follows Local Plan policies and Corporate Plan priorities of a Healthy and Prosperous Torbay.
- 2.3 In practice larger developments usually require independent assessment of viability, and the structure provides guidance on which matters will be prioritised. Site delivery matters will necessarily need to take priority and there is very limited scope to waive these matters for viability reasons. Affordable housing, employment and health items will be given the next highest level of priority, followed by the broader sustainable development contributions.
- 2.4 Each planning application must be determined on its merits and there may be specific material considerations that dictate that a different priority may need to be given to S106 Obligations.
- 2.5 The SPD must be kept up to date with evolving legislation and evidence. It may need adjustments depending on the CIL Examination's outcome.

3 Recommendation(s) / Proposed Decision

Mayoral Recommendation:

- 3.1 That following consideration of representations made on the Draft Planning Contributions and Affordable Housing Supplementary Planning Document (SPD), the SPD be adopted, with minor modifications, as a Supplementary Planning Document as set out in Appendix 3 to the submitted report.
- 3.2 That the Executive Head of Business Services, in consultation with the Executive Lead for Planning, Transport and Housing, be given delegated powers to make minor amendments to the document to ensure legibility and clarity.

Officer Recommendation:

- 3.3 That following Consideration of representations received on the Draft Planning Contributions and Affordable Housing Supplementary Planning Document (SPD), the SPD be adopted, with minor modifications, as a Supplementary Planning Document as set out in Appendix 3 to the submitted report except that the threshold for provision of affordable housing in paragraph 3.4 of the SPD, and accompanying text elsewhere, be amended to 3 instead of 11 to ensure that the document adheres to the affordable housing thresholds set out in Policy H2 of the Adopted Torbay Local Plan, i.e. 3 dwellings for greenfield sites and that the Written Ministerial Statement of 28 November 2014 should be noted in the SPD as a material consideration.
- 3.4 That the Executive Head of Business Services, in consultation with the Executive Lead for Planning, Transport and Housing, be given delegated powers to make minor amendments to the document to ensure legibility and clarity.

Appendices

- Appendix 1: Supporting statement and impact assessment
- Appendix 2 Consultation statement setting out representations, recommended response and proposed modifications where appropriate. (Note that this will follow, after the consultation period ends on 31 October 2016. This is likely to entail some modifications to the SPD).
- Appendix 3: Planning Contributions and Affordable Housing SPD. Wording recommended for approval. Note that this will incorporate recommended minor modifications in response to consultation on the SPD

Background Documents

Torbay Local Plan 2012-30 A landscape for success.

<http://www.torbay.gov.uk/newlocalplan>

Torbay CIL Viability Study –Economic Viability Update. Peter Brett Associates January 2016.

<http://www.torbay.gov.uk/index/yourservices/planning/strategicplanning/evidencebase.htm>

Community Infrastructure Regulations 2010 (as amended)

National Planning Policy Framework especially paragraphs 153, 173, and 203 to 206

(National) Planning Practice Guidance part 23b (updated 19/05/2016)

Housing and Planning Act 2016.

Starter Homes Regulations, Technical Consultation, DCLG March 2016.

Written Ministerial Statement dated 28/11/2014

Court of Appeal Judgement in the case of Secretary of State CLG verses West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441

Appeal decision APP/K3605/W/16/3146699, 26 The Avenue, Claygate, Esher, Surrey (The “Elmbridge decision”)

Appeal decision APP/W0530/W/16/3142834. Land south of Kettles Close, Oakington, Cambridgeshire. (“The Cambridgeshire decision”).