

Delegated Decisions report



23 February 2021

ADOPTION OF PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT

Name of Cabinet Member	Councillor Peter Marland (Leader of the Council)
Report sponsor	Paul Thomas Interim Director - Planning, Strategic Transport and Placemaking
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Exempt / confidential / not for publication	No
Council Plan reference	Not in Council Plan
Wards affected	All wards

Executive Summary

This report recommends the adoption of the Planning Obligations Supplementary Planning Document (SPD) attached at Annex B. The Planning Obligations SPD has been informed by responses received during an eight-week public consultation, held between 5 August and 30 September 2020.

The updated Planning Obligations SPD is required primarily because of updated national guidance and the adoption of Plan:MK. Although the Planning White Paper (consulted on during October 2020) proposes major changes to the planning system, including developer contributions, the Government has not yet legislated for those changes. An update based on the current Planning Obligations legislation is therefore required.

When adopted, this SPD will replace our existing guidance on Planning Obligations (excluding Affordable Housing) contained within several Supplementary Planning Guidance (SPG) and Supplementary Planning Documents dating from 2003-2005.

1. Decisions to be Made

- 1.1 That the changes to the Planning Obligations Supplementary Planning Document, set out in **Annex A** to the report, be agreed.
- 1.2 That the amended Planning Obligations Supplementary Planning Document, set out in **Annex B** to the report, be adopted, in light of the changes set out in **Annex A**.
- 1.3 That the following documents be revoked:
 - (a) Planning Obligations for Central Milton Keynes SPG (2003)
 - (b) Planning Obligations for Education Facilities SPG (2004)
 - (c) Planning Obligations SPG for Leisure, Recreation and Sports Facilities Supplementary Planning Guidance (2005)
 - (d) Social Infrastructure Planning Obligations SPD (2005)
- 1.4 That the Interim Director - Planning, Strategic Transport and Placemaking, in consultation with the portfolio holder for planning, be given delegated authority to make any necessary minor corrections to the Planning Obligations Supplementary Planning Document.

2. Why is the Decision Needed?

- 2.1 Planning obligations are legally enforceable requirements entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of development. They are used to secure financial and in-kind contributions for infrastructure and facilities made necessary by the development such as schools, health centres recreational and open space and community facilities.
- 2.2 We are reviewing and revising our guidance on planning obligations to reflect current national and local planning policy, including the adoption of the Local Plan (Plan:MK) in March 2019. The document will also allow several guidance documents that we use to help secure planning obligations to be updated and consolidated into a single document. The consolidated document will also make it easier for the public, developers and housebuilders to understand our expectations in respect of planning obligations and will therefore provide greater certainty. This should have benefits in terms of speeding up the planning process.

- 2.3 We previously consulted on a draft Planning Obligations SPD from May to July in 2019. Following that consultation, the Government (in September 2019) changed the National Planning Practice Guidance (NPPG) on funding formulas, so that any evidence of need for infrastructure based on ‘formulaic’ approaches to determining planning obligations needed to be part of the plan making process, so it could be examined. This change to the NPPG meant it was necessary to amend our Planning Obligation SPD to exclude formula calculations - as these had not been subject to examination - and focus, instead, on the general principles that might drive a planning obligation.
- 2.4 The SPD that is recommended for adoption is very different from the version consulted on in May-July 2019. As well as the removal of the financial/tariff type formulas; there are also stronger links within the SPD to the role of Neighbourhood Plans, Milton Keynes Council (MKC) Ward Councillors and Town and Parish Councils in the identification of planning obligations. To make the SPD more transparent and accessible, it mirrors Plan:MK chapters and includes diagrams and process flow maps to show how the section 106 process would be administered.
- 2.5 Several planning obligations from the May-July 2019 draft SPD have been removed from the version that is proposed for adoption. Examples include contributions to inward investment, MK:U and the identification of sites to meet unforeseen future community needs for an indefinite period. We are not seeking a contribution for these items either because the contribution cannot be linked successfully to the Community Infrastructure Levy (CIL) regulations or because there is no planning policy basis in Plan:MK for a contribution toward them.
- 2.6 A Delegated Decision was made on 24 March 2020 to approve an eight-week consultation on the revised SPD. At that time the expectation was that public consultation would commence in May that year. However, public consultation necessarily took place later than originally planned; between the 5 August and 30 September.

Public Consultation on the Planning Obligations SPD

- 2.7 As part of the public consultation, we published the Planning Obligations SPD and, a Strategic Environment Assessment (SEA) screening statement on our website. The website also included a consultation statement (with a consultation form), a digital response form and guidance notes. The SPD was also publicised via our consultation finder page.
- 2.8 Over 1,000 emails and 300 letters were posted to residents, companies and organisations on our consultation database. Additionally, a YouTube broadcast was made on the 21 September 2020, with invitations sent to MKC Ward Councillors and to Parish and Town Councils, and the opportunity for members

of the public to watch was advertised on our website. Questions were invited before the meeting via our website and during the presentation.

Responses to the Planning Obligations SPD Consultation

2.9 A total of 29 responses were received from a wide variety of organisations. The responses and an officer comment are detailed in **Annex A**. This has resulted in some revisions to the SPD, which are set out in **Annex B**.

3. Implications of the Decision

Financial	Y	Human rights, equalities, diversity	N
Legal	Y	Policies or Council Plan	Y
Communication	N	Procurement	N
Energy Efficiency	Y	Workforce	N

(a) Financial Implications

Planning Obligations are a significant contributor to our Capital programme and provide a source of revenue, for example to cover the maintenance of open space, in order to mitigate pressures created by new development and to support new communities. The risk of money being returned to developers for the non-implementation of schemes for which contributions have been obtained is considered low due to effective monitoring.

(b) Legal Implications

Planning obligations may only constitute a reason for granting planning permission for a development if they meet three legal tests (Regulation 122 of the Community Infrastructure Levy Regulations) that they are:

- (i) necessary to make the development acceptable in planning terms;
- (ii) directly related to the development; and
- (iii) fairly and reasonable related in scale and in kind to the development.

These three tests, when coupled with the changes to the NPPG on funding formulas, have resulted in significant changes to the SPD. Continuing to rely on the previous iteration of the SPD, with formulas for planning obligations, is not advised as it would be contrary to national planning guidance and expose us to the risk of a legal challenge.

The Town and Country Planning (Local Planning) (England) Regulations 2012 set out the statutory requirements for the consultation and adoption of Supplementary Planning Documents. When adopted in line with statutory requirements, the SPD will be a material consideration in the determination of planning applications.

(c) Policies or Council Plan

The adopted SPD will replace the following documents:

- (i) Planning Obligations for Central Milton Keynes SPG (2003)
- (ii) Planning Obligations for Education Facilities SPG (2004)
- (iii) Planning Obligations SPG for Leisure, Recreation and Sports Facilities Supplementary Planning Guidance (2005)
- (iv) Social Infrastructure Planning Obligations SPD (2005)

The Planning Obligations SPD will assist in the delivery of several Council Plan priorities, such as planning for the long-term growth of Milton Keynes, stronger communities and helping to make Milton Keynes a green and sustainable city. It is a daughter document of our adopted Local Plan (Plan:MK) and thus forms part of our policy framework.

(d) Energy Efficiency

The Planning Obligations SPD would not have any direct effect on energy use or carbon emissions of either our estate or the wider built environment of Milton Keynes. However, we operate a 'Carbon Offset Fund' utilising section 106 contributions to reduce carbon emissions across the Borough, and so it indirectly supports the continuation of this practice.

4. Alternatives

- 4.1 One alternative option is to Do-Nothing and not adopt the SPD and wait for the Government to legislate changes to the system of developer contributions. The Do-Nothing option is not considered appropriate as the Council would need to continue to rely on a set of planning obligations documents that are becoming increasingly out of date and ineffective. Additionally, there is currently no set timescale for the Government to confirm how it intends to change the system of developer contributions.
- 4.2 The Preferred Option is to adopt the Planning Obligations SPD (at **Annex B**) which will:

- (a) update our existing guidance in the areas covered by the various existing SPD and SPG documents;
 - (b) consolidate all our existing Planning Obligations guidance (excluding Affordable Housing and the Sustainable Construction SPDs) into a single document which will be more accessible and easily understood;
 - (c) reflect current national and local planning policy including Plan:MK; and
 - (d) be consistent with the application of the Community Infrastructure Levy Regulations 2010 (as amended by the 2011 and 2019 Regulations) when negotiating and agreeing Section 106 legal agreements.
- 4.3 For the reasons specified above the 'Preferred Option' is to adopt the Planning Obligations Supplementary Planning Document set out in **Annex B**, in the light of changes set out in **Annex A**.
5. Timetable for Implementation
- 5.1 If this SPD is adopted at this meeting the earliest the SPD could come into effect, allowing for a call-in period, would be in March. Allowing time for administrative arrangements the preferred date for the SPD to come into effect is Tuesday 9 March 2021.
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List of Annexes

Annex A	Representations received on the draft Planning Obligations Supplementary Planning Document consultation Consultation Responses
Annex B	Milton Keynes Council Planning Obligations Supplementary Planning Document, February 2021 Planning Obligations SPD

List of Background Papers

None.