

<b>Item No.</b> 15.	<b>Classification:</b> Open	<b>Date:</b> 6 March 2024	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		S106 & Community Infrastructure Levy (CIL) Supplementary Planning Document (SPD)	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Helen Dennis, New Homes and Sustainable Development	

## **FOREWORD - COUNCILLOR HELEN DENNIS, CABINET MEMBER FOR NEW HOMES AND SUSTAINABLE DEVELOPMENT**

New developments can bring significant benefits to our borough, so long as we are clear about our expectations in planning policy, and have the right processes in place for monitoring our requirements and delivering any in lieu provision.

This new Supplementary Planning Document (SPD) aims to support our policies as set out in the Southwark Plan, giving further guidance across key thematic areas and updating the rates for in lieu payments, to ensure that we can meet the cost of delivery, for example, around play provision.

Among other things, this document provides new viability-tested figures for affordable housing in lieu payments, uprating the expected amounts per habitable room across the vast majority of the borough, including in the very north of the borough, where we will now be expecting £250k per habitable room. Administering and monitoring S106 and CIL requirements do have significant cost implications for the council, and so this SPD also sets out our intention to bake these costs into our required contributions.

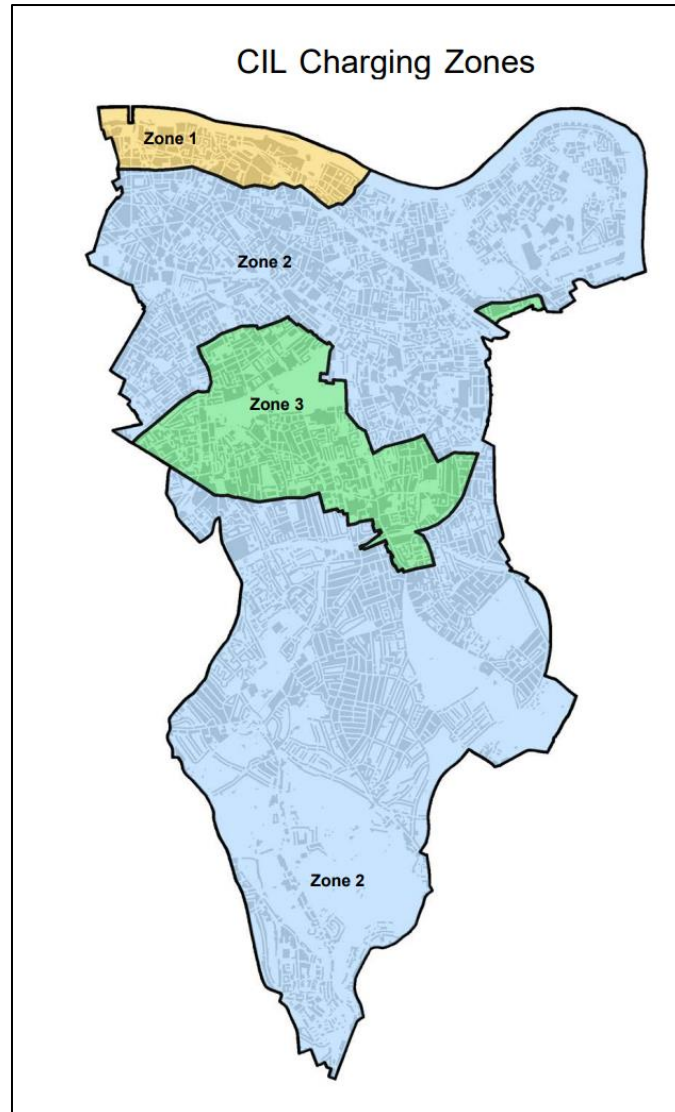
I am delighted that we are publishing this new guidance to support the implementation of the Southwark Plan and would encourage readers to also go through our latest Infrastructure Funding Statement which provides more detail on recent projects delivered through development including work to Cossall Park, Lower Road Cycle Infrastructure, improvements to the Thames Path, and the installation of a new mosaic at London Bridge station. By bringing forward this SPD, we are ensuring that we can secure even greater benefits for Southwark neighbourhoods over the coming years.

## **RECOMMENDATIONS**

1. That Cabinet approve the new Section 106 (S106) and Community Infrastructure Levy (CIL) Supplementary Planning Document (SPD) for consultation.

## **BACKGROUND INFORMATION**

2. The section 106 and CIL SPD has been updated to reflect new planning policies introduced in the Southwark Plan 2022 such as affordable housing and biodiversity net gain. It has also updated the financial contributions that are required to cover the council's monitoring functions and payments in lieu where a development is unable to meet policy on-site.
3. Section 106 planning obligations and CIL are known collectively as developer contributions. These are planning tools to mitigate any negative impacts of development. Almost all development has some impact on the need for infrastructure, services and amenities.
4. Section 106 obligations are financial or non-financial contributions that address the negative impacts of development on residents, and deliver benefits through on-site and off-site infrastructure provision. They are set out in a legal agreement between the council and a developer or landowner.
5. CIL is a set tariff and is charged per square meter of additional floorspace on new development. It is collected by the Council and used to fund new infrastructure including transport, new schools, community and health infrastructure, parks and biodiversity across the borough.
6. The council's CIL is set out in the adopted CIL charging schedule. This is based on the amount of CIL needed to support growth across the borough. Rates are set by different CIL Charging Zones (as set out below). The revised SPD does not make any changes to the existing charging schedule.



7. A review of CIL contributions for student housing is currently underway. If a change is considered appropriate this will be brought to Cabinet for consideration.

### **KEY ISSUES FOR CONSIDERATION**

8. The Section 106 and CIL SPD will replace the existing S106 SPD adopted in 2015 and updated in 2020. It will support the implementation of the Southwark Plan policies by defining the Section 106 planning obligations required from different types of development. It will be a material consideration in planning decisions made by the Council.
9. It sets out how Section 106 obligations and CIL are used by the Council and contains details of the specific financial and non-financial obligations which may be required by new developments on-site or off-site. The contributions are organised by different scales of development in order to help developers and members of the public understand which obligations may be relevant for their specific scheme.

10. The non-financial obligations are linked to policy requirements in the Southwark Plan. A number of the policies in the Southwark Plan 2022 allow a financial contribution to mitigate the impact of development instead of providing the policy requirement on-site. This is referred to as a 'Payment in Lieu' (PIL) and the updated SPD makes clear how this will be calculated for all schemes.
11. The following topics are covered by the draft SPD:
  - Social rented and intermediate homes
  - Wheelchair accessible homes
  - Affordable workspace
  - Business relocation
  - Jobs and training in construction and completed developments
  - Local procurement
  - Loss of employment space
  - Supporting the local economy
  - Net zero carbon development
  - Connection to a District Heat Network
  - Air quality
  - Tree management and replacement
  - Biodiversity and ecological management
  - Amenity Space, play space and open space
  - Social, community and other infrastructure
  - Sustainable transport, public realm and highways
  - Archaeology
  - Conservation and restoration management
  - Construction and highways
  - Administration and compliance.
12. Furthermore, the developer contributions for infrastructure and service provision have not been updated since 2015. The existing figures do not reflect the latest Southwark Plan and the current cost of provision. For example, the current Payment in Lieu for play space, of £151 per sqm does not reflect an average provision cost of £598 per sqm. All of the figures have now been updated in order to accurately reflect current costs.
13. The monitoring fees have also been updated and are based on the average amount of time spent by staff per application. There is a set fee per planning application which now covers the administration costs of the Section 106 team and the monitoring functions of the planning policy team.

## **Viability**

14. The proposed financial contributions and monitoring fees have been viability tested by specialist consultants to ensure that they would not have any impact on the deliverability of schemes in the borough. It tested a

number of different typologies including residential development, mixed use residential and office/industrial, office schemes and stacked industrial.

15. The appraisal considered that the obligations within the SPD which would have the biggest implications on viability would be affordable housing, public realm and open space, carbon offset and transport and highways. However, it should be noted that these obligations may not all be considered together on every scheme.
16. The consultants concluded that the appraisal results support the proposed obligations and fees in general, as they can be viably provided in a number of scenarios and typologies within the borough. Where viability has shown to be challenging, this does not mean that the fees and obligations should be scaled back. It shows that when the sites come forward a degree of flexibility should be applied. This reflects current practice and national requirements.

## **Policy implications**

### National

17. The [Levelling Up and Regeneration Act \(2023\)](#) sets out a framework for the proposed new Infrastructure Levy to replace developer contributions. However, it is planned that this will be phased in and tested over a 10-year period, therefore there is a need for an up-to-date SPD for S106 contributions to provide certainty to developers on S106 and CIL in the meantime. The transition to the new Infrastructure Levy will be closely monitored, and new arrangements implemented by the council in accordance with the timeframes set out in the final legislation.
18. The proposed reforms to the local plan making process intend to remove SPDs which instead will be considered as part of producing a new local plan. However, these reforms are still subject to further consultation and SPDs developed under the current planning system will remain in place until a new plan is produced.

### Local

19. The updated S106 and CIL SPD will support the implementation of the Southwark Plan policies, in particular Policy IP3, by defining the planning obligations required from different types of development. It will be a material consideration in planning decisions made by the Council.
20. The planning obligations included in the new SPD align with Southwark Council's wider strategies, such as obligations for sustainable transport, public realm and highways and net zero carbon development, which crosscut with the new transport strategy [Streets for People](#) (2023-2030) and the [Climate Action Plan](#) (2022).

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

21. The S106 and CIL SPD is aimed at both developers and the public. The content is intended to deliver benefits to communities which are inclusive and accessible, in line with Southwark Council's vision of a fairer future for all. The new SPD will ensure that all communities benefit from new development. This can be achieved through the financial and non-financial contributions which are made towards service delivery, affordable homes, social and community infrastructure, job opportunities and managing the impact of climate change. Development contributions through S106 planning obligations and CIL have a key role in facilitating this, helping to secure positive change and a better place to live.

### **Equalities (including socio-economic) impact statement**

22. The Equalities Impact Needs Assessment, identifies the protected characteristics and needs of Southwark's diverse communities. It concluded that there are no negative impacts. This is included as Appendix C.

### **Health impact statement**

23. Planning has a key role to play in supporting the council to ensure new development improves and addresses health inequalities. The new S106 & CIL SPD sets out the planning obligations and financial contributions that will mitigate negative impacts from development on the health of Southwark's communities, such as provision of social and community infrastructure where there is a need as well as improvements to air quality. It will also have an impact on factors that have an indirect beneficial impact on health, including improvements to sustainable transport infrastructure that can allow for active travel.

### **Climate change implications**

24. The council has declared a Climate Emergency with the ambition to reach carbon neutrality by 2030. Plan-making will involve the preparation and implementation of planning policies to meet this ambition when implemented through development management processes. This is supported by Southwark's Climate Change Strategy which sets out Action Points to meet this target.
25. Planning applications will be required to meet the policy requirements in the Southwark Plan 2022. Climate change considerations for both mitigation and adaptation should be considered in all development as good practice. Where major development cannot meet the policy requirements, planning obligations are used to address the measures which can help mitigate the impacts on climate change. Such as through consideration of biodiversity, air quality neutral standards, and connection to, or futureproofing a

connection to a District Heat Network. In exceptional circumstances, where major development cannot reduce carbon emission onsite in line with Part L 2021 Building Regulations, carbon off-set payments will be collected into the Green Buildings Fund. This funds carbon off-setting projects within Southwark and is monitored by the Council. The S106 legal agreement will secure the requirements of the Energy Statement. Alongside the Energy Statement.

### **Resource implications**

26. There will be a requirement for officers to administer and monitor S106 legal agreements, however the proposed administration and monitoring fees will ensure that these costs are appropriately resourced.

### **Legal implications**

27. See response from Assistant Chief Executive, Governance and Assurance.

### **Financial implications**

28. This SPD will ensure that the financial requirements for developments are fair and reasonable. It will also ensure that impacts of development are mitigated in line with policy requirements. The increases in contributions are in line with the costs of mitigating the impacts of development. These are flexible and are only applicable where the developer is not able to deliver their obligations on site.
29. There will be no immediate financial implications associated with the consultation stage of this SPD. Any staffing and resourcing costs associated with the consultation will be met within existing budgets. Any new or increased fees will need to be approved by Cabinet and set out in the Fees and Charges Schedule.

### **Consultation**

30. Following approval by Cabinet, the consultation will be carried out for a twelve week period from 11 March 2024 to 7 June 2024. Should any substantive comments be received which require additional changes, a further six week consultation will be undertaken.
31. Consultation on the SPD will follow the requirements of the Statement for Community Involvement. The consultation will be carried out as set out in the Consultation Plan which is included as Appendix D.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Assistant Chief Executive, Governance and Assurance (NST210224)**

32. Under paragraph 7 of Part 3D Individual Cabinet Members have the power to agree significant policy issues in relation to their area of responsibility. The Cabinet Member for New Homes and Sustainable Development therefore has the power to agree the draft s106 SPD which would include approving a draft for consultation. However, given the significance of the s106 and CIL SPD, the draft is brought to Cabinet for approval.
33. Final approval of the SPD resides with full Cabinet under Part 3C of the Constitution paragraph 21 which states that only full Cabinet has the power to adopt supplementary planning documents taking account of comments from the planning committee.
34. Supplementary planning documents (SPDs) should build upon and provide more detailed advice or guidance on policies in the adopted Southwark Plan 2022. As they do not form part of the development plan, they cannot introduce new planning policies into the development plan. They are however a material consideration in decision-making. They should not add unnecessarily to the financial burdens on development and the relevant viability considerations are set out at paragraphs 14-16.
35. The National Planning Policy Framework states that SPDs add further detail to the policies in the development plan. They can be used to provide further guidance for development on specific sites or on particular issues and are capable of being a material consideration in planning decisions but are not part of the development plan.
36. Regulations 11 to 16 of the Town and Country Planning (Local Planning) (England) Regulations 2012 set out the requirements for producing Supplementary Planning Documents. The s106 and CIL SPD will not form part of the statutory development plan but will be an important material consideration in determining planning applications.
37. The Environmental Assessment of Plans and Programmes Regulations 2004 (SEA Regulations) also require the Council to consider whether or not Strategic Environmental Assessment (SEA) of the SPD should be undertaken. A strategic environmental assessment is unlikely to be required where a supplementary planning document deals only with a small area at a local level (see regulation 5(6) of the Environmental Assessment of Plans and Programmes Regulations 2004), unless it is considered that there are likely to be significant environmental effects.
38. Before deciding whether significant environment effects are likely, the criteria specified in schedule 1 to the Environmental Assessment of Plans and Programmes Regulations 2004 need to be taken into account. Officers have prepared a screening report (Appendix E) and consider that it is unlikely that there are significant environmental effects. The Environment



Agency, Historic England and Natural England will be consulted on the draft s106 and CIL SPD.

39. Council Assembly on 14 July 2021 approved a change to the council's Constitution to confirm that all decisions made by the council will consider the climate and equality (including socio-economic disadvantage and health inequality) consequences of taking that decision. This has been considered at paragraphs 23 and 24 to 25 above.
40. The Public Sector Equality Duty ("PSED") is set out at section 149 of Equality Act 2010 and requires the council to have due regard in the exercise of its functions (including decision making), to the need to:
  - a) Eliminate discrimination, harassment, victimisation or other prohibited conduct;
  - b) Advance of equality of opportunity between persons who share a relevant protected characteristics and those who do not share it;
  - c) Foster good relations between those who share a relevant characteristic and those that do not share it.
41. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
42. Officers have considered the council's PSED under section 149 of the 2010 Act at paragraph 22 of this report and the Equalities and Impact Needs Analysis (EINA) at Appendix C. Officers have concluded that, at this stage, the draft s106 and CIL SPD is not considered to have any adverse impacts on persons with protected characteristics.
43. The report recommends that the draft s106 and CIL SPD is published for public consultation. Comments relating to equalities considerations will be considered following the consultation and the s106 and CIL SPD updated as appropriate.
44. Section 19(3) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to comply with their adopted Statement of Community Involvement ("SCI"). The Council's SCI provides for a period of 6 weeks informal consultation followed by 6 weeks formal consultation.

#### **Strategic Director of Finance (FC23/009)**

45. The report requests approval from Cabinet for the new Section 106 (S106) and Community Infrastructure Levy (CIL) Supplementary Planning Document (SPD) for consultation.
46. The strategic director of finance notes that there will be no immediate financial implications associated with the consultation stage of this SPD and notes other comments in the financial implications.

47. Staffing and any other costs associated with this recommendation are to be contained within existing departmental revenue budgets.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Link: <a href="#">The Southwark Plan</a>	Southwark Planning Policy Division	<a href="mailto:Juliet.seymour@southwark.gov.uk">Juliet.seymour@southwark.gov.uk</a>

## APPENDICES

No.	Title
Appendix A	Draft S106 and CIL Supplementary Planning Document
Appendix B	Draft viability appraisal
Appendix C	Equality impact needs assessment
Appendix D	Consultation Plan
Appendix E	SEA Screening Document

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Helen Dennis, New Homes and Sustainable Development	
<b>Lead Officer</b>	Clive Palfreyman, Strategic Director of Finance	
<b>Report Author</b>	Juliet Seymour, Head of Policy, Building Control and the Historic Environment	
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<b>Dated</b>	22 February 2024	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Assistant Chief Executive, Governance and Assurance	Yes	Yes
Strategic Director of Finance	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		22 February 2024