

Appendix 1

Text Changes proposed to the Draft Planning Obligations and Affordable Housing SPD

August 2017

Paragraph	Consultee	Summary of Issue	Text changes proposed
6.3.5	West Sussex County Council	The document makes reference at 6.3.5 to the Infrastructure Delivery Plan identifying all infrastructure needed to deliver all development in the Local Plan. For reference, the information provided by WSCC in the Strategic Infrastructure Package is the infrastructure needed to mitigate only the strategic site allocations in the Local Plan.	Agree. Para 6.3.5 to be amended : “The Infrastructure Delivery Plan (IDP) sets out details about the transport improvements that are anticipated to be required in order to deliver successfully <u>the strategic allocations of the development strategy established by the HDPF.</u> ”
6.3.16	West Sussex County Council	It is requested that the following text is added to para 6.3.16: <u>Where a planning obligation is used to secure financial contributions in lieu of whole on-site education facilities, then the amount will be based on the real costs of the school development.</u>	Agree. Para 6.3.16 amended to include: <u>“Where a planning obligation is used to secure financial contributions in lieu of whole on-site education facilities, then the amount will be based on the real costs of the school development.”</u>
5.7	Paul Kornycky	There should be reference to the fact that case law requiring public disclosure of key facts will have priority over any view of the applicant to keep such facts secret.	Noted. Revised paragraph 6.1.55 clarifies that the Council will seek to ensure the transparency of viability evidence, in line with para 4 of the Planning Practice Guidance on Viability.
5.7	Paul Kornycky	“Make it clear that the public availability of viability assessments needs to extend to the independent surveyor/valuer report referred to in para 5.7”.	Noted, the approach to the public availability of viability assessments is set out at paragraph 6.1.55, in line with para 4 of the Planning Practice Guidance on Viability.

Paragraph	Consultee	Summary of Issue	Text changes proposed
6.1.33	Paul Kornycky	“This para misses the point in order to undertake a viability assessment the affordable housing and to be provided must be established (both %age and mix) , otherwise figures can vary hugely. If you defer the detail of the affordable homes until reserved matters, this is an issue.	Noted. Propose to add additional wording to para 6.1.33 “There may be circumstances, particularly with Outline applications, where the details of affordable housing provision have not been finalised, <u>but as a minimum the percentage and mix of affordable housing proposed shall be stated in the application.</u> ”
6.1.55	Paul Kornycky	“The Council needs to have regard to case law regarding what facts should be made public, especially where there a lower than compliant level of affordable housing is proposed”.	Noted. Revised paragraph 6.1.55 clarifies that the Council will seek to ensure the transparency of viability evidence, in line with para 4 of the Planning Practice Guidance on Viability.
Appendix 2 Point 2	Paul Kornycky	Reference to land values is wooly. Surely needs to refer to existing use value and alternate use value , to determine. The overall gain from securing planning permission. Current value could include a speculative lift.	Disagree. No change proposed. There is no “correct” or “incorrect” methodology to be used by applicants. Applicants will need to justify whichever viability methodology they use.
Para 4.10	Storrington and Sullington Parish Council	SPD clarifies distinction between CIL and planning obligations. HDC will publish a Regulation 123 list of infrastructure projects which will be funded in whole or part by CIL. Para 4.10 refers to liaising with WSCC and other relevant body. Members suggest that some reference should be made to neighbourhood plans, made or in progress.	Disagree. No change proposed. This paragraph deals with the bodies that HDC would liaise with in terms of securing planning obligations- there is no need for a reference to neighbourhood plans.

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Section 6	Storrington and Sullington Parish Council	Section 6 covers the provision of affordable housing. We need to ensure our NH plan does not conflict with the guidance.	Noted. No comment.
-	Storrington and Sullington Parish Council	Areas that draw up a plan and secure the consent of local people in a referendum will benefit from 25% of the levy arising from revenue arising from the development that takes place in the area. For this to apply the neighbourhood plan must be made. Parish Council think it is unfair that if the Plan is not made, and the site is allocated, the Parish Council only gets 10%, even where the site is likely to come forward.	Noted, no change. This is how the Government CIL Regulations apply for funding for “made” neighbourhood plans and there is no scope for amendment.
All	Environment Agency	No comments at this time.	Noted, no change.
Para 4.11	Liberty Property Trust	Support for the recognition in this paragraph of the need to retain flexibility in negotiations regarding all planning obligations as it is not always possible to identify the specific services for which land, works or finance may need to be secured.	Noted, no change.

Paragraph	Consultee	Summary of Issue	Text changes proposed
Para 6.1.2	Liberty Property Trust	Support for the reference to the fact that the Housing and Planning Bill is likely to have an impact on how affordable housing is classified and delivered in the future. This is of particular importance when considering strategic developments such as Land North of Horsham, which will be implemented throughout the period of time covered by the HDPF.	Noted, no change.
Para 6.1.9	Liberty Property Trust	Support for the recognition that, when considering the level of housing to be provided, the Council will assess the viability of applications when applications depart from adopted policy. These assessments will be considered using sound evidence on financial viability from applicants.	Noted, no change.

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Para 6.1.26/6.1.27	Liberty Property Trust	This paragraph seeks to maintain accommodation as affordable housing. It needs to explain how this could be achieved in light of the Government's policy allowing 'right to buy', as being proposed in the Housing and Planning Bill. Of particular relevance is the statement in paragraph 6.1.27 that a Section 106 agreement will include requirements relating to the "continued use of affordable housing in perpetuity".	Noted, no change. Para 6.1.26 is a general comment about seeking to preserve the status of Affordable Housing. The wording in para 6.1.27 indicates there is a tenant's right to acquisition as a generality. Any changes in legislation and the means to acquire would still be covered by the wording.
Paras 6.1.48-49	Liberty Property Trust	Support for the recognition of the fact that there may be circumstances where the application of the relevant target in Policy 16 of the HDPF , in combination with any other section 106 requirements , may make the proposed development unviable. We recognise there will be a need for applicants to demonstrate that the proposed development can only be made financially viable with the reduced affordable housing provision.	Noted., no change.

Paragraph	Consultee	Summary of Issue	Text changes proposed
Paras 6.3.41	Liberty Property Trust	<p>These paragraphs make reference to standard planning obligations, which may be required to make development acceptable in planning terms. We note the reference to planning policies in the adopted HDPF which relate to the Land North of Horsham Strategic Allocation. (Sd1 to SD9). These references will be addressed in any application for Land North of Horsham.</p>	Noted, no change.
All	Gladman	<p>It is important to remember that planning obligations should be applied flexibly to prevent planned development from being stalled. Where obligations are being sought, the Council should take into account changes in market conditions over time. The cost of any requirements likely to be applied to development should, when taking onto account the normal costs of development, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable.</p>	Noted, no change. It is considered the SPD sets out sufficient guidance covering the flexible approach the Council will apply in circumstances where evidence demonstrates a planning obligation is likely to lead to a development being stalled.

Paragraph	Consultee	Summary of Issue	Text changes proposed
Section 5	Gladman	Welcome the recognition in Section 5 that where an otherwise desirable development cannot be fully compliant and remain viable, a reduced package of planning obligations may be accepted.	Noted, no change.
Para 6.1.35	Gladman	The provision of affordable housing can be adequately dealt with via condition and does not need to be included in a Section 106 agreement.	Disagree, no change. While it has been possible in the past to deal with affordable housing through planning conditions in some circumstances, (generally smaller and less complicated developments), the Council considers this mechanism poses risks and difficulties in many cases and that the use of planning obligations is a less riskier approach. The Council has a good track record of securing affordable homes in this way.
-	Gladman	Therefore despite the HDPF being adopted last year, it would be prudent for the Council to go back and check that its policies are compliant with this statement and supported by appropriate evidence.	Noted, no change.
Section 7	Gladman	Monitoring- Gladman object to monitoring fees. Argue there is established case law (Oxfordshire CC v Secretary of State (2015) where the judge found that monitoring fees were not CIL compliant , as it was not necessary to make the development acceptable in planning terms.	Disagree, no change. Section 7 of the SPD has been drafted to take into account the issues arising from the case law cited by the consultee. The Council considers that the case law does not prevent the securing of contributions towards monitoring, where these are properly assessed and justified on a case-by-case basis.

Paragraph	Consultee	Summary of Issue	Text changes proposed
All	Natural England	SEA Screening Opinion THE SPD will not introduce new policies and is purely a guidance document. It therefore “does not require an SEA under the Assessment of Environmental Plans and Programmes Regulation (2004). This is because there will be no significant environmental effects arising from its implementation , it supplements national guidance and is in any event a financial tool which Article 3(8) of the SEA Directive excludes from requiring SEA.	Noted, no change.
Whole document	HDC	Update to reflect current legislation	<ul style="list-style-type: none"> • Amendments refer to the Housing and Planning Act (not Bill) • Amendments to Registered Providers, rather than Housing Associations • Para 6.1.55 – position on public availability of Viability Assessments

Paragraph	Consultee	Summary of Issue	Text changes proposed
Para 4.8	HDC	Clarification of who is responsible for spending of CIL funds	<p>Para 4.8 amended to read: As has been the case in the past, the Council will act as the co-ordinating authority for the negotiation of planning obligations and the collection of contributions. Although the District Council is not responsible for the provision of all services and facilities listed in this document, <u>Horsham District Council will act as collecting authority for all CIL funds. collect and remain accountable for the spending of funds.</u> Other service providers, for example, West Sussex County Council and the Environment Agency, will be consulted on individual planning applications likely to require the securing of planning obligations. <u>Horsham District Council will pass relevant CIL funds to West Sussex County Council and other relevant bodies for the provision of certain strategic infrastructure. These bodies will be responsible for the expenditure of the funds that HDC has passed to them.</u></p>
Para 6.1.6	HDC	Rewording of bullet points to more accurately reflect Policy 16	<ul style="list-style-type: none"> • On sites of 15 or more dwellings or over 0.5 hectares in area, the Council will require 35% of dwellings to be affordable <u>and delivered on site.</u> Unless there are exceptional circumstances it is expected that the affordable housing would be provided on site; • On sites of between 5 and 14 dwellings, the Council will require on-site provision based on 20% of dwellings being affordable, <u>or where this is not achievable, and evidence has been submitted to the Council to demonstrate this, a financial contribution equivalent to the cost of the developer providing the units on site will be sought.</u> This section of the policy acknowledges the potential financial contributions to be made to off-site provision where on-site provision is not achievable or will not most appropriately meet needs.
Para 6.1	HDC	Clarification on position of standard legal agreements	Add to para 6.1: <u>The Council will be introducing standard legal agreements/unilateral undertakings to simplify procedures.</u>

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Para 6.1.20	HDC	Clarification that when developers have permission for schemes with reduced affordable housing provision, predominantly affordable rented housing will be required.	Add at end of para 6.1.20 <u>“It is likely that where less than the target percentage in Policy 16 is being provided, developers will be required to provide predominantly affordable rented housing.”</u>
Para 6.1.27	HDC	Clarification on clawback/use of reviews. Upwards only	Add wording at para 6.1.27: <u>Review and clawback; Affordable Housing requirements are applied where they are required to make an application acceptable in planning terms. Thus review mechanisms should not be used to reduce the base level of affordable housing contributions that are required as part of the planning permission. This would require a new or modified planning permission.</u>
Para 6.1.54	HDC	Clarification of wording to reflect instruction of consultants, and who pays consultants' fees	The Council may will , in most cases, instruct external consultants to review a viability submission independently. If external consultants are to be instructed the Applicant will be required to <u>cover the consultant's costs</u> pay the fees . The applicant will be advised of the fees payable and the amount will need to be paid to the Council prior to the FVA being assessed.
Para 6.1.62	HDC	Clarification that VOA code of practice will be used for consistency with what is in CIL Charging schedule.	This makes the requirement equivalent to the on-site starting point as per the Council's Policy 16, whereby any communal areas do not add to the affordable housing requirement. In the case of doubt, the gross internal area of a dwelling will be as defined by the Royal Institution of Chartered Surveyors <u>Valuation Office Agency's</u> most recent Code of Measuring Practice or equivalent.

Paragraph	Consultee	Summary of Issue	Text changes proposed
Para 6.1.66	HDC	Clarification that BCIS index will be used, rather than RPI, which is what majority of authorities use.	<ul style="list-style-type: none"> • Indexation from a set time before the date of the <u>agreement</u> the date of the Resolution to Grant or Unilateral Undertaking until the date of payment. Indexation will be on an annual basis in accordance with the Retail Price Index <u>BCIS General Building Cost Index and/or BCIS All-in TPI Index</u>
Para 6.1.67	HDC	Clarification that “commencement date ” will be used as a trigger for monitoring of applications.	The Section 106 Agreement or Unilateral Undertaking will contain a milestone that triggers the payment of the contribution, usually (but not always) this will be the carrying out of any Material Operation Commencement of Development. When the payment is triggered the Applicant should notify the Council that the payment is now due.
Para 6.2.1	HDC	Para 6.2.1 – for category 2 standard planning obligations not restricted by CIL regs, general reference at start that conditions may be appropriate for a number of these examples.	. <u>It might be the case that a number of these areas can be dealt with as part of the Planning Application and by condition.</u>
Para 6.3.2	HDC	Para 6.3.2 – update that Reg 123 list is included as Annex 1 of Horsham CIL Charging Schedule	At the time CIL is introduced, the Council intends to publish a ‘Regulation 123 list’ and a draft version of that list was included within the consultation on the Draft CIL Charging Schedule. The Council’s CIL Charging Schedule (April 2017) includes its Regulation 123 List at Annex 1. The guidance within Category 3 of this SPD should be read alongside the Council’s Regulation 123 list.

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Para 6.3.12	HDC	Para 6.3.13 – clarification that Land North of Horsham and Kilnwood Vale are “zero rated” and not liable for CIL	<p>For the largest planned developments, and in particular the North Horsham strategic development, specific on-site school infrastructure is required to mitigate the impact of the development. In such cases CIL is not considered an appropriate mechanism to provide the level of certainty required in terms of the timing of school infrastructure delivery and planning obligations will be used for this purpose. Reflecting the outcomes of the viability evidence, the viability consultants recommended that a differential charge zone be created to include both the North of Horsham Strategic Development Area and Kilnwood Vale. It was recommended that a £0 per sq.m CIL rate be applied within this ‘strategic sites’ charge zone for residential development. The recommendation was accepted by the Independent CIL Examiner. It is important to note that the Council’s CIL charge rate structure reflects the special requirements of the North of Horsham development and the need to rely on planning obligations to mitigate the impact of the development. This is also reflected in the Council’s Regulation 123 list.</p>
Para 6.3.13	HDC	Para 6.3.14 – there are a number of references in 6.3 paragraphs to the Land North of Horsham application and infrastructure- this is an update to include resolution from Council on 22 May 2017.	<p><u>The Land North of Horsham application (16/1677) was considered at Committee on 22 May 2017. It was resolved that it be determined by the Director of Planning, Economic Development & Property, in consultation with the Chairmen and Vice-Chairmen of the Planning Committee (North) and the Planning Committee (South) and the Cabinet Member for Planning & Development, with a view to granting permission, subject to the completion of a Legal Agreement to secure the details as set out in the Heads of Terms and appropriate conditions. During determination both the Legal Agreement and planning conditions may be added to, removed or varied.</u></p>

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Para 6.3.19	HDC	Para 6.3.20 – Leisure, Sport and Open Space –	“The standards for sport, recreation and open space provision are set out in the Council’s adopted “Sport, Open Space and Recreation Assessment “(February 2014) (or in national standards. For ease of reference these will be pulled together and made available in an additional Appendix (Appendix 5) when this is completed.
Section 8	HDC	Remove Section 8 Next Steps – no longer needed	-