

East Herts Council Report

Council

Date of Meeting: 13 May 2020

Report by: Cllr Haysey, Leader of the Council and Cllr Goodeve, Executive Member for Planning and Growth

Report title: Open Space, Sport and Recreation Supplementary Planning Document- Final for Adoption

Ward(s) affected: All

Summary

- To outline the results of the public consultation on the draft Open Space, Sport and Recreation Supplementary Planning Document (SPD) and seek Members' agreement to adopt a revised document.

RECOMMENDATIONS FOR Council:

- (a) That the responses of the consultation be noted and the officer responses and proposed changes to the Open Space, Sport and Recreation Supplementary Planning Document (SPD) be supported;**
- (b) That the Open Space Sport and Recreation Supplementary Planning Document (SPD), as detailed at Appendix A to this report, be approved for adoption; and**
- (c) That in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 it has been determined that a Strategic Environmental Assessment of the emerging Open Space, Sport and Recreation Supplementary Planning Document (SPD) is not required as it is unlikely to have significant environmental effects.**
- (d) That the Head of planning and Building Control, in consultation with the Executive Member for Planning and**

Growth, be authorized to make any further minor changes to the document which may be necessary.

1.0 Proposal(s)

- 1.1 The Open Space, Sport and Recreation Supplementary Planning Document (SPD) provides guidance on how to comply with policies CFLR1 and DEL2 of the East Herts District Plan, 2018. It sets out the type and scale of open space, sport and recreation developer contributions that will be sought to support new development. It will be a material consideration in the determination of planning applications and will be used when securing S106 agreements and unilateral undertaking.
- 1.2 Following public consultation, the Council has amended the SPD to reflect the issues raised. The report was originally to have been considered by the Executive at its meeting on 21 April 2020. That meeting having been cancelled due to the coronavirus situation, the report was circulated by email to Executive Members and is now recommended to Council.

2.0 Background

- 2.1 Sport recreation, open space, leisure and other community facilities are key infrastructure that must be provided to support development in East Herts, with existing facilities protected and enhanced.
- 2.2 The provision and funding of this infrastructure needs to be planned and supported. The principles and standards identified in the SPD are based on the recent technical studies that informed the District Plan. Once adopted, this SPD will replace the current Open Space, Sport and Recreation guidance (2009).
- 2.3 Supplementary Planning Documents are documents which add further detail to the policies in the development plan. This SPD has been produced to expand particularly on District Plan policies CFLR1 Open Space, Sport and Recreation and Policy DEL2 Planning Obligations
- 2.4 Members will recall that public consultation on a draft version

of the SPD for a period of six weeks was agreed at Executive on 3rd September 2019. The consultation subsequently took place between 3 October and 5pm on 14 November 2019.

- 2.5 The SPD has been produced by Nortoft Partnerships Limited in collaboration with the council. A copy of the revised SPD is attached as **Appendix A**.

3.0 Reasons

- 3.1 The National Planning Policy Framework (NPPF) outlines the need to deliver sufficient infrastructure and facilities to support new development. It states that plans should detail the contributions expected from development¹ and local planning authorities are encouraged to consider if otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.
- 3.2 Planning obligations are sought via section 106 agreements but only when they meet the three tests set out in the Community Infrastructure Levy Regulations²: To make development acceptable in planning terms; where they are directly related to the development; and are fairly and reasonably related in scale and kind to the development
- 3.3 Changes to these regulations in September 2019 deleted pooling restrictions, so contributions can be pooled from multiple developments to fund strategic facilities.
- 3.4 The purpose of this SPD is to explain when the Council will seek planning obligations (contributions) to balance the impact of development on local open space, sport and recreation. It shows how calculations for the provision and cost of new and improved open space, sport and recreation provision are worked out, improving transparency and consistency in the planning obligation process. A systematic approach means the contribution of new development is more coherent, whilst still allowing the site specific consideration and flexibility that underpins the S106 process.

¹ Para 34, NPPF (2019)

² CIL Regulations, 2010 (as amended)

- 3.5 The contribution requirements are based on the quantity, quality and accessibility standards in the Open Space and Sports Facilities Assessment Technical Study (2017), which forms part of the evidence base to the District Plan. There are four parts to this assessment:
- Part 1: Background and Context
 - Part 2: Built Facilities Strategy
 - Part 3: Playing Pitch Strategy
 - Part 4: Open Spaces Assessment
- 3.6 These technical studies cover a range of different sports and open spaces and have been endorsed by Sport England and developed in consultation with national governing bodies and local providers. Action plans in the Built Facilities and Playing Pitch Strategies identify potential projects that require funding.
- 3.7 The standards in these background documents are used within the SPD to guide developers and officers on how to deliver effective and proportionate contributions towards open space, sport and recreation provision. However, these standards are not used in isolation. To comply with the CIL tests the standards are applied within the local context reflecting the assessed population needs of a specific development and consultation with stakeholders.
- 3.8 In accordance with the District Plan, land will either be required for provision on-site or if this is not appropriate, a financial contribution will be sought for new, improved or extended open space, sport and recreation.
- 3.9 Capital and maintenance costs in the draft SPD were sourced from industry standards. Long-term management regimes should be demonstrated by applicants, or arrangements made for a commuted maintenance sum of at least 20 years. To enable the standards and costs in the SPD to be calculated easily for a development scenario, contribution calculators will be available on the Council's website.

Consultation responses

- 3.10 The draft SPD was subject to public consultation in accordance with the Town and Country Planning (Local Planning (England) Regulations 2012. It was published for 6 weeks consultation instead of 4 weeks because the draft was published before the Council adopted the revised Statement of Community involvement on 23 October 2019.
- 3.11 A total of 108 responses were received from 19 respondents. Two of the responses stated that the respondents had no comments on the draft SPD. Ten comments expressed support for the document, including Sport England, which welcomed the production of the SPD. There were 44 objections to the SPD and 52 comments. One additional blank comment was submitted in error, but was deleted after discussion with the consultee.
- 3.12 The main issues raised in the responses are summarised below:
- A lack of clarity about the process for calculating contributions- A number of objections and comments raised concern that the SPD needed more explanation about how the guidance should be applied, more clarification about how to calculate provision and greater detail about the scope of the SPD. One respondent recommended using flow charts to explain the process more clearly.
 - Use of calculations is too prescriptive- Many of the objections and comments from developers are concerned that the SPD is too formulaic and fails to allow enough flexibility to reflect site specific considerations and the CIL regulations. A number of comments sought more flexibility in the use of lifecycle/maintenance costs, the standard population multiplier, the exclusion of SUDs in definition of open space and thresholds for on-site/ off-site provision. Some comments linked these requirements to viability concerns.
 - More information about facilities required- Several respondents wanted more detail about specific facilities or clubs within the SPD, so that there is up to date evidence about projects requiring funding.

- More detail of costs- Several respondents sought more clarity about facility and maintenance costs used and evidence that they are reasonable and fair. Several requested the use of more locally specific costs.
- Playing pitch model- Sport England request the latest playing pitch model is incorporated, to ensure 3G pitches are accurately calculated.

3.13 Officers have considered these responses in detail. Most of the comments can be addressed by how information is presented in the SPD. The SPD is based on robust evidence and the use of calculations and standards provide a sound framework for Section106 negotiations, allowing greater transparency and consistency. However, the Council recognises the need for flexibility and fully intends to apply the SPD in accordance with the CIL regulations, ensuring each application is considered in its own merit. This approach is not made sufficiently clear in the draft SPD. Likewise, the process for determining decisions about on-site and off-site provision needs more explanation.

3.14 As a result, a key change is that the document has been restructured to explain the process more logically with more detail added to increase clarity. Information has been reordered and a new section (3) has been added to summarise the three evidence base strategies and provide greater understanding about the context for the contributions within the SPD. Table 1 outlines the changes to the section structure in the revised SPD. Sections 4 and 5 specifically explain how to apply the SPD and how to assess contributions. Previously this information was distributed throughout the SPD and was difficult to understand. Additional information about the facility costs has been added to the appendices for clarity. Lifecycle costs are explained in more detail in sections 5.8 and 5.9.

Table 1: Changes to the structure of the SPD

Draft SPD sections	Final SPD sections
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Introduction	Introduction
Planning obligations	Context
Calculating contributions	Understanding the evidence base
Calculations for sport and leisure	Application of the SPD
Other calculation information	How to assess the contributions
-	Worked examples
<u>Appendices:</u> A- Allocations to CIL or S106 B- National and local planning policies C- Calculation worked examples	<u>Appendices:</u> A- Allocations to CIL or S106 B- National and local planning policies C- Open Spaces Maintenance costs D- Capital cost information

- 3.15 In addition, to address concern that the document is too prescriptive, more detail has been added about flexibility in sections 2 and 5 to emphasise that all the requirements in the SPD will be used by officers flexibly to ensure site specific circumstances, including viability considerations, are taken into account. This includes recognition that local costs and site population estimates can be used if considered acceptable by the Council.
- 3.16 To further explain how local context is considered, three decision flow charts have been included in section 5 for each type of provision (open space, built facilities and playing pitches) to more clearly explain the contribution process. The provision and cost calculations are the starting point for

negotiations, but need to be used in conjunction with the local evidence base to ensure the site specific context is taken into account.

- 3.17 Therefore whilst there have been a number of revisions to the final SPD the majority of these changes relate to the structure of the SPD, how information is presented and how the requirements are explained. These modifications address many of the concerns raised in the consultation. The SPD has not been amended to include a detailed list of facilities that could be recipients of S106 as this would be difficult to update frequently enough in the SPD. Clearer reference is made to the action plans in the Built Facilities Study and Playing Pitch Strategy. These provide a list of projects that require improving and expanding and will be updated to ensure potential projects are taken into consideration.
- 3.18 It is considered unnecessary to refer to viability issues repeatedly throughout the document. In line with national legislation and policy, viability will be taken into account in all planning obligation negotiations and this is set out in the SPD.
- 3.19 There are also a small number of modifications that change the scope of the requirements in the SPD:
- Changes to the thresholds for play provision. More detail provided about how to decide if on or off-site provision is required. Thresholds are amended slightly to ensure they are consistent with guidance elsewhere in the SPD.
 - Will not be applied to all new residential development but to schemes of 10 or more dwellings. On reflection the requirement for new residential development to undertake a planning obligation to secure open space and sports provision is unreasonable and unpractical. There is flexibility for lower thresholds to be used in villages to meet identified needs.
 - Uses the more recent version of Sport England's Playing Pitch Model.

- Capital cost information updated from 2018 to 2019 costs to ensure most information is up to date at the point of adoption. More clarification that alternative costs may be acceptable is agreed by the Council.
- Use of locally specific open space maintenance costs.

3.20 The issues raised as part of the consultation; the officer responses and the proposed amendments to the draft document are included as a schedule in the Consultation Statement, attached as **Appendix B**. For clarity, a proposed modification document has also been attached as **Appendix C** so that it is easier to see where the changes are within the SPD. Members are therefore invited to agree these officer responses and modifications and the adoption of the final document. A copy of the final Open Space, Sport and Recreation SPD is attached as **Appendix A**.

Strategic Environmental Assessment

- 3.21 Under the requirements of the European Union Directive 2001/42/EC and Environmental Assessment of Plans and Programmes Regulations (2004), certain types of plans that set the framework for the consent of future development projects, must be subject to an environmental assessment. It is therefore a requirement that the Council undertakes a Screening Assessment to determine whether the draft Open Space, Sport and Recreation SPD should be subject to a Strategic Environmental Assessment.
- 3.22 The Regulations require that the Council consults three statutory bodies in reaching this determination. Consultation has therefore been carried out with the Environment Agency, Natural England and Historic England. All three organisations have confirmed that they have no comment on the Council's draft Screening Statement.
- 3.23 Therefore, the final Screening Statement is attached at **Appendix D**. It concludes that the draft SPD is unlikely to have significant environmental, social or economic effects beyond those of the District Plan policies it supplements; does not

create new policies and only serves to provide useful guidance on how to effectively and consistently implement the District Plan policies and therefore does not require a Strategic Environmental Assessment.

4.0 Options

4.1 Option 1-Not adopting SPD - will mean the adhoc approach to securing open space, sport and recreation planning obligations will continue. The current process relies primarily on individual site by site negotiations, which lacks consistency and transparency. Officers may also continue to rely on the guidance in the 2008 Open Space SPD, which sets out costs and provision standards that are out of date.

4.2 Option 2- Adopting SPD – Will ensure that up to date costs and provision guidance is applied, in accordance with current policy and legislation. Whilst taking into account the site context, the SPD provides a systematic approach to S106 negotiations, setting clear expectations about what the Council expects from developers, whilst allowing flexibility when necessary. This encourages a more transparent and efficient negotiation process.

5.0 Risks

5.1 The adopted SPD will increase the efficiency of negotiations between the council and applicants

6.0 Implications/Consultations

6.1 The draft SPD was subject to a six week public consultation as detailed above.

Community Safety

No

Data Protection

No

Equalities

No

Environmental Sustainability

No

Financial

No

Health and Safety

No

Human Resources

No

Human Rights

No

Legal

The SPD is not introducing new legal requirements. The requirement for planning obligations is set out in legislation and the District Plan establishes the policy framework for requesting open space, sport and recreation contributions from new development. The SPD provides additional guidance on the process and scope of planning obligations for open space, sport and recreation provision.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

- 7.1 East Herts District Plan October 2018 – Chapter 19 – Community Facilities, Leisure and Recreation,
<https://www.eastherts.gov.uk/districtplan>
- 7.2 Open Space and Sports Facility Assessment (2017)

<https://www.eastherts.gov.uk/planning-building/east-herts-district-plan/evidence-base>

- 7.3 Appendix A: Open Space, Sport and Recreation Supplementary Planning Document.
- 7.4 Appendix B: Consultation Statement
- 7.5 Appendix C: Proposed Modification Document
- 7.6 Appendix D: Strategic Environmental Assessment Screening Report

Contact Member

Cllr Linda Haysey – Leader of the Council

linda.haysey@eastherts.gov.uk

Cllr Jan Goodeve – Executive Member for Planning and Growth

jan.goodeve@eastherts.gov.uk

Contact Officer

Sara Saunders – Head of Planning and Building Control

Contact Tel No 01992 531656

sara.saunders@eastherts.gov.uk

Report Author

Laura Guy–

Principal Planning Officer (Policy & Implementation)

laura.guy@eastherts.gov.uk