



Cabinet

21 September 2021

Report of: Councillor Joe Orson - Leader of the Council

Developer Contributions Supplementary Planning Document

Corporate Priority:	Priority 3: Delivering sustainable and inclusive growth in Melton
Relevant Ward Member(s):	All
Date of consultation with Ward Member(s):	1 September 2021
Exempt Information:	No
Key Decision:	Yes c) Has significant impact on two or more wards in the Borough and on communities living or working in those areas
Subject to call-in:	Yes

1 Summary

- 1.1 Following the decision taken by Cabinet in July 2021, the draft Developer Contributions Supplementary Planning Document (SPD) has been subject to a period of statutory public consultation. This report provides a summary of the consultation responses received and amendments to the draft proposed as a consequence. Cabinet is asked to endorse the finalised SPD and recommend its approval to Council on the 23rd September 2021.
- 1.2 The SPD provides detail and clarification on the approach the Council will take to Developer Contributions when required under Policy IN3 of the adopted Local Plan. It sets out the Council's expectation that developers will meet all relevant infrastructure requirements in full, however where viability issues are demonstrated and the development remains desirable, a tiered approach to prioritising infrastructure requests in line with Policy IN3 is proposed helping to provide clarity and reduce the complexity and timescales involved in negotiating section 106 agreements.

2 Recommendations

That Cabinet:

- 2.1 **Notes the comments received during the consultation period and accepts the proposed amendments to the draft Developer Contributions Supplementary Planning Document (SPD).**
- 2.2 **Recommends to Council that the final version of the Developer Contributions SPD, shown at Appendix A, is adopted on the 23rd September 2021.**

3 Reason for Recommendations

- 3.1 The content of the SPD has been formulated in collaboration with Members and the County Council and the infrastructure prioritisation approach illustrated within this report and the SPD, was set out within the Cabinet report considered in July 2021. The starting point for the Council will be that all developers should meet all relevant infrastructure requirements in full. However the approach regarding infrastructure priorities established in Policy IN3 and detailed within the SPD provides clarity to all parties if it becomes necessary and justified to negotiate the content of a section 106 agreement due to issues surrounding viability. Each planning application will continue to be assessed on a case-by-case basis according to the merits of the development and the CIL regulations.
- 3.2 Further to the completion of the six week public consultation from 26th July 2021 to 6th September 2021, 20 responses were submitted. These are summarised at paragraph 5.2 below and are reported in greater detail in Appendix B to this report, along with the changes made to the draft SPD responding to the responses received.
- 3.3 It is considered that the finalised SPD is a suitable mechanism for achieving the shared strategic aim of delivering sustainable growth and associated key infrastructure in Melton. This includes the three parts of the Melton Mowbray Distributor Road (MMDR) and education facilities.
- 3.4 Additionally the SPD demonstrates the Council's commitment to fully supporting Leicestershire County Council in meeting the financial requirements for the significant infrastructure investment planned for Melton.

4 Background

- 4.1 The current developer contributions procedures can cause issues and delays during the negotiation stage of the process if concerns are raised regarding viability. Section 106 agreements can take many months to formulate and be agreed upon by all parties. Consequently, this can cause delays in the delivery of housing and infrastructure within the Borough. A significant issue surrounds the lack of clarity regarding what infrastructure should be prioritised where the development is desirable but viability has been raised as a concern.
- 4.2 The Developer Contributions SPD supports the delivery of Local Plan Policies, in particular Policy IN3, and provides greater clarity regarding the Council's developer contributions processes and its infrastructure priorities as set out by this policy. It will provide clarity and transparency and be used by planning officers, developers and the Planning Committee to help them with their decision making.
- 4.3 The SPD demonstrates a continuing commitment towards meeting the corporate priority of delivering sustainable and inclusive growth, ensuring that significant strategic infrastructure is prioritised and funded. The Borough Council has an excellent track record

in securing developer contributions and since 2015, has secured more than £32m for Leicestershire County Council services, and a further £3m for others (Primary Care, Police, Parish Councils etc.).

- 4.4 The SPD directly contributes to the Council's corporate priority of supporting the County Council to deliver the Melton Mowbray Distributor Road (MMDR). The Council acknowledges the significant investment that the County Council will make within the Borough by forward funding this infrastructure. By prioritising contributions as set out within the SPD, the Borough Council is making an unambiguous commitment to ensure that the County Council are fully supported with their contribution requests, helping to mitigate the risk of forward funding, and to enable them to be in a position to accept the Housing Infrastructure Fund (HIF). In parallel, other mechanisms to support delivery of the MMDR are being explored with the County Council. These will be dealt with in separate reports. The County Council has advised that it is satisfied with the content of the SPD and their Cabinet is due to receive an update on the MMDR southern section and the Housing Infrastructure Fund grant on 17th September 2021.

5 Main Considerations

- 5.1 Following the Cabinet decision on 21st July, a period of statutory public consultation commenced on 26th July 2021 and ran for six weeks until 6th September 2021. The consultation was publicised through the Council's website, social media, and through the Melton Times. Stakeholders and planning policy consultees were also contacted directly. Remote meeting drop in events were held across the period for public, developers, and members to ask questions about the draft SPD. The responses received have been taken into account to form the final SPD.
- 5.2 In total 20 responses were received. A schedule of responses to the public consultation can be found in Appendix B. These are summarised below:
- Key partner agencies welcome the approach and the explanation of linkages to existing policy and key strategic strategies and priorities. Officers at Leicestershire County Council have confirmed they are content with the draft SPD.
 - A reminder that SPDs do not form part of the development plan and as such they cannot introduce new planning policies that would add unnecessary financial burdens on developments.
 - Specific wording and references within the SPD require update to reflect the most up-to-date regulations, legislation and policy.
 - The need to acknowledge engagement with neighbouring authorities on cross-boundary developments.
 - Some developers queried the local Infrastructure lists in that they are audits of existing infrastructure needs and not a costed, viable assessment of what planned development might need to contribute towards as mitigation of the effects of proposed development.
 - Some developers queried how the priorities in Table 1 are relevant to both Melton Mowbray and then other areas within the Borough, who do not require the same infrastructure. A distinction needs to be made.
 - There needs to be greater clarity provided on how the SPD and specifically the priorities link with Policy IN3.

- The council needs to be able to prove how they decided their monitoring fees to ensure it meets Part 10A of the CIL regulations.
- Opinions expressed with regards to the content of some of the local infrastructure lists from some developers and residents,
- There are some minor typographical errors to be addressed

5.3 A series of other comments related to the calculation of contributions referenced, their costing and operational procedures relating to formulating agreements such as use of templates, standard clauses and response periods. However, the SPD is intended to explain the approach to formulating the composition of agreements, rather than the value of contributions that may be sought in any particular circumstance. In all cases, any contribution sought will be subject to assessment under the tests of the Community Infrastructure Levy Regulations (and associated planning policy) regarding necessity, relationship to the development, fairness and reasonableness.

5.4 In response to the comments received, the following changes to the draft SPD have been made:

- Clarification within the explanatory text of the priority of primary health contributions in 'Table1';
- Detailing of projects and functions that reflect the corporate priorities of both the Council and those of Leicestershire County Council;
- Updating references to current legislation and policy, including viability and the potential impact of the recent introduction of 'First Homes' policy;
- Additional content to address cross boundary situations
- Linkages to the forthcoming Open Space and Playing Pitch Strategy, and to replacement of lost facilities;
- Greater clarification of the derivation and need for the SPD and relationship with Local Plan policies, Policy IN3 in particular;
- Wording to reflect that developer contributions can also be the subject of Unilateral Undertakings and Deeds of Variation (as well as Agreements);
- Repositioning of monitoring contributions within the priority hierarchy
- Minor typographical errors within the document

6 Summary of Final Developer Contributions SPD

6.1 Policy IN3 makes clear that additional dwellings or employment premises will be expected to help deliver sustainable communities through making developer contributions to local infrastructure in proportion to the scale of its impacts. The SPD develops the principles of the priority order set out in that policy and provides further clarity. Incorporating the proposed amendments, the finalised Developer Contributions SPD is set out in appendix A. It adopts a Borough-wide perspective, whilst also providing a local dimension, with the aim of providing clarity and transparency to officers, members, developers and wider stakeholders.

6.2 The key elements of the final SPD are summarised as follows:

Borough-Wide Infrastructure Priorities

- 6.3 Without exception, all developments will be required to incorporate essential infrastructure necessary to ensure adequate provision of essential utilities, facilities, water management and safe access (Part I: Essential Infrastructure, Policy IN3) within their design proposals. These have not been incorporated in the prioritised table below as they would be integral to any development design and therefore a contribution would not be required.
- 6.4 The specific priorities within Policy IN3 relating to “Part II: Essential Infrastructure” and “Part III: Desirable Infrastructure” are set out in more detail within the SPD and summarised in Table 1 below. The guidance within the SPD will not cover every possible circumstance and/or obligation that may need to be taken into account, but it will provide a clear indication of how the Council will meet the necessary CIL regulations from new development in respect of the provision of infrastructure, community facilities and services. It is necessary to have a consistent and transparent approach so that applicants and planning officers can be aware early on in the development process what the Council's expectations are.
- 6.5 Whilst the infrastructure identified in Table 1 is prioritised as a hierarchy, the Council’s starting point for discussions will be that developers contribute to the full range of necessary infrastructure to support the establishment of sustainable communities. However, this will always be assessed on a case-by-case basis according to the merits of the case and the CIL regulations.

Table 1. *Explanation of Prioritisation of Infrastructure within Policy IN3*

Policy IN3 Category	Priority Sub-Category	Required Contributions (where applicable)
Part II : Essential Infrastructure: (including the Melton Mowbray Transport Strategy and its key component, the Melton Mowbray Distributor Road) as identified in the Infrastructure Delivery Plan or any made Neighbourhood Plan including contributions from residential development towards affordable housing to meet the requirement set out in Policy C4.	Priority 1	<ul style="list-style-type: none"> • Strategic Highways Infrastructure (MMTS and MMDR) • Education (including early years, SEND, primary, secondary and post-16)
	Priority 2a	<ul style="list-style-type: none"> • Affordable Housing • Local Highways Infrastructure (such as traffic calming etc.)
	Priority 2b	<ul style="list-style-type: none"> • Primary Care • Open Spaces • Strategic Community & Leisure Facilities
	Priority 2c	<ul style="list-style-type: none"> • Police & Community Safety • Civic Amenities • Sustainable Travel – i.e. Public Transport, Travel Packs, Bus Passes, Travel Plans etc.)
Part III. Desirable infrastructure as identified in the Infrastructure Delivery Plan or any made Neighbourhood Plan.	Priority 3	<ul style="list-style-type: none"> • Libraries • Other Swimming Pools, Sports Halls and Playing pitches and other outdoor sport (other than when integral to site specific policy requirements such as SS4

		and SS5) <ul style="list-style-type: none"> • Other Natural open space, informal open space (other than when integral to site specific requirements) • Local Community Infrastructure Priority Lists (See Appendices) • All other Leicestershire County Council planning obligations which may be requested ¹ • Monitoring (LCC & MBC)
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6.6 Priority 1 requirements in the above table are regarded as essential to facilitate sustainable development, and as such it is not envisaged that they can be compromised in any readily foreseeable circumstance.

6.7 Occasionally development proposals may come forward which are highly desirable in their content but which cannot achieve all of the contributions required to mitigate their impact upon infrastructure and facilities. Where it is considered that the benefits of a proposal are sufficiently strong so as to justify a shortfall in the mitigation of its impacts, prioritisation has to take place. There may be a proportioning of the contributions across priorities 2a, b and c with weighting in favour of 'a', then 'b', then 'c'. Priority 3 will only be relevant where Priorities 1-2 have been satisfied.

6.8 Table 1 is provided for use by developers and planning officers throughout the planning application process. The SPD's guidance will add an element of flexibility in order to reflect the nature, scale and location of development. Therefore, some developments in some locations may not produce a need for infrastructure despite their inclusion within the higher priority categories, in these cases the lower priority contributions would be a starting point.

6.9 In addition, not all the contributions from Table 1 will be requested on every planning application, each request will be assessed for CIL compliance on a case-by-case basis reflective of its circumstances, and those parties requesting contributions will be expected to submit evidence to support their requests in accordance with the CIL regulations.

Local Infrastructure Priorities

6.10 In order for the SPD to provide a local context and capture Ward Members' and local communities' infrastructure aspirations (Corporate Priority 6), local infrastructure priority lists are contained within Priority 3. These lists represent the outcome of collaborative engagement between Borough Council Members, officers and Parish Councils. A short list of infrastructure priorities were devised by Members in conjunction with Parish Councils in their areas to illustrate the specific infrastructure priorities for that parish/area. This may include infrastructure such as village hall improvements, local play area enhancements etc.

6.11 The lists should be used by developers to understand what requests may be received from Parish Councils and other interested parties. Although these lists are within the SPD, requests for funding will still need to be made in response to planning applications.

¹ Such as Adult Social Care and Health, Public Health, Community Safety, Sport and Recreation facilities as specified in the Planning Obligations Policy - <https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2019/8/16/Planning-Obligations-Policy.pdf>

Requests will be required to be supported by evidence illustrating the need generated by the development concerned and the quantity of the contribution sought, as required by the CIL regulations.

6.12 In conjunction with the SPD, other documents and policies should be referred to when dealing with developer contributions. These include

- [MBC Housing Mix and Affordable Housing SPD](#)
- [MBC Open Space Strategy and Action Plan](#)
- [LCC Planning Obligations Policy](#)

7 Options Considered

7.1 The preferred option, that is laid out within this report is to recommend to Council that the final Developer Contributions SPD is adopted. This is considered necessary to both support Local Plan Policy IN3 and also the Borough Council's strategic priority of supporting the County Council to deliver the MMDR and help mitigate the financial risk it faces. It will also provide clarity to the complex process of securing contributions and is therefore considered that the adoption of the SPD is the necessary next step for this project.

7.2 Another option is for Cabinet to consider an alternative hierarchy to the infrastructure priorities list. Given the existing approach established within Policy IN3, the Council's strategic corporate priority to support delivery of sustainable and inclusive growth and specifically to support the County Council deliver the MMDR, the current priorities can be justified and this option is therefore not considered desirable.

7.3 A final alternative would be to not recommend the SPD for adoption. This option is not recommended as it does not provide clarity to the Council's planning officers and Planning Committee, developers, and the public as to how the Council's will approach securing developer contributions. As a result, the Council would be in a weaker position when negotiating section 106 contributions. In addition, this SPD is part of a suite of documents that will support the Council's commitment to work with the County Council in delivering key infrastructure within the Borough.

8 Consultation

8.1 A series of consultations have been undertaken to reach the current stage of the project. These are detailed below;

- a) Scoping Report Consultation – In August 2019 the Council held a consultation on a scoping report that illustrated our plans for the SPD. This was published on the www.meltonplan.co.uk website, alongside a press release which was posted on the Melton Borough Council Website. In addition to this the Council consulted statutory bodies, infrastructure partners and all the contacts on the Planning Policy consultee database via email. The results of this consultation have informed the content of the draft SPD that is presented in this report.
- b) Ward Member Engagement – In March 2020 Member engagement commenced. Members were asked to collaborate with their respective Parish Councils to produce a Local Infrastructure Priority list for each Parish/Ward. These lists are placed in the appendices of the Draft SPD and will provide focus to the Council's efforts when securing developer contributions for local infrastructure. Due to Covid the consultation

was postponed between March and July 2020, where a zoom meeting was held and feedback gathered by email.

- c) In February and March 2021 the County Council were consulted on the content of the Draft SPD, and amendments were made taking into consideration their comments. The revised Draft was again shared with them in late June 2021, and they have confirmed that they are satisfied with the content of the document.
- d) Following the Cabinet decision in July 2021, a period of statutory consultation on the draft SPD commenced. The summary of responses received and Council's response from to the consultation, held for 6 weeks from 26th July to 6th September 2021, is set out within the main body of the report and detailed in Appendix B.

9 Next Steps – Implementation and Communication

- 9.1 Subject to consideration by Cabinet, the SPD will be referred to Council to consider for adoption on the 23rd September 2021. Subject to Council approval of the SPD, an adoption statement will be published to comply with the Town and Country Planning (Local Planning) (England) Regulations 2012, part 5, 14.
- 9.2 Once adopted, the SPD will be published on the [Melton Local Plan webpage](#), and the decision will be communicated (via email) to all relevant stakeholders, including developers and planning agents; Councillors; Parish Councils; the County Council; Leicestershire Councils; neighbouring Councils and relevant internal members of staff for immediate implementation in assessment of planning applications and pre-application discussions. A press release will accompany the publication of the adopted SPD.

10 Financial Implications

- 10.1 The SPD will not have any adverse financial impacts on the Council. Once fully adopted the SPD will illustrate the Council's approach to securing monitoring fees from planning applications that require a section 106 agreement. By creating a clear approach that the Council will start to see an income stream for the use of monitoring developer contributions. The monitoring contributions will be based on a flat rate that will correlate to the level of officer time on monitoring each contribution.
- 10.2 In addition to the monitoring contributions, there may be an increase in developer contributions secured for Council projects such as open space, leisure and community facilities etc. Again, this will be dependent on the specific development and any viability negotiations. However, the infrastructure priority list will outline where the Council's priorities lie when negotiating section 106 agreements. Funds will be allocated to specific projects and budgets within the Council or passed to external infrastructure providers as appropriate, ensure they are ringfenced solely to the purpose(s) for which they were sought.

Financial Implications reviewed by: Director for Corporate Services

11 Legal and Governance Implications

- 11.1 The Planning and Compulsory Purchase Act 2004 (as amended) and the Town and Country Planning (Local Development) (England) Regulations 2021 provide the statutory Framework governing the preparation and adoption of DPD's. The SPD follows the guidelines set out in the Regulations and frameworks.
- 11.2 The [National Planning Policy Framework \(2021\)](#), states that supplementary planning documents should; "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, such as design. Supplementary planning documents are capable of being a material consideration in planning decisions but are not part of the development plan.”

- 11.3 The legislation relating to Supplementary Planning Documents is found in the [Town and Country Planning \(Local Planning\) \(England\) Regulations 2012](#) specifically in Part 5 of the regulations. In addition the regulations state:
- 11.4 8 - (1) A local plan or a supplementary planning document must—
- (a) contain the date on which the document is adopted; and
 - (b) indicate whether the document is a local plan or a supplementary planning document.
- (2) A local plan or a supplementary planning document must contain a reasoned justification of the policies contained in it.
- (3) Any policies contained in a supplementary planning document must not conflict with the adopted development plan.
- (4) Subject to paragraph (5), the policies contained in a local plan must be consistent with the adopted development plan.
- (5) Where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy
- 11.5 Developer contributions may only be requested if they meet the 3 statutory tests as set out in the [Community Infrastructure Levy \(CIL\) Regulations 2010 \(as amended\)](#) and in the NPPF, they are:
- a) necessary to make the development acceptable in planning terms,
 - b) directly related to the development, and
 - c) fairly and reasonably related in scale and kind.
- 11.6 Additionally the updated [The Community Infrastructure Levy \(Amendment\) \(England\) \(No. 2\) Regulations 2019](#), that provided guidance on pooling contributions, charging monitoring fees, and infrastructure funding statements have been used to inform sections of the SPD.
- 11.7 Looking specifically at the decision-making implication of the SPD; the [NPPG](#) (para 008, ref: 61-008-20190315) states: SPD’s should build upon and provide more detailed advice or guidance on policies in an adopted local plan. 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. The SPD should contain a reasoned justification of the policies within in and for it not to conflict with adopted development plan policies. This SPD provides further guidance in relation to the implementation of Policy IN3 of the Melton Local Plan. It has been drafted to ensure that there is fairness and transparency with regard to financial burdens arising from Developer Contributions. The SPD sets out the justification of the policies within in it in relation to both the local and national policy context at Section 2.
- 11.8 The SPD does not remove the need for the necessity of contributions to be justified upon submission in relation to individual planning applications and for these to be examined by the Planning Committee for compliance under the CIL Regulations. The starting point will be that all necessary contributions should be paid and the prioritisation in the SPD relates only to circumstances where development proposals come forward which are highly

desirable but which cannot achieve all of the contributions required to mitigate their impact. The SPD reflects and assists the better interpretation and application of Policy IN3 of Local Plan and will assist the achievement of Corporate Strategy priorities.

Legal Implications reviewed by: Monitoring Officer 16.09.21

12 Equality and Safeguarding Implications

12.1 The Developer Contributions SPD is simply adding guidance to policies contained within the Melton Local Plan, therefore does not need an EIA as there are no equality and safeguarding implications.

13 Community Safety Implications

13.1 Although the SPD does not have direct implications on community safety, section 4.4 details how Leicestershire Police will be consulted upon and request contributions if the need arises. This ensures that people understand how new developments contribute to making the community a safer environment.

14 Environmental and Climate Change Implications

14.1 Developer Contributions are legal obligations to mitigate the impacts of development proposals, as set out in the NPPF. Therefore, the SPD supports positive implications on the environment by illustrating how the Council will use developer contributions as a means to compensate for any negative impacts on the environment.

14.2 In addition to this, large-scale strategic infrastructure such as the MMDR will create betterment opportunities specifically linking to air pollution and climate change.

14.3 Therefore, although the SPD does not directly implement infrastructure, it does provide guidance on how the Council will work will developers and infrastructure providers to create opportunities for positive environmental implications.

15 Other Implications (where significant)

15.1 Health and Wellbeing Implications: The SPD does not have direct implications on health and wellbeing, however it does contain a section detailing how healthcare contributions will be requested by CCGs to assist with improvements to primary care in the Borough.

15.2 Human Resource Implications: None identified.

15.3 Procurement Implications: None identified.

16 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact	Risk
1	The County Council, do not accept the HIF grant requiring revision of priorities of the SPD	Significant	Critical	Medium Risk
2	The Council vote to not adopt the SPD	Very Low	Critical	Medium Risk
3	The SPD is subject to a legal challenge	Low	Critical	Medium Risk
4	Lower priority infrastructure is not funded sufficiently or at all	Low	Marginal	Low Risk

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High				
	4 Significant			1	
	3 Low		4	3	
	2 Very Low			2	
	1 Almost impossible				

Risk No	Mitigation
1	The SPD forms part so of a suite of documents showing the Council's commitment to the County Council in supporting them fund strategic infrastructure. The County Council is due to provide an update regarding the Housing Infrastructure Fund grant at their meeting on 17 th September and the Borough Council is working with them to deliver the related workstreams including new and updated Masterplans and the s106 agreement by the end of 2021.
2	Council Officers have proactively worked with Members to produce the SPD and therefore the final version is based on the previously agreed draft version and has incorporated views provided by Members.
3	The necessary procedures have been followed when producing the SPD including a comprehensive consultation, reducing the risk of a legal challenge. Comprehensive legal advice has been provided throughout and is summarised in section 11.
4	The starting point for every planning application is that all the required contributions should be paid, and the Council have the ability refuse applications if they consider the lack of funding would make the development unsustainable.

17 Background Papers

17.1 None

18 Appendices

18.1 A: Developer Contributions Supplementary Planning Document September 2021

18.2 B: Schedule of Consultation Responses

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