

## Executive Board – 18 May 2021

<b>Subject:</b>	Approval to adopt Affordable Housing Contributions arising from Purpose Built Student Accommodation Supplementary Planning Document (SPD)
<b>Corporate Director(s)/Director(s):</b>	Chris Henning, Corporate Director of Development and Growth Paul Seddon, Director of Planning and Regeneration
<b>Portfolio Holder(s):</b>	Councillor Linda Woodings, Portfolio Holder for Planning, Housing and Heritage
<b>Report author and contact details:</b>	Matthew Grant, Principal Policy Planner Tel: 0115 8762561 <a href="mailto:matthew.grant@nottinghamcity.gov.uk">matthew.grant@nottinghamcity.gov.uk</a>
<b>Other colleagues who have provided input:</b>	Matt Gregory, Planning Policy Manager Karen Shaw, Local Plans Manager
<b>Subject to call-in:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Criteria for Key Decision:</b>	
(a)	<input type="checkbox"/> Expenditure <input checked="" type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision
<b>and/or</b>	
(b)	Significant impact on communities living or working in two or more wards in the City <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Type of expenditure:</b>	<input type="checkbox"/> Revenue <input type="checkbox"/> Capital
<b>Total value of the decision:</b>	
<b>Wards affected:</b>	All Wards
<b>Date of consultation with Portfolio Holder(s):</b>	
<b>Relevant Council Plan Key Theme:</b>	
Nottingham People	<input checked="" type="checkbox"/>
Living in Nottingham	<input checked="" type="checkbox"/>
Growing Nottingham	<input type="checkbox"/>
Respect for Nottingham	<input type="checkbox"/>
Serving Nottingham Better	<input type="checkbox"/>
<b>Summary of issues (including benefits to citizens/service users):</b>	
<p>Supplementary Planning Documents (SPDs) are documents which add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues. SPDs are a material consideration in planning decisions but are not part of the Statutory Local Plan.</p> <p>The Affordable Housing Contributions arising from Purpose Built Student Accommodation SPD will provide guidance on the requirement for Section 106 financial contributions for the provision of affordable housing contributions as a consequence of new PBSA. It will supplement Policy 8 of the Nottingham City Aligned Core Strategy - ACS (2014) (Local Plan Part 1) and Policy HO3 of the Land and Planning Policies Document - LAPP (2020) (Local Plan Part 2). This SPD will provide guidance to PBSA developers on the City Council's approach (as Planning Authority) to seeking contributions towards affordable housing provision.</p> <p>This SPD was approved for a period of public consultation which ran for 10 weeks between 27 May until 5pm on 5 August 2020. A summary of the consultation comments is provided later in this report along with a Report of Consultation (Appendix 1) which details each comment made, a response on behalf of the Council and details changes made to the SPD as a result.</p> <p>The Board is asked to consider the revised SPD (Appendix 2) for adoption.</p>	

**Exempt information: State 'None' or complete the following**

None

**Recommendation(s):**

**1** To adopt the Affordable Housing Contributions arising from Purpose Built Student Accommodation Supplementary Planning Document (SPD)

**2** To apply this SPD to all planning applications which are validated following its adoption.

**1 Reasons for recommendations**

1.1 The above SPD will help to ensure that the Council seeks affordable housing contributions from PBSA in line with the adopted Local Plan.

**2 Background (including outcomes of consultation)**

2.1 SPDs are documents which add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues. SPDs are a material consideration in planning decisions but are not part of the statutory development plan.

2.2 This SPD addresses developer's financial contributions towards affordable housing ("commuted sums") from Purpose Built Student Accommodation (PBSA) in accordance with Local Plan Policy HO3. PBSA contributes a significant proportion to the general housing needs of the city, as set out in the Local Plan. Policy HO3 includes a 10% affordable housing requirement for all new residential developments of 10-14 dwellings and 20% affordable housing requirement for schemes of 15 or more dwellings (or on sites over 0.5 hectares). With such a large proportion of new housing being completed in the City being PBSA (almost 50% on current trends), it is vital that PBSA contributes to meeting the City's affordable housing need, otherwise the planned level of affordable housing will not be met. Developer contributions are used to support the implementation of the Council's Housing Strategy priorities, in particular the financing for the development and acquisition of new affordable homes. Current priorities support the delivery of more affordable homes to rent across the authority area as well as a number of forms of specialist affordable provision to meet the needs of Nottingham people. The funds will primarily be used to support the Council in its development and acquisition programmes and to subsidise Registered Provider partners who are developing new affordable homes within the City.

2.3 Although each case will be considered on its own merits, the SPD sets the starting point for negotiations relating to the provision of affordable housing contributions from PBSA established by the Local Plan policies. The average household size of student households in the City is 5 students, so this ratio is used to translate PBSA bedspaces to the required number of affordable homes for which the commuted sum is required, as set out in the table below. To be in line with government guidance, and the thresholds in Policy HO3 for normal residential schemes, the following contributions will be negotiated:

<b>Size of PBSA Scheme</b>	<b>Contribution</b>
≤ 50 Bedspaces	Zero
50-74 Bedspaces	10%
75≥ bedspaces	20%

- 2.4 The draft SPD underwent a period of public consultation from 27 May until 5 August 2020 (10 weeks) giving additional time for consideration and response by interested parties during the Covid pandemic.
- 2.5 A total of 79 representation comments were received from 9 interested parties on behalf of PBSA developers, the University of Nottingham, Nottingham City Homes and a residents group (Nottingham Action Group).
- 2.6 All comments have been considered and a number of changes to the SPD are proposed as a result. A 'Report of Consultation' which sets out the comments made, and the City Council's response to them, together with any recommended changes to the document can be found at Appendix 1 to this report. The final version of the SPD which is proposed for adoption is found at Appendix 2.
- 2.7 As a result of the consultation process a number of changes have been made to the SPD. These include;
- Expanding the justification for the requirement for affordable housing from PBSA schemes and highlighting that this approach is integral to achieving wider plan objectives in relation to providing affordable housing for the City.
  - In accordance with the previous point, exempting any PBSA on the defined University campuses (using the existing Policies Map boundaries set by Local Plan 'Policy LS2: Supporting the Growth of Further and Higher Education Facilities') from affordable housing contributions. This is on the basis that development on these sites will not come forward for anything other than university related schemes (ie would never deliver mainstream housing) and as such requiring contributions from them would not be 'reasonably related' to the development. It could not be argued for instance that development on campuses would be displacing mainstream housing and the resultant opportunity to secure affordable housing contributions from it.
  - Setting out further detail as to how the proposed obligations meet the Regulation 122 tests by expressly identifying why PBSA should make contributions to (general) affordable housing (i.e. that it is necessary) and how it is reasonably related in kind.
  - Providing additional commentary and explanation of how the formula for converting PBSA bedspaces into units at a ratio of 5 to 1 has been set, specifically highlighting the data sources used.
- 2.8 The adoption of an SPD is open to legal challenge. Given the level of consultation comments received, the in-depth nature of the arguments put forward, and the financial consequences for PBSA developers it is felt that the risk may be real in this case. However, the Council has sought legal advice which indicates that the approach is lawful. There is nothing in national policy to prevent such an approach and examples of other authorities requiring similar contributions include Oxford and Norwich.
- 2.9 The SPD impact on the land values for sites developed for PBSA has been risk assessed. It is not anticipated that this requirement is set at a level for this type of development that will result in problematic viability challenges for the delivery of new schemes. The established viability appraisal process for S106 contributions will operate within the normal planning process for future PBSA schemes that are considered by planning committee. There is an acknowledged potential impact on the council's asset disposal strategy and this has been taken into account.

- 2.10 Once adopted the Council would be able to seek around £2 million a year for affordable housing contributions based on past build rates although this is not guaranteed and is dependent on viable schemes coming forward.

### **3 Other options considered in making recommendations**

- 3.1 Not adopting the SPD. This option was rejected because it would result in a lack of comprehensive planning guidance to underpin the Local Plan.

### **4 Finance colleague comments (including implications and value for money/VAT)**

- 4.1 The Affordable Housing Contributions from Purpose Built Student Accommodation developments will bring in income in accordance with a standard formula mechanism to reflect actual costs. This additional section 106 income must be spent in line with the section 106 agreement and will require appropriate monitoring to ensure that the contribution is expended as agreed.

Roma Desai, Commercial Business Partner, Strategic Finance, 20 April 2021

- 4.2 The additional S106 receipts are not currently included within the capital programme. To commit the additional S106 receipts and add schemes to the capital programme formal approval is required. As per the Capital Strategy these future schemes cannot progress until the additional S106 receipts have been secured.
- 4.3 The Council is currently undergoing an Asset Rationalisation Programme, all current offers for assets which are currently being disposed of for PBSA have included this additional S106 requirement. As detailed in the property comments adoption of the SPD will impact the capital receipt generated from future PBSA disposals.

Tom Straw, Senior Accountant (Capital Programmes), Technical Finance, 5 May 2021

### **5 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)**

- 5.1 The Council as Planning Authority has a power to adopt Supplementary Planning Documents (SPDs) which add more detail and guidance in relation to Local Plan policies and which then become material planning considerations when planning applications are determined. The adoption of SPDs is an executive function and therefore within the powers of the Board.
- 5.2 As with most decisions the adoption of the SPD will be open to legal challenge and the report author highlights that the risk of challenge in this case is felt to be real. Various technical and legal objections have been made to the SPD and the detailed responses to these are found in Appendix 1.
- 5.3 There is nothing in law to prevent the Council having a policy requiring affordable housing contributions from student dwellings (including PBSA) and the basis for the Council doing so is established by policy in a recently adopted Local Plan which was found to be sound following public

examination. Whilst there has been criticism of the methodology proposed by the SPD this follows a similar approach to that used to calculate similar contributions from other forms of housing which appears to be a logical and reasonable approach. The SPD has been revised where appropriate to address concerns and better explain why it is felt to be consistent with National and local policy, law and guidance.

Ann Barrett, Team Leader (Planning, Environment and Leisure) Legal Services, 8 April 2021.

## **6 Strategic Assets & Property colleague comments (for decisions relating to all property assets and associated infrastructure)**

- 6.1 The SPD, outlined in this report, will impact on the viability of PBSA sites in the City and may have the effect of reducing the number of such sites that come forward for development. It will also reduce the capital receipts obtained in future disposals of sites suitable for PBSA owned by the Council.

Beverley Gouveia, Development & Disposals Manager, Economic Development and Property, 7 April 2021

## **7 Social value considerations**

- 7.1 The SPD will allow the Council to seek necessary Affordable Housing Contributions from student accommodation developments that will be used across the City for the benefit of residents with housing need.

## **8 Regard to the NHS Constitution**

- 8.1 Not applicable.

## **9 Equality Impact Assessment (EIA)**

- 9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:  
(Please explain why an EIA is not necessary)

Yes

The Affordable Housing Contributions arising from Purpose Built Student Accommodation Supplementary Planning Document (SPD) Supplementary Planning Document is part of the EqIA for the Local Plan Part 2 (Land and Planning Policies document) and can be viewed at:

<https://www.nottinghamcity.gov.uk/information-for-business/planning-and-building-control/planning-policy/the-local-plan-and-planning-policy/lapp-local-plan-part-2-examination/examination-library/core-documents/>

(see Core documentation (regulations documents) with references LAPP-CD-REG-11, LAPP-CD-REG-12, LAPP-CD-REG-13).

## **10 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)**

- 10.1 None.

## **11 Published documents referred to in this report**

11.1 Greater Nottingham, Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies (Part 1 Local Plan), September 2014.

11.2 Nottingham City Land and Planning Policies Development Plan Document, (Local Plan Part 2), January 2020.