

Sandwell Metropolitan Borough Council

21 July 2015

The following summary reports relate to those minutes of the Cabinet which contain a recommendation to the Council.

Meeting Date	Subject
20 May 2015	West Midlands Joint Committee – Revised Terms of Reference, Constitution and Standing Orders
24 June 2015	Planning Obligations Supplementary Planning Document 2015 – Approval to Adopt (Key Decision Ref. No. JE138)
24 June 2015	2015/2016 Discretionary Housing Payments Policy Amendments

Report to Cabinet

20 May 2015

Subject:	West Midlands Joint Committee – Revised Terms of Reference, Constitution and Standing Orders
Lead Member:	Leader of the Council

1. Summary Statement

1.1 This report seeks to agree the changes to the Terms of Reference and Constitution for the West Midlands Joint Committee. This is to reflect changes following the approval of The West Midlands Integrated Transport Authority (Decrease in Number of Members) Order 2014. This made changes to the governance arrangements of the West Midlands Integrated Transport Authority.

1.2 The West Midlands Joint Committee met in July 2014 and formally established the new West Midlands Integrated Transport Authority. A further Joint Overview and Scrutiny Committee was established in September 2014. The Constitution and Terms of Reference have been amended to reflect these changes and are now set out in Appendix A.

Further details are attached for your information.

2. Recommendations

2.1 That the Council be recommended to approve the revised Terms of Reference and Constitution of the West Midlands Joint Committee, as set out in Appendix A.

2.2 That in connection with 2.1 above, the Director – Governance be authorised to enter into such legal documents as are necessary to give effect to the revised Terms of Reference and Constitution of the West Midlands Joint Committee.

Neeraj Sharma
Director – Governance

Contact Officer

Pardip Sharma
Service Manager – Legal Services
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3. Strategic Resource Implications

3.1 There are no direct financial implications arising from this report.

4. Legal and Statutory Implications

4.1 The West Midlands Joint Committee was set up pursuant to Part VI of the Local Government Act 1972. The amendments are to recognise the changes that have happened since the Terms of Reference were last revised in October 2013.

5. Implications for the Council's Scorecard Priorities

5.1 The West Midlands Joint Committee is involved in strategic object setting in transport and economic infrastructure across the West Midlands conurbations which contributes to the Council's Scorecard priorities.

6 Background Details

6.1 The District Council's of the West Midlands established the West Midlands Joint Committee on the 24th July 1985 for the purpose of discharging the functions set out in the Annex to the Constitution. The revised Constitution has been updated to reflect changes as set out in The West Midlands Integrated Transport Authority (Decrease in Number of Members) Order 2014, and the establishment of a Joint Overview and Scrutiny Committee. The changes are also necessary as a consequence of the formal establishment of the West Midlands Integrated Transport Authority.

6.2 The Terms of Reference and Constitution will be revised in order to:

- a) Remove responsibilities previously laid in relation to the interim Shadow Integrated Transport Authority Board arrangements.

- b) Add reference to the role of West Midlands Joint Committee in confirming the appointment of the 5 additional members to the West Midlands Integrated Transport Authority's Joint Overview and Scrutiny Committee. Appendix A sets out the revised Constitution reflecting the changes.
- c) remove reference to the Chairman (or their delegated representative) of each of the Local Enterprise Partnership's being an ex officio member of the Committee for Shadow Board items.

WEST MIDLANDS JOINT COMMITTEE
CONSTITUTION
[2015]

1. (i) The District Councils of the County of West Midlands established on 24 July 1985 a Joint Committee known as the West Midlands Joint Committee ("the Committee") for the purpose of discharging the functions mentioned in the Annex. The Committee was a joint committee for the purposes of Part VI of the Local Government Act 1972 and the provisions of that part applicable to joint committees shall apply to the Committee.
- (ii) This Revised Constitution has been updated to reflect changes as set out in the Localism Act 2011 in relation to strategic planning and cross boundary infrastructure matters which must now be dealt with via the Duty to Cooperate ("the duty").
2. (i) The Committee shall comprise seven voting members, each District Council being entitled to appoint one voting member who shall be a member of the District Council making the appointment. In the event of any voting member of the Committee ceasing to be a member of the District Council which appointed him/her, the District Council shall forthwith appoint another voting member in his/her place. Only a voting member is entitled to be elected as Chair or Vice-Chair of the Committee.
- (ii) Each District Council may appoint two of its members to attend the meeting of the Committee as observer members in addition to the voting member appointed under (i) above. Such observer members may speak at meetings of the Committee but not vote.
- (iii) Each District Council may appoint members of its Council as substitute for the voting members or observer members appointed under (i) or (ii) above to attend meetings of the Committee and its sub-committees in the absence for any reason of the voting members or observer members appointed under (i) or (ii) above and in attending meetings of the Committee and its sub-committees the substitute voting members or observer members shall be treated in all respects as if they were appointed under (i) or (ii) above as the case may be. The Secretary for the Committee shall be informed prior to the commencement of the meeting of the names of substitute members.

- (iv) The Chairman of each Joint Authority appointed in the West Midlands shall be an ex officio member of the Committee. Such ex officio members may speak at meetings of the Committee but not vote.
 - (v) The Committee shall, at its Annual Meeting, elect a Chair and Vice-Chair from amongst its voting members. In the event of both being absent from the meeting, the Chair and the Vice-Chair for whatever reason, the Committee shall elect a Chair from amongst the voting members present for that meeting.
 - (vi) Four voting members of the Committee shall constitute a quorum. Except as otherwise provided by statute, all questions shall be decided by a majority of the votes of the voting members present, the Chair having the casting vote in addition to his/her vote as a Member of the Committee.
 - (vii) The Committee will meet as agreed at AGM but in any event at least quarterly. However, a meeting of the Committee may be convened at any time by the Secretary in consultation with the Chair. A meeting of the Committee must also be convened by the Chair within 28 days of the receipt of a requisition of any two voting members of the Committee addressed to the Secretary to the Committee. All requisitions shall be in writing and no business other than that specified in the requisition shall be transacted at such a meeting.
 - (viii) The Committee shall from time to time make such standing orders for the carrying on of the business of the Committee as the Committee shall deem necessary or desirable.
 - (ix) For the avoidance of doubt and subject to there being no changes to the law on this issue, where a District Council is operating executive arrangements pursuant to the Local Government Act 2000 (and any regulations made under it), it will be a matter for the Executive of the District Council to appoint any voting member, observer member or substitute member to the Committee.
3. The Committee shall from time to time appoint such sub-committees to consider and deal with any of the functions of the Committee as may be thought desirable.
 4. The Committee shall employ a Secretary and such other officers as may be deemed necessary for the due conduct of the business of the Committee at such remuneration (if any) and upon such terms as the Committee shall decide. The appointment of Secretary shall be for a term of three years and shall be made at the annual meeting of the Committee in the appropriate year.

5. (i) The Secretary shall keep proper accounts of the money received and expended by the Committee.
- (ii) The Secretary shall apportion the expenses of the Committee between the District Councils in proportion to the population of each district in the County.
6. This Revised Constitution and, subject as hereinafter mentioned, the functions of the Committee may be amended at any time by the unanimous agreement of the District Councils.
7. That the relevant Standing Orders for West Midlands Joint Committee are those of Birmingham City Council.
8. Decision making between meetings is delegated to the Chair, but those decisions are only to be implemented if supported in writing by the signatures of all of the Chief Executives of each of the 7 Districts.

The Annex

(Functions of the Joint Committee)

1. To make nominations or appointments as the case may be:-
 - (i) to the 5 balancing places of the West Midlands Police and Crime Panel
 - (ii) to the 5 balancing places of the West Midlands Integrated Transport Authority Joint Overview and Scrutiny Committee.
2. In relation to Birmingham Airport, to:-
 - 2.1
 - (i) determine the exercise of the Districts' powers and rights as shareholders of the Company including the manner in which the Districts' block shareholder vote is to be exercised;
 - (ii) determine the manner in which the block vote is to be cast by any of the Districts' Directors.
 - (iii) determine the exercise of rights and performance of obligations, warranties, indemnities and covenants contained in the Investment Agreement and Taxation Deed relating to the restructuring of the Airport;
 - (iv) appoint and remove the Districts' Directors on the Board and appoint appropriate officers as Districts' Observers to attend Board meetings and support the District Directors.
 - 2.2 The delegation of powers by the Districts to the Joint Committee in clause 2.1 shall be subject to a condition that all resolutions of the Joint Committee or any Sub-Committee appointed by the Joint Committee shall be passed by a majority of the members present who between them represent Districts who hold at least 51% of the Districts' total shareholding.
 - 2.3 The Joint Committee may arrange for the discharge of their functions by a Sub-Committee subject to the same condition set out in clause 2.2.

- 2.4 The Joint Committee may arrange for the discharge of their functions subject to the condition set out in clause 2.2 by each of the Districts' Chief Executives or anyone authorized by any District to act in the Chief Executive's absence acting in consultation with the Chair or Vice Chair of the Joint Committee.
3. To co-ordinate actions on important issues affecting the Districts and to provide a vehicle for communicating these actions, and the needs of Districts, to Government and other influential bodies.
 4. To consult and co-operate as respects matters affecting the District Councils (including the Duty to Cooperate and as appropriate with each District Council and the Joint Authorities.
 5. To consider, in consultation with and, if appropriate, in partnership with the Joint Authorities, whether they could make better value arrangements for the provision of any services, supplies or works required in connection with the discharge of the functions of the District Councils.
 6. To co-ordinate the exercise by the District Councils of the enforcement functions conferred on them by the Weights and Measures Act 1985 (as amended) with a view to securing uniformity in the exercise of those functions throughout the West Midlands and the employment provision or use by those Councils for the purposes of those functions of staff, property and facilities.
 7. To oversee the work of and payment of the Joint Data Team contract with Mott Macdonald Ltd dated 27 March 2008.
 8. To receive reports from any partnership
 9. To exercise the functions delegated to it by the Agreement between the District Council relating to landfill brokerage dated 9 September 1994.

Report to Cabinet

24 June 2015

Subject:	Planning Obligations Supplementary Planning Document 2015 – Approval to Adopt (Key Decision Ref. No. JE138)
Presenting Cabinet Member:	Regeneration and Economic Investment

1. Summary Statement

- 1.1 The use of planning obligations in Sandwell is currently set out in a Supplementary Planning Document (SPD) “Planning Obligations”, which was adopted in 2009, and updated in 2011 in order that it was consistent with policies in the Black Country Core Strategy 2011. Major changes are now required to the SPD in the light of two related matters: firstly, the changes to the “Section 106” regime introduced by central Government from April 2015, and secondly, the recent introduction of Community Infrastructure Levy in Sandwell, on 1st April 2015.
- 1.2 The Draft Supplementary Planning Document was distributed for consultation between 16 March and 27 April 2015. A total of 9 representations were received and considered and are set out in a Consultation Statement (see Appendix 1 for details). Appropriate amendments have been made to the Draft SPD, and the amended SPD is now recommended for adoption.

Further details are attached for your information

2. Recommendations

- 2.1 That the Council approve and adopt the Planning Obligations Supplementary Planning Document 2015.
- 2.2 That, in consultation with the Cabinet Member for Regeneration and Economic Investment, the Director - Regeneration and Economy review and make any minor changes, as necessary, to the Consultation Statement, as set out in Appendix 1.

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Director – Regeneration and Economy

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Spatial Policy and Development
0121 569 4229

3. Strategic Resource Implications

- 3.1 Production of the Supplementary Planning Document will be funded from within the Regeneration and Economy target budget.

4. Legal and Statutory Implications

- 4.1 The current Development Plan for Sandwell includes the Black Country Core Strategy (BCCS), the Sandwell Site Allocations and Delivery Development Plan Document (SAD DPD), and a number of Area Action Plans (AAPs) and Supplementary Planning Documents (SPDs). Details are set out in the approved Local Development Scheme (LDS).
- 4.2 SPDs are intended to expand upon policy or provide further detail to policies in Development Plan Documents, but do not have development plan status. They must not be used to allocate land or contain policies that should be subject to independent examination.
- 4.3 The purpose of the proposed Planning Obligations SPD 2015 is to set out Sandwell's approach to Planning Obligations, including Section 106 Agreements in the light of the introduction of Community Infrastructure Levy (CIL) in April 2015.
- 4.4 The Planning Act 2008 and Town and Country Planning (Local Development) (England) Regulations 2012 removed the requirements for a Sustainability Appraisal (SA) to be produced for all Supplementary Planning Documents (SPDs). However, the Council is still required to screen its SPDs to ensure that the legal requirements for SAs are met where there are impacts that are not covered in the appraisal of a parent Development Plan Document (DPD) or where an assessment is required by the SEA regulations. It is considered that as a result of the assessment undertaken by the Council, along with the responses received from the statutory consultation bodies, an SEA is not required for the purposes of the Planning Obligations Supplementary Planning Document.

5. Implications for Council's Scorecard Priorities

- 5.1 The SPD Planning Obligations contributes to delivering a range of infrastructure projects that will help to achieve Council Scorecard priorities: great places, great people and great prospects.
- 5.2 Planning obligations provide infrastructure or income to be spent on improving infrastructure (which will assist in achieving 'great places'), and on a wide range of facilities identified by communities (which assists in supporting 'great people').

6. Background Details

- 6.1 National Planning Policy Guidance states that:

“Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements and section 278 highway agreements. Developers will also have to comply with any conditions attached to their planning permission.”

- 6.2 The use of planning obligations in Sandwell is currently set out in a Supplementary Planning Document (SPD) “Planning Obligations”, which was adopted in 2009, and updated in 2011 in order that it was consistent with policies in the Black Country Core Strategy 2011. Major changes are now required to the SPD in the light of two related matters: firstly, the changes to the “Section 106” regime introduced by central Government from April 2015, and secondly, the recent introduction of Community Infrastructure Levy in Sandwell, on 1st April 2015.
- 6.3 The Draft Supplementary Planning Document was distributed for consultation between 16 March and 27 April 2015. A total of 9 representations were received and considered. (See appendix 1 for Consultation Statement which details representations and Council's response). Appropriate amendments have been made to the Draft SPD, and the amended SPD is now recommended for adoption.
- 6.4 The SPD sets out how Sandwell will deal with planning obligations from 1st April 2015. In doing so, it closely follows the National Planning Policy Framework (NPPF) and the associated Planning Practice Guidance (PPG). It sets out how Community Infrastructure Levy will be implemented, how Section 106 Agreements will be used in future, such as those needed for on-site improvements, or for affordable housing, or for community benefit.

- 6.5 Appendix 1 of the SPD includes information relating to provision of affordable housing. It states that in exceptional circumstances only, the affordable housing may be provided in the form of a commuted sum contribution. Appendix 1 sets out the formula for how this contribution will be calculated. Over the life of this document changes may occur which would affect this formula, for example, the percentage amount that a Registered Social Provider pays for a residential unit. Therefore, it may be necessary to amend the formula to reflect these changes, however the main SPD document would not be affected. To avoid having to re-consult on the whole document for a minor change to the Appendix it is recommended that the Area Director for Regeneration and Economy is authorised to review and make any minor changes to Appendix 1 in consultation with the Cabinet Member
- 6.6 It is recommended that Council adopt the Planning Obligations Supplementary Planning Document 2015.

Source Documents:

Draft Supplementary Planning Document: Planning Obligations 2015 (link).

Screening Statement on Draft SPD

http://www.sandwell.gov.uk/downloads/download/1901/strategic_environmental_assessment_screening_statement_for_planning_obligations_spd_consultation_draft

Sandwell MBC
Planning Obligations Supplementary Planning
Document
Regulation 12(a) Report of Consultation and
Consultation Statement
May 2015

Background

This report sets out the consultation that took place in the lead up to and during public consultation of the Sandwell MBC Draft Planning Obligations Supplementary Planning Document (in this document referred to as the Draft SPD) between 16th March and 27th April 2015. It reviews the consultation responses received, the number of representations made and a summary of the main issues raised by the representations.

This document has been prepared in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 which requires that Local Authorities set out the persons the local planning authority consulted when preparing the supplementary planning document, a summary of the main issues raised with the consultation responses, and how those issues have been addressed.

The consultation on the Draft SPD was taken following changes to the Section 106 regime introduced by central government from April 2015 and the introduction of Community infrastructure levy on 1st April 2015.

Once adopted, the new Planning Obligations SPD will replace the Council's current Planning Obligations SPD (2009, updated 2011).

The intention is that this SPD will help all parties involved understand how Sandwell MBC will deal with planning obligations from 1st April 2015. It will also set out how Community Infrastructure Levy will be implemented, how Section 106 Agreements will be used in future such as those needed for on-site improvements, or for affordable housing.

Public Consultation

The Council's Jobs and Economy DMS approved the draft SPD for public consultation on 9th March 2015 and Public Consultation was held between 16th March and 27th April 2015.

Notification of the draft SPD consultation was emailed to:

- Statutory Consultees including adjoining Local Authorities
- Local Plan database contacts including individuals, developers and agents.

A public notice was displayed in the Express & Star on 12 March 2015.

Hard copies of the draft SPD were made available in West Bromwich library and Council House, Oldbury.

A comments form was made available for consultation responses. Comments were requested in writing to Strategic Policy, Sandwell Council, Directorate of Regeneration & Economy, Council House, Freeth Street, Oldbury B69 3DE or by email to ldf_planning@sandwell.gov.uk.

An introduction to the Draft Planning Obligations SPD was made publicly available on the Sandwell MBC website
http://www.sandwell.gov.uk/info/200275/planning_and_buildings/604/planning_obligations_supplementary_planning_document

An email address and contact telephone number was provided on all the consultation material and the website, for those who wanted to ask questions and seek further information.

Summary of Response to the Consultation

The Council received a total of 9 responses to the consultation from the following stakeholders.

The Respondents to the Draft Charging Schedule are set out below:

Rep No	Date Received	Respondent Name	Respondent / Organisation	Agent
SPD/01	24/03/2015	Ian Greatrex	BHP Consultants	
SPD/02	27/03/2015	Rachael Bust	The Coal Authority	
SPD/03	14/04/2015	Roslyn Deeming	Natural England	
SPD/04	22/04/2015	Hayley Anderson	Birmingham City Council	
SPD/05	27/04/2015	Kezia Taylerson	Historic England	
SPD/06	22/04/2015	Helen R Winkler	Police and Crime commissioner for West Midlands	Tyler Parkes
SPD/07	01/04/2015	Kenny Aitchison	Wolverhampton City Council	
SPD/08	17/04/2015	Neil Hollyhead	Walsall Council	
SPD/09	30/04/2015	Andrew Leigh	Dudley Council	

A summary of the main issues raised by the representations is at Appendix 1 of this report.

Modifications to the Planning Obligations Supplementary Planning Document

A schedule of modifications to the consultation draft SPD is set out at Appendix 2.

Appendix 1: Representations received and Council's responses

Reference	Name	Organisation	Representation	Council Reponse
SPD/01	Ian Greatrex	BHP Consultants	Does the Aspinall Verdi Viability Study (2014) take into account the 25% affordable housing planning obligation in determining that schemes remain viable at the proposed levels of CIL Charging?	The CIL is not subject to consultation as it has been through the examination process and found sound, however we can confirm that the Aspinall Verdi Viability Study (2014) did take into account the 25% affordable housing obligation as stated in paragraph 4.7.
SPD/01	Ian Greatrex	BHP Consultants	It needs to be made clear that where provided as part of a new residential scheme the affordable housing element is exempt for the CIL Charge	Added extra wording for clarity.
SPD/01	Ian Greatrex	BHP Consultants	There is a fundamental flaw in the assessment of the commuted sum calculations for the delivery of off-site affordable housing. The calculation should reflect the difference in the cost of providing the affordable housing on-site as against the value of that affordable housing to a registered provider and not difference between market value and the RP purchase price. The commuted sum should be sufficient to facilitate off-site delivery	<p>It should be noted that commuted sum contributions will only be acceptable in exceptional circumstances.</p> <p>Our evidence from registered providers shows that they pay a percentage of the open market value when purchasing properties which is in line with our formula.</p> <p>It should also be noted that the Council take viability into account, as set out in the SPD. This would also accord with the NPPF which states that "any commuted sum payment should be broadly equivalent to the cost to the developer of onsite provision."</p>

SPD/01	Ian Greatrex	BHP Consultants	In addition Registered Providers are now typically paying 50% of market value for rented (up to 55% for affordable rented) and 65-70% of market value for shared ownership properties. Resulting in different calculations.	Additional consultation between the Council and Private Registered Providers (PRP) has revealed that percentage paid for properties by PRP has increased and the calculation will be amended accordingly.
SPD/01	Ian Greatrex	BHP Consultants	As such the calculations should be more along the lines in the attached table.	<p>As detailed above, our evidence from registered providers shows that they pay a percentage of the open market value when purchasing properties which is in line with our formula.</p> <p>It should also be noted that the Council take viability into account, as set out in the SPD. This would also accord with the NPPF which states that "any commuted sum payment should be broadly equivalent to the cost to the developer of onsite provision."</p> <p>Commuted sum contributions will only be acceptable in exceptional circumstances.</p>
SPD/01	Ian Greatrex	BHP Consultants	These figures are then much more consistent with the levels of Grant funding Registered Providers would have received from the Homes & Communities Agency when delivering 100% affordable housing schemes prior to the introduction of the 2011-2015 Affordable Rented Programme	Homes and Community Agency grant rate since the 2011 -2015 Affordable Housing Programme is no longer a standard grant rate. Grants vary between the differing schemes. As such, in order to provide consistency it was felt grant rates are not suitable for calculating commuted sum payments.

SPD/02	Rachael Bust	The Coal Authority	No Comments	Comments Noted
SPD/03	Roslyn Deeming	Natural England	No Comments	Comments Noted
SPD/03	Roslyn Deeming	Natural England	Consider that collaborative working across local authority boundaries is essential to address environmental challenges such as climate change and the delivery of green infrastructure and ecological networks.	Comments Noted
SPD/04	Hayley Anderson	Birmingham City Council	No Comments	Comments Noted
SPD/05	Kezia Taylerson	Historic England	No Comments	Comments Noted
SPD/05	Kezia Taylerson	Historic England	Would like consideration given to historic environment and the way in which planning obligations can have a positive effect for heritage at risk or maintenance /enhancement of heritage assets as well as viability issues for heritage assets and their ability to contribute towards planning obligations	Added extra wording

SPD/06	Helen R Winkler	Tyler Parkes on behalf of Police and Crime commissioner for West Midlands	Request that Safety and Security Infrastructure be included within Chapter 4 'Section 106 Agreements & Section 278 Agreements. Specific wording: Police Infrastructure - Development proposals that would generate additional requirements for safety and security measures, including towards additional police personnel, lighting and CCTV, could be required to enter into planning obligations on a site by site basis.	Added extra wording
SPD/07	Kenny Aitchison	Wolverhampton City Council	Like the direction Sandwell is moving in. Feel that a % of OMV is the best approach. There is strength in all of the BC Las to agree a similar calculation.	Comments Noted
SPD/07	Kenny Aitchison	Wolverhampton City Council	Think that the average that RPs are paying for S106 units is much higher than 40%.	Agreed, the percentage paid will be increased to show the actual prices RPs are currently paying.
SPD/07	Kenny Aitchison	Wolverhampton City Council	3.2 Could be strengthened by ensuring that strategic housing priorities are considered ahead of "planning or other reasons". High level strategic outcomes also highlighted that relate to housing in the "Sandwell Plan".	Comments noted.

SPD/07	Kenny Aitchison	Wolverhampton City Council	In the sections under “How Commuted Sum Payments could be Spent” a greater emphasis on the Council spending the money rather than RPs.	The Council is now looking at a number of options to increase the number of council owned properties, moves are afoot to increase the number of council homes by use of commuted sum monies. So the issue of the council utilising commuted sum monies rather than RPs will have greater emphasis.
SPD/08	Neil Hollyhead	Walsall Council	Walsall have noted 1 other more affordable option that they are considering – seeking the effective amount of grant that an RP would need to provide these units elsewhere, which we have been advised is on average £35K a plot.	Over the years, HCA grant rates have not just been reduced but have become rather arbitrary and vary from scheme to scheme. Another concern I have about grant rates is that they are scheme based rather than based on an individual unit type or size. Nevertheless, grant rates are an alternative option which we will consider.
SPD/09	Andrew Leigh	Dudley Council	Is there a rationale for providing the circumstances and how the sums could be spent for off-site contributions. Dudley say very little other than off site contributions are acceptable in exceptional circumstances.	Agree that commuted sums contributions in lieu of onsite provision should only be considered in exceptional circumstances. Part of the rationale for accepting commuted sums are (1) to allow for a degree of flexibility during negotiations, (2) get value for money for the re-provision of the affordable housing elsewhere (3) create balanced communities, and (4) in some instances, where provision on site would prove to be difficult to sell on to a RSL (e.g. apartment blocks) then accepting a commuted sum could be more desirable.

SPD/09	Andrew Leigh	Dudley Council	Do you get a lot of off-site contributions?	Over the years we have received not an insignificant amount of commuted sum contributions; in order to ensure the appropriate spending / allocation of the monies (in accordance with the Section 106) it was felt necessary to show how the money could be spent. This provides for consistency, transparency and lessens ambiguities.
SPD/09	Andrew Leigh	Dudley Council	Am I right in assuming that you will determine commuted sums on the sum equal to the difference between the appropriate RSL purchase prices and the market valuation of an equivalent dwelling in the locality?	As noted in the position statement, the amount of commuted sum payable per dwelling would be a sum equal to the difference between the appropriate RSL purchase price and the market valuation of an equivalent dwelling in the locality. However in light of results from recent consultations this may be slightly amended to ensure that the calculations do adhere to the remits of the NPPF.
SPD/09	Andrew Leigh	Dudley Council	Have you any evidence that we should be switching to the approach you are suggesting?	The suggested changes were raised as it was felt that the current method was not an effective way of calculating commuted sums. However over the last several years HCA grant rates have been reduced and grants vary between schemes hence one of the main factors in the calculation of commuted sums is no longer a given. The suggested method offers a degree of certainty, transparency and simplicity.

Appendix 2: Sandwell MBC draft Planning Obligations SPD - Schedule of Proposed Changes

Page no Draft SPD	Proposed Change	Reason for Change
3	Para 3 – and secondly, the forthcoming introduction of Community Infrastructure Levy in Sandwell, on 1 st April 2015.	CIL now implemented
3	Para 5 – Sandwell is introducing implemented CIL from in April 2015	CIL now implemented
15	Para 1 - Section 106 requirements remain in force in Sandwell until the introduction of CIL in April 2015. After Following the introduction of CIL in April 2015, planning obligations made under Section 106 of the Town and Country Planning Act 1990 will be limited to those matters that are directly related to a specific site, and which are in accord with Regulation 122, i.e. the obligation is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development	CIL now implemented
15	Para 2 – After Following the introduction of CIL in April 2015 Sandwell will continue to pool Section 106 contributions to provide appropriate items of infrastructure not contained in the Reg. 123 List. No more than five planning obligations (entered into after 6 April 2010) will be pooled in respect of one of these items of infrastructure.	CIL now implemented
16	Under Affordable Housing – Move Affordable housing requirements are specifically excluded from the CIL regime. To the end of the paragraph and insert (However it should be noted that within the CIL, affordable housing can attract relief if the relevant criteria is met).	For clarity
18	2 nd paragraph after Affordable Housing header insert - The Vacant Building Credit will be taken into account where applicable. See paragraph 7.4.	To reflect change in nation regulations
17	After para 3 – insert the following: Section 106 agreements will continue to be sought for Travel Plans where applicable.	For clarity
17	Para 6 – amend 10 residential units to <u>11</u> residential units and 500 square metres Gross External Area to <u>1000</u> square metres Gross External Area	To reflect change in national regulations
17	Para 7 – amend 500 square metres or more GEA to <u>1000</u> square metres or more GEA	To reflect change in national regulations

[ILO: UNCLASSIFIED]

18	Under Others – add <u>developments that would generate additional requirements for safety and security measures; effects on historic environment and</u>	
Appendix 1	<p>Before Definition of Affordable Housing insert - Vacant Building Credit</p> <p>7.4 In November 2014 the Government announced the policy that for vacant buildings (or those which have been demolished as part of the scheme), an affordable housing contribution can only be sought on any uplift in floorspace as a result of the development.</p> <p>7.5 For example, where a building with a gross floorspace of 8,000 square metre building is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would be normally sought.</p> <p>7.6 The vacant building credit applies where the building has not been abandoned.</p>	To reflect change in national regulations
Appendix 1	<p>Under Calculating the level of provision of affordable housing header insert after 1st paragraph -</p> <p>7.11 Regard will also have to be had to the Vacant Building Credit, see paragraph 7.4.</p>	To reflect change in national regulations

PLANNING OBLIGATIONS

A SUPPLEMENTARY PLANNING DOCUMENT

SANDWELL M.B.C.

DRAFT

May 2015

Planning Obligations Supplementary Planning Document

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1. Introduction

1.1 National Planning Practice Guidance states that:

“Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the Community Infrastructure Levy and planning obligations in the form of section 106 agreements and section 278 highway agreements. Developers will also have to comply with any conditions attached to their planning permission. Local authorities should ensure that the combined total impact of such requests does not threaten the viability of the sites and scale of development identified in the development plan.”

1.2 The use of planning obligations in Sandwell is currently set out in a Supplementary Planning Document “Planning Obligations”, which was adopted in 2009, and updated in 2011 in order that it was consistent with policies in the Black Country Core Strategy 2011.

1.3 Major changes are now required to the SPD in the light of two related matters: firstly, the changes to the “Section 106” regime being introduced by central Government from April 2015, and secondly, the introduction of Community Infrastructure Levy in Sandwell, on 1st April 2015.

1.4 In the first instance, from April 2015, Community Infrastructure Levy (CIL) regulations restrict the use of Section 106 planning obligations to fund items of infrastructure. In future, contributions may only be pooled together from up to five separate planning obligations (backdated to April 2010) for a specific item of infrastructure that is not included on the authority’s infrastructure list – and these must be site-specific contributions which can be justified with reference to evidence on infrastructure planning.

1.5 With regard to the second matter, Sandwell introduced CIL in April 2015 in order to generate funding for infrastructure projects evidenced in its Infrastructure Delivery Programme (IDP), and defined in its Regulation 123 List. The Regulation 123 List does enable site-specific planning obligations to be used, as it specifically excludes on-site provision, improvement, operation or maintenance of open space and play provision, and of transport or traffic schemes which are required on-site to make development acceptable in planning terms.

1.6 This Supplementary Planning Document therefore sets out how Sandwell will deal with planning obligations from 1st April 2015 in the light of these changes. In doing so, it closely follows the National Planning Policy Framework (NPPF) and the associated Planning Practice Guidance (PPG).

2. Policy Background

- 2.1 Planning obligations will be sought by Sandwell MBC where they are necessary to make a development acceptable in planning terms. The Council is guided by national policy and statutory tests in this respect.

National Planning Guidance

- 2.2 The policy tests are set out in the National Planning Policy Framework (NPPF):

“Planning obligations should only be sought where they meet all of the following tests:

- *necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*
- *fairly and reasonably related in scale and kind to the development.”*

(NPPF Planning Policy Guidance, Paragraph 204)

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

- 2.3 This policy is set out as a statutory test in the Community Infrastructure Levy Regulations 2010, as amended, as Regulation 122.

Local Planning Guidance

- 2.4 The Local Plan for Sandwell comprises a number of documents:

- Black Country Core Strategy 2011,
- Sandwell Site Allocations & Delivery Development Plan Document 2012,
- Tipton Area Action Plan 2008,
- Smethwick Area Action Plan 2008,
- West Bromwich Area Action Plan 2012.

<http://blackcountrycorestrategy.dudley.gov.uk/>

http://www.sandwell.gov.uk/info/200275/planning_and_buildings/676/site_allocations_and_delivery_development_plan_document

http://www.sandwell.gov.uk/downloads/file/1339/adopted_tipton_area_action_plan

http://www.sandwell.gov.uk/downloads/download/1100/smethwick_area_action_plan

http://www.sandwell.gov.uk/info/200275/planning_and_buildings/709/west_bromwich_area_action_plan

Black Country Core Strategy

- 2.5 The Black Country Core Strategy was developed by the four Black Country Boroughs of Dudley, Sandwell, Walsall and Wolverhampton and sets out the vision and spatial objectives for future development in the Black Country up to 2026. The document delivers the strategic policies to aid the urban renaissance within the four authorities. It is the key statutory plan for each authority and considers not only land use but also environmental, economic and social issues.
- 2.6 The Core Strategy has been developed using three main policy areas to produce Directions of Change which are to deliver economic wealth and prosperity within the Black Country, deliver and enhance cohesive and sustainable communities within the Black Country and set a powerful agenda for its environmental transformation.
- 2.7 The Black Country Core Strategy was adopted in February 2011. The key policy for planning obligations in the BCCS is DEL1 Infrastructure Provision (table 1):

Table 1: Policy DEL 1

DEL1 Infrastructure Provision

Strategic Objectives

The provision of appropriate infrastructure in a timely manner underpins the whole transformational and regeneration strategy and this policy is intended to ensure the delivery of Spatial Objectives 6, 7, 8 and 9.

Policy

All new developments should be supported by the necessary on and off-site infrastructure to serve the development, mitigate its impacts on the environment, and ensure that the development is sustainable and contributes to the proper planning of the wider area.

Unless material circumstances or considerations indicate otherwise, development proposals will only be permitted if all necessary infrastructure improvements, mitigation measures and sustainable design requirements and proposals are provided. These will be secured through planning obligations, the Community Infrastructure Levy, planning conditions or other relevant means or mechanisms, to an appropriate timetable that is prioritised, resourced, managed, delivered and co-ordinated across the sub region as a whole where appropriate.

To deliver and monitor the implementation of the development across the Black Country in Local Development Documents, the relevant Black Country Authorities will jointly set out:

- The range of infrastructure to be provided or supported;**
- The prioritisation of and resource for infrastructure provision;**
- The scale and form of obligation or levy to be applied to each type of infrastructure,**
- Guidance for integration with adjoining Local Authority areas;**
- Including maintenance payments and charges for preparing**

Policy Justification

- 2.67 The scale of growth proposed in the Core Strategy will have significant impacts on the local environment and the capacity of a range of infrastructure and facilities. Without appropriate investment, future development will be neither sustainable nor acceptable. The definition of infrastructure in this context is wide, including affordable housing, renewable energy, publicly accessible open space, sustainable drainage, sport and recreational facilities, air quality mitigation measures and residential services, for which overall targets and standards are set in the Core Strategy, but also locally specified requirements, such as crime prevention measures and public art, and cross boundary requirements, such as waste water management. Impacts on the environment can include loss of open space or wildlife habitat which must be mitigated.
- 2.68 Each development proposal, therefore, must address its own impacts through on-site and off-site provision or enhancements, secured through planning obligations or other relevant means. Where the combined impact of a number of developments creates the need for infrastructure, it may be necessary for developer contributions to be pooled to allow the infrastructure to be secured in a fair and equitable way. Pooling may take place both between developments and between local authorities where there is a cross-authority impact.

Primary Evidence

Black Country Infrastructure Study (2009)
Black Country Viability Study (2009)

Delivery

Through DPDs and SPDs for various types of infrastructure and planning obligations.
Investment will be sought through negotiations as part of the Development Management process.

Indicator	Target
LOI DEL1 - Adoption of Local Development Documents setting out details of the full range of infrastructure to be provided or supported.	100% by 2016

Sandwell Local Plan

- 2.8 The adopted Local Plan comprises, in addition to the Black Country Core Strategy 2011, the Sandwell Site Allocations & Delivery Development Plan Document 2012, the Tipton Area Action Plan 2008, the Smethwick Area Action Plan 2008, and the West Bromwich Area Action Plan 2012.
- 2.9 The Site Allocations & Delivery DPD notes BCC Policy DEL1, and recognises that a broad range of funding mechanisms are needed to facilitate any necessary on-site and off-site infrastructure, including planning obligations, Community Infrastructure Levy, and planning conditions.
- 2.10 Three policies make specific reference to planning obligations:
- SAD EMP2 Training and Recruitment: to provide targeted recruitment or training associated with new development.
 - SAD EOS4 Community Open Space: to provide new or improved open space for new developments where appropriate.
 - SAD DM7 Residential Moorings: in certain locations, it may be appropriate to use a planning obligation to ensure the satisfactory development and/or management of the site).

3. Community Infrastructure Levy

- 3.1 The Community Infrastructure Levy (CIL) has been introduced by the Government as the preferred way for local authorities to improve infrastructure and deal with planning obligations. CIL Regulations 2010 (as amended) provide local authorities with the opportunity to generate revenue from new developments, to be spent on wide range of infrastructure projects which are needed as a result of, or to enable, development. Such projects include (but are not limited to) roads, public transport, open space or health centres in their areas. CIL charges must be based on a viability assessment of development in the Borough and CIL income must be spent on identified infrastructure needs.
- 3.2 This Community Infrastructure Levy (CIL) Draft Charging Schedule, (Table 2), takes effect from 1 April 2015.
- 3.3 In order to prepare the Draft Charging Schedule (DCS), the Council commissioned an Infrastructure Delivery Programme in 2012 to establish what infrastructure is required to cope with projected growth in the Borough, and what funding is available. As a result, the Council has identified an Infrastructure Funding Gap of £157 million, and that a Community Infrastructure Levy is necessary to address some of the funding deficiency.
- 3.4 This CIL Draft Charging Schedule has been informed by a Viability Study prepared by Aspinall Verdi in 2014. The Study showed that viability of residential development, and for most types of retail development, in Sandwell is sufficient to bear a CIL charge. The charge is considered to be an appropriate balance between the need to fund infrastructure for growth and the need to enable development to take place. It is anticipated that CIL receipts for the period 2014 to 2026 will be approximately £7M.
- 3.5 The Council will monitor viability annually and consider a review of CIL as and when market conditions and viability information warrant it.
- 3.6 All appropriate planning applications should be submitted with a CIL Information Form:
(<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>).

Table 2: Charging Schedule

CHARGING SCHEDULE for Sandwell MBC (the Charging Authority)

This charging schedule was approved on 3rd March 2015 and takes effect from 1st April 2015. It has been issued, approved and published in accordance with CIL Regulations 2010 (as amended), and Part 11 of PA 2008.

Development Typology	CIL Rate - £ per sq. m
Retail ^{1,4} Units (West Bromwich Strategic Centre only)	£50
Supermarkets/superstores ² and retail warehouses ³ - over 280 sq. m Borough wide	£60
Residential ⁵ (1-14 units)	£30
Residential ⁵ (15 or more units)	£15
All other uses	Nil

¹ Retail units include all those uses within Use Classes A1-A5 as summarised below in Footnote 4 except for supermarkets/superstores and retail warehouses as defined below in Footnotes 2 and 3.

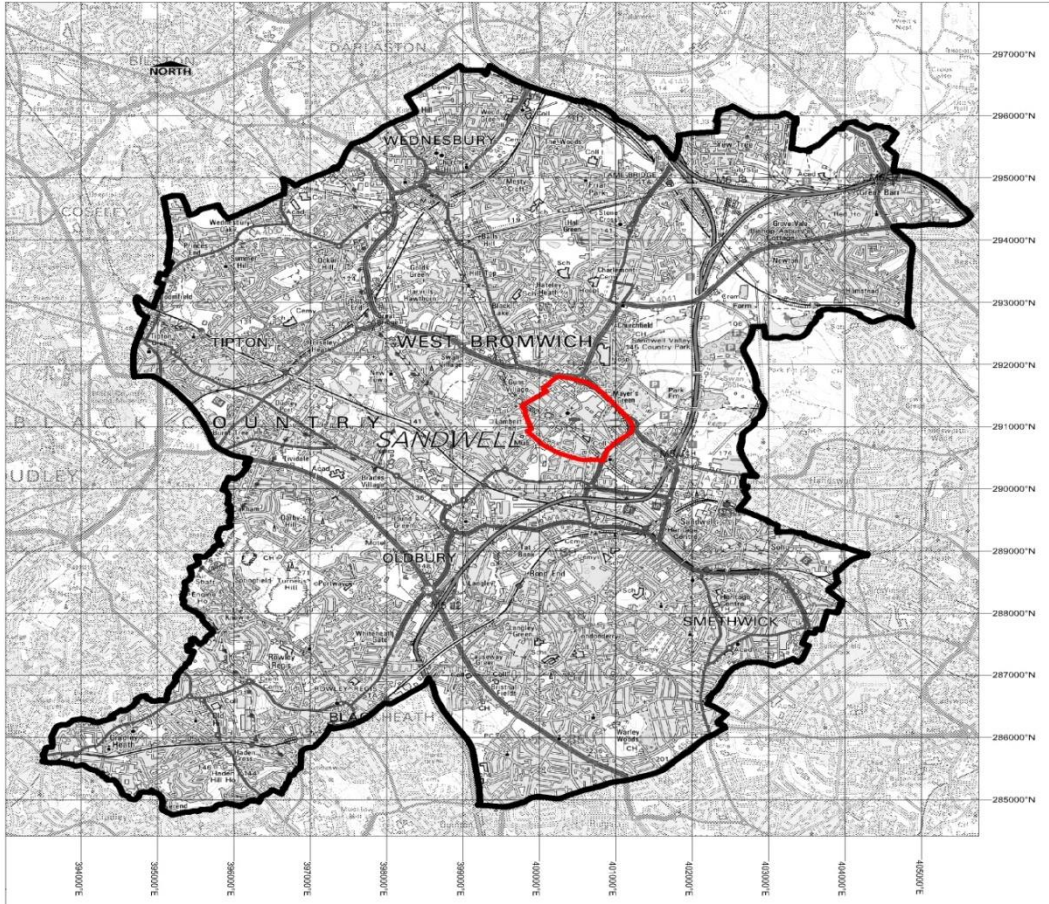
² Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.

³ Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

⁴ Use Classes A1-A5 are summarised as A1 Shops, A2 Financial and Professional Services, A3 restaurants and cafes, A4 drinking establishments, and A5 hot food takeaways.

⁵ Residential development excludes Use Class C2 Residential Institutions – which is use for the provision of residential accommodation and care to people in need of care, hospital, nursing home, residential school, college or training centre.

The chargeable rate per square metre has been set with regard to viability, to ensure that the levy does not put at risk overall development in Sandwell. The 'Chargeable Amount' will be calculated by the Council in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010, (as amended). In outline, the chargeable rate per square metre is multiplied by the chargeable net area of development, and adjusted in accordance with the RICS Tender Price Index (to allow for changes in prices between the date the rate is set, and the date the charge is applied to a particular development).



Sandwell Community Infrastructure Levy Residential and Retail Charging Areas

- Borough Boundary
- West Bromwich Strategic Centre Boundary



Not to Scale

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March 2014



Regulation 123 List 2015

- 3.7 Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) restricts the use of planning obligations for infrastructure that will be funded in whole or in part by the Community Infrastructure Levy. Infrastructure types or projects that are listed below cannot also be secured through planning obligations. This is to ensure there is no duplication between CIL and planning obligations secured through s106 agreements in funding the same infrastructure projects.
- 3.8 The list below sets out the infrastructure projects or types that Sandwell MBC intends to be wholly or partly funded by CIL. The list is derived from the Sandwell Infrastructure Delivery Programme (IDP) 2013.
1. Provision, improvement, replacement, operation or maintenance of primary and secondary education facilities, with the exception of initial provision at Land at Friar Park Road Wednesbury (SAD DPD HOC8/Ref16).
 2. Provision, improvement, replacement, operation or maintenance of health care facilities, with the exception of initial provision at Land at Friar Park Road Wednesbury (SAD DPD HOC8/Ref16).
 3. Provision, improvement, replacement, operation or maintenance of open space and recreation facilities, (additional outdoor gym and complementary youth facilities, additional outdoor all weather facilities, recreational infrastructure (e.g. drainage, signage, lighting), arboriculture of tree stock, management of ecological spaces, additional recreational buildings), and library facilities. This specifically excludes on-site provision, improvement, operation or maintenance of open space and play provision required on-site to make development acceptable in planning terms.
 4. Provision, improvement, replacement, operation or maintenance of Local Transport Network schemes and Public Transport schemes (listed below). This specifically excludes on-site provision, improvement, operation or maintenance of schemes required on-site to make development acceptable in planning terms.
 5. Provision, improvement, replacement, operation or maintenance of specified flood defences (culverted channel Cradley Heath, raised defence Holloway Bank, Titford culvert upsizing).

- 3.9 Planning obligations will still be required in accordance with Regulation 122 and 123 (Community Infrastructure Levy Regulations 2010 (as amended) for obligations relating to infrastructure not listed above.
- 3.10 Inclusion in this list does not signify a commitment from the council to fund all of the projects listed, or the entirety of any one project through CIL. The order in the table does not imply any order of preference for spend.

3.11 Local Transport Network schemes

Major Schemes related to growth as outlined in the West Bromwich AAP

- A41 Carters Green Junction Improvement
- West Bromwich South West Bypass
- M5, Junction 1 Improvement

Other schemes related to growth in West Bromwich AAP

- Ringway Modifications (High Street/Bull Street)
- Ringway Modifications (Spon Lane/Ringway Junction)
- Trinity Way/High Street Junction
- Kelvin Way/Spon Lane Junction
- A4182 Junction Improvements

Schemes related to Smethwick AAP

- Lewisham Rd/Bridge St Junction
- Rolfe St/Bridge St and Rolfe St/New St. Junctions
- Soho Way/Soho St Junction

Other schemes related to growth across Sandwell (RC9, RC12, RC13)

- B4166 Oldbury Road /Albion Road Junction
- Charles St/Phoenix St Junction and Greets Green Rd/Ryders Green Rd Junction
- Lower Church Lane Improvement
- Cornwall Rd/Foundry Lane Junction
- Highgate St/Garratts Lane Improvements
- Lower High St/Forge Lane Junction
- Tollhouse Way/Grove Lane Junction, Smethwick

3.12 Public Transport schemes

Short term

- Londonderry Interchange (Smethwick)
 - Walking and cycling routes improvements to complement wider growth measures
 - Park and ride extension at Rowley Regis
 - Public realm measures at West Bromwich /Metro Plaza
- Complementary Works**
- CCTV improvement measures across Sandwell
 - Passenger Information Improvements across Sandwell

Medium term

- Tipton Public Transport Interchange
- 2 Bus corridor routes 126 and 87
- Strategic bus corridors across Sandwell
- Blackheath Public Transport Interchange

3.13 Long term Cross Boundary/Sub-regional Measures

The following schemes fulfil a sub-regional role so not all the cost of the projects can

be attributable to CIL in Sandwell. Assumptions are made on the element of demand

generated by future development in Sandwell.

- Black Country Gateway – Bescot Yard Intermodal Rail Freight Interchange
- Rowley Regis turnback (part of wider Snow Hill Line enhancements)
- Wednesbury to Brierley Hill Rapid Transit Route
- Walsall – Stourbridge Freight line

http://www.sandwell.gov.uk/info/200275/planning_and_buildings/950/planning_policy/5

3.14 Following the introduction of CIL in April 2015, planning obligations made under Section 106 of the Town and Country Planning Act 1990 will be limited to those matters that are directly related to a specific site, and which are in accord with Regulation 122, i.e. the obligation is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. This may include requirements which are not capable of being funded through CIL, such as affordable housing.

3.15 Examples of the type of infrastructure it is intended to fund through CIL, or through S106:

Table 3: Examples of infrastructure funded by CIL or S106

Intended to fund via CIL	Intended to fund via S106
Provision, improvement, replacement, operation or maintenance of Local Transport Network schemes and Public Transport schemes listed in the SMBC Infrastructure Development Programme.	Local site-related transport improvements, such as junction improvements, new accesses, travel plans.
Provision, improvement, replacement, operation or maintenance of flood defences.	Local site-related flood risk remedies.
Provision, improvement, replacement, operation or maintenance of open space.	Provision of on-site open space or play space especially on larger sites.

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- 3.16 Following the introduction of CIL in April 2015 Sandwell will continue to pool Section 106 contributions to provide appropriate items of infrastructure not contained in the Reg. 123 List. No more than five planning obligations (entered into after 6 April 2010) will be pooled in respect of one of these items of infrastructure.
- 3.17 A large scale development, (such as Land at Friar Park Road), is likely to have greater impact on the local community and the infrastructure network, and is more likely to require on-site provision of certain facilities such as green space or education. It is anticipated that there is likely to be a limited number of instances in the plan period to 2021; where this does occur, the authority will assess the extent of the need for infrastructure and negotiate the appropriate planning obligations.

4. Section 106 Agreements & Section 278 Agreements

- 4.1 Development proposals will be assessed for CIL and for on-site planning obligations as outlined above.
- 4.2 However, certain planning obligations in the form of Section 106 Agreements and/or Section 278 Agreements may still be required.

On-site requirements

- 4.3 Planning obligations for on-site infrastructure may still be required in accordance with Regulation 122 and 123 (Community Infrastructure Levy Regulations 2010 (as amended)) for obligations relating to infrastructure not listed in the Regulation 123 List. Where this is the case, advice will be given at pre-application stage.

Affordable Housing

- 4.4 In Sandwell, there is a policy requirement for the provision of affordable housing on developments of 15 dwellings or more. The amount and nature of that provision is informed by the Housing Needs Survey and the current Affordable Housing policy (see Appendix 1 for details). Only in exceptional circumstances would a commuted sum be acceptable instead of on-site provision.
- 4.5 The Vacant Building Credit will be taken into account where applicable. See paragraph 7.4.
- 4.5 Affordable housing requirements are specifically excluded from the CIL regime. (However it should be noted that within the CIL, affordable housing can attract relief if the relevant criteria is met).

Transport

- 4.6 Obligations are sometimes required to mitigate traffic impacts as part of the development scheme and these are generally dealt with through consultation with the Highways Authority. Where required, a Section 278 Agreement will be prepared.
- 4.7 Section 278 Agreements (under the Highways Act 1980) are made between a highway authority and a person who agrees to pay all or part of the cost of highway works.
- 4.8 Sandwell's Infrastructure Delivery Programme specifies those local highway schemes which it is intended to fund through the community Infrastructure Levy, and Section 278 Agreements will not apply to those schemes.
- 4.9 The Regulation 123 List also specifies that CIL will be used to fund:

[ILO: UNCLASSIFIED]

Provision, improvement, replacement, operation or maintenance of Local Transport Network schemes and Public Transport Schemes listed in the SMBC Infrastructure Development Programme, but specifically excludes on-site provision, improvement, operation or maintenance of schemes required to make development acceptable in planning terms.

- 4.10 (There are different rules and regulations for Highways agreements drawn up by the Highways Agency, which is responsible for the strategic road network, and these are not part of Sandwell's CIL and Section 278 arrangements).
- 4.11 Where Section 278 Agreements are used, there is no restriction on the number of contributions that can be pooled.
- 4.12 Further information on the application of section 278 Agreements in relation to specific planning proposals is available from highwaysgeneral@sandwell.gov.uk.
- 4.13 Section 106 agreements will continue to be sought for Travel Plans where applicable.

Community Benefit

- 4.14 Some potential planning obligations do not fall within the scope of Community Infrastructure Levy requirements. Sandwell Council promotes a community benefit approach to maximise social and economic impacts and contribute toward the creation of sustainable communities and local businesses. Accordingly, the Council may seek S106 Agreements to assist in delivering skills, employment and training contributions for development.
- 4.15 The purpose of the Think Sandwell Employment and Training Initiative is to ensure that planning obligations related to employment and training are identified as part of the council's community benefit clause for targeted recruitment and training. Planning obligations aimed at providing employment and training for local unemployed residents will be sought from development sites which meet one or both of the following thresholds:
 - 1. Developments containing 11 residential units or more, hotels, student/ residential accommodations with 20 or more rooms, or an uplift in business/employment floor-space of 1000 square metres Gross External Area (GEA) or more. These developments are required to provide on-site construction training and apprentice opportunities during the construction phase.

2. Developments with a business/employment floor-space of 1000 square metres or more GEA. These developments are required to provide employment and training opportunities, including apprenticeships, enabling local unemployed people to gain employment in the construction of the development and once development built the end-user opportunities where applicable.

- 4.16 The Community Benefits Coordinator is the initial main point of contact for advice and guidance to all developers and contractors to meet the requirements contained within the formal planning requirements for employment and training.

- 4.17 The role of the Community Benefits Coordinator is to act as the interface and therefore provide a structured approach between the developer/contractor and the training provider, helping to facilitate the delivery of agreed employment and skills targets within an Employment and Skills Plan (ESP).

- 4.18 Further information: Karen Richards - Community Benefit Coordinator:
0121 569 2104/ 07929 353 338 or email:
Karen_richards@sandwell.gov.uk

Others

- 4.19 Certain other planning obligations which do not relate to infrastructure provision, and which do not appear on the Regulation 123 List may be required or negotiated on some developments, for example, developments that would generate additional requirements for safety and security measures; effects on historic environment and travel plans (transport@sandwell.gov.uk).

5. Assessing Viability

- 5.1 In the event that a developer considers that proposed development is not sufficiently viable to be able to meet some or all planning obligations, it is the responsibility of the applicant to demonstrate this to the Council's satisfaction.
- 5.2 For the Council to consider a viability case, it will be essential that the developer shares information substantiating this on an open book basis. It must be in the form of a Viability Appraisal to the standard of DAT HCA.

<https://www.gov.uk/government/collections/development-appraisal-tool>
- 5.3 The Council will in most cases, refer the Appraisal to a third party such as the District Valuer for examination and verification, with the cost of this to be paid by the applicant in advance.
- 5.4 If the applicant considers that the proposed development incurs abnormal development costs, full details must be provided to the Council. The costings should take account of extra-over costs only, and provide a comparison breakdown of costs for the same development with normally anticipated "brownfield" specification to compare with the costings for the "abnormal" specification that is proposed. A site investigation report, remediation statement, detailed foundation drawings and calculations of how the abnormal costs have been derived must be submitted with the application.
- 5.5 Further detail of the Council's view on abnormal costs is contained in Appendix 2.
- 5.6 If the Council considers that a development site is marginal in terms of viability, the Council may reduce the cost of the Planning Obligation(s). In general terms, a pro rata reduction would be made to reduce the obligations as a whole, but the particular obligations effected will be determined by the Council in line with its policy requirements at the time.
- 5.7 However, some planning obligations are required in order to make the application acceptable in planning terms, and are therefore necessary for good planning. A development which is insufficient in terms of the necessary planning obligations cannot be considered to meet policy requirements. For example, certain road junction improvements may be required in order to make the development of a housing site safe.

6. Pre-application, monitoring and charges

Pre-application

- 6.1 The Council encourages pre-application discussions as a matter of course. Initial requirements, planning obligations where appropriate, and any CIL liability will be advised at an early stage in the process. These can be based on a developer's early layout or on a set of assumptions.

Monitoring

- 6.2 Monitoring of Section.106 Agreements is required in order to ensure that planning obligations entered into are complied with in the agreed timescales, that any monies due under the Agreement are received at the correct stage, that they are spent on the appropriate projects or programmes, and that they are spent within the agreed period.
- 6.3 The monitoring is carried out by the Council's Section106 Monitoring Officer. However, other Council officers will become involved from time to time, depending on the complexity of the Agreement.

Charges

- 6.4 All Planning Obligations will incur charges as follows:

Legal and Administrative Costs

- 6.5 The Council will charge a fee to cover the reasonable legal and administrative costs of preparing, negotiating and completing the Section 106 Agreement. This amount is determined by, and payable to, Legal Services. Currently, the minimum fee is £750 per agreement. Additional costs may arise due to the complexity of a particular agreement.

Monitoring

- 6.6 Each S.106 Agreement will include a standard charge to cover the costs to the Planning Service of monitoring the obligations. Currently, the charge is £500 per obligation in the same Agreement.

Appendix 1: Affordable Housing

7.1 Policy Background

“To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

- plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);
- identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and
- where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.”

(NPPF Paragraph 50).

7.2 Black Country Core Strategy Policy HOU3 Delivering Affordable Housing sets out the Council’s approach to the provision of affordable housing in new residential developments. The policy requires up to 25% affordable housing on all developments of 15 or more dwellings where this is financially viable.

The Council has also produced a Statement of Abnormal Costs (Appendix 2 of this document) to allow for an element of flexibility in the provision of affordable housing should the developer be able to demonstrate that there are abnormal costs associated with the site that would prejudice the viability of the development if an element of affordable housing is included. The statement provides guidance on what will and will not be considered as abnormal development costs.

7.3 The Black Country Core Strategy seeks to provide sufficient affordable housing to meet local housing needs. The tenure and type of units sought will be determined on a site-by-site basis, based on the best available information regarding housing need. Policy HOU3 provides an opportunity for the Black Country Local Authorities to establish an agreed definition for affordable housing, a common target, and sets out how affordable housing will be delivered – a consistent approach across the Black Country.

Vacant Building Credit

- 7.4 In November 2014 the Government announced the policy that for vacant buildings (or those which have been demolished as part of the scheme), an affordable housing contribution can only be sought on any uplift in floorspace as a result of the development.
- 7.5 For example, where a building with a gross floorspace of 8,000 square metre building is demolished as part of a proposed development with a gross floorspace of 10,000 square metres, any affordable housing contribution should be a fifth of what would be normally sought.
- 7.6 The vacant building credit applies where the building has not been abandoned.

Definition of Affordable Housing

- 7.7 Affordable housing includes social rented and intermediate housing provided to specified eligible households whose needs are not met by the market.
- Social rented housing is rented housing owned and managed by local authorities and housing associations (known as Registered Providers, or RPs).
 - Intermediate affordable housing is housing at prices and rents above those of social rent but below market price or rents. These can include shared equity (e.g. Homebuy), shared ownership, discounted sale homes and intermediate rent.
 - Homes of these types will only be considered as intermediate affordable housing if they meet the criteria in the definition. If they do not, even if they are offered at less than market price, they will be considered “low cost market housing”.
 - Low cost market housing is not part of the Government’s definition of affordable housing and therefore will not be considered as such by Sandwell Council.

Policy Development

- 7.8 The application of the policy is particular to each planning application. The Council’s preferred approach is for the affordable housing provision to be provided on-site by the developer and then transferred to a RP for management and maintenance. The preference is for the units to be evenly distributed throughout the development to avoid the affordable units being isolated in one part of the site. Commuted sums will be acceptable only in exceptional circumstances.

7.9 Sandwell's adopted Residential Design Guidance states:

"Where affordable housing is included within housing layouts it should not be grouped together or segregated from the wider development, and ideally pepper-potted across sites where possible. Neither should affordable housing be isolated or obvious because of its design. Dwellings must be tenure blind and consistent with wider development in terms of architectural coding and the quality and variety of materials proposed."

Calculating the Level of Provision of Affordable Housing

- 7.10 In line with Black Country Core Strategy Policy HOU3 Delivering Affordable Housing, the Council negotiate up to 25% of the total units to be provided on all sites over 15 units in size. However, if the developer can demonstrate to the Council's satisfaction that:
- The site does not have access to local centres and public transport, or
 - There is no demonstrable need for affordable housing in the locality, or
 - There are abnormal development costs that will prejudice the viability of the development if an element of affordable housing is included,

Then the Council will not require affordable houses to be provided.

- 7.11 Regard will also have to be had to the Vacant Building Credit, see paragraph 7.4.
- 7.12 The Black Country Core Strategy contains a target of 11,000 affordable dwellings in the period 2006-2026 – this equates to approximately 550 dwellings per year in the Black Country. Sandwell will seek an appropriate amount of affordable housing each year to contribute to this target. However, it is also important to note that affordable housing is not only delivered through Section 106 Agreements but also through other funding programmes.

Tenure Mix

- 7.13 The overall provision of affordable housing also has to consider tenure mix. The evidence within the Council's Housing Needs and Demands Survey 2010 suggests that a balance of 50% social rented and 50% intermediate housing will meet the needs of low income households, key workers and those on average who are unable to purchase. Therefore, the Council will expect the affordable housing provision to be apportioned in this way.

Mix of House Types

- 7.14 In addition to a mix of social rented and intermediate provision, the Council will expect the size, type and tenure of affordable housing to be in accordance with the information provided by the latest Housing Needs and Demand Study and any other information that the Council may collect with regard to housing need.

On-Site Provision of Affordable Housing

- 7.15 There are two ways of providing affordable housing on-site:
- The site is developed and a proportion of the units are transferred by the developer to an RP to manage (with or without a transfer of ownership of land), or the transfer of a site, with full access rights, to an RP.
 - The Council's preferred approach is for the developer to construct all the houses and then transfer the required affordable properties to a Registered Provider. This is to ensure that affordable homes are regulated appropriately and remain affordable in perpetuity (subject to the right to acquire).
- 7.16 In larger residential developments where the site is to be developed in phases, developers will be expected to prepare a master plan that sets out the number and type of affordable houses to be provided in each phase. The number of affordable dwellings in each phase should be proportionate to the overall level of affordable housing on site.
- 7.17 In these circumstances, the following condition will be attached to planning permissions containing affordable housing:
- 25% of the general market housing on the site cannot be occupied until the affordable housing element defined in the planning application has been transferred to an appropriate Registered Provider.

Commuted Sums

- 7.18 Council policy is that commuted sums in lieu of on-site provision will only be accepted in exceptional circumstances where all other avenues have been explored and found to be unsuitable. In practice, commuted sums are generally accepted in lieu of on-site bungalow provision and occasionally for other types of dwelling, if an adequate number is not being provided on-site, by the developer, to meet the affordable housing requirement.

7.19 Commuted sums will be calculated using the following method:

The amount payable per dwelling will be a sum equal to the difference between the appropriate RP purchase price and the market valuation of an equivalent dwelling in the locality (with a distinction between rented units and shared ownership units).

Typically, a RSL would pay 50% of the market value for a rented unit, 55% for an affordable rented unit and 70% for a shared ownership property.

Example:

Market Valuation = £150, 000

For social rented unit this would be:

Purchase Price (social rented unit) at 50% of market value = £75,000

Commuted sum = £150,000 - £75,000 = **£75,000**

For Affordable rented unit this would be:

Purchase Price (Affordable rented units) at 55% of market value

Commuted sum = £150,000 - £82,500 = **£67,500**

For shared ownership unit this would be:

Purchase Price (shared ownership) at 70% of market value = £105,000

Commuted sum = £150,000 – £105,000 = **£45,000**

7.20 Any costs associated with negotiating a commuted sum, including the cost of site/property valuations, will be met by the developer directly.

7.21 The timing of the payment of commuted sum will be in accordance with a payment schedule agreed with the Council.

7.22 All cash payments will be held in a ring-fenced account and used to fund affordable housing in line with the Council's Housing Strategy. Contributions will mainly be used to fund affordable housing opportunities across the Borough, although there maybe occasions where the funding will be used to improve the condition of existing affordable dwellings.

Further Information

- 7.23 The current threshold for requiring the provision of affordable housing is 15 dwellings. Where sites are developed in phases, a pro rata contribution will be required.
- 7.24 Details of the agreed provision of affordable housing (on or off site) are set out in a Section 106 Agreement. This includes details of plot numbers, bedroom sizes, tenure and any commuted sum payments. Planning conditions may also be used to secure this objective in appropriate circumstances.
- 7.25 The Section 106 Agreement will allow up to 10 years for the sum to be spent; in the unlikely event that the commuted sum is not spent in that period, there is provision for it to be paid back.
- 7.26 Where there is potential for a number of different schemes to provide a commuted sum for one target site, it may be appropriate to pool the contributions, e.g. for a development of bungalows for the elderly.
- 7.27 Should the developer consider that the Council's approach to the provision of affordable housing would threaten the economic viability of a scheme, they must submit full details, including costings and valuations, as required in the section on assessing viability. The Council will not reduce the requirements without being able to consider this information.

Appendix 2: Abnormal Costs

- 8.1 The overwhelming majority of development sites in Sandwell must be considered as “brownfield sites” and this should be reflected in the valuation and purchase price of the site.
- 8.2 However, the Council recognises that there are some circumstances in which abnormal costs are a threat to the viability of the development of a site. Therefore, the Council has prepared guidance notes on what will, and will not be considered as “abnormal development costs”. These were initially developed for use in connection with affordable housing, but the viability implications apply to all contributions.
- 8.3 The following guidance is based upon the assumption that a developer has carried out “due diligence” in the acquisition of the proposed development site and has satisfied himself of matters associated with the site history and previous uses. This is usually done by means of an “environmental audit” and limited site investigation to identify any liabilities and development constraints before purchase of the site.
- 8.4 The following development costs will not normally be considered as “abnormal”:-**
- Demolition of existing buildings and clearance of the site.
 - Removal or treatment of underground obstructions, cellars, basements and storage tanks.
 - The location and treatment of abandoned mineshafts identified on Coal Authority search enquiries.
 - Diversion of existing services, sewers, culverted watercourses and overhead power lines.
 - Extinguishment of highway rights and grubbing out of any existing highway infrastructure that may affect the development.
 - Re-profiling of a sloping site.
 - Provision of retaining walls and retaining structures on a sloping site.
 - The provision of land drainage unless associated with leachate control measures from a former landfill or encapsulation location.
 - Additional foundation and drain protection measures to safeguard buildings from the presence of trees.
 - The eradication /treatment of Japanese Knotweed or other invasive plant species.
 - Any anticipated costs for area improvements by “planning gain”, Section 106 agreements.
- 8.5 The following may be considered as “abnormal” development costs:-**
- Probe drilling and pressure grouting of cavities and voids associated with former mine workings and geological faulting beneath the footprints of buildings within 50 metres of the ground surface.

- The removal of, or on-site treatment of, combustible/carbonaceous fills from beneath the footprints of proposed buildings.
- The on-site treatment of highly contaminated materials by specialist techniques such as, encapsulation/entombment, bio-remediation or thermal desorbition.
- The provision of a capillary break layer to prevent recontamination of near surface soils as a result of re-charging of potentially contaminated ground water.
- The provision of an engineered cap layer to protect end users/ building fabric from contaminants.
- Protection measures to foundations/drainage systems to safeguard against very aggressive ground conditions, e.g. sacrificial materials, protective coatings and treatments.
- Provision of active gas protection measures and certain aspects of passive gas protection measures to safeguard occupants of proposed buildings from elevated levels of ground gas, e.g. gas proof membranes, sub-floor ventilation blankets and ventilation provisions.

8.6 It should be noted that the above is not meant to be an exhaustive list and the developer should recognise and accept that each site will have its own constraints and the Council will have to look at the merits of each site carefully.

Report to the Cabinet

24 June 2015

Subject:	2015/2016 Discretionary Housing Payments Policy Amendments
Presenting Cabinet Member:	Finance and Resources

1. Summary Statement

- 1.1 Discretionary Housing Payments provide financial assistance for customers in receipt of Housing Benefit who have difficulty meeting the shortfall between their Housing Benefit and the rent charged.
- 1.2 There is a limited fund available for Discretionary Housing Payments (DHPs) which is determined annually by the Department for Work and Pensions (DWP). The government contributes 40% towards this fund.
- 1.3 The DWP have considerably increased the DHP fund since the introduction of the Welfare Reform Act. The increase was intended to provide support to those customers most affected by the changes to Housing Benefit (such as the benefit cap and the bedroom tax).
- 1.4 On 30 March 2015, following a judicial review hearing, the judge ruled Sandwell's DHP Policy to be unlawful due to consistently taking the care component of Disability Living Allowance into account as income when determining entitlement.
- 1.5 A review of the DHP policy has now taken place to take into account this ruling, and the following amendments have been made: -
 - DLA, Attendance Allowance (AA), Personal Independence Payments (PIP) and Carers Allowance (CA) to be fully disregarding when calculating a claimant's total income.

- When a claimant is in receipt of DLA, AA, PIP or CA and applies for a DHP due to the bedroom tax, a DHP will be awarded covering the full bedroom tax deduction.

1.6 A full equality impact assessment has been carried out on the amended policy, which included consultation with stakeholders.

Further details are attached for your information.

2. Recommendation

2.1 That the Council be recommended to approve the revised 2015/2016 Discretionary Housing Payments Policy as attached at Appendix 1.

Melanie Dudley
Assistant Chief Executive

Contact Officer
Sue Knowles
Operations and Improvement Manager
Revenues and Benefits Services
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3. Strategic Resource Implications

3.1 From July 2001, a scheme was introduced which grants all Local Authorities powers to pay a discretionary amount to top up the Housing Benefits statutory scheme. The legislation governing Discretionary Housing Payments can be found in the Discretionary Financial Assistance Regulations 2001 (SI 2001 / 1167).

3.2 There is a limited fund available for DHPs. The fund is set on an annual basis by the DWP and the government contribute 40% towards the fund.

3.3 The total DHP fund available to Sandwell for 2015/16 is £2,156,578 and the government contribution towards this fund is £862,631.

4. Legal and Statutory Implications

- 4.1 The legislation governing Discretionary Housing Payment (DHP) can be found in the Discretionary Financial Assistance Regulations 2001 (SI 2001 / 1167).

5. Implications for the Council's Scorecard Priorities

- 5.1 Effective operation of the DHP scheme contributes to the Council's scorecard priorities. The DHP scheme covers shortfalls between rental liability and payment of Housing Benefit / Universal Credit (Housing Costs element).
- Great Performance - Getting the money right -
We will make sure we get good value for money and manage our services well, so that we are independently judged as 'Good' in the use of resources by our external auditor.

6 Background Details

- 6.1 Since the introduction of DHP in July 2001, Sandwell has had a DHP Policy setting out our approach to determining and awarding DHP.
- 6.2 We work closely with stakeholders to ensure that we understand the issues faced by customers so that we can adopt a DHP policy which is fit for purpose and addresses the real issues faced by customers.
- 6.3 This approach has been particularly important with the introduction of the Welfare Reform Act, which included a number of changes to Housing Benefit. As a result of this, many customers required assistance through DHP as they were faced with a shortfall in rent which they could not afford.
- 6.4 The DWP provide a DHP guidance manual to assist local authorities in their application of the scheme.
- 6.5 When determining entitlement to DHP, Sandwell's approach was to look at a customer's total income and outgoings to see if they can afford to pay the shortfall in rent. The DWP guidance manually makes specific reference to the mobility component of Disability Living Allowance (DLA) stating that it should be disregarded as income, however it does not state that the care component should be disregarded.

- 6.6 Sandwell did not disregard the care component; however it did look at all expenditure and take account of any increased expenditure as a result of a person's disability.
- 6.7 On the 30th March 2015 following a Judicial Review, a judge ruled our policy to be illegal as we consistently took the DLA – Care into account.
- 6.8 A review of the DHP policy has now taken place and the following amendments have been made: -
- DLA, Attendance Allowance (AA), Personal Independence Payments (PIP) and Carers Allowance (CA) to be fully disregarding when calculating a claimant's total income.
 - When a claimant is in receipt of DLA, AA, PIP or CA and applies for a DHP due to the bedroom tax, a DHP will be awarded covering the full bedroom tax deduction.
- 6.9 On 6 May 2015 70 stakeholders were contacted by email asking for their feedback on the proposed changes to the policy. In addition to this an article was also included in Sandwell's Voluntary and Community Sector newsletter inviting feedback. This newsletter reaches an audience of 1,545.
- 6.10 The closing date for feedback was 20 May 2015. Only one response has been received from the consultation.
- 6.11 An equality impact assessment has been carried out on the amended policy and no adverse impacts were identified.

Source Documents:

DHP Guidance Manual

Judicial Review Decision The Queen (on the application of Michael Hardy) Claimant and Sandwell Metropolitan Borough Council (Case No: CO/16824/2013)

Housing Benefit Circular S1/2015

REVENUES AND BENEFITS SERVICE

Discretionary Housing Payments Policy

2015 / 2016

Policy Statement

Sandwell MBC's objective is to treat each and every application for Discretionary Housing Payment on its individual merits.

Introduction

From July 2001, a scheme was introduced which grants all Local Authorities powers to pay a discretionary amount to top up the Housing Benefits statutory scheme. The legislation governing Discretionary Housing Payment (DHP) can be found in the Discretionary Financial Assistance Regulations 2001 (SI 2001 / 1167).

Effective operation of the DHP scheme contributes to the Council's scorecard priorities. The DHP scheme covers shortfalls between rental liability and payment of Housing Benefit / Universal Credit (Housing Costs element).

Shortfalls can occur due to: -

- The rent determined by the rent officer/ Local Housing Allowance being lower than the claimant's eligible rent
- Under occupation of a property
- Reduction in Local Housing Allowance rates for under 35's
- The 65 per cent taper being applied to the Housing Benefit / Housing Costs calculation
- A non-dependant deduction being made to the claimant's eligible rent
- A social tenants eligible rent being reduced due to under occupancy
- The benefit cap being applied

Every claimant who has an entitlement to Housing Benefit / Housing Costs and who has such a shortfall is entitled to make a claim for help.

The main features of the DHP scheme are:

- The scheme is discretionary; a claimant may be entitled if the criteria is satisfied.
- The amount that can be paid out by a Council in any financial year is cash-limited by the Secretary of State.

- DHP's are not a payment of Housing Benefit/Universal Credit. However, the claimant must have an entitlement to Housing Benefit/Housing Costs in benefit weeks that a DHP is being considered for.
- There is a need for financial assistance.

What Discretionary Housing Payments Cannot Cover

These are the elements of a persons rent and shortfalls in benefit that cannot be met by a DHP under the legislation:

- Ineligible charges: service charges that are not eligible for Housing Benefit/Housing Costs cannot be covered by a DHP.
- Sanctions and reductions in benefit.
- Suspended payments of Housing Benefit/Housing Costs.
- Shortfalls caused by Housing Benefit/Housing Costs overpayment recovery.

Purpose

The purpose of this policy is to specify how Sandwell Revenues and Benefits Service will operate the scheme and to indicate some of the factors that will be considered when deciding if a DHP can be made. Each case will be treated strictly on it's merits and all customers will be treated equally and fairly when the scheme is administered.

The Revenues and Benefits Service is committed to working with the local voluntary sector, social landlords and other interested parties in the Borough to maximise entitlement to all available state benefits and this will be reflected in the administration of the DHP scheme. The Revenues and Benefits Service operates within the Council's anti-poverty strategy and is committed to the equitable operation of a DHP scheme. Where the evidence provided indicates that the claimant is not claiming another state benefit they may be entitled to, the Revenues and Benefits Service will advise them to make such a claim and provide details of other agencies in the Borough who may be able to help with such a claim.

Statement of objectives

The Revenues and Benefits Service will consider making a DHP to all claimants who meet the qualifying criteria as specified in this policy. In administering the scheme the Revenues and Benefits Service will give consideration to the guidance produced by the Department for Work and Pensions (see attached document). The Revenues and Benefits Service will treat all applications on their individual merits and will seek through the operation of this policy to:

- Alleviate poverty;
- Support vulnerable young people in the transition to adult life;
- Help and encourage residents to sustain and maintain housing;
- Encourage Sandwell residents to obtain and sustain employment;
- Prevent and reduce homelessness;
- Help those who are trying to help themselves, where appropriate incentivise customers to improve their financial awareness and wellbeing by utilising mechanisms such as financial training, use of direct debit, bank accounts which ring fence priority payments such as rent and take up of debt advice;
- Keep families together;
- Support the vulnerable in the local community to maintain their health and wellbeing;
- Support disabled people living in significantly adapted accommodation – including any adaptations made for disabled children; and foster carers, whose housing benefit is reduced because of a bedroom being used by, or kept free for, foster children;
- Help claimants through personal crisis and difficult events;
- Support people affected by welfare reform changes;
- Support carers.

The Revenues and Benefits Service considers that the DHP scheme should be seen as short-term financial assistance. It is not and should not be considered as a way around any current or future entitlement restrictions set out within the Housing Benefit legislation and Council Tax Reduction legislation

Claiming a DHP

A claim for a DHP can be made via the online claim form on www.sandwell.gov.uk or can be made in writing and signed by the claimant. A letter or signed statement made at any of the Revenues and Benefits Service offices will be treated as a valid claim provided the following conditions are met.

- On request or in appropriate circumstances, the Revenues and Benefits Service will issue the claimant with a special DHP application form. This will be date stamped and will count as the date of claim. The claimant will be required to return the form to the Revenues and Benefits Service within one month of its issue and will be encouraged to include any relevant supporting evidence.
- The Revenues and Benefits Service may request any reasonable evidence in support of an application for a DHP. The Revenues and Benefits Service will make such requests in writing or by contacting the claimant by telephone. The claimant will be asked to provide any evidence within 14 days of such a request although this will be extended in appropriate circumstances.
- If the claimant is unable to or does not provide the required evidence, the Revenues and Benefits Service will still consider the application and will take into account of any other available evidence including that held on the Housing Benefit file.
- Verification of information will normally be required.

Commencement of a DHP Award

The start date of an award is determined by the Revenues and Benefits Service and can be either:

- i) The Monday after the written claim for a DHP is received by the Revenues and Benefits Service.
- ii) The date on which entitlement to Housing Benefit/Universal Credit including Housing Costs commenced.
- iii) The date on which the need arose, as long as Housing Benefit/Housing Costs was payable at the time.

Period of a DHP Award

In all cases, the Revenues and Benefits Service will decide the length of time for which a DHP will be awarded on the basis of the evidence supplied and the circumstances of the claim.

- The minimum period for which the Revenues and Benefits Service will award a DHP is one week.
- The Revenues and Benefits Service will usually award a DHP for not less than 3 months where it is to meet a shortfall due to the rent officer's determination / local housing allowance and in all such cases consideration will also be given to the tenancy end date.
- The Revenues and Benefits Service will not normally award a DHP for a period exceeding 12 months.
- Where a claimant is disabled, living in specially adapted accommodation the Revenues and Benefits Services recognise that it may be appropriate to make long-term DHP awards, exceeding 12 months.

Awarding a DHP

Decisions regarding an award of DHP will be made by the Assistant Chief Executive.

In deciding whether to award a DHP, the Revenues and Benefits Service will consider the following:

- The shortfall between Housing Benefit/Housing Costs and the rent liability;
- Any steps taken by the claimant to reduce their rental liability;
- The financial and medical circumstances (including ill health and disabilities) of the claimant, their partner and any dependants and any other occupants of the claimant's home;
- The income and expenditure of the claimant, their partner and any dependants or other occupants of the claimant's home;
- Any savings or capital that might be held by the claimant;
- The level of indebtedness of the claimant;
- The nature of the claimant's circumstances;
- The amount allocated up to the cash limit set by the Secretary of State at the time of the application;

- Any other special circumstances brought to the attention of the Revenues and Benefits Service.

When calculating the claimant's income Disability Living Allowance (both care and mobility components), Attendance Allowance, Personal Independent Payments and Carers Allowance will be fully disregarded. Additionally, any claimant in receipt of these benefits, applying for a DHP as a result of a reduction in the Housing Benefit due to the Spare Room Subsidy (commonly known as the bedroom tax) will be awarded a DHP equal to the bedroom tax reduction (i.e. 14% or 25% of the eligible rent).

The Revenues and Benefits Service will decide how much to award based on the individual circumstances. This may be an amount below the difference between the rent liability and the Housing Benefit/Housing Costs. An award of a DHP does not guarantee that a further award will be made at a later date even if the claimant's circumstances have not changed.

An award of a DHP may also be made for a rent deposit, removal costs or for a property that the claimant has yet to move into if they are already entitled to Housing Benefit/Housing Costs for their present home.

Changes in Circumstance

The claimant has a duty to notify the Revenues and Benefits Service of any change in circumstance.

The Revenues and Benefits Service can revise a DHP award to take account of a change in circumstance.

Method of Payment

The Revenues and Benefits Service will decide the most appropriate person to pay based upon the circumstances of each case. This could include paying:

- the claimant;
- their partner;
- an appointee;

- their landlord (or an agent of the landlord);
- any third party to whom it might be most appropriate to make payment.

The Revenues and Benefits Service will pay an award of DHP by the most appropriate means available in each case. This could include payment by:

- electronic transfer (e.g. BACS);
- crediting the claimant's rent account.

Payment frequency will normally be aligned to the Housing Benefit payment cycle.

Notification

The Revenues and Benefits Service will inform the claimant in writing of the outcome of their application within 14 days of receipt of all information. Where the application is unsuccessful, the Revenues and Benefits Service will set out the reasons why this decision was made and explain the right of review. Where the application is successful, the Revenues and Benefits Service will notify the claimant of:

- the weekly amount of DHP awarded;
- whether it is paid in advance or in arrears;
- the period of the award;
- how, when and to whom the award will be paid;
- the requirement to report any change in circumstances;

The Right to Seek a Review

DHP decisions are not Housing Benefit/Universal Credit decisions and are therefore not subject to the statutory dispute mechanism. All Councils are expected to set up an appropriate review process.

The Revenues and Benefits Service will operate the following policy for dealing with requests to review a refusal to award a DHP, a decision to award a reduced amount of DHP, a decision not to backdate a DHP or a decision that there has been an overpayment of a DHP.

- A claimant (or their appointee or agent) who disagrees with a DHP decision may dispute the decision. A dispute must be made in writing to the Revenues and Benefits Service within one calendar month of the written DHP decision being issued.
- Upon receipt of a dispute the DHP request will be re-considered by an officer who was not involved in the first decision and notify the claimant of the outcome in writing.
- As part of the dispute process Revenues and Benefits Services may feel it appropriate to offer the claimant an explanation of the DHP decision by telephone, at interview or in writing in order to seek to resolve the matter. Where agreement cannot be reached a re-consideration will be carried out.
- Where agreement cannot be reached, a complaint can be made under the Council's Complaints procedure.
- Where the claimant is still not satisfied, the decision may only be challenged via the judicial review process or by complaint to the Local Government Ombudsman.

Overpayments

The Revenues and Benefits Service will seek to recover DHP's found to be overpaid. When considering recovery of overpaid DHP's we will also consider retrospective awards of Social Security Benefits which may affect the amount of DHP award. This will usually involve issuing an invoice to the claimant or the person to whom the award was paid. It is most unlikely that recovery of any overpayment caused by a Sandwell official error will be sought. Under no circumstances will recovery be made from any amounts of Housing Benefit/Universal Credit due to the claimant (except if the claimant requests this method of recovery specifically in writing). The decision letter that notifies a decision that there is an overpayment will also set out the right of review.

Publicity

The Revenues and Benefits Service will publicise the scheme and will work with all interested parties to achieve this. A copy of this policy statement will be made available for inspection and will be posted on the Sandwell Council website. Information about the amount spent will not normally be made available except at the end of the financial year.

Fraud

The Revenues and Benefits Service is committed to identifying and subsequently investigating suspected fraudulent claims to benefit and DHP. Individuals who falsely declare their circumstances in order to claim DHP will have committed a criminal offence, which may lead to criminal proceedings being instigated.

Reporting

On a monthly basis a report detailing all DHP applications received, decisions made and DHP fund available is forwarded to the Assistant Chief Executive for approval.

Equalities

An equality assessment has been carried out on this policy in line with the Council's obligation to the Public Sector Equality Duty provided by the Equality Act 2010. No adverse impact on any protected characteristic has been identified as a result of this policy.

However, due to the discretionary nature of decision making the Revenues and Benefits Service will randomly sample decisions made to ensure consistency.

Monitoring and Review

The monthly report will detail the name, ethnicity, the source of the request, amount awarded and the period of the award.

The policy will be reviewed annually, or sooner if appropriate, to take account of operational adjustments and or changes to legislation.