

Consultation Statement

**Summary of consultations received with respect of
Dudley MBC's draft Planning Obligations
Supplementary Planning Document (SPD) (June
2007) and the Council's responses**

Summary of consultations received to Dudley MBC's draft Planning Obligations Supplementary Planning Document (SPD) (June 2007) and the Council's proposed responses to the consultations.

1. Berwin Leighton Paisner (On behalf of Westfield Shopping Towns)

Summary of Comments	Council's Response	Council's Further Action
<p><u>How can they be used (para 1.25)?</u></p> <p>Issue 1</p> <p>... the SPD does not set out the hierarchy of conditions vs obligations. We would recommend that a new paragraph is inserted before 1.25 along the following lines:</p> <p><i>"Government policy and guidance indicates that, wherever possible, planning conditions should be attached to grant of planning permission in preference to the use of obligations. However, it is not always appropriate to deal with certain matters by way of condition, and this is when a planning obligation can be used".</i></p>	<p>Issue 1</p> <p>Agree</p>	<p>Issue 1</p> <p>Agree – add in suggested wording before paragraph 1.25.</p> <p>"Government policy and guidance indicates that, wherever possible, planning conditions should be attached to grant of planning permission in preference to the use of obligations. However, it is not always appropriate to deal with certain matters by way of condition, and this is when a planning obligation can be used".</p>
<p><u>Off-Site and Pooled contributions (Para 1.28)</u></p> <p>Issue 2</p> <p>The use of pooled contributions is approved in paragraphs B21-24 of Circular 05/05. However, the pool must be limited to such programmes and schemes as are directly related to the development. Therefore, in paragraph 1.28 after</p>	<p>Issue 2</p> <p>Agree.</p>	<p>Issue 2</p> <p>Add in the following wording in paragraph 1.28 after "... identified in the relevant planning agreements." Insert "Those schemes must be directly related to the proposed development."</p>

<p>“... identified in the relevant planning agreements.” Insert “Those schemes must be directly related to the proposed development.”</p>		
<p><u>Impact on Viability (Para 1.29 and 1.30)</u></p> <p>Issue 3</p> <p>Paragraph 1.30 states “any deviation from the Council’s standard obligations will be considered as an unusual exception”. This is inconsistent with the proper policy approach to deal with each site on its individual merits. Failure to do so is likely to mean that proposed obligations would fail the test of “necessity”. Therefore this paragraph should be deleted in its entirety and replaced with something along the following lines:</p> <p><i>“1.30 Every proposed development must be assessed against the relevant planning policy, and obligations will only be required where a development would otherwise be unacceptable in planning terms”.</i></p>	<p>Issue 3</p> <p>Noted. Paragraph 1.30 to be deleted and reworded.</p>	<p>Issue 3</p> <p>Delete paragraph 1.30 and replace with;</p> <p>“Every proposed development must be assessed against the relevant planning policy, and obligations will only be required where a development would otherwise be unacceptable in planning terms ... In these instances the developer will be expected to provide the full cost of meeting the public infrastructure requirements outlined in this SPD. Only in exceptional circumstances would the Council consider a reduction in the full cost. In these cases the public infrastructure requirements may be prioritised in accordance with the Council’s policy priorities, in consultation with interested parties”.</p>
<p><u>Process of Securing Planning Obligations (Para 1.33, 1.34)</u></p> <p>Issue 4</p> <p>Paragraph 1.34 states that “providing the developer agrees to the requirements then the planning application will go to committee where it will be recommended for approval ...”. This is clearly a mistake – officers will have to review the application as a whole along with the package of obligations which has been negotiated with the</p>	<p>Issue 4</p> <p>Noted. It is expected that a development proposal would meet the relevant planning policy tests before negotiations on planning obligations would take place. To negotiate planning obligations on a development proposal which fails the fundamental first hurdle of meeting planning policy could mislead a developer.</p>	<p>Issue 4</p> <p>No further action.</p>

developer and make the appropriate recommendation, which will not necessarily be for approval.		
<p>Issue 5</p> <p>Both Paras 1.33 and 1.34 refer to how a package of s.106 “requirements” will be made and “failure to agree to these services/ infrastructure may well result in [refusal]”. The process of determining obligations is a process of negotiation, not unilateral imposition of terms by the Council. Both these references should be deleted and replaced with a reference to the negotiating process, for example:</p> <p><i>“ Once those services/ infrastructure have been identified it will be a matter for negotiation between the parties to reach agreement.”</i></p>	<p>Issue 5</p> <p>Noted. The purpose of the SPD is to add clarity and certainty to the development process which will enable developers to factor in these essential infrastructure costs before submitting a planning application.</p>	<p>Issue 5</p> <p>No further action.</p>
<p><u>Accounting for Use of Contributions</u></p> <p>Issue 6</p> <p>The “prioritisation mechanism” referred to in para 1.42 can only allocate funds to the schemes in accordance with the terms of an agreement. This needs to be clarified.</p>	<p>Issue 6</p> <p>Agreed.</p>	<p>Issue 6</p> <p>Add in wording at the end of bullet point 1:</p> <p><i>“ This meeting uses a detailed prioritisation mechanism to allocate these funds to sites. These decisions are then reported through the Council’s Cabinet and ratified at Full Council meeting in order to receive member approval. Funds will be allocated to schemes in accordance with the terms of the agreement.”</i></p>
<p><u>Economic Well Being</u></p> <p>Issue 7</p>	<p>Issue 7</p>	<p>Issue 7</p>

<p>Contrary to paragraph 2.9 there is in fact no policy support in either the Employment and Economy or Community Services chapter of the adopted UDP to require contributions towards access to opportunities or funding the delivery of services to support the unemployed into work.</p>	<p>Noted. The key policy on which this section expands upon is the Planning Obligations Policy 'DD7'. The preamble to this policy cites 'Economic and Community Development' as a type of mitigation which may be sought when a proposal is tested against the implications for a range of community provision and infrastructure requirements.</p>	<p>Replace the Section Heading with Economic and Community Development as opposed to Economic Well Being to avoid misinterpretation when referring back to UDP policy.</p>
<p>Issue 8</p> <p>Any obligation could only be required with respect of Economic Wellbeing if it met all of the policy tests and the nature of the development meant that permission should not be granted without those obligations.</p>	<p>Issue 8</p> <p>Agreed.</p>	<p>Issue 8</p> <p>No further action.</p>
<p><u>Highway Infrastructure Works</u></p> <p>Issue 9</p> <p>Paragraph 2.50 states that penalty interest on s.278 payments will be 2% above base rate. The requirement to pay base rate interest, along with obligations or conditions generally imposed that certain parts of the development cannot be commenced or occupied without such payments being made, should be incentive enough to make a prompt payments.</p> <p>Other issues – Paragraphs 2.48 and 2.49</p> <p>It has been considered by officers that minor amendments are required to paragraphs 2.48 and 2.49 in order to make them clearer.</p>	<p>Issue 9</p> <p>This clause is therefore an incentive to encourage developers to pay costs contained within a legal agreement promptly when they are called upon to do so to avoid unnecessary costs being incurred by the local authority.</p> <p>Paragraph 2.48</p> <p>Clarify Dudley's position with respect of Highway Infrastructure Works and Planning Obligations by amending wording in Para 2.48.</p>	<p>Issue 9</p> <p>No further action.</p> <p>Paragraph 2.48</p> <p><i>“ If Highway Infrastructure Works result as a result of a new development then a S.106 agreement or Planning Obligation will normally be required to ensure that the planning permission will not to be implemented until such a time as the land owner or developer has entered into the necessary S278/</i></p>

	<p>Paragraph 2.49</p> <p>Clarify Dudley's position with respect of Traffic Regulation Orders by amending wording to Para 2.49.</p>	<p>S38 agreement Planning and Highway Agreements".</p> <p>Paragraph 2.49</p> <p><i>" If the Highway Infrastructure Works result in the introduction of new, or an amendment to an existing TRO, a fee of £1,900 will be required to cover the Council's costs in introducing it or amending it the Council will use its best endeavours to advance and secure a TRO, however, the TRO is subject to other legislation and therefore its implementation can not be guaranteed "</i></p>
<p><u>Site Specific Measures</u></p> <p>Issue 10</p> <p>Although it is recognised that there will sometimes be measures which fall outside of the norm for s.106 obligations, these must still be relevant and necessary and pass all of the policy tests. Therefore, at the end of para 2.55 wording to that effect should be added, such as:</p> <p><i>" The Council can only require such measures where they satisfy all of the policy tests as set out in circular guidance "</i></p>	<p>Issue 10</p> <p>Refute. This issue is already made clear under paragraph 2.55.</p>	<p>Issue 10</p> <p>No further action.</p>
<p><u>Historic Environment</u></p> <p>Issue 11</p> <p>Para 2.60 implies that all developments will affect areas of <i>"local character and distinctiveness"</i>. This cannot be correct. Only where a proposed</p>	<p>Issue 11</p> <p>Agreed. The Council considers this to be a fair comment.</p>	<p>Issue 11</p> <p>Delete the first bullet point under paragraph 2.60:</p> <ul style="list-style-type: none"> Developments affecting areas of 'Local

development will have an adverse impact on a recognised “heritage asset” can a contribution or other obligation be required to mitigate that impact.		Character and Distinctiveness’, i.e. all developments.
<p>Issue 12</p> <p>Paragraph 2.64 indicates a number of types of planning obligation which the Council could require, including:</p> <ul style="list-style-type: none"> • Contribution towards the cost of producing planning guidance notes of benefit to the historic environment. • Contribution towards the cost of producing and implementing up to date conservation area character appraisals <p>Neither of these matters are appropriate for planning obligations, as they both form part of the Council’s statutory duty which it would have to carry out whether a development was proposed or not. It would also be contrary to the policy approach as expressed at paragraph B7 of the circular 05/05 that a planning obligation should never be used as a “<i>betterment levy</i>”. In addition it is difficult to see how this could be applied as a “blanket” charge without failing the “<i>necessity</i>” or “<i>relevance</i>” policy tests. Both of these should be deleted.</p>	<p>Issue 12</p> <p>Agreed. The Council considers this to be a fair comment.</p>	<p>Issue 12</p> <p>Delete the fourth and fifth bullet point under paragraph 2.64:</p> <ul style="list-style-type: none"> • To contribute towards environmental improvements of an historic asset e.g. public realm improvements in a conservation area • To contribute towards the cost of producing planning guidance notes that will be of benefit to the historic environment
<p>Issue 13</p> <p>The final bullet point in 2.64 should also state that such a contribution can only be required if the development has a direct impact upon such an archaeological site or resource.</p>	<p>Issue 13</p> <p>Agreed. The Council considers this to be fair comment.</p>	<p>Issue 13</p> <p>Amend to final bullet point under paragraph 2.64 so that it reads as follows:</p> <p><i>“To contribute towards better understanding,</i></p>

		<p><i>education and research of an archaeological site or resources that have not only wider community benefits but an identifiable relationship/ connection with the development concerned e.g. contribution towards post excavation costs for Dudley excavation."</i></p>
<p><u>Open Space, Sport and Recreation</u></p> <p>Issue 14</p> <p>Paragraph 2.85 states that the council "<i>will require</i>" contributions towards off-site provision for non-major (1 – 79 units) residential schemes. However, it does not address the situation where a developer may be able and prepared to offer on-site provision.</p>	<p>Issue 14</p> <p>Noted.</p>	<p>Issue 14</p> <p>Paragraph 2.85 will be qualified with the following wording:</p> <p><i>"... The Council will require the provision of commuted sums for children's play and open space provision as an alternative to on site provision ... unless the applicant can demonstrate that provision is better made by onsite provision in accordance with the criteria set out in the adopted SPD for Open Space, Sport and Recreation Provision."</i></p>
<p><u>Public Art</u></p> <p>Issue 15</p> <p>Policy DD9 in the Dudley UDP states that contributions towards public art would be a "<i>voluntary scheme</i>", while the SPD (para 2.96 to 2.97) states, to the contrary, that "<i>obligations will be required</i>". There is no policy basis for Dudley to automatically require contributions for public art.</p>	<p>Issue 15</p> <p>Agree – replace the word "required" in paragraphs 2.96 and 2.67 with "sought"</p>	<p>Issue 15</p> <p>Amend wording in paragraphs 2.96 and 2.97 as follows:</p> <p><i>"Obligations will be required sought for development of 10 or more dwellings or, where this is unknown, the site area of 0.5 hectares or more"</i></p> <p><i>"In other cases obligations will be required sought where the floorspace to be created exceeds 1,000 square metres (gross) or the site area is 1 hectare or more".</i></p>

<p>Issue 16</p> <p>Seeking a public art contribution as a matter of course implies that all development is harmful to public (visual) amenity. Often development will enhance visual amenity and the requirement for public art contributions in those cases would fail the circular test for “<i>necessity</i>”. Suggest in paras 2.96 and 2.97 that “<i>obligations may be sought where appropriate</i>”.</p>	<p>Issue 16</p> <p>Refute: The comments raised suggest that public art is a form of mitigation for adverse visual impact of development and that it may be used to make otherwise unacceptable development acceptable. However the Council would only seek public art contributions as a necessary social, cultural and environmental element of development.</p>	<p>Issue 16</p> <p>No further action.</p>
<p><u>Public Realm</u></p> <p>Issue 17</p> <p>The stated aim of the contributions is for maintenance of existing public realm. The basis of calculation for those contributions, however, is on the establishment and maintenance of public realm.</p>	<p>Issue 17</p> <p>Noted.</p>	<p>Issue 17</p> <p>Add in the following wording:</p> <p><i>“The basis of calculation for those contributions, however, is on the establishment, and maintenance and improvement of public realm.”</i></p>
<p>Issue 18</p> <p>The “<i>trigger</i>” threshold for the contribution is stated as being 1 dwelling (residential) or 0.1 ha (other). The requirement for a fixed contribution for such small developments is likely to fall foul of the policy tests of necessity and proportionality. Again, to prevent such a contribution from simply being a “<i>betterment levy</i>” or development tax the requirement for a contribution to public realm must be considered on a case-by-case basis.</p>	<p>Issue 18</p> <p>Refute: The purpose of the SPD is to ensure that all new development meets the cost of providing the infrastructure that would otherwise fall on the community charge payers of Dudley. The current trigger level of 5 dwellings plus is arbitrary and fails to account for the cumulative infrastructure needs arising from 1-4 dwellings. The infrastructure needs are fairly and reasonably related to each and every dwelling. Rather than determining contributions on a “case by case” basis, a tariff-based system (where appropriate) allows for a speedy, predictable and transparent system of determining contributions for necessary infrastructure allowing certainty for the developer and the local community.</p>	<p>Issue 18</p> <p>No further action.</p>

2. Sport England

Summary of Comments	Council's Response	Council's Further Action
<p>Issue 19</p> <p>Currently, the section of the SPD that deals with Open Space, Sport and Recreation (p34) is limited to public open space, children's play and playing fields. It is important that indoor sport facilities (e.g. sports halls, swimming pools) are also included).</p>	<p>Issue 19</p> <p>Noted: Further work will be undertaken to consider the inclusion of indoor sports facilities in Planning Obligations SPD. The Council is currently preparing a Sports Strategy which will help provide the necessary information to widen the scope of the SPD.</p>	<p>Issue 19</p> <p>Further work being undertaken with a view to widening the scope of the SPD to include indoor sporting facilities.</p>
<p>Issue 20</p> <p>In order to have a robust basis to require planning contributions it is important to have prepared a PPG17 playing pitch strategy and indoor sports strategy. This will define the current levels of provision, should set local standards of provision and how facilities meet the existing needs of the community.</p>	<p>Issue 20</p> <p>As above.</p>	<p>As above</p>
<p>Issue 21</p> <p>Where new development is proposed and demand increases but existing facilities do not have the capacity to meet that demand it is important to seek provision through 106 agreements – that may be through the provision of new playing fields or sports facilities or improvements to existing to increase capacity (e.g. qualitative improvements such as under-drainage to a pitch or changing facility upgrading etc).</p>	<p>Issue 21</p> <p>As above.</p>	<p>Issue 21</p> <p>As above.</p>

3. Councillor Ray Burston

Summary of Comments	Council's Response	Council's Further Action
<p>Comments made in respect of those aspects of Planning Obligations that relate to public transport – especially the provision of bus services.</p> <p>Issue 22</p> <p><i>“...I would like to propose that additional criteria are added into the public transport ‘scores’ in order to rate large scale developments according to whether existing bus services can access the estate without having to double-back on themselves ... as well as whether the proposed road network has the ability to handle the kind of larger buses that may already service the main road itself”.</i></p>	<p>Issue 22</p> <p>Your comments are welcomed and will be taken on board through the design process. Colleagues are reminded that they should be a consideration.</p>	<p>Issue 22</p> <p>No further action through the SPD.</p>
<p>Issue 23</p> <p><i>“ I would further propose modifying the “Bus frequency of principal service ...” criteria so that the nearest bus stop is specifically defined according to CENTRO’s accessibility distances for acceptable public transport provision (i.e. a 400m walk during weekday daytimes and an 800m walk during evenings and Sundays).</i></p>	<p>Issue 23</p> <p>As above.</p>	<p>Issue 23</p> <p>No further action taken through the SPD.</p>

4. Natural England

Summary of Comments	Council's Response	Council's Further Action
No comments.	Noted.	No further action.

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5. The Highways Agency

Summary of Comments	Council's Response	Council's Further Action
<u>Transport Infrastructure Improvements</u> Issue 24 Agency would like to see the SPD place a greater emphasis on the need to mitigate the impact of developments through sustainable transport measures such as Travel Plans and demand management.	Issue 24 Refute: Officers consider this issue is adequately dealt with through the Transport Infrastructure and its associated sustainability appraisal.	Issue 24 No further action.
Issue 25 The Agency suggests that paragraph 2.130 of the SPD could be slightly revised to ensure that emphasis is placed, first and foremost on reducing trip demand and it ought to be made clear that additional trips created by the development will not include any trips that can be discounted through the introduction of measures to reduce travel demand, such as Travel Plans.	Issue 25 Noted: Wording to be redrafted to reflect comments.	Issue 25 Following paragraph 2.130 an additional paragraph should be added which states: <i>" In calculating a sustainability score the emphasis is placed first and foremost on reducing trip demand. Therefore it is stressed that additional trips made created by a development will not include trips that could be discounted through the introduction of measures to reduce travel demand, such as Travel Plans".</i>

6. RPS Planning on behalf of London and Cambridge Properties

Summary of Comments	Council's Response	Council's Further Action
<u>Economic Well Being</u>		

<p>Issue 26</p> <p>The calculation methodology for contributions from residential development does not acknowledge that some housing development proposals will be predominantly targeted at managerial/entrepreneurial households of social groups A & B. In such circumstances, it would be unreasonable to apply the methodology of the Draft SPD in order to calculate the likely numbers of unemployed residents who could be expected to reside within a proposed development. The calculation methodology is too generalised and would undoubtedly produce an unemployed figure for the development which would be in excess of reality, and would unreasonably skew the financial contribution sought by the SPD.</p>	<p>Issue 26</p> <p>In light of consultation responses, paragraphs 2.14, 2.16, 2.18, 2.19 of the Economic Well Being Section have been taken out in order to allow for further detailed evidential work to be undertaken. A more robust and revised section will be produced in due course.</p>	<p>Issue 26</p> <p>Delete paragraphs 2.14, 2.16, 2.18 and 2.19 and reword paragraphs 2.10, 2.12, 2.15 and 2.17 as follows:</p> <p><u>Para 2.10</u></p> <p><i>“Dudley Council is looking to secure, through the Planning Obligations process, both commitment to and resources to fund;</i></p> <ul style="list-style-type: none"> <i>• A number of local jobs for local people;</i> <i>• Interventions that can support activities to up skill local unemployed people of a working age and support them into sustainable employment”</i> <p><u>Para 2.12</u></p> <p><i>“Where appropriate all developments will be encouraged to contribute towards economic well being, through job opportunities using locally sourced labour and materials. either through financial contributions or in kind. The following headings set out how planning obligations may be used in achieving economic well being in the Borough.”</i></p> <p><u>Para 2.15</u></p> <p><i>“ For large scale developments the resources gained through Planning Gain (Section 106) will directly fund services that will link future residents of that development with training and employment. For larger constructions and commercial development, opportunities for local employment and use of local services will be sought.</i></p>
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		<p><u>Para 2.17</u></p> <p><i>“ Developers are encouraged to make early contact with Planning and the Economic Well Being section of the Economic Regeneration Division to discuss;</i></p> <ul style="list-style-type: none"> <i>• The development of proposals that can both support/ facilitate and benefit from the training and the ‘Local Jobs for Local People’ initiatives/ interventions, which are currently available.</i> <i>• Discuss the contributions (financial) which will be expected through the Planning Obligations process that will be expected from the developers to support a range of tailored activities that are/ could be matched into their proposed scheme, but will improve the chances of local unemployed people gaining employment.</i>
<p>Issue 27</p> <p>It is also suggested that rather than pursue financial contributions, the emphasis should be upon securing in-kind support from development proposals, for example to explore on-site training and employment opportunities during construction.</p>	<p>Issue 27</p> <p>In light of consultation responses, paragraphs 2.14, 2.16, 2.18, 2.19 of the Economic Well Being Section have been taken out in order to allow for further detailed evidential work to be undertaken. A more robust and revised section will be produced in due course. It is recommended that the following paragraph is added in to the Economic Well Being Section to secure in-kind support from development proposals.</p>	<p>Issue 27</p> <p>Add in the following paragraph after the existing paragraph 2.17 under the heading ‘What is expected from Developers’:</p> <p>“For Commercial Developments we will look at the need to improve employment rates towards the England average. The Developer will therefore agree a level of intervention, which will allow <u>unemployed</u> people living within the Borough opportunities to apply for work both in the construction of and end user phase of the Development. This includes:</p> <ul style="list-style-type: none"> • A recruitment process that provides equality of opportunity for local

		<p>unemployed residents.</p> <ul style="list-style-type: none"> • The registering of any vacancies that relates to work on or associated with the Development with agencies identified by the Planning Authority. This should be for a period prior to and after completion of the Development. • Provision of a minimum of 3 working days between registering the vacancy and filling the vacancy. • Provision of a minimum of 3 working days between registering the vacancy and filling the vacancy. • Provision to advertise vacancies in local Job Centres, agencies identified by the Planning Authority and in 3 local news papers nominated by the Council. • Commitment to work with agencies identified by the Planning Authority for the purpose of identifying and interviewing suitable local unemployed applicants. • The production of a Sustainable Development Method Statement setting out what measures will be undertaken to achieve the requirements set out above and made available to the Planning Authority.”
Open Space, Sport and Recreation		

<p>Issue 28</p> <p>The calculation methodology as proposed is confusing with regards to children's play. In particular, it should be much clearer as to what figure is to be used for 'bed space'.</p>	<p>Issue 28</p> <p>The calculation methodology with respect of children's play is based on the methodology set out in the Open Space, Sport and Recreation SPD which was adopted in June 2007.</p> <p>The figures for Children's play set up costs are derived from the figures provided in the extant 1993 UDP. The costs set out in the 1993 UDP have proven, inline with the annual inflation multiplier, to be a realistic indicator of the true costs involved. However, as these costs were allocated in child bed space bands, a small variation in developer's layout may at times have led to a significant adjustment (up or down) in the developer's contribution as they fell into a different band. In order to provide a fairer basis for calculation, a best fit line has been applied to the 1993 figures (with subsequent inflation added up to 2001). The equation that describes this best fit line has been proposed as the new cost accordingly. This is represented diagrammatically in the Open Space, Sport and Recreation SPD. The figures set out in the Planning Obligations SPD have been updated on an annual basis using a cost of living index to provide the figures referred to in table 3 of the document.</p>	<p>Issue 28</p> <p>Add in additional wording after table 3 and before Paragraph 2.89 to make specific reference to the additional guidance offered in the Open Space, Sport and Recreation SPD:</p> <p>"Full justification of costs for provision of Open Space, Children's Play and Playing Fields are set out in Chapter 11 of the Open Space, Sport and Recreation SPD".</p>
<p>Issue 29</p> <p>The 15 year maintenance period as proposed is excessive. In the Draft Open Space, Sport & Recreation SPD (Nov 2006), as re-consulted upon during March – May 2007, a maintenance period of 10 years is proposed for public open space, children's play and playing fields.</p>	<p>Issue 29</p> <p>Refute – This is considered to be a reasonable figure given the extra demand placed on the local authority by increased demand. Furthermore it accords with recently adopted figures in the Open Space, Sport and Recreation Provision SPD.</p>	<p>Issue 29</p> <p>No further action.</p>
<p><u>Transport Infrastructure Improvements, Highway Infrastructure Works and Site Specific Measures</u></p>		

<p>Issue 30</p> <p>It is essential that all planning obligations required by the Borough Council in respect of transport facilities and infrastructure provision are considered in the whole, and not in isolation, to ensure that a strategic overview is taken of the impact of the development on the local transport network. The avoidance of dividing the different facets of highway and transportation into different silos would avoid unreasonable contributions requirements being placed upon developers.</p>	<p>Issue 30</p> <p>Refute: The division of the different facets of highway and transportation into different ‘silos’ would not result in unreasonable contribution requirements being placed on developers. Highway improvements works are separate from Transport Infrastructure Improvements because the S.278 agreements, to which the former refers, are not directly part of the S.106 process. They have been included in the document however for the purposes of completeness and clarity only.</p>	<p>Issue 30</p> <p>No further action.</p>
<p><u>Public Art</u></p> <p>Issue 31</p> <p>Whilst the provision of public art within the development itself is understood, the suggestion that an equivalent financial contribution may be made towards the provision of public art ‘elsewhere in the vicinity’ is vague. It is important that the SPD acknowledges the contribution to the overall public art requirement as made by landscaping schemes/ materials (hard and soft) which may be integral to the development proposals.</p>	<p>Issue 31</p> <p>Agreed – Public art is often best delivered as an integral part of built features, i.e. floorscapes, street furniture, buildings rather than as freestanding installations</p>	<p>Issue 31</p> <p>Add in the following wording after paragraph 2.95:</p> <p>“When negotiating the requirement for public art it should be noted that public art is often best delivered as an integral part of built features, for example floorscapes, street furniture and buildings rather than as freestanding installations”.</p>

7. Black Country Geodiversity Partnership

Summary of Comments	Council’s Response	Council’s Further Action
<p>The SPD would benefit by expanding the following paragraphs:</p> <p><u>Historic Environment</u></p>		

<p>Issues 32</p> <p>Para 2.60 Historic Environment - Triggers for planning obligations</p> <p>Third bullet point:</p> <p><i>Developments impacting upon Landscape Heritage Areas ... add ... including features of geodiversity interest such as natural outcrops (including sporadic glacial boulders 'erratics') and the use of local stone in the historic and built environment (buildings, walls, kerbstones, cobbles, graveyards etc), ...</i></p>	<p>Issue 32</p> <p>The Council consider that this issue is already taken on board via the planning process and policies HE1 and HE2 of the UDP. Furthermore the Historic Environment policies already support the use of vernacular materials for appropriate development.</p>	<p>Issue 32</p> <p>No further action.</p>
<p><u>Nature Conservation</u></p> <p>Issue 33</p> <p>Para 2.77 Nature Conservation – Trigger for Obligation</p> <p>First sentence: ... <i>impact on the natural environment, including biodiversity (habitat and wildlife) and geodiversity (natural outcrops and landform), measures will be required ...</i></p>	<p>Issue 33</p> <p>Agree – 'Nature Conservation' as referred to under policy DD7 'Planning Obligations' relates to both wildlife and geological features. Therefore it is considered reasonable to add in the suggested wording.</p>	<p>Issue 33</p> <p>Add the following wording into paragraph 2.77;</p> <p>" ... impact on the natural environment, including biodiversity (habitat and wildlife) and geodiversity (natural outcrops and landform), measures will be required ...".</p>

8. Nathaniel Lichfield and Partners on behalf of Tesco Stores

Summary of Comments	Council's Response	Council's Further Action
<p><u>Part 1 – Purpose of the SPD</u></p> <p>Issue 34</p> <p>Within the Aim of the SPD, it would be helpful to capture the fundamental principle set out in</p>	<p>Issue 34</p> <p>Agree.</p>	<p>Issue 34</p> <p>Add in the following sentence at the start of paragraph 1.8:</p>

<p>Government Policy (Circular 05/05) that <i>'Planning obligations are ... intended to make acceptable development which would otherwise be unacceptable in planning terms'</i> (Paragraph B3).</p>		<p>" The fundamental principle underlying planning obligations is that they are "... intended to make acceptable development which would otherwise be unacceptable in planning terms" (Circular 05/2005, Paragraph B3).</p>
<p><u>Part 1 – When are they needed?</u></p> <p>Issue 35</p> <p>The SPD could helpfully address the relationship between planning obligations and planning conditions (Circular 05/05 paragraph 51 refers). Specifically, the SPD should recognise that where the policy tests set out in Circular 11/95 can be met, the imposition of a condition is preferable, and that the terms of conditions will not be duplicated on planning obligations.</p>	<p>Issue 35</p> <p>Agree.</p>	<p>Issue 35</p> <p>Suggest following wording is inserted after paragraph 1.20:</p> <p>What is a Planning Obligation?</p> <p>Planning obligations, also known as Section 106 agreements, are legal agreements negotiated between local planning authorities and developers. They are sought only where it is considered necessary to safeguard the local environment and/or compensate for additional burdens placed by the development on community facilities and infrastructure.</p> <p>The purpose of a planning obligation is to mitigate the impacts of proposed new development. In essence they are intended to make 'acceptable' development that would otherwise be 'unacceptable in planning terms</p> <p>The legal basis for planning obligations is provided by Section 106 of the Town and Country Planning Act 1990 (as amended by the Compensation Act 1991). Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004 give the Secretary of State the power to</p>

		<p>make regulations to replace S.106, but the Secretary of State has not yet taken these powers.</p> <p>Government advice on the application and use of planning obligations is set out in Circular 05/2005 'Planning Obligations'. This guidance seeks to ensure that planning obligations are used as effectively as possible.</p> <p>Conditions Vs Planning Obligations</p> <p>In order to exercise control over development, suitable conditions may be imposed on a planning consent. The aim of conditions is to make a proposal acceptable when the only other alternative may have been to refuse it. Conditions can only control the application site itself or adjoining land under the applicants control.</p> <p>In circumstances where an authority may wish to control the impact of a development but the desired restrictions go beyond the bounds that conditions may reasonably cover, the authority may enter into a Section 106 Agreement or Planning Obligation. Planning obligations will only ever prepared when it is considered that a development will have negative impacts that can't be dealt with through conditions.</p> <p>Government guidance on Planning Conditions is set out in Circular 11/95. The guidance contains a number of policy tests which, if met, make the imposition of a condition preferable to a planning obligation. In addition to this Circular 05/05 clearly states that the terms of conditions should not be duplicated or re-stated on a planning obligation.</p>
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Issue 36	Issue 36	Issue 36
The SPD could also confirm the Council's endorsement of Government Policy that planning permission cannot be granted subject to a condition requiring the developer to enter into a planning obligation.	Noted: Amend SPD	SPD amended as per issue 35 above.
<u>Part 1 – Impact on viability</u>		
Issue 37	Issue 37	Issue 37
It would be helpful for the SPD to clarify the 'open book basis' on which information is shared by recognising that, when required, 'full financial details' of a schemes will be provided to the Council and handled by it on a confidential basis in recognition of a developers commercial interests..	Agreed: Reword paragraph 1.29.	Delete paragraph 1.29 and replace with: “ If a developer considers that the level of obligations required would render their proposal unviable, then the developer will be expected to provide for the full financial details of the proposal to the Council, in a financial appraisal submitted and signed by an appropriately qualified professional. This will be handled on a confidential basis in recognition of a developers commercial interests. For the Council to consider an “unviable” argument, it will be essential that the developer shares information substantiating this on an open book basis. If there is any disagreement on the financial appraisal the Council will expect the developer to agree to an adjudication by an independent financial body and any costs of the adjudication funded by the developer”.
Issue 38	Issue 38	Issue 38
The SPD could helpfully record that the Council will negotiate obligations on a proposal by proposal basis, starting with the formulae provided	Agree.	Add in the following paragraph under paragraph 1.24:

in the SPD, but then with due regard to the resulting <i>total</i> package of obligations sought when considering whether obligations are <i>'fairly and reasonably related in scale and kind to the proposed development'</i> (Circular 05/05 Paragraph B5 and draft SPD paragraph 1.23).		"The Council will negotiate obligations on a proposal by proposal basis starting with the formulae provided by the SPD, and then with due regard to the resulting total package of obligations sought when considering whether obligations are <i>'fairly and reasonably related in scale and kind to the proposed development'</i> (Paragraph B5, Circular 05/05).
Issue 39 The requirement for developers to undertake a financial viability appraisal and demonstrate exceptional circumstances is considered to be excessive.	Issue 39 Refute: If a developer is seeking to reduce the requirements for infrastructure then this can only be properly considered if the full details of the reason for the request are provided. This will then allow the Council to assess the viability argument by the developer. Without the facts and figures, audited as necessary it would be impossible for the Council to assess any claim for a reduction in the Obligations.	Issue 39 No further action.
Issue 40 The SPD should allow for solicitors acting on behalf of developers to draft agreements following an agreement to this approach on a case by case basis with the Council.	Issue 40 Agree.	Issue 40 Add in sentence to paragraph 1.35 of the SPD: " Planning agreements will be draft by the Council's legal services team, or by solicitors acting on the Council's behalf. The SPD will also allow for solicitors acting on behalf of developers to draft agreements following an agreement to this approach on a case by case basis with the Council. Developers will be required to pay the Council's costs in drafting the agreement".
Issue 41 Tesco agrees that it may be helpful for evidence of title and draft heads of terms to be provided on	Issue 41 Refute: The planning application fee goes towards meeting the costs of processing the planning	Issue 41 No further action.

<p>submission of applicants where pre-application discussions with the Local Planning Authority have confirmed that an obligation will be necessary. Tesco do not however agree that the payment of any fee to manage and monitor the legal agreement is necessary at this stage. Reference to the timing of this payment should accord with the 'Trigger for Payment' in draft paragraph 1.40.</p>	<p>application and negotiating the planning obligations. The fee for the management and monitoring the planning obligation ensures the negotiated infrastructure is put in place for the benefit of the future occupiers /users of the development.</p>	
<p><u>Part 1 – Financial Contributions</u></p> <p>Issue 42</p> <p>The suggestion that an additional charge to cover the cost of a dedicated Planning Obligations officer is not considered reasonable or necessary, as planning application fees already reflect the scale of development proposed and the likely resource required for determination.</p>	<p>Issue 42</p> <p>Refute: The SPD seeks to properly set out the true costs of infrastructure arising from a proposed development. Such costs should be borne by the developer.</p>	<p>Issue 42</p> <p>No further action.</p>
<p><u>Part 2 – General Comment</u></p> <p>Issue 43</p> <p>In referring to a number of issues, the draft SPD appears to seek 'planning gain' rather than simply the mitigation of the negative effects of development. The approach of the draft SPD should be reviewed having regard to Government Policy that 'planning obligations should never be used purely as a means of securing a "betterment levy". (Circular 05/05, paragraph B7).</p>	<p>Issue 43</p> <p>Refute: The Planning Obligation requirements arise as a direct result of the development. The formulae in the SPD are open and transparent. There is absolutely no question that the SPD seeks betterment, rather seeking the full and proper costs of a development proposal that would otherwise fall on the existing community.</p>	<p>Issue 43</p> <p>No further action.</p>
<p><u>Part 2 – Economic Well Being</u></p> <p>Issue 44</p> <p>Dudley's employment rate is 8% <i>lower</i> than the England average according to the figures at</p>	<p>Issue 44</p> <p>Agree: Dudley's employment rate is actually 8% higher than the England average.</p>	<p>Issue 44</p> <p>Paragraph 2.19 of the Economic Well Being Section to be deleted.</p>

paragraph 2.19.		
Issue 45 Where developments provide significant employment and training opportunities, developers should not be expected to provide an additional financial contribution. Commercial development which provides employment and training opportunities will, in itself, make a positive contribution to the local employment level. A financial contribution towards Economic Wellbeing is not therefore necessary to make the development acceptable in planning terms.	Issue 45 In light of consultation responses, paragraphs 2.14, 2.16, 2.18, 2.19 of the Economic Well Being Section, which refer to financial contributions to Economic Well Being, have been taken out in order to allow for further detailed evidential work to be undertaken. A more robust and revised section will be produced in due course.	Issue 45 Delete paragraphs 2.14, 2.16, 2.18 and 2.19 which refer to financial contributions towards Economic Well Being.
<u>Part 2 – Nature Conservation</u> Issue 46 The suggestion that some developments should also enhance ‘ <i>quality, quantity, net value or importance of biodiversity or geological interest</i> ’ as an obligation does not accord with the principles behind obligations. Any enhancements should be sought only where there is a clear planning policy justification and negotiated on a proposal by proposal basis.	Issue 46 Agree	Issue 46 Add in the following wording before the final sentence in 2.80: “ ... <i>The aims of these enhancements should be to maximise benefits for nature conservation value of the site. Any enhancements should be sought only where there is a clear planning policy justification and be negotiated on a site by site basis. Planning Obligations for enhancements would need to be calculated on a site by site basis.</i> ”
<u>Part 2 – Open Space, Sport and Recreation</u> Issue 47 The suggestion at draft paragraph 2.92 that negotiations for non-residential development should be based on one-third of the requirements for residential development is inappropriate. Any	Issue 47 Agree.	Issue 47 Delete paragraph 2.92 from the document.

negotiations relating to non-residential development should be on a proposal by proposal basis according to the mix of uses proposed.		
<p><u>Part 2 – Public Realm</u></p> <p>Issue 48</p> <p>There is no specific reference to public realm improvements in Circular 05/05 paragraph B15. Whilst the need for public realm improvements may arise from some development proposals, there is no justification for requiring contributions from all new residential developments providing one additional dwelling or more, or sites creating more than 100 square metres (gross) of other floorspace. Developers should only be expected to contribute where <i>‘a proposed development would, if implemented, create a need for a particular facility’</i> (Circular 05/05 paragraph B15).</p>	<p>Issue 48</p> <p>Refute: The references in Paragraph B15 in Circular 05/05 are examples. They do not purport to be a definitive list of all the infrastructure requirements arising from a development. Additional development will result in more residents/employees, which means greater usage and strain on existing areas of public realm. These areas of public realm will be enjoyed and used by the future residents/employees and hence the developer should contribute a share towards the improvement and maintenance of the public realm that will benefit those occupying the development.</p>	<p>Issue 48</p> <p>No further action.</p>
<p><u>Part 2 – Transport Infrastructure Improvements</u></p> <p>Issue 49</p> <p>The approach adopted in the draft SPD broadly accords with Government Policy. However, any contribution should be based on site specific considerations and discussions, rather than a crude ‘cost per additional trip’ calculation.</p>	<p>Issue 49</p> <p>It is important that site specific discussions can take place in an informed and fair manner taking account of not only localised issues but also issues affecting the wider community.</p> <p>The methodology and calculations promoted in the SPD have been developed to address these issues and form the basis or bench mark from which discussions can take place.</p>	<p>Issue 49</p> <p>No further action.</p>

9. Home Builders Federation

Summary of Comments	Council's Response	Council's Further Action
<p><u>Part 1 - General Comments</u></p> <p>Issue 50</p> <p>The HBF consider that given the impact of Planning Obligations on a developments and their viability that the issue of Planning Obligations should be examined independently as a Development Plan Document.</p>	<p>Issue 50</p> <p>Refute: The current starting point for negotiations on Planning Obligations, within Dudley MBC boundaries, is the Unitary Development Plan (2005). There are a number of policies within the plan, in particular Policy DD7 'Planning Obligations' which could potentially require development proposals to include S.106 agreements. However, given that the policy framework already exists it is the intention of the SPD to expand upon the policies that already exist so as to provide more clarity to developers, the community and the Council regarding the basis for negotiating planning obligations. It is not the intention to create new policy, rather to expand upon existing policy.</p>	<p>Issue 50</p> <p>No further action.</p>
<p>Issue 51</p> <p>The SPD neglects to fully identify the positive contributions that housing developments can add to the community i.e. housing developments can help sustain communities for the benefit of existing and new residents.</p>	<p>Issue 51</p> <p>Noted.</p>	<p>Issue 51</p> <p>No further action.</p>
<p>Issue 52</p> <p>The HBF considers that many of the requirements for contributions are unnecessary as there are an increasing amount of households due to an ageing population and the increase in one person households etc which means that, although more houses are required, there are no additional people to cater for. Existing mechanisms, such as</p>	<p>Issue 52</p> <p>Refute – The broad range of planning obligations required are soundly based in policy. Furthermore it should be noted that Council Tax only caters for the requirements of existing, occupied housing, not for new infrastructure etc.</p>	<p>Issue 52</p> <p>No further action.</p>

Council Tax, should be used to provide funding for such facilities.		
Issue 53 The Local Planning Authority must also consider the impact the SPD will have in terms of the viability and affordability of a development. It is inevitable, in the interim period, that where land has already been purchased, and developer contributions not factored into the cost of development, that these costs will be passed on to the prospective buyer. This will inflate prices and may result in a development being unaffordable. The LPA should consider a phased implementation of the SPD to prevent this.	Issue 53 Noted: If the requirements of the planning obligations SPD impact on the viability of the development there is a procedure by which both the developer and the Council can seek independent advice. In such cases the planning obligation requirements could be reduced. A phased implementation of the SPD is not therefore needed.	Issue 53 No further action.
<u>Part 1 - Impact on Viability</u> Issue 54 Para 1.29 proposes “for the council to consider the “unviable” argument, that it will be essential that a developer shares information substantiating this on an open book basis”. The HBF is fundamentally opposed to such a requirement. Authorities can request open book accounting but it cannot expect or require it.	Issue 54 Refute: Whether or not a developer wishes to argue that a development is unviable in line with the requirements of the planning obligations SPD is entirely up to the developer. The Council does however require an open book accounting to assess any viability argument if a developer wishes to put forward such a case. The Council cannot accept a developer’s claim of unviability without a detailed open assessment of costs that can be robustly and independently checked by appropriately trained professionals.	Issue 54 No further action.
<u>Part 1 - Recovery of Costs</u> Issue 55 The HBF object to Paragraphs 1.35 and 1.39 which require developers to pay to Council's costs	Issue 55 The timescale for the payment of the planning obligations contributions will be a matter of	Issue 55 No further action.

in drafting the agreement and for the services of a dedicated Planning Obligations Officer. It is considered that the planning fee accurately reflects the costs incurred by the Local Authority.	negotiation with the developer. However, early payment minimises any delay in ensuring the necessary infrastructure is in place for the occupiers/users of the development.	
<u>Part 1 - Payment of Contributions</u> Issue 56 The SPD outlines that payments may be required “on signing the agreement, on starting development on the site, when an agreed percentage of the works is completed, or when the development is complete”. To require funds prior to a development being complete is considered by the HBF to be premature as developers will not have been able to secure receipts for the dwellings.	Issue 56 It is important that the required infrastructure is provided as soon as possible to benefit the first occupants of the development. To delay payment of the monies will delay the necessary infrastructure to the detriment of the occupants of the development. For larger development negotiations on phasing of monies are undertaken.	Issue 56 No further action.
<u>Part 2 – General</u> Issue 57 Standard charges and formulae should not be applied in blanket form regardless of actual impacts (paragraph B35). The requirement for social infrastructure (education contribution and sustainable transport) is just that; a blanket charge determined solely on the development proposed rather than on the nature and extent of existing provision. It is wholly unjustifiable and should be deleted from the SPD.	Issue 57 Refute: It is agreed that standard charges and formulae should not be applied in blanket form regardless of actual impact. In line with guidance in Circular 05/2005 the guidance on formulae and standard charges in the SPD has been formulated with the intention of reflecting the actual impacts of the development. All sections in Part 2 of the SPD, including those on Education and Transport Infrastructure Improvements have been assessed against the general tests in Circular 05/05, therefore it is felt that the retention of these sections is fully justified.	Issue 57 No further action at this time. Has been built into the formulae set out in the SPD.
<u>Part 2 – Economic Well Being</u> Issue 58	Issue 58	Issue 58

<p>The HBF does not consider that Economic Well Being to be necessary to make the proposed development acceptable in planning terms and/ or directly related to the proposed development. Such requirements should be removed.</p>	<p>Refute: The requirement for contributions towards Economic Wellbeing are rooted in approved UDP Policy DD7 'Planning Obligations'.</p>	<p>For clarity change the title of the Economic Wellbeing section to Economic and Community Development so that it can be clearly linked with the Policy DD7 'Planning Obligations'.</p>
<p><u>Part 2 – Education</u></p> <p>Issue 59</p> <p>It is not appropriate for all new housing development to contribute towards the provision of educational facilities if there is no direct link between the need for those facilities and the development proposed. This could be because the type of housing proposed will not be occupied by persons who would use those facilities (e.g retirement dwellings), because there is adequate provision or provision with spare capacity already in existence, or because they should be provided out of the public purse and are already being or will be paid for by the occupants of new housing through Council Tax.</p>	<p>Issue 59</p> <p>Refute: The guidance does not suggest that all new housing development should contribute towards the provision of educational facilities, particularly if the need for increased educational facilities does not arise from the development proposed. Educational obligations will apply to residential developments if the development is likely to result in the generation of additional pupil numbers in excess of that which the schools can accommodate. In these circumstances a financial contribution for ensuring on-site provision will be required if the size of the development justifies the provision of new education facilities.</p> <p>Certain types of residential accommodation will not be subject to educational obligations. These include sheltered housing, rest homes, nursing homes, hostels, student accommodation, one bedroom dwelling houses and studio flats.</p>	<p>Issue 59</p> <p>No further action.</p>
<p>Issue 60</p> <p>The HBF objects to the use of the average household size to calculate requirements. Household size is falling and therefore we question whether this indicator is valid and flexible enough to adopt to changing circumstances.</p>	<p>Issue 60</p> <p>Noted. A clearer more robust system has been put in place which calculates the number of school places required based not only on the number of dwellings but also the composition of house types. For example the system recognises that a development of one hundred 3 bedroom dwellings</p>	<p>Issue 60</p> <p>Amends to paragraphs 2.24, 2.26, 2.29, 2.30 and 2.31.</p> <p><u>Para 2.24</u></p> <p>Obligations may be required for both Primary (4–10</p>

	<p>would yield a greater number of students than one hundred 2 bedroom flats.</p>	<p>4- 11 year olds) and Secondary School (11 – 18 year olds) and Post 16 facilities (11-16 year olds), and. In exceptional circumstances obligations will be sought towards facilities for 0-5 year olds and Special Education Facilities.</p> <p><u>Para 2.26</u></p> <p>... There is currently one cost multiplier figure for each phase of education (primary, secondary/ post 16) each using different area standards.</p> <p><u>Para 2.29</u></p> <p>Our area assumptions per pupil are standardised on a 1 Form Entry Primary (210 places 5 – 11) and a 6 Form Entry Secondary School (900 places 44 –16 11-18).</p> <p><u>Para 2.30</u></p> <p>Delete paragraph 2.30 and replace with:</p> <p><u>Calculation</u></p> <p>In calculating developers contributions towards Education the Council will take two key factors into consideration, these are the number of units proposed and the number of bedrooms. This calculation allows officers to make a fair calculation of anticipated student yield from a varied mix of developments and gives due to smaller and larger developments. It should be stressed that this model does not include one bedroom/ studio developments as statistics show the pupil yield from these obligations to be negligible.</p> <p><i>Example;</i></p>
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		<p>According to the figures set out in Dudley's Housing Need Survey (2005) a development comprising one hundred 3 bedroom dwellings would yield an average of 35 pupils. Based on the figures this number would be broken down into the following categories;</p> <ul style="list-style-type: none"> • 60% or 21 pupils of Primary age (4 - 10); • 40% or 12 pupils of Secondary age (11 – 18); <p>The cost per school place and specific to Dudley are:</p> <ul style="list-style-type: none"> • £9,646 cost per Nursery and Primary School • £14,739 cost per Secondary School
<p>Issue 61</p> <p>New development must only be required to contribute to provision required to meet the genuine need it creates and must not be expected to contribute to any existing shortfall.</p>	<p>Issue 61</p> <p>Noted. It is not the intention of the SPD to do this. Contributions should reflect not only the local impact of development but also the wider impacts that arise. It is recognised that the value of sites that access problems is reduced to reflect the additional mitigating costs to the developer.</p>	<p>Issue 61</p> <p>No further action.</p>
<p><u>Library Services</u></p> <p>Issue 62</p> <p>The HBF consider that this requirement is not directly related to the five tests as set out in Circular 05/05.</p>	<p>Issue 62</p> <p>Refute – Library services are essential educational and social facilities. Obligations sought in respect of Library services are justified by Paragraph B15 of Circular 05/2005 and are further supported by</p>	<p>Issue 62</p> <p>No further action.</p>

	polices CS3 and DD7 of the UDP.	
Issue 63 The HBF objects to the use of the average household size to calculate the requirement for library services. Household size is falling and therefore we question whether this indicator is valid and flexible enough to adopt to changing circumstances.	Issue 63 Noted: Household size is obtained from census demographic data and will be updated as such data becomes available. Average household size strikes a reasonable balance enabling speedy processing of a planning application, as opposed to what could otherwise involve discussion and debate with the developer using complex demographic statistical data to determine the likely occupancy of a development by age/gender/social class/medical and so on, all of which could play a part in affecting library usage. The use of average household size strikes a reasonable balance in determining the triggers for assessing sums due.	Issue 63 No further action.
<u>Open Space</u> Issue 64 If there is surplus open space within an area, a development should not be required to provide any further open space. A development should not be required to provide facilities in order to provide facilities in order to satisfy a deficiency within the locality.	Issue 64 Refute. If the Council were to adopt this approach it would ignore the issues of quality open space and value to residents. Regardless of the size of the open space it will received increased pressure as a result of development.	Issue 64 No further action.
Issue 65 The requirement for 20 years maintenance payment should be deleted. It is not clear where the Adopted Plan policy justification for such a figure is. Furthermore, it is unrealistically long and is contrary to government policy.	Issue 65 Refute. The draft SPD refers to a 15 year maintenance requirement, not 20 years.	Issue 65 No further action.
<u>Public Realm</u>		

<p>Issue 66</p> <p>We consider that this requirement is wholly unreasonable and should be removed from the SPD.</p>	<p>Issue 66</p> <p>Refute: It would be helpful if when responding to the Consultation the reason why this requirement is considered “unreasonable” is actually given. It is impossible to respond to such an unsupported statement when it is clear in the Public Realm section that only the costs of Public Realm arising from the occupiers of the new development will be apportioned to new development proposals.</p>	<p>Issue 66</p> <p>No further action.</p>
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10. Turley Associates on behalf of London and Cambridge Properties

Summary of Comments	Council’s Response	Council’s Further Action
<p><u>Part 1</u></p> <p>Issue 67</p> <p>The draft SPD states that that the Council will seek to negotiate obligations in line with the standards set out in the SPD and will only accept a different level of contribution in exceptional circumstances. The SPD does not, however, make clear what circumstances may warrant a reduced planning obligation requirement.</p>	<p>Issue 67</p> <p>Planning obligations negotiated will be considered on a case by case basis and judged upon their own merits. Therefore the Council is not in a position through the SPD to clearly define which circumstances may warrant a reduced planning obligation requirement.</p>	<p>Issue 67</p> <p>No further action.</p>
<p>Issue 68</p> <p>The document includes a long list of matters where the Council may require a planning obligation. It is not clear from the document whether the Council will seek to secure the whole</p>	<p>Issue 68</p> <p>Noted: Normally only one planning obligation will be sought for a planning application. The planning obligation will list both the Developer’s and Council’s obligations which may well be several items. Further consideration will be given to</p>	<p>Issue 68</p> <p>Add in wording at the end of Para 1.30; “ Until such a time as a formal priority mechanism for apportioning a reduced level of Planning Obligations is determined (in</p>

set of obligations if these are relevant for a particular site and proposal. It is unclear whether and how the Council will prioritise planning obligations.	prioritising infrastructure requirements. Until such a time as a priority order is determined for infrastructure (which may vary according to site specific needs) then infrastructure requirements will normally be apportioned simply on a percentage basis on the totality of the relevant infrastructure requirements.	accordance with the Council's Objectives and Priorities) then generally the requirements will be apportioned on the same ratio or percentage as if there was no reduction in infrastructure."
Issue 69 The document should also state clearly that discussions and consultation with regard to Section 106 Agreements will be carried out at pre-application stage to provide developers and the Council with confidence in a proposed scheme.	Issue 69 Agreed.	Issue 69 The document should also state clearly that discussions and consultation with regard to Section 106 Agreements will be carried out at pre-application stage to provide developers and the Council with confidence in a proposed scheme.
Issue 70 The document suggests that developers should engage with a number of Council departments to discuss whether and what level of obligation may be required. The Planning department should co-ordinate the response by other Council departments, it should not be up to the developers to seek input from the various Council departments.	Issue 70 Agree.	Issue 70 Add the following wording into Paragraph 1.33: " The planning Case Officer will rely on these other to identify where there is a need, arising from the development, for infrastructure and/ or services. The Case Officer will then advise the developer of these requirements and seek the developers agreement for their inclusion within a S.106 legal agreement co-ordinate the responses present to them by the other Council departments and inform the developer of the requirements made. The developers agreement will then be sought for their inclusion within a S.106 legal agreement ... ".
<u>Part 2 – Economic Well-Being</u> Issue 71 LCP consider that this section fails to meet the	Issue 71 In light of consultation responses, paragraphs 2.14, 2.16, 2.18, 2.19 of the Economic Well Being	Issue 71 Delete paragraphs 2.14, 2.16, 2.18 and 2.19 which refer to financial contributions towards Economic

<p>aims of Circular 5/2005 and the Planning Obligations SPD as it does not provide clarity for developers regarding the basis for negotiating planning obligations in respect of economic well-being. It is therefore requested that the Council clarifies in the SPD when a contribution will be sought, how the contribution will be calculated and what the contribution will be used for. The SPD should also make clear that no will be sought from development proposals involving the refurbishment/ remodelling of existing buildings/ land. It is considered that the Council fundamentally rethink how the contribution is calculated as the current approach penalises investment and growth.</p>	<p>Section, which refer to financial contributions to Economic Well Being, have been taken out in order to allow for further detailed evidential work to be undertaken. A more robust and revised section will be produced in due course.</p>	<p>Well Being.</p>
<p><u>Environmental Protection</u></p> <p>Issue 72</p> <p>Planning Obligations with respect of Environmental Protection should only be used where matters relating to noise, air quality and contaminated land cannot be dealt with through condition. The section should make clear that conditions will be used wherever possible.</p>	<p>Issue 72</p> <p>Agree.</p>	<p>Issue 72</p> <p>Add in the following wording after Paragraph 2.33 underneath the heading 'Trigger for Obligation':</p> <p>“Planning obligations with respect of Environmental Protection should only be used where matters relating to noise, air quality and contaminated land cannot be dealt with through condition. The following section talks about the triggers for planning obligations with respect of Noise Emissions, Air Quality and Contaminated Land, however it should be noted when dealing with this subject matter that conditions will be used wherever possible”.</p>
<p><u>Historic Environment</u></p> <p>Issue 73</p>		

<p>Planning Obligations have to clearly relate to the proposed development and imposing a blanket obligation requirement in respect of the historic environment for all development proposals therefore appears inappropriate. The document needs to make clear that a planning contribution will be primarily sought from developments which directly impact the historic environment (e.g. impact on listed buildings, conservation areas etc).</p>	<p>Issue 73</p> <p>Agreed. The Council considers this to be a fair comment.</p>	<p>Issue 73</p> <p>Issue 73 has been addressed above already in the Council's response to Issue 11 (please see above). By deleting the first bullet point under paragraph 2.60 (which makes reference to developments affecting areas of 'Local Character and Distinctiveness') – there is no longer a blanket obligation in respect of the historic environment for all development proposals. The SPD therefore does now make it clear that planning contributions will be sought from developments which have an identifiable impact on the historic environment (e.g. impact on listed buildings, conservation areas etc).</p>
<p>Issue 74</p> <p>The Council can deal with the impact of a particular development on the 'Local character and Distinctiveness' through other means than a planning obligation. This category should therefore be removed from the list of developments which may require a planning obligation. The SPD also needs to clarify what the contribution will be used for; what is meant by 'heritage objective'?</p>	<p>Issue 74</p> <p>The Council considers this to be a fair comment.</p> <p>The Council considers that the SPD does clearly set out in paragraphs 2.64 and 2.65 what the contributions will be used for.</p> <p>The Council does however consider that the observation in respect of what is meant by 'heritage objective' to be a fair comment.</p>	<p>Issue 74</p> <p>Issue 74 has been partly addressed already in the Council's response to Issue 11 (please see above) by deleting the first bullet point under paragraph 2.60 (which makes reference to developments affecting areas of 'Local Character and Distinctiveness').</p> <p>No further action.</p> <p>The Council proposes to include a 'Glossary of Terms' what is meant by terms such as 'heritage objective'.</p>
<p><u>Public Art</u></p> <p>Issue 75</p>	<p>Issue 75</p>	<p>Issue 75</p>

<p>The document should clearly state the reasons for requiring the provision of public art as part of developments o 1,000 square metres or more. It should also be clearly stated that monies obtained from developments will be spent on providing public art in close proximity to the development making a contribution.</p>	<p>Noted/ Agreed.</p>	<p>The wording on paragraph 2.98 should be amended to clearly state that monies obtained from developments will be spent on providing public art in close proximity to the development making a contribution. Amend final sentence as follows;</p> <p><i>“ ... This may be provided directly by the developer as an integral part of the development, or by way of a commuted sum for complementary initiatives in the vicinity of the development be spent on providing public art in close proximity to the development ,making a contribution ”</i></p>
<p><u>Public Realm</u></p> <p>Issue 76</p> <p>The document should clearly state the reasons for requiring developments in excess of 100 square metres to make a contribution towards public realm improvements. It should make clear what contribution will be required from commercial developments. It should be clearly stated that monies obtained from commercial developments will be spent on improving the public realm in close proximity to the commercial development making a contribution. The section could also provide details about the types of improvements that will be funded.</p>	<p>Issue 76</p> <p>Refute – It is considered that this issue is addressed adequately in paragraph 2.117.</p>	<p>Issue 76</p> <p>No further action.</p>
<p><u>Transport Infrastructure Improvements</u></p> <p>Issue 77</p> <p>The section sets out when the Council will require</p>	<p>Issue 77</p> <p>Noted. However the culmination of the Highway</p>	<p>Issue 77</p> <p>No further action.</p>

<p>a contribution towards transport infrastructure improvements. This section could be combined with the highway infrastructure section to provide developers with a clearer guide to transport infrastructure costs. This could also include the following section on Travel Plans.</p>	<p>and Transport Infrastructure Sections is not considered appropriate. The reason being that the section on Highway Infrastructure Works relates more specifically to S.278 or S.38 agreements rather than S.106 agreements. On this basis it should be treated differently to the section on Transport Infrastructure Improvements and Travel Plans. The Highway Infrastructure Section, although not specifically related to Planning Obligations should be kept in for the purposes of clarity and completeness.</p>	
<p>Issue 78</p> <p>The document should specify the maximum amount that will be required from a development with regard to transport infrastructure improvements. It also needs to clarify what will happen once the required £2,065,680 has been obtained.</p>	<p>Issue 78</p> <p>The contribution required from a development will be a fair reflection on the impact of that development on existing access networks as informed by the calculations. In the case that the original estimated gross figure is exceeded the moneys would be used to accelerate the programme. It should be noted that this figure reflects an existing best estimate of the shortfall resulting from additional development growth, however, following the outcomes of the ongoing Regional Special Strategy (RSS II) this figure may need to be amended.</p>	<p>Issue 78</p> <p>No further action.</p>
<p><u>Travel Plans</u></p> <p>Issue 79</p> <p>It is not clear when a travel plan will be required and what this will entail. The document should provide more detail with regard to travel plans.</p>	<p>Issue 79</p> <p>The requirement for travel plans will be considered on a case by case basis and is supported by guidance within the Parking Standards and Travel Plans Supplementary Planning Document.</p>	<p>Issue 79</p> <p>No further action.</p>

11. Theatres Trust

Summary of Comments	Council's Response	Council's Further Action
Issue 80 We note in the <i>Review of the Dudley Community Plan 2000 – 2005</i> that the leisure and culture theme has 'struggled to achieve the targets identified' and that the issue of leisure has not been addressed in the Planning Obligations SPD other than in association with the sport and recreation. By omitting the word <i>culture</i> , the word 'leisure', which appears in Policy DD7, implies a relationship with only sporting activities.	Issue 80 This SPD has been prepared on the back of an existing policy on Planning Obligations within the Dudley Unitary Development Plan. This policy does not make specific reference to 'culture' and therefore the Council is limited in the extent to which it can address the 'cultural' facilities within the SPD. The new Local Development Framework however will be prepared with close links to the Community Strategy where issues like this will be dealt with.	Issue 80 No further action.
Issue 81 It is important that the need for developer contributions for infrastructure of cultural activities is identified, it is therefore suggested that the Council look at this topic again and introduce a new section on community facilities, which would include libraries.	Issue 81 As above.	Issue 81 No further action.

12. English Heritage

Summary of Comments	Council's Response	Council's Further Action
Issue 82 The section on the historic environment provides a clear overview of the most likely triggers for planning obligations, and the role for types of planning obligations. As a minor comment we recommend that 'historic asset' is consistently used rather than the term 'heritage asset'. There are two differences to securing 'the relevant heritage objective' which are a little unclear, are they really necessary?	Issue 82 The Council considers this to be a fair comment as the term 'historic asset' is one used through the recently published document 'Standard and Guidance for Stewardship of the Historic Environment' (2007) and using consistent terminology makes sense. The Council considers that use of the term 'heritage objective' is necessary – it is a term used	Issue 82 To amend the SPD by deleting the term 'heritage asset' and to consistently replace it instead with the 'historic asset'. The Council proposes to include a 'Glossary of Terms' which will explain what is meant by the

	extensive by English Heritage in their policy statement ' <i>Enabling development and the Conservation of heritage assets</i> ' (2001).	term 'heritage objective'
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13. Environment Agency

Summary of Comments	Council's Response	Council's Further Action
<p>Issue 83</p> <p>There is no reference to Developer Contributions towards either contributing towards the cost of resolving flooding problems (i.e. undersized culverts) or providing funding towards the flood risk infrastructure they depend on, such as maintaining drains and clearing culverts.</p> <p>PPS25: Development and Flood Risk Paragraph G2 states that <i>"In certain circumstances ... it may be necessary to permit development that requires the provision of flood risk management ... such provision will generally be funded by the developer"</i>.</p> <p>The Environment Agency therefore wishes to see the issue of developer contributions in relation to flood management, defence and mitigation included within the SPD.</p>	<p>Issue 83</p> <p>Noted: This is already taken into account through the development process. The EA are consulted on development proposals and if there are infrastructure shortfalls as a result of the development then developer contributions are sought.</p>	<p>Issue 83</p> <p>No further action.</p>

14. Network Rail

Summary of Comments	Council's Response	Council's Further Action
<p>Issue 84</p> <p>Where it has been identified that rail patronage has increased as a direct result of new development, contributions for transport links should be sought. Transport assessments should be used to judge the effects on the rail transport</p>	<p>Issue 84</p> <p>Strategic infrastructure is subject to the consideration of that responsible Authority, in this case Network Rail and Central Government and as such is beyond the Council's powers.</p>	<p>Issue 84</p> <p>No further action.</p>

network, especially at Stourbridge Town, Stourbridge Junction, Lye and Coseley stations. Where it is identified that improvements may be required, planning obligations should look to fund these. These could be for infrastructure enhancements and could include station upgrading work, additional car parking, improved waiting facilities, improved accessibility (e.g. cycle routes/ storage), public transport access, disabled access or improved layout.		
Issue 85 The recent Guidance on Transport Assessment (2007) published by the DfT places a much greater emphasis on the significance of rail as an alternative and sustainable method of transport. Network Rail would expect this to be reflected in any transport assessment and would request that as identified.	Issue 85 As above.	Issue 85 No further action.
Issue 86 Improvements to stations are likely to benefit the whole borough. Network Rail would welcome the commitment of the Council of pooling planning obligations from numerous developments to mitigate their combined impact upon the railway (in accordance with Circular 05/05), especially paragraphs B21-B24 and B33-B35.	Issue 86 As above.	Issue 86 No further action.

15. Countrywide Properties

Summary of Comments	Council's Response	Council's Further Action
Part 1		

<p>Issue 87</p> <p>The overriding concern regarding the Draft SPD is that a wide range of issues are considered within the document without any acknowledgement that many of these, may more simply be addressed through the use of a condition.</p>	<p>Issue 87</p> <p>See response to issue 35.</p>	<p>Issue 87</p> <p>See response to issue 35.</p>
<p>Issue 88</p> <p>Paragraphs 1.29 – 30 of the Draft SPD consider viability, however, given that in many instances developers are financially committed to sites without having regard to the contents of the SPD, a postponed implementation date would be appropriate. We believe the document should clearly state that its proposals will apply to applications submitted after 1st January, 2008 in order to allow developers to have proper regard to its implications.</p>	<p>Issue 88</p> <p>See response to issue 52.</p>	<p>Issue 88</p> <p>See response to issue 52.</p>
<p>Issue 89</p> <p>There is no differentiation between outline and full applications. A simple explanation of how the planning authority would deal with an outline where all matters are reserved for subsequent approval would be useful as, without a definitive number of proposed dwellings, it is not possible to calculate many of the proposed contributions.</p>	<p>Issue 89</p> <p>Noted: This Planning Obligation SPD will allow a developer to ascertain the likely costs arising from a proposed development site when the developer is preparing a draft layout. At the outline planning application stage the developer will be advised by the Planning Case Officer of the planning obligations requirements.</p>	<p>Issue 89</p> <p>No further action.</p>
<p>Issue 90</p> <p>Within the SPD figures are used within a formulae without a clear explanation of where they are derived from and why they are being used – it is not possible to know whether they are appropriate. It would be useful to see an explanation of each</p>	<p>Issue 90</p> <p>Refute: Each section of the SPD contains a sub-section entitled 'Basis for Calculation' to give transparency and clarity, this gives details of where figures quoted have been derived, along with the relevant officer contact details</p>	<p>Issue 90</p> <p>No further action.</p>

provided in each case as an appendix to the SPD.		
Issue 91 Paragraph 1.36 requires developers to meet the Council's reasonable legal costs. If developers are expected to meet these costs, we believe that the SPD should contain a clear commitment from the Council that every endeavour will be made to issue decisions within the statutory determination period.	Issue 91 Refute: The Council will always seek to issue a decision on a planning application within the Government timescales. The necessity to consult outside bodies and the often complex nature of submitted details can result in some planning applications being determined outside the set timescales. The Council has already initiated steps through the use of Grampian conditions to minimise delay in getting an approval to applicants.	Issue 91 No further action.
<u>Part 2 – Affordable Housing</u> Issue 92 Paragraph 2.4 – there is no planning policy requirement to “ <i>expect</i> ” developers to work with particular RSLs.	Issue 92 Agreed.	Issue 92 In paragraph 2.4 replace the word “ <i>expect</i> ” with “ encourage ”.
<u>Part 2 – Environmental Protection</u> Issue 93 Paragraph 2.33 – there is an inference within the Environmental Protection section of the document that it will usually be necessary for off-site works to be undertaken to satisfy noise and air quality issues. The majority of issues can be addressed on-site by way of detailed design and planning conditions. The SPD should acknowledge this.	Issue 93 Agreed. Where possible conditions will be used.	Issue 93 Dealt with under issue 73.
<u>Economic Well Being</u> Issue 94	Issue 94	Issue 94

<p>A new requirement for an “<i>Economic Well Being</i>” contribution is proposed. Paragraph 2.16 refers to new housing, increasing population levels, however the occupiers of many of the proposed dwellings will be moving within, not into, the Borough. It cannot therefore be demonstrated that increasing unemployment is directly related to new residential development.</p>	<p>In light of consultation responses, paragraphs 2.14, 2.16, 2.18, 2.19 of the Economic Well Being Section, which refer to financial contributions to Economic Well Being, have been taken out in order to allow for further detailed evidential work to be undertaken. A more robust and revised section will be produced in due course.</p>	<p>Delete paragraphs 2.14, 2.16, 2.18 and 2.19 which refer to financial contributions towards Economic Well Being.</p>
<p>Issue 95</p> <p>Other funded initiatives are in place to bring people into work within the Borough and for the Council to “<i>seek to develop an income stream through the Planning Gain process</i>” from residential development to subsidise such schemes is a misuse of planning obligations.</p>	<p>Issue 95</p> <p>In light of consultation responses, paragraphs 2.14, 2.16, 2.18, 2.19 of the Economic Well Being Section, which refer to financial contributions to Economic Well Being, have been taken out in order to allow for further detailed evidential work to be undertaken. A more robust and revised section will be produced in due course.</p>	<p>Issue 95</p> <p>Delete paragraphs 2.14, 2.16, 2.18 and 2.19 which refer to financial contributions towards Economic Well Being.</p>
<p><u>Part 2 – Open Space, Sport and Recreation</u></p> <p>Issue 96</p> <p>Paragraph 2.83 – the open space, sport and recreation section should acknowledge that it is acceptable for developers not only to deliver on site open space and play provision, but also maintain it through a management company.</p>	<p>Issue 96</p> <p>Accept: The Council is happy to expect this approach as an option for the SPD. However if developers do pursue this course of action that they will be expected to provide detail via a ‘Landscape Design Method Statement’ referred to in the Open Space, Sport and Recreation SPD.</p>	<p>Issue 96</p> <p>Suggest that the following wording is added, to create a new paragraph, after the table under paragraph 2.88:</p> <p>“It is also acceptable for developers not only to deliver on-site open space and play provision, but also to maintain it through a management company. However if a developer does opt to pursue this option they will be expected to provide detail via a ‘Landscape Design Method Statement’. The Council’s requirements for such a statement are set out in the Open Space, Sport and Recreation SPD and should also include consideration of planning guidance for nature conservation, the historic environment and site specific guidance.”</p>

<p><u>Transport Infrastructure Improvements</u></p> <p>Issue 97</p> <p>The Draft SPD considers the Council's Transportation Capital Programme 2006 – 2011 which comes to just under £26 million and then work on the premise that the additional weekday trips are divided into this amount to give a figure of spending per trip. This however does not take into consideration any of the network which is currently substandard, as some of the capital program will be for upgrading and improving existing facilities rather than just to wholly catering to additional trips.</p>	<p>Issue 97</p> <p>Noted.</p>	<p>Issue 97</p> <p>It is suggested that table 4 be amended to remove the Major Schemes from the calculations. The Council have been concerned that these schemes represent major additional capacity improvements above that that considered in this document and as such it could be argued that it is inappropriate to include them. As such the following amendments to the text in paragraph 2.123 are recommended:</p> <p><i>"2.123 Table 4 shows that the transport infrastructure funded via the Transportation Capital Programme Integrated Transport Block up to 2011 is £25,821,000 £20,722,000. The Central Government funding is intended to accommodate the additional trips generated by the current population".</i></p>
<p>Issue 98</p> <p>The process which by which the commuted sum requirement is calculated involves dividing a 5 year programme by a weekday amount. This surely is a mixing of units of time. It is more representational to divide the five year capital programme by the number of weekdays within that 5 year timescale if the data in Table 5 is to be correctly applied. This would therefore be 1,300 times the 15,090 million / 19.617 million trips which would be therefore a spending per trip of £1.32 (as opposed to £1,711). On this basis then the units of time would be constant and not different as the proposed.</p>	<p>Issue 98</p> <p>Noted.</p>	<p>Issue 98</p> <p>Recommend following changes to the text in paragraphs 2.125, 2.126, 2.127 and 2.129 to clarify, improve and firm up the guidance given in the 'What is expected from the developer' and 'Basis of calculation' heading of the Transport Infrastructure Section:</p> <p><i>" 2.125 It can be seen from Table 5 that the total extra trip generation from the existing households and businesses in Dudley is 15,090. Given that the transport infrastructure funded via the Transportation Capital Programme over 5 years totals £25,821,000 £20,722,000 the proportion per additional trip equates to spending per trip equates to £1,711 £1,373 (that is £25,821,000</i></p>

		<p>£20,722,000/ 15,090 = £1,711 £1,373)."</p> <p><i>" Step 2: Planning for Additional Growth</i></p> <p><i>2.126 ... Taking the identification of £25,821,000 £20,722,000 needed for the 5 year Transport Capital Programme then 8% additional growth from extra households and businesses will necessitate an additional £2,065,680 £1,657,760 needed for Transport Capital Infrastructure Improvements"</i></p> <p><i>" 2.127 On the basis of the above developer contributions will be sought on the basis of £1,711 £1,373 per additional trip arising from the development to be pooled to meet the additional £2,065,680 £1,657,760 needed. The contributions pooled will be used to accelerate or enhance current transport infrastructure improvements to reflect the increased demand resulting from developments. The monies will be spent in the local area as specified in agreement with the promoter to the benefit of the occupiers of the development be they residents, visitors or workers".</i></p> <p><i>" 2.129 Sustainability Assessment Forms are required to obtain a Sustainability Score, once this score is known the trip contributions can be calculated. The trips contributions can be calculated by dividing the £1,711 £1,373 trip generation cost by 30 ... The resulting figure is then multiplied by the maximum Sustainability Assessment score minus the actual Sustainability Assessment score. The developer may choose to promote measures to improve the sustainability assessment subject to the satisfaction of the Council. The resulting figure gives a price per trip and This is finally multiplied</i></p>
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		<p><i>by the trip rates for the relevant type of development ...”</i></p> <p><i>“ 2.130 ... Robust and detailed evidence on trip generation from previous uses must be submitted at the same time of initial submission of the planning application #a. A developer is seeking may seek a reduction in additional trip generation arising from the scheme subject to the satisfaction of the Council. Weekday trip contributions can be derived from the Transport Assessment (TA) or for smaller scale developments from Table 5”.</i></p>
<p><u>Nature Conservation</u></p> <p>Issue 99</p> <p>Planning 2.81 – We support the provision of mitigation and enhancement of nature conservation on a site by site basis but oppose the introduction of a “<i>standardised system for enhancements</i>” proposed in paragraph 2.8. We do not believe this to be a reasonable requirement that is necessary to make a development acceptable in planning terms, particularly if on site, nature conservation is proposed.</p>	<p>Issue 99</p> <p>Refute: Work on a “standardised system for enhancement” is still at its very initial early stages. Once in an initial draft form the document would be consulted upon and comments considered at this stage.</p>	<p>Issue 99</p> <p>No further action.</p>

16. The Inland Waterways Association

Summary of Comments	Council’s Response	Council’s Further Action
<p>Issue 100</p> <p>We note that the canal network is mentioned within the chapter on Historic Environment and that the Council propose several mitigations, all of which we agree with, in order to protect them.</p>	<p>Issue 100</p> <p>Refute: Under the Environmental Protection section the issue referred to seek to protect noise sensitive development from adjacent bad neighbour development and to address air quality</p>	<p>Issue 100</p> <p>No further action.</p>

<p>However we are a little concerned that the canal network is not specifically mentioned within either the Environmental Protection or Nature Conservation Sections. Given that potential developers might over look the canal network when considering these issues we would suggest that they be included for in the relevant text.</p>	<p>and contaminated land issues. There is no need to refer to the canal network in this Environmental Protection section in what simply seeks to set out protective mechanisms via S.106s to mainly new residential development. Para 2.63 Historic Environment section, para 2.63 canals are referred to as falling with the definition of an historic asset.</p>	
<p>Issue 101</p> <p>The draft SPD does not take into consideration the gain that adjacent land owners might contribute to the profits of a developer and the need to pay for the up keep of that quality land, via a planning gain supplement (S.106) payment, which the land owner is providing. For example British Waterways provides a canal that could increase the value of property built adjacent to it by up to 20%, yet waterside developers are not required to pay towards the up keep of that canal out of the profits they make to give the purchasers something that they have paid for.</p>	<p>Issue 101</p> <p>The purpose of the SPD is not to seek a portion of the uplift in the value of land which may (or indeed may not) accrue from being next door to a particular land use. Such an approach would run contrary to the tests as set out in Circular 05/2005. If an adjacent development has a measurable detrimental affect on a waterway the current policy would allow British Waterways to seek a means to ameliorate that detrimental affect through the planning application process.</p>	<p>Issue 101</p> <p>No further action.</p>