

Planning Obligations SPD: Consultation Statement

The Planning Obligations SPD expands on policy IM2 (planning obligations) of the Welwyn Hatfield District Plan (adopted 2005) and provides detailed guidance on the type and scale of planning obligations sought by the council, in addition to setting out our approach to securing planning obligations.

This consultation statement has been prepared in accordance with Regulation 17 (1) (b) of the Town and Country Planning (Local Development) (England) Regulations 2004.

Pre-production Consultation

As part of the preparation of the draft Supplementary Planning Document (SPD) meetings were held with the following service providers to discuss the scope of the document:

- WHBC Client Services Team
- WHBC Development Management Team
- WHBC Community Services
- WHBC Landscape and Allotments Team
- Hertfordshire County Council

A number of issues were raised in conjunction with the SPD at these meetings, including:

- The range, scale and form of planning obligations likely to be sought;
- The evidence basis for requiring planning obligations;
- The types of development likely to require planning obligations and the thresholds at which obligations will be sought; and
- The procedures that will need to be put in place, or formalised, with regards to the negotiation, payment, and monitoring of planning obligations.

These issues were subsequently addressed in the draft SPD and the approach to securing planning obligations for different types of infrastructure was agreed by the above service providers. Furthermore, a consensus was also reached between different service providers within the council, with regards to the procedure for negotiating and monitoring planning obligations, with the aim of establishing a system that is transparent, fair and consistent.

Consultation on the draft SPD

Consultation on the draft planning obligations SPD took place between 21st September and 25th October 2011 for a period of five weeks.

During this period the SPD was available for inspection during normal office hours at the following locations:

- Welwyn Hatfield Borough Council Offices
- Welwyn Garden City Central Library
- Hatfield Central Library
- Hatfield Town Council's Offices
- Jim MacDonald Centre

The SPD was also available to view and comment on, online, via Objective, the council's consultation portal.

Who was consulted

In accordance with Part 1 (2) of the Town and Country Planning (Local Development) (England) Regulations 2004 the draft SPD was sent to a number of specific and general consultation bodies. Further to this, an email was also sent to everyone on the council's consultation portal 'Objective' informing them that the SPD was available for comment.

In total we received 65 comments on the SPD from 23 people, including:

- Hastoe Housing Association
- Welwyn Garden City Society
- Herts Biological Records Soc
- English Heritage
- Environment Agency
- Highways Agency
- Herts County Council
- YMCA
- Residents
- Agents
- Sport England
- Coal Authority
- Theatres Trust
- HCA
- Natural England

Comments on the draft SPD

Following the consultation period, all the comments were processed, and a summary of all the comments received on the SPD, and the council's response to them, is set out in the tables below.

A number of changes have also been made to the SPD to reflect the comments raised as part of the statutory consultation process and these are as follows:

- A section on the relationship of the SPD to the draft SPD has been added at paragraph 1.13
- The relationship between planning obligations and the community infrastructure levy has been expanded upon in the document at paragraph 2.9
- A sentence has been added at paragraph 3.3 to clarify that the starting point for the assessment of planning obligations on schemes, will be on the total number of dwellings proposed in the planning application.
- The reference to 35% affordable housing on page 13 has been changed to read 30%.
- The format of section 3.2 on Green Space has been amended
- The definition of green space has been widened
- The approach to securing obligations for the provision of green space has been amended
- The format of section 3.3 on Allotments has been amended
- The approach to securing obligations for the provision of allotments has been amended
- The approach to securing obligations for play space set out in section 3.4 has been enhanced

- The approach to the delivery of sports pitches at section 3.5 of the SPD, and sports facilities at section 3.6 of the SPD, has been firmed up and widened to include contributions towards the enhancement of existing facilities in proximity to the proposed development that would serve the development, and are shown to be in need of improvement. This will aid in meeting the demand from new developments where it is not feasible to provide sports pitches on site. Furthermore, the SPD will also be amended to refer to the local standards for the provision of sports pitches rather than the national FIT standards.
- Where the term 'substantial site' has been used, this has been clarified to relate to sites of 300 dwellings or more.
- The SPD will be amended to include a definition of what is meant by community facilities.
- Section 3.9 has been amended to take account of the comments made by Hertfordshire County Council
- A paragraph has been added under section 3.10 'Other Obligations' to set out the councils approach to negotiating obligations for heritage assets.
- A reference to the County Council has been added at paragraph 4.6 and 4.8
- Section 4.3 on cumulative applications has been reinforced to ensure the splitting of sites to avoid payment of planning obligations is precluded.
- A section on the re-payment of obligations has been added to the procedure chapter.
- Section 4.7 has been amended to take account of the comments made by HCC.

Wherever possible officers of the council have amended the SPD to take on board the comments raised as part of the statutory consultation, however, in some instances this has not been possible, due to the nature of the comments.

A transcript of all the comments made on the draft Planning Obligations SPD, the Council's Response to them, and Proposed Changes to the SPD

General Comments on the whole SPD

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Miss Rachael Bust	Coal Authority	Consultee	Thank you for consulting The Coal Authority on the above. Having reviewed your document, I confirm that we have no specific comments to make on this document at this stage.	Comments noted.	None
Mr Brian Rothwell		Consultee	The Chapter/Paragraph numbering system is very confusing. The review system is not user friendly and does not work properly for chapter 1	Comments noted. The chapter/ section/ paragraph numbering is set by our publishing software Objective, and unfortunately cannot be changed.	None
Ms Katharine Fletcher	English Heritage	Consultee	We would suggest that the document should provide for instances where contributions are required towards the preservation or enhancement of heritage assets, including the investigation and interpretation of archaeology (whether designated or not). In the case of sites encompassing designated assets, it may be justified to tie planning permission to repair and re-use of the heritage asset, especially if development could affect its setting, future viable use or it is identified as at risk on a local register. We therefore suggest that the	Comments noted. The council currently uses both planning conditions and planning obligations to ensure the repair and maintenance of listed buildings within the borough, and will amend the SPD to reflect this.	Planning obligations for heritage assets will be included under the other obligations section.

			SPD should be amended to provide for contributions relating to heritage assets, where appropriate. Most commonly this is likely to apply to archaeological evaluation and recording, but other assets may be relevant in certain cases.		
Mr Andy Instone	Hertfordshire County Council	Consultee	It is important that any Planning Obligations consider the historic environment. The requirements of PPS 5 and the accompanying practice guide should be followed where necessary. The relevant parts of the proposed NPPF which deal with the historic environment should also be considered. Planning Obligations should where necessary include reasonable measures to achieve this.	Comments noted. The council currently uses both planning conditions and planning obligations to ensure the repair and maintenance of listed buildings within the borough, and will amend the SPD to reflect this.	Planning obligations for heritage assets will be included under the other obligations section.
Mr Gordon Wyatt	Natural England	Consultee	Natural England supports the Councils production of this document and, in particular, the inclusion of Standard Charges for Green Space, Allotments and Play Facilities.	Comments Noted	None
Mrs Judith Watson	Herts Association of Parish & Town Councils	Consultee	<p>We would appreciate a clause being inserted to preclude the splitting of sites to avoid the necessity of the provision of affordable housing on eligible sites.</p> <p>There should also be mention of the re-designation of wards and the fact that Woolmer Green is now in Welwyn East Ward and not in Welwyn North.</p>	Comments Noted	<p>Section 4.3 on cumulative applications will be reinforced to ensure the splitting of sites to avoid payment of planning obligations is precluded.</p> <p>The SPD will also be amended to</p>

					reflect the re-designation of the wards and that Woolmer Green is now in Welwyn East Ward.
Mr James Yeoman	Savills	Agent for Miss Kate Turner of Lands Improvement Holdings Plc	LIH welcomes the transparency of the approach towards negotiating appropriate and fair planning obligations. In summary LIH recognises the importance that the proposed SPD can make in securing appropriate contributions from new development within the Borough. LIH considers the Councils evidence based approach to securing contributions enabling a site-by-site review is a reasonable approach to pursue. However, LIH take this opportunity to highlight the importance that such contributions do not impact upon the viability of a scheme and therefore prevent development potential and economic growth from being realised.	Comments Noted	None
Mr Chris Shaw	Highways Agency	Consultee	There is no immediate direct benefit to ourselves but nevertheless the Highways Agency supports the Borough Council's approach. More appropriately the Highways Agency would wish to work with the Hertfordshire County Council Planning Obligations Guidance Toolkit in respect of sustainable transport measures.	Comments Noted	None
Mr Edward Keymer	Keymer Cavendish	Agent for Brocket Trustees	The charges proposed in the planning obligations SPD will further exacerbate the problems faced by house builders including: 1. Increased building costs 2. Difficulties of funding affordable housing	Your comments have been noted. The council however feels that the approach set out in the SPD is	None

			provision 3. Threatened introduction of CIL 4. Multiple demands of district and county councils under planning obligations 5. Even the highways agencies are demanding contributions in the A1 corridor Thus impacting on housing delivery.	appropriate and that the level of charges proposed are well within the parameters of viability for most types of residential development in most locations, as shown by the findings of the council's Development Economics Study (2010).	
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Comments on Introduction

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr David Martin	YMCA	Consultee	<p>With regard to the YMCA specifically, it is the YMCAs clear policy intention to replace the current Peartree hostel with new facilities elsewhere in Welwyn Garden City. Accordingly, re-provision on brownfield land is the only sensible approach to providing good quality facilities at an affordable cost. The HCA funding programmes for such schemes are now fundamentally reduced and, to that end, the YMCA will need to take on significant debt in order to fund the scheme. The presence of significant planning obligations could have a major adverse impact on viability which, in turn,</p>	<p>Whilst the council notes the comments made by the YMCA, it is unable to exempt the YMCA from paying planning obligations, as there are no policy grounds on which this exemption could be based.</p> <p>It should however be noted that the level of obligations required will be dependant on the nature of the scheme proposed, which may mean that not all of the obligations set out in the SPD are applicable to the development.</p> <p>Furthermore, if the viability of the</p>	None

			could impact upon the ability to deliver new facilities at similar levels. Hertfordshire County Council have incorporated a wise approach in their planning obligations toolkit which recognises the importance of supported housing and its benefit to the local community. It is recommended that this common sense approach is expressly replicated in the Welwyn Hatfield SPD in order to protect supported housing and, in particular, stimulate its reprovision with modern and good quality facilities that are a key component of Welwyn Hatfield's community infrastructure.	scheme proposed by the YMCA is marginal, and the applicant considers the planning obligations required by the council to impact on the viability of the development, the onus will be on the applicant to demonstrate this through a robust open book appraisal, which will then be considered by the council as part of the application process.	
Mr Brian Rothwell		Consultee	Unilateral Undertakings should be mentioned.	Unilateral undertakings are mentioned at paragraph 1.5 of the introduction.	None
Mr Brian Rothwell		Consultee	Para 1.7 is not telling you what it is, it is telling you what it should be used for	Comments noted	None
Mr Brian Rothwell		Consultee	The review system does not work for this chapter	Comments noted. The chapter/ section/ paragraph numbering is set by our publishing software Objective, and unfortunately cannot be changed.	None
Mr Edward Keymer	Keymer Cavendish	Agent for the Bocket Trustees	With the localism bill about to be enacted and the abolition of local development frameworks it seems curious that Welwyn Hatfield is seeking consultation on this document now rather than awaiting ratification of the localism bill and the NPPF. It is stated at para 1.2 that planning obligations are an effective tool to secure the wider aims of the local authority. They	In response to your comments. The planning obligations SPD has been developed in line current government guidance, and also takes account of the policies contained within the draft National Planning Policy Framework (NPPF), published in July 2011. Consultation on the draft NPPF closed on the 17th October 2011, and the final version is expected to be published by	None

			<p>are not. Para 68 of the NPPF states that planning obligations should only be sought where they are: - necessary to make the development acceptable in planning terms - directly related to the development - fair and reasonably related in scale and type of development</p>	<p>April 2012. Whilst amendments to the NPPF are envisaged, the policy approach set out in this SPD will however remain unchanged.</p> <p>Further to this, it is the council's view that planning obligations are an effective tool to secure the necessary infrastructure and services required as a result of development, to ensure that the negative impacts of development on infrastructure and service provision can be adequately mitigated, and that the wider aims of the council are met.</p> <p>The council will however only seek planning obligations where they meet the tests set out in regulation 122 of the CIL Regulations 2010, which places new statutory regulations upon the use of planning obligations to clarify their purpose.</p>	
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Comments on Policy Context

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Change to SPD
Mr Graham Goodall	Hertfordshire Biological Records Centre	Consultee	Policy IM2 Planning Obligations. We welcome the inclusion of this policy; particularly the requirement for on-site and off-site improvements, which could include Green Infrastructure. We welcome the inclusion of policies R13 SSSI; R14 Local Nature Reserves and R17 Trees, Woodland and Hedgerows.	Comments noted	None

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Change to SPD
Mr Edward Keymer	Keymer Cavendish	Agent for Bocket Trustees	Planning professionals had understood that the purpose of CIL was to simplify and avoid the complications of planning obligation negotiation. However, as set out in para 2.11, as many as five individual planning obligations headings which are capable of being covered by CIL can still be addressed as planning obligations. Furthermore, for infrastructure issues outside CIL an unlimited number of planning obligation headings can be addressed. These paras have crucial implications to viability.	Comments noted.	None

Comments on Approach

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr David Martin	YMCA	Consultee	That hostels, supported housing and community facilities that are associated with them will be exempt from the payment of planning obligation contributions.	<p>Whilst the council notes the comments made by the YMCA, it is unable to exempt the YMCA from paying planning obligations, as there are no policy grounds on which this exemption could be based.</p> <p>It should however be noted that the level of obligations required will be dependant on the nature of the scheme proposed, which may mean that not all of the obligations set out in the SPD are applicable to</p>	None

				<p>the development.</p> <p>Furthermore, if the viability of the scheme proposed by the YMCA is marginal, and the applicant considers the planning obligations required by the council to impact on the viability of the development, the onus will be on the applicant to demonstrate this through a robust open book appraisal, which will then be considered by the council as part of the application process.</p>	
Ms Michelle Crees	Homes & Communities Agency	Consultee	<p>The HCA would advise the council to ensure that it reviews on a case by case basis the requirement for each individual planning obligation to ensure that all obligations comply with the following tests (based upon three of the five policy tests in Circular 05/05):</p> <ul style="list-style-type: none"> • Necessary to make the development acceptable in planning terms; • Directly related to the development; and • Fairly and reasonably related in scale and kind to the development. 	Comments noted	None

Mr James Yeoman	Savills	Agent for Miss Kate Turner of Lands Improvement Holdings Plc	LIH supports the need for provision to be evidence based, taking account of the specific site characteristics and viability, as well as simply the overarching or borough-wide need. Likewise LIH supports the principle that development meets needs appropriate to its local area as identified, for example, by paragraphs 3.75 (sports facilities) and 3.83 (community facilities).	Comments noted	None
Mr Edward Keymer	Keymer Cavendish	Agent for the Brocket Trustees	Concerned about the use of the HISS to calculate standard charges for planning obligations, given the study is roughly three years out of date.	Comments noted. It is the council's view however that the HISS provides a robust evidence base for the calculation of standard charges for planning obligations, and the infrastructure costs set out in the HISS are still applicable today.	None

Comments on Approach to Affordable Housing

Full Name	Organisation Details	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mrs Jane Gallifent	Hastoe Housing Association	Consultee	Para 3.6 - It is recognised that these thresholds may be inherited from the existing District Plan but I suspect that this has a significant reduction in provision of affordable housing as a result of the 25 unit threshold. Would the SPD be an opportunity to promote a reduction in threshold? Para 3.8 - I would encourage the Council to consider being specific to a minimum	Para 3.6 - With regards to the provision of affordable housing the purpose of the SPD is to expand upon existing policies in the District Plan, not to create new policy. Given this the SPD can only use the standards for affordable housing provision set out in the District Plan, and therefore cannot reduce the threshold.	None

			<p>quota of tenure types to enable transparency to landowners; having drawn a line on minimum requirements will position the Council more favourably should a developer/landowner start on the viability route to argue less affordable housing.</p> <p>Para 3.10 - I would strongly recommend that all affordable housing irrespective of grant meets the HCA's prevailing design standards. Otherwise, there is a real risk that this will be exploited and absolutely minimum standards will be offered to include no restrictions on property sizes.</p> <p>Para 3.14 - Hastoe welcomes the Rural Exception Policy. As this policy will only be implemented where housing need is identified and existing residents benefit, Hastoe would recommend that no commuted payments were introduced under a S106. It is not clear whether they are exempt of if at least there is some recognition that there will be no significant increase on local infrastructure and community and therefore should be limited or exempt.</p> <p>Observations - It is identified by Hastoe and I am not sure whether this is a common response from other RPs, but our evidence base has proven that 1 bed shared ownership homes are not in demand and our organisation will not unless there is overwhelming evidence, deliver this house type as shared ownership.</p>	<p>Para 3.8 – It is the council's approach to take a more flexible approach to tenure mix, rather than having a minimum quota for tenure types. Here, the precise requirements for each site will be assessed in light of the council's latest evidence of need, and should reflect the requirements of the Housing Register. Furthermore, the exact range and mix of housing will depend on the nature and location of the site, and will be assessed on a site specific basis.</p> <p>Para 3.10 – The council expects the standard of design for all affordable housing to be of a high quality, and applications will be assessed against the design policies in the District Plan. Unfortunately the council does not have the power however to insist that all affordable housing is built to the HCA's design standards, as this is not an adopted policy.</p> <p>Para 3.14 – In line with the terms of the planning obligations SPD new residential development in the borough, may be liable to pay planning obligations. However where the applicant considers the planning obligations required by the council to impact on the viability of the development, the onus will be on the applicant to demonstrate this</p>	
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				through a robust open book appraisal. Other comments have also been noted.	
Mr Linnell		Consultee	<p>Opposed to the council's approach for delivering affordable housing in the borough.</p> <p>Only agree with the councils approach to the provision of affordable housing on rural exception sites in the borough if there is an established proven need at the commencement of the period.</p> <p>With regards to the councils approach to calculating commuted payments in lieu of the provision of affordable housing on site. I do not know how it will work in practice and what margins will be adopted.</p> <p>Section 106 agreements have been abused in the past to extricate a ransom from developers. Such abuse should be written out in the policy and all items should be proven before claimed and accounted for at a later date, say 3 years, with provision for repayment is the proceeds or schemes have not been realised.</p>	<p>The council notes the comments made of the draft SPD.</p> <p>The council also acknowledges that after a certain date, if there are section 106 monies that remain unspent, these should be repaid to the applicant/ developer. However, given the length of time it can take for some sites to come forward, and the nature of delivering larger infrastructure projects, it is the council's view that 10 years from the date of the section 106 agreement, is an acceptable period of time, after which monies should be repaid.</p>	A section on the re-payment of obligations will be added to the procedure chapter.
Mrs Jean Hewitt		Consultee	I am disappointed that 3.11 only seeks Lifetime Home standards to be observed on affordable housing (which applies to only 30% of new homes) and, if I am interpreting the SPD correctly, only on schemes of 25 or over residences. If the	<p>To respond to your comments on the draft SPD...</p> <p>Policy H10 of the District Plan does in fact state that in all residential development involving 5 or more</p>	None

			<p>GLA can dictate Lifetime Home standards to 100% of all schemes throughout Greater London, it must be reasonable for such standards to be achieved in more rural locations where density is not such an issue. Many London boroughs apply Lifetime Homes criteria, where practicable, to conversions to dwellings from other use classifications in addition to the 100% requirement for new build. I would therefore argue that that the Equality Impact Assessment provided in the SPD is flawed, specifically questions 10 and 15, as there is not a neutral effect on older people, young people with young children, and disabled people. Not ensuring suitable housing with the flexibility to cater for wider needs means that these groups are negatively affected by the proposed policy. Is there any requirement for wheelchair housing standards - I would suggest that 10% of any new homes should be wheelchair adaptable.</p>	<p>dwellings the council will seek to secure a proportion of dwellings to be built to lifetime homes standard. The SPD has just applied this standard to affordable housing provision though, as this is usually negotiated through a section 106 agreement. Typically, in other development, the council will seek to enforce this policy through a planning condition.</p> <p>Further to this the purpose of an SPD is to expand upon existing policies in the District Plan, not to create new policies. Given this, we would argue that the Equalities Impact Assessment is not flawed, as the SPD is merely implementing existing policies, not creating new policy.</p> <p>Finally, the council does not have a specific policy relating to wheelchair standards at present.</p>	
Ms Michelle Crees	Homes & Communities Agency	Consultee	<p>Each site must be considered on its own merits, taking into consideration mix, size, costs, values, and all other S106 requirements. The approach that you set out in your document would effectively consider the difference between the open market value and the affordable value as being the subsidy that would have been provided on site and what might reasonably be considered as a commuted</p>	Comments noted	None

			sum. The HCA considers this approach to be appropriate.		
Mr Edward Keymer	Keymer Cavendish	Agent for the Bocket Trustees	There is some confusion in that the target is stated to be 30% affordable housing, but other sections such as viability refer to 35%. Furthermore the SPD offers no flexibility to take account of the availability or non availability of Housing Association Grant. If there is no government funding to support affordable housing, the developer could end up providing not only the land, but also the bricks and mortar free of charge. If this was the case, it would have a calamitous impact on viability - an impact which might not be assessable at the time the planning obligation was entered in to.	<p>Comments noted.</p> <p>The council's policy for affordable housing provision is 30% on residential sites of 25 units or more, or on residential sites over 1 hectare, and the reference to 35% on page 13 has been changed to read 30%.</p> <p>Furthermore, to respond to your second point, it should be noted that the SPD does take account of scheme viability, in relation to affordable housing provision and states that where an applicant considers that a scheme is unable to deliver the level of affordable housing required by the District Plan Policy this would need to be justified, and the onus would be on the applicant to demonstrate to the council why viability would be a barrier to the delivery of the policy requirements.</p>	The reference to 35% affordable housing on page 13 has been changed to read 30%.

Comments on Approach to Green Space

Full Name	Organisation Details	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr David Farmer		Consultee	Agree with the councils approach to employ a standard charge to secure planning obligations from residential development in Welwyn	Comments noted	None

			<p>Garden City and Hatfield for the delivery of green space; the threshold for charging; and the level of charge employed.</p> <p>With regard to section 3.31, I am in favour of proposals to provide links to the countryside from Welwyn Garden City and Hatfield to potential strategic sites.</p> <p>Proposals should also focus on the enhancement of Panshanger Park, and the purchase of Rolls Wood and Blackthorn Wood.</p>		
Mr Graham Goodall	Hertfordshire Biological Records Centre	Consultee	<p>We welcome the inclusion of 'green space' in the SPD. The definition of Green Infrastructure should however also refer to farmland which forms a living, working landscape, and biodiversity.</p> <p>Developers must be required to deliver Planning Obligations to protect and enhance the local populations of 'priority' and protected species where necessary.</p> <p>Light pollution is also an issue that is receiving growing environmental concern. Poorly designed and badly aimed lighting may have adverse effects. This should also be controlled.</p> <p>In order to truly deliver sustainable development, planning authorities need to take a holistic environmental overview.</p> <p>Sustainable Drainage Systems (SUDS) and green roofs should always be designed into development sites where they are applicable.</p>	Comments noted	The definition of green space will be widened in the SPD to take account of these comments.

			Particular attention needs to be given to the detrimental impact of human activity (recreational/amenity) on wildlife, particularly where this occurs on and adjacent to Wildlife Sites. Therefore, public access to Wildlife Sites, and other sensitive areas, needs to be carefully considered and any resulting recreational activities must only be non-intrusive and even these activities should be carefully managed so as not to cause disturbance.		
Ms Michelle Crees	Investment and Regeneration Manager Homes & Communities Agency	Consultee	The HCA supports the principle of securing contributions from residential development towards Green Space for Green Infrastructure Plan projects. However the SPD should seek to ensure onsite provision of Green Space on larger sites, unless there is sufficient Green Space provided within the locality of the residential development.	Comment noted	The SPD will be amended in accordance with this comment.
Miss Anna Parr	Planning Liaison Technical Specialist Environment Agency	Consultee	We support paragraph 3.30 and its reference to the green infrastructure plans.	Comment noted	None

Mr Edward Keymer	Keymer Cavendish	Agent for the Brocket Trustees	Consider Welwyn Hatfield's standard for open space provision to be too high. Whilst everyone agrees that extra open space is 'nice to have' the land take for development will be hugely inflated if one third of every development has to be public open space. It is far more important to have sports facilities that are available throughout the year such as illuminated multi use games areas. In parallel informal areas of woodland where people can walk their dogs and even jog require little maintenance and therefore low levels of funding by developers.	Comments noted. The standard for open space used in the SPD, is however taken from the council's adopted open space, outdoor sport and recreation study (2009).	None
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Comments on Approach to Allotments

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell		Consultee	<p>Do not agree with the councils approach to employ a standard charge to secure planning obligations from residential development in the borough for the delivery of allotments. There is no reason why more allotments should be provided. There was no proven demand cited.</p> <p>Do not agree that the charge should apply to residential developments of 10 units or more.</p> <p>Do not agree with the level of charge employed for the provision of allotments.</p>	<p>Comments noted.</p> <p>The council's Open Space, Outdoor Sport and Recreation Study (2009) and Green Infrastructure Plan (2011) both found that there was considerable demand for allotments in the borough however, with waiting lists in many areas. Given this, it is the council's view that larger developments in the borough will generate a need for additional allotment plots, which should be provided on-site, to accommodate the anticipated additional demand for allotments that a new development will</p>	None

				give rise to.	
Ms Michelle Crees	Homes & Communities Agency	Consultee	The HCA is unclear why development contributions that are sought for allotments will be used to implement relevant projects identified in the councils Green Infrastructure Plan. If contributions are sought for allotments then any contributions that are sought for allotments must be specifically used to either provide new allotments or improve existing allotments. In addition, the SPD should seek to generate onsite provision of allotments on larger sites.	Comment noted	The SPD will be amended accordingly

Comments on Approach to Play Facilities

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Ms Michelle Crees	Homes & Communities Agency	Consultee	It is unclear why contributions are being sought towards Childrens Play Space from one bedroom dwellings as they will not be occupied by families with school age children.	Given that it is impossible to cross tabulate census information for habitable rooms and number of children living in a dwelling, the council feel justified in requiring a contribution towards play space from one bedroom dwellings, as there is no concrete way of demonstrating whether families with children of school age do live in one bedroom dwellings or not. Asking for a contribution across the board is therefore the most equitable way of applying the obligation, and ensures that we are creating supported	None

				communities. Further to this, play spaces can be used by children of all ages, not just those of school age.	
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Comments on Approach to Sports Pitches

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Roy Warren	Sport England	Consultee	<p>Sport England welcome the inclusion of sports pitches in the SPD.</p> <p>The Council's evidence base provided by the Welwyn Hatfield Sports Facilities Study is considered to be very robust and provides a sound basis for justifying provision to be made by development. However, there are concerns about the proposed approach due to the lack of clarity it provides about whether the provision of playing pitches will be sought from developers and where. Furthermore, there is not sufficient guidance about the level of provision that will be required when on-site provision is made and how contributions will be calculated when off-site provision is made.</p> <p>All developments which meet the 0.4 ha threshold should be required to make provision rather than it being considered on a case by case basis as</p>	<p>The council notes the representation made by Sport England and has the following comments to make.</p> <p>The council accepts that where there is evidence that new developments will give rise to an increased demand for sports pitches then measures should be taken to ensure this demand is catered for. However it does not consider it feasible for every new residential development to provide new sports pitches.</p> <p>Furthermore, the council appreciates that most sites coming forward will not be</p>	<p>The approach to the delivery of sports pitches in the borough will be firmed up in the SPD and widened to include contributions towards the enhancement of existing facilities in proximity to the proposed development, that would serve the development, and are shown to be in need of improvement. This will aid in meeting the demand from new developments where it is not feasible to provide sports pitches on site.</p> <p>Furthermore, the SPD will also be amended to refer to the local standards for the provision of sports pitches rather than the national FIT standards.</p>

		<p>this would accord with the evidence base and provide for consistency and transparency in the application of the approach. Exceptions should only be made where the Council is satisfied that there is not a need for new or improved sports pitch provision.</p> <p>Where provision is required, guidance is needed in the SPD on how this should be provided.</p> <p>In practice the majority of residential developments of larger than 0.4 ha that will come forward in Welwyn Hatfield will not be large enough to justify on-site provision being made or will only be large enough to justify small scale provision (e.g. single playing pitch sites) which may not be viable to operate and undesirable to provide in terms of meeting local needs.</p> <p>The SPD approach should reflect this as off-site provision through financial contributions towards delivering strategic sports pitch projects would in practice be expected to be the norm rather than the exception i.e. a standard charge approach (similar to that proposed in the SPD for play facilities) would be considered appropriate for the majority of developments.</p> <p>Both on-site provision and developer</p>	<p>large enough to justify on-site provision or will only be large enough to justify small scale provision which may not be viable to operate, however the council does not currently have any plans to deliver new strategic sports pitches, or any land in its ownership on which to facilitate this, and given this contributions are not sought for this purpose. However this will be reviewed as part of the preparation of the Local Development Framework and the development of a CIL charging schedule.</p> <p>When substantial sites, of 300 dwellings or more, do come forward however, the council will look to secure the provision of new sports pitches on-site to promote the creation of sustainable communities.</p>	
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			<p>contributions should use local standards of provision as the basis for calculating the level of sports pitch provision to be made as this would accord with current Government guidance as set out in PPG17. It is therefore recommended that this is incorporated into the approach set out in the SPD.</p> <p>In terms of deciding whether on-site or off-site provision should be made, it is advocated that this should be discussed between the Council and the applicant at pre-application stage rather than setting dwelling/site area thresholds which may be inappropriate in many circumstances (e.g. town centre regeneration schemes).</p> <p>However, it should be recognised that on-site provision is only likely to be desirable where multi-pitch sites can be provided that can be supported by appropriate ancillary facilities - small sports pitch sites with limited ancillary facilities are undesirable from both a user and management perspective especially in urban areas. In practice, it is usually only larger urban extensions where such facilities can be justified and practically accommodated on-site within developments.</p>		
Ms Michelle	Homes & Communities	Consultee	Further guidance should be provided on the payment of a commuted sum where	Comments noted	All references to commuted sums have been removed

Crees	Agency		it is not possible for direct provision of facilities to be provided on site in order to provide developers with certainty when they purchase development sites.		from this section.
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Comments on Approach to Sports Facilities

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Roy Warren	Planning Manager Sport England	Consultee	<p>Sport England welcome the inclusion of sports facilities in the SPD.</p> <p>The Council's evidence base provided by the Welwyn Hatfield Sports Facilities Study is considered to be very robust and provides a sound basis for justifying provision to be made by development.</p> <p>However, the following concerns are identified with the approach that is proposed in the SPD:</p> <ol style="list-style-type: none"> 1. While the section relates to sports facilities, sports halls are the only facility that is referred to in the SPD even though sports facilities would cover a range of facilities. To address this, the SPD should either explain or justify why only sports halls have been referred to in this section or extend the range of facilities that this section covers based on the facilities where an existing or future need has been identified in the 	<p>The council notes the representation made by Sport England and has the following comments to make.</p> <p>Similarly to sports pitches, the council accepts that where there is evidence that new developments will give rise to an increased demand for sports facilities then measures should be taken to ensure this demand is catered for. However it does not consider it feasible for every new residential</p>	<p>The definition of sports facilities will be widened to reflect other sports facilities and a summary of future sports needs will be provided.</p> <p>The SPD will also be amended to clarify what is meant by 'substantial site', and the reference to national standards will be replaced with the council's adopted local standards of</p>

			<p>Council's study. This is pertinent in view of the proposed approach in paragraph 3.75 referring to sports facilities rather than sports halls.</p> <ol style="list-style-type: none"> 2. While the section provides a summary of current sports hall needs, it should also refer to future sports needs. 3. Paragraph 3.75 refers to sports facilities being sought where there is evidence of need. However, a robust evidence base is already in place which shows a range of sports facility needs across the whole district. Consequently, all developments which meet the Council's threshold should be required to make provision rather than it being considered on a case by case basis. Exceptions should only be made where the Council is satisfied that the development does not generate a need for new or improved sports facility provision. 4. The proposed approach does not include a clear development threshold for requiring sports facility provision to be made. Without this, there is a lack of clarity about what scale/type of developments would be expected to make provision which could result in inconsistency and a lack of transparency in the application of the approach. Sport England would advocate that all residential developments pay a standard charge towards off-site sports facilities. 5. The proposed approach only refers to 	<p>development to provide new sports facilities.</p> <p>Furthermore, the council appreciates that most sites coming forward will not be large enough to justify on-site provision of sports facilities, however, neither does the council have any plans to deliver new strategic sports facilities, or any land in its ownership on which to facilitate this, and given this contributions are not sought for this purpose.</p> <p>When substantial sites, of 300 dwellings or more, do come forward however, the council will look to secure the provision of new sports facilities on-site to promote the creation of sustainable</p>	<p>provision for sports facilities.</p> <p>In addition to this, the approach to the delivery of sports facilities in the borough will be firmed up in the SPD and widened to include contributions towards the enhancement of existing facilities in proximity to the proposed development, that would serve the development, and are shown to be in need of improvement. This will aid in meeting the demand from new developments where it is not feasible to provide sports facilities on site.</p>
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			<p>the Council seeking to secure sports facility provision on substantial sites which are not defined. This could be interpreted that provision will only be sought in major developments where on-site sports facility provision could be justified. Clarity is required on whether this is the case as the approach is not clear on this point as the approach goes on to refer to on site provision or off site provision through developer contributions being made. In any case, "substantial" should be defined if it is going to be retained as it is ambiguous. As set out above, Sport England would advocate that a standard charge approach is applied to all developments that generate a need for sports facilities</p> <p>6. The proposed approach does not reflect that on-site sports facility provision is unlikely to be realistic for the majority of development sites. In practice the majority of residential developments that will come forward in Welwyn Hatfield will not be expected to be large enough to justify on-site provision being made. In practice, it is usually only large urban extensions where such facilities can be justified and practically accommodated on-site within developments. The SPD approach should reflect this as off-site provision through pooling financial contributions towards delivering strategic sports facility projects would in practice be</p>	<p>communities.</p> <p>This approach will however be reviewed as part of the preparation of the Local Development Framework and the development of a CIL charging schedule.</p>	
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			<p>expected to be the norm rather than the exception.</p> <p>7. Developer contributions should use local standards of provision as the basis for calculating the level of sports pitch provision to be made as this would accord with current Government guidance as set out in PPG17.</p> <p>Without a 'standard charge' type approach being applied for sports facilities, Sport England is concerned that the SPD will only have a limited effect in securing new sports facility provision to meet the needs generated by new development.</p>		
Ms Michelle Crees	Homes & Communities Agency	Consultee	<p>Further guidance should be provided as to what the council consider to be a substantial site and what scale any commuted sum would take where there is not direct provision on site in order to provide developers with certainty when they purchase development sites.</p>	Comments noted	The SPD will be amended to clarify what is meant by 'substantial site' and all references to commuted sums have been removed from this section.

Comments on Approach to Community Facilities

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Ms Rose Freeman	The Theatres Trust	Consultee	<p>Section 3.7 Community Facilities, Paragraph 3.81 should also, we suggest, include town centres so that the first sentence reads - To aid [in]</p>	<p>Comments noted. Whilst the council agrees that it would be helpful to define what is meant by the term community facilities,</p>	<p>The SPD will be amended to include a definition of what is meant by community</p>

			<p>the creation of town centres, sustainable neighbourhoods and villages in the borough.</p> <p>The document is not clear on which facilities are included within the term community facilities. We wish to be reassured that your theatres are embraced within this section and therefore request the text incorporates a description of the term for clarity and greater certainty of intended outcomes.</p> <p>Theatre buildings should benefit appropriately under the terms of S106 and other agreements to mitigate the impact of any new developments upon existing theatres and provide a mechanism for theatres to address the social, physical, environmental and economic pressures and new demands associated with development.</p>	<p>please note that for the purpose of this SPD, theatres are not included in this definition, as the council does not have a programme for providing new or enhancing the existing theatres in the borough.</p>	<p>facilities.</p>
<p>Ms Michelle Crees</p>	<p>Homes & Communities Agency</p>	<p>Consultee</p>	<p>Further guidance should be provided as to what the council consider to be a substantial site and what scale any commuted sum would take where there is not direct provision on site in order to provide developers with certainty when they purchase development sites.</p>	<p>Comments noted</p>	<p>The SPD will be amended to clarify what is meant by 'substantial site' and all references to commuted sums have been removed from this section.</p>

Comments on Approach to Waste and Recycling

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mrs Marion Hayes		Consultee	Agrees with the council proposed approach to employ a standard charge to secure planning obligations from residential development in the borough for the delivery of waste and recycling facilities.	Comments noted	None
Mr Brian Rothwell		Consultee	Does not agree with the council's approach to employ a standard charge to secure planning obligations from residential development in the borough for the delivery of waste and recycling facilities You forced bins upon us so you pay for them, otherwise it will be unfair to the new residents who will have it added to the cost of their house. Most people were happy with the plastic bag system. Do you really want to have negotiations about items costing a few pounds?	Comments noted. A standard charge has been developed here on the grounds that the provision of waste and recycling bins is a one off capital cost which is directly attributable to the impact of a new development.	None

Comments on Approach to HCC Obligations

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Miss Alexandra Stevens	Hertfordshire County Council	Consultee	I am pleased to note the inclusion of the Planning Obligations Guidance: a Toolkit for Hertfordshire January 2008 (the Toolkit) and the support of Welwyn	The council has noted the comments made by the County Council and where applicable, will amend the SPD accordingly.	The SPD will be amended to refer to 'Health and Community Services', paragraph 3.95 will be amended to reflect the

			<p>Hatfield Borough Council (WHBC) in respect of seeking planning obligations through the use of standard charges for HCC Services.</p> <p>It should be noted however, that the Toolkit document applies up to a threshold of 300 dwellings, above this developments will be considered individually and specific on-site or off-site provision may be sought for land or built facilities as set out within paragraph 10.6 of the Toolkit. In addition, in some instances, local circumstances may make it necessary to seek planning obligations other than the standard charge, such as on-site provision and currently there is no standard charge in respect of Health and Community Services (formally Adult Care Services) matters as set out within the Toolkit. Accordingly, it would be helpful if the wording of paragraph 3.95 could be amended to read 'Welwyn Hatfield Borough Council will support the County Council in seeking planning obligations for the items outlined above so long as need can be evidenced and they meet the three tests set out in Community Infrastructure Regulations 2010. (I have requested further information</p>	<p>Further to this, the council has considered the arguments put forward by the County Council in relation to seeking contributions for fire hydrants, and considers there to be a sufficient argument for asking for contributions to the provision of fire hydrants in the SPD.</p>	<p>County's proposed wording, and the threshold at which the Toolkit will be applied will be amended accordingly.</p> <p>Furthermore, the council's approach to fire hydrants will be amended in the SPD to include an obligation for fire hydrants.</p>
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		<p>in respect of the change from Adult Care Services (ACS) to the Health and Community Service (HCS) from the Service which I hope to forward shortly.)</p> <p>I am disappointed to note paragraph 3.95 states that the provision of fire hydrants will not be supported by WHBC and would be grateful if this matter and the reasons for it could be discussed. All dwellings must be adequately served by fire hydrants in the event of fire. The Fire and Rescue Authority has a statutory duty under section 38 of the Fire and Rescue Services Act 2004 to take all reasonable measures for securing that an adequate supply of water will be available for the authority's use in the event of fire. Such supply of water would be obtained by agreement with water undertakers (s39 of the Act) such as for public fire hydrants or by private agreement (s41 of the Act) such as for private fire hydrants. In relation to public fire hydrants, a water undertaker is statutorily bound to provide a fire hydrant to any of its water mains or other pipes if requested by the Fire and Rescue Authority (s57(2) of the Water Industry Act 1991). Pursuant to</p>		
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			<p>section 57(5) of the said Act the Fire and Rescue Authority is liable for any costs of the water undertaker in installing fire hydrants where requested by them. The provision of public fire hydrants is not covered by Building Regulations 2010 (Part B5, as supported by Secretary of State Guidance Approved Document B). HCC therefore seeks the provision of those hydrants made necessary as a direct result of new development by the developer through standard clauses set out in a legal agreement or unilateral undertaking. If the developer does not provide the necessary hydrants required to serve his development the responsibility and cost would fall upon the County Council. The use of planning obligations to secure this provision has been supported at appeal and judged to meet the tests of CIL Regulation 122.</p>		
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Comments on Approach to Other Obligations

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell		Consultee	Public art seems to be unnecessary and generally choices in the UK have not been good! Properly designed and good quality features in town centres and roundabouts together with landscaping schemes would be a major improvement if properly designed and not what the majority of people would describe as "rubbish".	Comment noted	None
Miss Anna Parr	Environment Agency	Consultee	We support 3.98 bullet point 1 and the reference to Sustainable Urban Drainage Systems.	Comment noted	None

General Comments on Procedure

No general comments were made on this chapter.

Comments on the Council's Pre-Application Advice Procedures

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell	n/a	Consultee	There should be no charge for the pre application advice.	Comments noted. Here the SPD is just clarifying existing practice.	None

Mr Brian Rothwell	n/a	Consultee	<p>The public should be made aware of a possible forthcoming application before any discussions on obligations take place so that they can have an input to the discussion. Whilst the officers will be expert on the matter of infrastructure such as drains etc. it will be the public (particularly local residents) who will be best equipped to consider the effect on the neighbourhood.</p>	<p>Where on large schemes a developer undertakes pre-application publicity, then the council can consider any feedback on planning obligation matters.</p> <p>Further to this, at application stage, all planning applications are advertised for a minimum period of 21 days, and representations on issues relating to the application (including planning obligations) can be made during this period. There is however no consultation period specifically for a S106 agreement or unilateral undertaking.</p>	None
Miss Alexandra Stevens	Hertfordshire County Council	Consultee	<p>The link provided in paragraph 4.5 (www.welhat.gov.uk/preapplicationadvice) does not appear to be working, the page simply states Sorry! The page that you requested cannot be found."</p>	Comment Noted	None – however the page on the Council's website has been repaired

Comments on Drafting Agreements

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell	n/a	Consultee	<p>Would only agree with the council's procedure for drafting S106 agreements and unilateral undertakings, subject to variation as below.</p> <p>There should be a timetable for dealing with these and the Council should pay if it does not comply or adopts a negative negotiating position "because it has nothing to lose".</p>	<p>Comments noted. Unfortunately the council cannot provide a timetable for dealing with the drafting of section 106 and unilateral undertakings as the time taken to draft these agreements will vary in accordance with the type of planning application, and nature of agreement.</p>	None

Miss Alexandra Stevens	Hertfordshire County Council	Consultee	<p>Where there are planning obligations involving HCC we may also require proof of title, accordingly it would be helpful if the last sentence of paragraph 4.6 could be amended to read 'Further to this, applicants should also be aware that all parties with a land ownership interest should enter into a S106 Agreement or Unilateral Undertaking (including mortgagees) and that the council and where appropriate county council will require a proof of title before the agreement can progress'.</p> <p>The link (www.welhat.gov.uk/planningobligations) provided at paragraph 4.7 does not currently appear to include copies of the standard S106 agreements or unilateral undertakings so we are not able to comment on these at present. I would be grateful if copies of the draft templates could be provided for comment as the drafting may have implications for HCC.</p> <p>In some instances, particularly where HCC is to be a party to a S106, we will also need to be involved in drafting and agreeing the S106 deeds it would therefore be helpful if paragraph 4.8 could read 'The drafting of Section 106 Agreements and the checking of Unilateral Undertakings will be undertaken by either the Councils Legal Team, solicitors appointed by the council to represent them and/or HCC. In addition, it may be helpful if the last sentence could be amended to read '...and a solicitors undertaking will be required from the applicant before proceeding with this work.</p>	Comments noted	The SPD will be amended in accordance with these comments
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Comments on Cumulative Applications

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell		Consultee	With regards to the council's approach to cumulative applications - fine if relates to one developer. Bad if applies and the last builder has to shoulder the cost for all others.	Comments noted	None

Comments on Approach to Monitoring and Administration Contribution

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell	n/a	Consultee	<p>I do not agree with the council's proposed approach to seeking a contribution towards the costs associated with administering each S106 Agreement and Unilateral Undertaking, and monitoring compliance with each agreement.</p> <p>The costs are draconian. Any costs reclaimed should relate to the specific project and should not be payable if the Council do not act reasonably. The Council should pay if they act unreasonably.</p>	Costs towards monitoring and administration are common practice, and are necessary to cover the costs borne by the council in relation to section 106 agreements.	None

Comments on Maintenance Contributions

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell	n/a	Consultee	The council's approach to seek a maintenance contribution from developers, on a discretionary basis, for the upkeep and maintenance of facilities provided using planning obligations is unreasonable. If the Council wants it, it should pay for it to be maintained.	Comments noted. ODPM Circular 05/05 does however enable councils to seek a reasonable maintenance contribution, on a discretionary basis, for the upkeep and maintenance of facilities secured through planning obligations.	None

Comments on Off-site Provision

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell	n/a	Consultee	OK if the Council do the work within say 3 years. If not the money should be repaid.	Comments noted. The council also acknowledges that after a certain date, if there are section 106 monies that remain unspent, these should be repaid to the applicant/ developer. However, given the length of time it can take for some sites to come forward, and the nature of delivering larger infrastructure projects, it is the council's view that 10 years from the date of the section 106 agreement, is an acceptable period of time, after which monies should be repaid.	A section on the re-payment of section 106 contributions will be added to the procedure chapter.

Comments on Pooled Contributions

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Miss Alexandra Stevens	Hertfordshire County Council	Consultee	It would help to clarify the wording of the last sentence of paragraph 4.16 if it could be amended to read... “However, once the council has introduced its CIL charging schedule, Section 106 contributions will only be able to be pooled from up to five developments”. It would also be beneficial to include reference to unilateral undertakings in paragraph 4.17 as contributions set out within this form of deed may also be pooled.	Comments noted	The SPD will be amended accordingly

Comments on Indexation

No comments on this section

Comments on Bonds

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Anthony Grice	Welwyn Garden City Society	Consultee	Bonds made should be ring fenced to ensure that they are not used for other purposes.	Comments noted. This is the council's normal procedure.	None

Comments on Payment of Contributions

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Miss Alexandra Stevens	Hertfordshire County Council	Consultee	Paragraph 4.23 states it may be acceptable to phase payments in the case of larger development schemes. It may be useful to include an indication of the scale of development WHBC considers of a suitable size to allow phased payments.	Comments noted	No amendments are proposed – phased payments will only be permitted on a discretionary basis and will take account of individual circumstances.

Comments on Viability

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Linnell	n/a	Consultee	The imposition of a penalty charge such as this will affect viability of all schemes. Please be honest in your presentation. No I do not agree with the approach. The whole issue is wrong.	Comments noted. The SPD does however recognise that in certain market conditions the overall level of contribution attributed to a scheme can from time to time affect the financial viability of a development proposal. Given this, where a developer considers the planning obligations (inc the level of affordable housing provision) required by the council to impact on the viability of a development proposal, the onus will be on the developer to demonstrate this through a robust open book appraisal	None

Mr Brian Rothwell	n/a	Consultee	Paragraph 4.24 re-enforces the need to involve the public before the officer start discussions on obligations with the developer.	Comments Noted. Where on large schemes a developer undertakes pre-application publicity, then the council can consider any feedback on planning obligation matters.	None
Ms Michelle Crees	Homes & Communities Agency	Consultee	The HCA notes that the draft SPD states that Welwyn Hatfield Borough Council have examined the economic viability of land for housing development in the area, as part of the councils Development Economic Study (DES) published in July 2010 and that the council is confident that the level of charges set out in the SPD are well within the parameters of viability for most types of residential development in most locations across the area. Although the council have commissioned a bespoke Three Dragons toolkit, the HCA is quite happy to assist local authorities through its enabling function in examining viabilities where developers consider the planning obligations (including the level of affordable housing provision required by the council) impact negatively on the viability of the development proposal.	Comments noted	None

Miss Alexandra Stevens	Hertfordshire County Council	Consultee	There may be a slight error in the first sentence of paragraph 4.26 which I believe should read Where a developer considers the planning obligations (including the level of affordable housing provision) required by the council do impact on the viability of a development proposal..	Comments Noted	None
Mr James Yeoman	Savills	Agent for Miss Kate Turner of the Lands Improvement Holdings Plc	Section 4.11 of the Draft SPD concerns development viability. LIH welcomes the Council's recognition of the impact that planning obligations can hold upon the viability of development proposals. This is particularly pertinent given the recent economic climate that has been experienced. A flexible approach is essential to enable delivery of development where specific site characteristics or conditions and / or the local, regional or indeed national market may otherwise mean that development is simply not viable. It is also noted that development can make a significant contribution towards the regeneration or growth of a particular town or settlement and should not be solely focused on short-term financial gain. The Draft SPD identifies that it will enable consideration to be afforded to likely planning obligations required, at the earliest possible stage in the planning process. It is not	<p>Comments noted.</p> <p>At present the fee for the use of the Three Dragons Toolkit is £0.</p> <p>With regards to your comments on having a flexible approach to the application of planning obligations, where the applicant considers the planning obligations required by the council to impact on the viability of the development, the onus will be on the applicant to demonstrate this through a robust open book appraisal.</p> <p>If at a later date in the delivery of a development, an applicant can evidence and justify that certain obligations negotiated through a section 106 agreement or unilateral undertaking at the time planning permission was granted are no longer viable and would jeopardise the delivery of the whole</p>	None

			<p>however always the case that development costs or other factors that affect viability can be fully established until later in the development process. Accordingly, there needs to be allowance for flexibility in the application of the planning obligations to ensure that development is viable and therefore deliverable. In turn this will enable the Council to ensure it has a reliable housing land supply, in accordance with PPS3. Paragraph 4.26 requires the use of the Councils bespoke Three Dragons Toolkit to demonstrate viability issues. It continues to identify that this will be subject to a fee. This fee is yet to be detailed and LIH simply take this opportunity to highlight that this fee must be set at a reasonable level, given the dependence on such a method to demonstrate viability.</p>	<p>development, then the council will assess the evidence presented to them at this date and consider whether the section 106 agreement or unilateral undertaking could be amended.</p>	
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Mr Edward Keymer*	Keymer Cavendish	Agent for the Brocket Trustees	<p>The new NPPF has a chapter on viability which has been absent from all previous planning guidance and states helpfully: "The cumulative impact of these standards and policies should not put implementation of the development plan at serious risk and should facilitate development <u>throughout the economic cycle</u>". The underlining of 'throughout the economic cycle' is mine and is there to emphasise that we are, and will continue to remain in a deep property recession for some years to come. The housing cycle today is very similar to that seen in 1991 and there is no prospect of a bounce back in the market to 2008 levels. Also there is no prospect whatsoever of high land values as seen in 2007. Land value comes from the margin between build cost and sale cost and with talk of CIL being introduced at £10,000 or even £20,000 per dwelling, or £150- £200 per sq m, one is rapidly approaching a situation where few, if any development sites will be viable.</p>	<p>Comments noted. The SPD does recognise that in certain market conditions, the overall level of contribution attributed to a scheme can from time to time affect the financial viability of a development proposal. Given this, where a developer considers the planning obligations (inc the level of affordable housing provision) required by the council to impact on the viability of a development proposal, the onus will be on the developer to demonstrate this through a robust open book appraisal</p>	None
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*Mr Keymer also used the council's adopted Three Dragons Model to test the viability of a scheme of 280 dwellings on 8 hectares net developable land, and submitted comments by post to the council on the usability of the model, which the council has noted.

Comments on the Procedure for Enforcing Planning Obligations

Full Name	Organisation	Consultee/ Agent	Summary of Comments	Council's Response	Proposed Changes to SPD
Mr Anthony Grice	Welwyn Garden City Society	Consultee	I agree with the approach proposed, but query if the Borough Council has the will to enforce the Planning obligations. It appears too often, to be dependent on the cost of any enforcement.	Comment noted. The council is however committed to enforcing the payment of planning obligations as per section 4.12 of the SPD.	None

Comments on the Appendices

No comments were made on the appendices.