

Chichester District Council

**A27 Chichester Bypass
Mitigation Supplementary
Planning Document
Consultation**

Representations on behalf of Barratt David Wilson

October 2023


Henry Adams

1 Introduction

- 1.1 This representation provides a response to the A27 Chichester Bypass Mitigation Supplementary Planning Document (SPD) Consultation on behalf of our client Barratt David Wilson. The representation is a general submission and is not site specific, although it is relevant to all sites promoted by BDW in the District.
- 1.2 This representation provides a written response in relation to the proposal to introduce a new charging schedule in respect of contributions towards improvements to the A27. The proposed charging schedule sits outside of the Council's adopted CIL charging schedule and seeks to replace an existing adopted infrastructure SPD.

2 Background & Policy Guidance

- 2.1 The Council are looking to replace part of their existing Planning Obligations and Affordable Housing Supplementary Planning Document (2016) specifically in relation to financial contributions towards A27 highway improvements. It is important to note that this results in deletion of part of the 2016 SPD and its replacement, which is confirmed at paragraph 1.4 of the consultation document.
- 2.2 As stated within the introductory section of the consultation draft SPD, it is noted that the technical evidence base covering the impact of new development in the south of the District on the A27 Chichester Bypass, and the mitigation required to address this, has been updated. As such, it is noted that Chichester District Council (CDC) takes the position that its previous approach to securing development contributions towards future mitigation of the A27 Chichester Bypass, in accordance with its 2016 adopted SPD 'Approach for securing development contributions to mitigate additional traffic impacts on the A27 Chichester Bypass', is no longer sufficient, which has led to the preparation of the new (consultation draft) SPD, to respond to the evidence base and update the approach.
- 2.3 The A27 Chichester Bypass is a Trunk Road, forming part of the national Strategic Road Network (SRN) which is managed by National Highways (NH) on behalf of the Secretary of State. Noting this, we are also aware of a recent letter from NH, to CDC in the context of a

recent planning appeal and dated 11 September 2023, which provides some clarification on NH's position with regards to the previous SPD.

2.4 The basis of the new SPD is the emerging Chichester Local Plan 2021 - 2039 and specifically the requirements of Policy T1 of this document. This is a document that is subject to a significant level of objection and is yet to be tested at Examination. A host of recent appeal decisions have confirmed that the emerging Local Plan carries limited weight given its stage of preparation. These decisions are summarised below:

- *Appeal Ref: APP/L3815/W/21/3274502 - Hambrook - dated: 4 November 2021.* Paragraph 10 confirms that the allocation of 500 houses in the draft Local Plan can be given little weight at the present time. The Inspector didn't expand on their conclusion on this matter.
- *Appeal Ref: APP/L3815/W/21/3284653 - Lavant - dated: 11 April 2022.* The Inspector confirms at paragraph 2 that the Local Plan review is at an early stage and subject to further consultation and revisions. The Inspector therefore afforded it only minimal weight in the decision.
- *Appeal Ref: APP/L3815/W/21/3286315 - West Wittering - dated: 22 April 2022.* The Inspector concludes at paragraph 17 that the Chichester Local Plan Review is at an early stage of preparation, as the Regulation 19 had yet to be published and no fixed date for consultation.
- *Appeal Ref: APP/L3815/W/21/3270721 - Westhampnett - dated: 27 May 2022.* Confirmed early stages of production of the Plan and due to the need for extensive public consultation and likely to be subject of modifications before adoption, it carries limited weight.
- *Appeal A Ref: APP/L3815/W/22/3295000 & Appeal B Ref: APP/L3815/W/22/3295004 - Nutbourne & Chidham - dated 29 August 2023.* This decision is post the January - March consultation on the pre-submission Local Plan and the inspector has concluded that the emerging Local Plan can only be given very limited weight in paragraph 13 of the decision.

2.5 There is also a significant level of objection to the Plan generally and specifically in relation to Policy T1, which is the basis for the proposed new SPD. Contrary to the suggestions at paragraph 1.7 of the SPD document, the Local Plan Review is not at an advanced stage.

- 2.6 Whilst Policy T1 in the emerging Local Plan introduces the suggestion for an updated charging methodology, the SPD refers to existing policies in the out of date Local Plan (2014-2029), in particular policies 8 and 9. The adopted policy relies on the 2013 Transport Study, however, the funding sought via the draft SPD relies upon the evidence base to the emerging Local Plan.
- 2.7 In light of the above, it is important to note the Planning Practice Guidance (PPG) in relation to how and where planning policies seeking planning obligations should be set. This confirms:

Policies for planning obligations should be set out in plans and examined in public. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land.

Such policies should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability. This evidence of need can be standardised or formulaic (for example regional cost multipliers for providing school places. See the guidance from the Department for Education on 'Securing developer contributions for education'. However, plan makers should consider how needs and viability may differ between site typologies and may choose to set different policy requirements for different sites or types of development in their plans.

It is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination. Whilst standardised or formulaic evidence may have informed the identification of needs and costs and the setting of plan policies, the decision maker must still ensure that each planning obligation sought meets the statutory tests set out in regulation 122. This means that if a formulaic approach to developer contributions is adopted, the levy can be used to address the cumulative impact of infrastructure in an area, while planning obligations will be appropriate for funding a project that is directly related to that specific development. (my emphasis)

Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure. Local communities should be involved in the setting of policies for contributions expected from development.

See related guidance: Viability and Plan-making

Paragraph: 004 Reference ID: 23b-004-20190901

Revision date: 01 09 2019

2.8 The above confirms that the Council's approach is contrary national guidance. The SPD seeks to introduce a fixed charging schedule, which does not for example have to consider the tests at paragraphs 110 and 111 of the NPPF. In seeking financial contributions, the decision maker must ensure each obligation complies with Regulation 122 of CIL Regulations. If a fixed rate is set out, without any specific assessment of impact, or indeed a specific mitigation scheme, the obligation posed would not meet the necessary Regulation 122 tests.

2.9 Whilst our client understands the Council's intentions, the mechanism sought is entirely inappropriate. It is clearly contrary to the PPG and should in fact be met through an updated CIL charging schedule, but that would require much greater certainty on the costs of the associated works. The Council's reason for disregarding the PPG and CIL receipts is set out at paragraph 3.4. This states:

The Council has also considered the guidance within the PPG stating that if a formulaic approach to developer contributions is adopted, the levy can be used to address the cumulative impact of infrastructure in an area. The Chichester Community Infrastructure Levy (CIL) has been in place since 2016. However, the funding raised through CIL is not sufficient to fund the required A27 mitigations works and, in any case, this funding is required for other essential infrastructure and facilities that are needed to mitigate the impact of development, as set out within the Council's Infrastructure Delivery Plan.

2.10 The failings of the Council to review their Local Plan and CIL charging schedule in a timely manner is not justification to bring forward an unlawful mechanism for securing infrastructure contributions. As confirmed above, the Council should in fact update their CIL charging schedule, which should follow appropriate Examination and adoption.

3 Proposed planning contributions

3.1 Section 4 of the draft SPD sets out the infrastructure improvements sought and potential costs of the works, albeit a very broad range of costs of between £28.9 - £43.3 million. Whilst the Council are yet to finalise those costs, or fully determine deliverability, the contributions sought are in line with the upper end of the range of costs, split between improvements of two roundabouts described at paragraph 4.4.

3.2 The draft SPD then goes on to confirm that a 'target' of £27,068,915 is to be secured. Whilst this is a very precise figure, this is not based on a specific scheme.

4 Proposed A27 Chichester Bypass Highway Mitigation

4.1 The consultation draft SPD (with specific reference to Paragraph 2.6, p. 6) states that, "Although the 2016 SPD has been successful in securing more than the target level of developer contributions for A27 improvement works, the remaining improvement works to the Fishbourne, Bognor, Stockbridge and Whyke roundabouts have not been possible to deliver. The main reason for this is that the cost of delivering these improvement works has increased very significantly over the past decade, well beyond the level of funding that has been secured through planning contributions under the 2016 SPD.

4.2 As a result of the above, the consultation draft SPD continues (at Paragraph 4.1, p. 10) and states that, "Therefore, the Council [CDC] has had no option but to propose a reduced mitigation package which will focus on delivering the improvements works to both Fishbourne and Bognor junctions, as described within Section 7 of the Local Plan Transport Assessment (Stantec, January 2023). These junction improvements are also set out within the Infrastructure Delivery Plan and the Infrastructure Business Plan."

4.3 Paragraph 4.4 of the consultation draft SPD identifies what are understood to be latest available cost estimates for each of the above two junctions, which are stated as being between £9.5 and £12.9 million for the Fishbourne Roundabout (with the Terminus Road Link); and between £19.4 and £30.4 million for the Bognor Road Roundabout (with the Vinnetrow Road Link); a total cost range of between £28.9 million and £43.3 million. As discussed further on within this representation, the consultation draft SPD identifies (at Paragraph 4.23) a contribution rate for developments of £3,049.16 per bedroom. It is unclear how such a precise 'per bedroom' contribution rate can be identified, given the estimated costs of the works at the two A27 Chichester Bypass junctions prioritised for improvements are so wide-ranging – indeed ranges of several million pounds per junction.

4.4 Furthermore, as discussed at the recent planning appeal for BDW Southampton's proposed development for 300 dwellings at 'Land at Highgrove Farm, Main Road Bosham, PO18 8EH (CDC planning application reference: 21/00571/FUL; The Planning Inspectorate

appeal reference: APP/L3815/W/23/3322020) (heard by way of a public inquiry between 3 and 10 October 2023), it is noted that the technical evidence base that it is understood underpins the consultation draft SPD remains a 'work in progress'. The identification of such a precise 'per bedroom' contribution amount is therefore considered to be premature at this stage.

5 Contribution Rate Formula

- 5.1 It is further noted that the previous SPD set out a formula for calculating the required development contributions, based on the number of dwellings proposed. It is noted that the 'per dwelling' amount varied depending on where in the District the proposed developments were located, with proposed developments within geographical areas closer to the A27 Chichester Bypass generally attracting a higher 'per dwelling' contribution than proposed developments within geographical areas further away. It is our view that this previous approach was largely sufficiently robust and logical, accepting that proposed developments located within closer proximity to the A27 Chichester Bypass are typically expected to have a greater 'per dwelling' traffic impact on it, compared with proposed developments located further away. However, we would add that any approach should also reflect the extent to which car trips from a development are shifted onto sustainable transport modes.
- 5.2 The consultation draft SPD identifies a 'per bedroom' contribution rate (£3,049.16 per bedroom), which would therefore result in the contribution per dwelling varying depending on the number of bedrooms it comprises. However, it is noted that there is no variation in the contribution rate as a result of geographical location or proximity to the A27 Chichester Bypass, or indeed the role of sustainable travel.
- 5.3 Whilst it is accepted that the traffic impact of a dwelling *may* vary depending on the number of bedrooms it comprises, because in turn it could be assumed, for example, that the greater number of bedrooms a dwelling comprises, the more occupants it has and therefore the greater the level of car ownership and/or traffic generation (for example, the number of car trips per day), it is concerning that there appears to no longer be any variation in the contribution rate, due to the geographical proximity of the proposed

development site to the A27 Chichester Bypass. It is surmised that the consultation draft SPD simply requires a certain size dwelling to pay the same contribution, regardless of its location within the District and proximity to the A27 Chichester Bypass – this omission, it is considered, is fundamentally flawed and unfair to proposed developments situated further away from the A27 Chichester Bypass, which would logically have a lesser traffic impact on it, compared with proposed developments situated further away.

- 5.4 Additionally, this 'per dwelling' approach does not account for different levels of traffic generation, determined by other factors including the promotion of effective sustainable (e.g. walking, cycling and public transport) transport measures at a development site.

6 Consideration of the Strategic Role of the A27 Chichester Bypass

- 6.1 As detailed with Section 9.9 'Apportionment of A27 Scheme Costs' of the January 2023 Stantec Transport Study, a 'SATURN' area-wide strategic traffic model was used to estimate traffic demands impacting the SRN A27 Chichester Bypass, split into Local Planning Review and committed development, and background traffic growth. Paragraph 9.9.4 states that, *"an assessment was undertaken at each of Fishbourne, Bognor, Whyke and Stockbridge Roundabouts on the SRN. For each junction, the assessment (2 way by direction) was undertaken for each approach arm in the 2014 Base Model and in the 535 DPA scenario Plan Year model (assumed to be 2039). This was used to estimate growth due to CDC proposed development and due to background growth. This also included an analysis of through traffic on the A27 by undertaking the appropriate assessment."*

- 6.2 In order to circumvent modelling limitations such as suppressed trips in the more congested AM and PM peak hours, the flow analysis was undertaken at Annual Average Daily Traffic (AADT) flow level by converting model AM and PM peak flows accordingly.

- 6.3 The results of the model demonstrated that developments within Chichester District are forecast to contribute 28% of the growth at the A27 Chichester Bypass Fishbourne and Bognor Road roundabouts between base year 2014 and Local Plan year 2038. As referenced in Paragraph 9.9.6, *"The results indicate that at Fishbourne junction, Chichester development contribute only 28% of the growth at the junction between 2014 Base Year and*

2038 Local Plan year. At Bognor Junction this figure is also estimated at 28%. The figures at Stockbridge and Whyke Roundabouts are 14% and 18% respectively. This will be proportionately less when considering only new development proposed by the emerging Local Plan (i.e. that which is not already committed), which is approximately a third of the overall development envisaged by the Plan.”

6.4 Paragraph 9.9.7 states, “All the junctions are shown to be over capacity without the Local Plan traffic added in. Therefore, it is clear that the issues seen at these junctions are not just a result of the Local Plan and committed development traffic, but other background and existing traffic also impact on performance of the junctions.”

6.5 CDC would be expected to contribute these proportions towards scheme mitigation costs, whilst the remaining funding should come from other sources. As noted, the A27 (including the Chichester Bypass) is a Trunk Road forming part of the national SRN. Given the important role of the A27 Chichester Bypass in facilitating longer distance strategic journeys as well as more local ones, it is considered that funding for junction improvements along the A27 Chichester Bypass should also come from Central Government level – it should not fall to CDC and developments in the local area to cover more than their respective impacts.

7 Future Developments Proposed Dwelling ‘Cap’

7.1 The consultation draft SPD proposes the implementation of a ‘cap’ on future housing development in the south of the district, to 3,551 uncommitted dwellings (Paragraph 4.12). The SPD states “a ceiling or cap on the level of new homes coming forward. But that ‘cap’ does not only apply once the new Local Plan has been adopted. National Highways has indicated that it considers that the ‘baseline’ for assessing the impact on development coming forward on the A27 should start in January 2023, when the Council’s modelling work on traffic impact was published within the Local Plan Transport Assessment. This means that any new dwellings coming forward now within the south of the District, whether planned or otherwise, will count towards the overall ‘cap’ on new homes.”

- 7.2 The consultation draft SPD states that viability test has been undertaken which equated to £7,623 per dwelling (Paragraph 4.16). Arriving at this figure is considered to be premature, if impacts from outside Chichester District, including impacts from longer distance strategic journeys, have not been taken into account.
- 7.3 Furthermore, the very limiting number of dwellings (3,551) left to implement south of the district up to 2029 will have a significant and detrimental impact on housing supply in the district, exacerbating existing housing shortages at a local level.
- 7.4 The imposition of a cap on the number of dwellings that can be delivered is considered to be fundamentally flawed. This cap does not take account of the varying levels of traffic generation that can come from a development, influenced e.g. by the site's location and potential for sustainable travel. It has also been proposed in the context of mitigation schemes that do little for sustainable travel and which are focussed on improving highway capacity. We would assert that no such housing cap should be put in place and, instead, planning applications for developments should continue to be determined based on residual traffic impact and proposed mitigation (including their ability to shift car trips onto sustainable transport modes).

8 National Highways Position

- 8.1 A letter, dated 11 September 2023, was sent by NH to CDC, in the context of a recent planning appeal, setting out NH's position with regards to the adopted CDC SPD. NH states that it is in agreement with *"the Council's [CDC's] decision to revise and replace the current SPD to reflect the current and future circumstances including the emerging Local Plan. We [NH] agree that the Council should now lead the collection and governance of developer contributions to fund mitigation measures, including the collection of higher contribution levels, as part of the delivery of the overall Local Plan and its supporting infrastructure and measures; (noting that some mitigation measures/schemes may not directly include the strategic road network (SRN))."*
- 8.2 NH states within its letter that it will consider proposals on a 'case-by-case' basis and either recommend that planning permission should be refused, or recommend a set of appropriate planning conditions to make the development acceptable, as follows: *"So far*

as future planning applications are concerned any responses from NH will consider proposals on a case-by-case basis and if, as a result of traffic generated by the development there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the SRN would be severe, NH will either recommend that permission should be refused or recommend appropriate Planning Conditions to make the development acceptable.”

8.3 It is understood, in light of the letter, that NH will continue to work with CDC *“to identify measures necessary to mitigate the impact of the Proposed Submission Local Plan on the SRN. NH are supportive in principle of a Monitor & Manage approach that reflects the principles of current policies, including C1/22, subject to the technical and policy details.”*

8.4 It is evident from NH’s letter that, whilst it agrees with CDC’s decision to revise and replace the current adopted SPD, it does not endorse the consultation draft SPD nor does it provide a position with regards to the proposed ‘per bedroom’ contribution rate. It remains unclear how NH’s proposed position going forwards, to consider proposals on a ‘case-by-case’ basis, is consistent with CDC’s proposals to continue collecting contributions, albeit at a new higher rate and, it is argued, with less technical robustness.

9 Emerging Draft Local Plan

9.1 The ‘*Chichester Local Plan 2021-2039 Proposed Submission (February 2023)*’ has not yet been adopted and therefore the current CDC Local Plan still remains in force. It is accepted that the SPD formula for A27 Chichester Bypass mitigation contributions (cost per dwelling) as set out in the adopted SPD (which forms part of the adopted Local Plan) needs to be updated to account for cost inflation. However, without a proper formula that is robust and subject to examination (as would be the case with CIL), and which is based on the use of industry standard calculations, it is considered that the proposed formula put forward is premature and requires further scrutiny.

10 Summary and Conclusions

- 10.1 This representation has been prepared on behalf of BDW Southampton in respect of Chichester District Council's (CDC's) '*Chichester Local Plan 2014-2029: A27 Chichester Bypass Mitigation*' consultation draft SPD, which was issued for consultation in August 2023.
- 10.2 BDW Southampton is currently promoting a number of residential developments within both Chichester District and neighbouring local authority areas, and therefore has an interest in the status and content of the consultation draft SPD.
- 10.3 This representation highlights a number of issues and concerns with the consultation draft SPD, as follows:
- i. The consultation draft SPD identifies what are understood to be latest available cost estimates for each of the Fishbourne and Bognor Road roundabouts on the A27 Chichester Bypass, which are between £9.5 and £12.9 million for the Fishbourne Roundabout; and between £19.4 and £30.4 million for the Bognor Road Roundabout; a total cost range of between £28.9 million and £43.3 million. However, the consultation draft SPD identifies a contribution rate for developments of £3,049.16 per bedroom. It is unclear how such a precise 'per bedroom' contribution rate can be identified, given the estimated costs of the works at the two A27 Chichester Bypass junctions are so wide-ranging – indeed ranges of several million pounds per junction.
 - ii. It is noted that the technical evidence base that it is understood underpins the consultation draft SPD remains a 'work in progress'. The identification of such a precise 'per bedroom' contribution amount is therefore considered to be premature at this stage.
 - iii. The previous SPD set out a formula for calculating the required development contributions, based on the number of dwellings proposed, which varied depending on where in the District the proposed developments were located. It is our view that this previous approach was largely sufficiently robust and logical, accepting that proposed developments located within closer proximity to the A27 Chichester Bypass are typically expected to have a greater 'per dwelling' traffic impact on it, compared with proposed developments located further away. However, we would add that any approach should also reflect the extent to which car trips from a development are shifted onto sustainable transport modes.
 - iv. Proposal is contrary to the clear Planning Practice Guidance. This states that the approach to affectively create a separate CIL tariff outside of any examination is

appropriate. The correct mechanism, as described above is to review the current CIL charging schedule and up date the associated levy payment.

- v. The consultation draft SPD identifies a 'per bedroom' contribution rate (£3,049.16 per bedroom), which would therefore result in the contribution per dwelling varying depending on the number of bedrooms it comprises. However, it is noted that there is no variation in the contribution rate as a result of geographical location or proximity to the A27 Chichester Bypass, or indeed the role of sustainable travel.
- vi. The A27 (including the Chichester Bypass) is a Trunk Road forming part of the national SRN. Given the important role of the A27 Chichester Bypass in facilitating longer distance strategic journeys as well as more local ones, it is considered that funding for junction improvements along the A27 Chichester Bypass should also come from Central Government level – it should not fall to CDC and developments in the local area to cover more than their respective impacts.
- vii. The consultation draft SPD suggests the implementation of a 'cap' on future housing development in the south of the district, to 3,551 uncommitted dwellings. The imposition of cap on the number of dwellings that can be delivered is considered to be fundamentally flawed. This cap does not take account of the varying levels of traffic generation that can come from a development, influenced e.g. by the site's location and potential for sustainable travel. It has also been proposed in the context of mitigation schemes that do little for sustainable travel and which are focussed on improving highway capacity. We would assert that no such housing cap should be put in place and, instead, planning applications for developments should continue to be determined on a case-by-case basis, based on residual traffic impact and proposed mitigation (including their ability to shift car trips onto sustainable transport modes). It also fails to take account of windfall sites that will occur over the planning period, or for example rural exception housing to meet specific needs.
- viii. A letter, dated 11 September 2023, was sent by NH to CDC, in the context of a recent planning appeal, setting out NH's position with regards to the adopted CDC SPD. NH states within its letter that it will consider proposals on a 'case-by-case' basis and either recommend that planning permission should be refused, or recommend a set of appropriate planning conditions to make the development acceptable. It is evident from NH's letter that, whilst it agrees with CDC's decision to revise and replace the current adopted SPD, it does not endorse the consultation draft SPD nor does it provide a position with regards to the proposed 'per bedroom' contribution rate. It remains unclear how NH's proposed position going forwards, to consider proposals on a 'case-by-case' basis, is consistent with CDC's proposals to continue collecting contributions, albeit at a new higher rate and, it is argued, with less technical robustness.

- ix. The '*Chichester Local Plan 2021-2039 Proposed Submission (February 2023)*' has not yet been adopted and therefore the current CDC Local Plan still remains in force. It is accepted that the SPD formula for A27 Chichester Bypass mitigation contributions (cost per dwelling) as set out in the adopted SPD (which forms part of the adopted Local Plan) needs to be updated to account for cost inflation. However, without a proper formula that is robust and subject to examination (as would be the case with CIL), and which is based on the use of industry standard calculations, it is considered that the proposed formula put forward is premature and requires further scrutiny.