

# Consultation Representation

## East Midlands Freeport – Strategic Infrastructure & Contributions

Supplementary Planning Document (Regulation 18 Consultation)

<b>Submitted by</b>	Cllr Ray Sutton as resident, parish and district councillor
<b>Date</b>	22 March 2026
<b>Addressed to</b>	North West Leicestershire District Council (NWLDC), South Derbyshire District Council (SDDC), Rushcliffe Borough Council (RBC)
<b>Copied to</b>	Relevant councillors and officers
<b>Reference</b>	NWLDC Local Plan Committee, 18 March 2026 – Additional Papers (pp.25–61)

### 1. Introduction

This representation is submitted in response to the Regulation 18 consultation on the draft Supplementary Planning Document (SPD) addressing strategic infrastructure delivery and developer contributions associated with the East Midlands Freeport (EMF) and its related strategic allocation sites.

It builds upon earlier correspondence with NWLDC regarding the legal risks inherent in the proposed approach and specifically addresses the content of the Additional Papers presented at the NWLDC Local Plan Committee on 18 March 2026.

This representation was drafted by me, with analytical assistance from AI tools. I have reviewed it carefully, and every point raised reflects my own considered view. I ask respectfully that it be taken seriously and formally recorded. I draw particular attention to the questions posed in **Section 7 (Requests for Clarification)** and the **Conclusion**.

This representation **does not contest the principle of logistics development** Freeport sites, nor the desirability of coordinated infrastructure delivery. The concern is narrower and more fundamental: whether the SPD, as currently drafted, remains within the **lawful scope of a supplementary planning document** and whether it proceeds on a **sufficiently evidenced and procedurally sound basis**.

For the avoidance of doubt, I note the following contextual points at the outset:

- The NWLDC Adopted and Amended Local Plan (2021) has not yet been superseded;
- The emerging NWLDC Local Plan has not yet reached Regulation 19 stage;
- The cross-boundary adoption involving SDDC and RDC raises additional issues of spatial planning coherence that are not fully addressed in the draft, particularly given the Planning Act 2025 and differing planning arrangements under the East Midlands Combined County Authority (EMCCA) for the Derbyshire and Nottinghamshire elements and under Leicestershire, a matter as yet undecided by the Secretary of State
- The representation proceeds on the basis that if the Councils considers any of the above factors reduces the legal risk rather than increasing it, they should set that out clearly in the substantive responses to their respective councils prior to Regulation 19.

## 2. Prematurity and Incomplete Evidence Base

The SPD is being advanced for public consultation in advance of the Infrastructure Delivery Plan (IDP), which the document itself identifies as the key instrument for:

- defining the strategic infrastructure required;
- identifying which development sites will be expected to contribute; and
- establishing the basis for cost apportionment between those sites.

**The IDP is not a supplementary document – it is the evidential foundation on which the entire contributions framework depends. Consulting on the framework before the IDP exists is not a minor procedural irregularity; it inverts the proper sequence of evidence-led plan-making.**

The committee report openly acknowledges that the absence of the IDP alongside the consultation draft is “not ideal” and that the SPD will rely on the IDP for future decision-making. In practice, this means:

- consultees are being invited to comment on a mechanism without knowing the schedule of works it will fund;
- the cost base has not been established;
- the beneficiary sites have not been mapped; and
- the apportionment methodology has not been tested for viability or consistency.

This is not a matter of timing alone. It raises a substantive question of whether the Regulation 18 consultation is capable of being “meaningful” in the sense required by the Town and Country Planning (Local Planning) (England) Regulations 2012. Consultees cannot reasonably assess a contributions regime without knowing its financial implications.

**Recommendation:** The SPD consultation should be paused until the IDP has been finalised and can be published alongside it for joint consideration. A single, integrated consultation would be both more efficient and more lawful.

## 3. Legal Scope of the SPD – Risk of Exceeding Policy

Under the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012, an SPD must supplement and elaborate upon existing development plan policy. It cannot introduce new policy requirements, impose new obligations, or establish spatial strategies that have not been approved through the statutory examination process.

The draft SPD, however, proposes mechanisms that go materially beyond guidance, including:

- **A cross-boundary tariff-style contributions framework:** the Framework Section 106 template creates a standardised system of obligations applicable across three local authority areas. This operates in substance as a tariff regime, irrespective of how it is described.
- **Equalisation arrangements between private landowners:** the SPD requires landowners to enter into equalisation agreements to share the cost of land given over for strategic infrastructure. Where agreement cannot be reached, it contemplates arbitration or expert determination. This is a novel and legally complex private-law mechanism being embedded within a planning document.

- **Repayment of forward funding:** the SPD establishes that contributions collected from later developers may be used to reimburse earlier developers who have forward-funded infrastructure. This is a financial arrangement going well beyond the interpretation of any existing adopted policy.
- **Review and recalibration of contributions:** the SPD expressly provides for contributions to be revised when the IDP is updated, subject to an undefined “grace period”. This introduces ongoing financial uncertainty with no clear ceiling.
- **Application to “Other Benefitting Development”:** the SPD extends its reach beyond the Freeport sites and strategic allocations to any development within the three-authority area that is considered to be “unlocked by or significantly benefit from” the strategic infrastructure. No geographic boundary or criteria-based test is provided for this category.

The NWLDC committee report itself acknowledges a risk of legal challenge on the basis that the SPD may exceed policy. That acknowledgement is significant. An SPD that at least one of the promoting authorities themselves recognise as legally vulnerable should not proceed without those vulnerabilities being resolved.

The argument that existing Local Plan policies (such as Policy IF1 in the North West Leicestershire Local Plan 2021 or the infrastructure policies in the South Derbyshire and Rushcliffe plans) provide sufficient policy grounding is not persuasive. Those policies support developer contributions in general terms; they do not establish a cross-boundary tariff framework or equalisation regime. The quantum and complexity of what is proposed requires a Development Plan Document, subject to independent examination.

**Recommendation:** The SPD should be scaled back to provide guidance on the implementation of existing adopted policies only. Any mechanisms that amount to new policy – particularly the contributions framework, equalisation requirements, and application to other benefitting development – should be progressed through the Development Plan Document process.

#### 4. The Supporting Logistics Evidence – Evidence or De Facto Policy?

A Statement of Common Ground, for NWLDC and Leicestershire only, was agreed at the NWLDC Local Plan Committee March 18<sup>th</sup> 2026 and was predicated on a strategic warehousing needs and apportionment study. This document warrants specific attention, as it is the basis for the works at M1 J24 being promoted by all three planning authorities through the SPD and goes beyond what might ordinarily be expected of background evidence.

The document:

- quantifies a total strategic warehousing requirement of approximately 3.06 million m<sup>2</sup> for Leicester and Leicestershire to 2046;
- apportions circa 44% of that requirement (approximately 1.33 million m<sup>2</sup>) specifically to North West Leicestershire; and
- provides a further corridor-level breakdown of that requirement across the M1/A50, A/M42 and Bardon areas.

One **practical effect** of the position, now adopted at NWLDC and across Leicestershire, might then be to prefer or resist development in particular corridors, or to justify contributions obligations. If it operates at NWLDC as **policy in substance**, regardless of how it is described, there is an implication for the jointly adopted SPD.

The transition from identifying need for the M1J24 works to directing where that need should be accommodated is precisely the kind of spatial strategy function that is reserved for Development Plan Documents under the statutory framework.

#### 4.1 Strategic Environmental Assessment

Given that the SPD and supporting documents in each planning authority direct substantial volumes of development to specific geographic corridors in Leicestershire, Derbyshire and Nottinghamshire, it raises a credible question as to whether it constitutes a “plan or programme” for the purposes of the Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations).

It is unclear whether:

- SEA screening has been undertaken in relation to the supporting document; and
- on what basis, if any, a conclusion of “no significant effects” has been reached.

This is not a technical point. If the document is a plan or programme requiring SEA and no screening has been carried out, the consultation is procedurally deficient.

**Recommendation:** Clarification is required as to whether SEA screening has been undertaken and, if so, the screening conclusion and its basis. If screening has not been undertaken, it should be carried out before the consultation proceeds further.

## 5. Weak Policy Footing and Circular Reliance on Emerging Plans

The SPD states that it is adopted on the basis of existing local plan policies. However, it also acknowledges that:

- the EMF sites will be developed over a timescale that extends beyond current adopted local plan periods;
- the SPD will be relevant to emerging local plans; and
- amendments are being sought to emerging policies to support the proposed approach.

This is a circular and legally unstable basis for proceeding. The SPD cannot lawfully be grounded in policies that do not yet exist, and it is constitutionally impermissible for an SPD to be used to pre-empt or shape emerging plan policy that has not yet been subjected to examination.

The position is particularly acute for North West Leicestershire, where:

- the emerging Local Plan is only at Regulation 18 stage;
- the EMAGIC allocation is not yet included in the plan and will be added at Regulation 19 stage; and
- the policy framework is therefore materially incomplete.

Adopting an SPD that is expected to be retrospectively justified by emerging policies that have not yet been tested is contrary to the principle that SPDs must derive their authority from the development plan as adopted.

**Recommendation:** The SPD should not be progressed until the relevant Local Plan policies for each of the three authority areas have been adopted and subject to

independent examination. The SPD should then be grounded solely in those adopted policies.

## 6. Strategic Transport Infrastructure – Evidential and Governance Gaps

### 6.1 The Role of National Highways

The SPD centres on improvements to M1 Junction 24 as the primary item of strategic infrastructure. Junction 24 forms part of the Strategic Road Network (SRN) and falls within the jurisdiction of National Highways. Interventions on the SRN require the agreement, technical input, and design approval of National Highways. Local planning authorities cannot unilaterally determine the scope or specification of works on the SRN.

The SPD does not demonstrate that National Highways has:

- agreed the nature or scale of interventions required at Junction 24;
- validated the traffic modelling assumptions underpinning the contributions framework;
- confirmed that the proposed packages of works are technically and operationally deliverable; or
- clarified how the proposed improvements interact with the Road Investment Strategy (RIS) or any other national funding programme – noting that there is no explicit or identifiable reference in RIS3, recently published, to the works in the draft SPD.

**Establishing a contributions framework for infrastructure that National Highways has not formally endorsed is a significant governance gap. Collecting contributions towards schemes that may not ultimately be deliverable in the form proposed creates real risk of unlawful obligation.**

### 6.2 Absence of Transport Evidence

For a contributions framework of this scale, the following evidence would ordinarily be expected:

- strategic transport modelling demonstrating cumulative impacts;
- trip distribution analysis across the three authority areas;
- scenario testing for different development quantum and phasing; and
- a clear causal link between specific development parcels and the need for specific interventions.

The SPD provides none of this. The consequence is that it is not possible to assess whether obligations imposed under the framework would satisfy the three statutory tests under Regulation 122 of the Community Infrastructure Levy Regulations 2010, namely that they must be:

- 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.

Obligations that cannot be demonstrated to satisfy these tests are unlawful. An SPD that establishes a framework without the evidence to discharge those tests is therefore procedurally deficient.

### 6.3 Undefined Infrastructure Programme

The SPD sets out four packages of works at or around Junction 24 in indicative terms, but:

- the works are not costed;
- no delivery mechanism or phasing programme is identified;
- the relationship between each package and specific development parcels is not established; and
- the IDP, which is intended to provide this detail, does not yet exist.

In effect, the SPD creates a funding mechanism in advance of any defined infrastructure programme. That is not a foundation on which lawful planning obligations can be built.

### 6.4 Apportionment Without Evidence

The SPD proposes that contributions will be sought from the Freeport sites, strategic allocations, and “other benefitting development”. However:

- no zones of influence or catchment areas are defined;
- no proportional traffic impact analysis is provided for individual sites; and
- the category of “other benefitting development” is undefined and potentially very broad.

Without this analysis, it is not possible to establish a defensible apportionment methodology. Contributions sought on this basis risk being challenged successfully on grounds of proportionality and nexus.

**Recommendation:** The SPD should be paused until: (a) National Highways has formally endorsed the infrastructure programme; (b) strategic transport modelling has been completed and published; (c) the infrastructure packages are costed and phased; and (d) the apportionment methodology has been tested against the Regulation 122 statutory tests.

## 7. Financial Uncertainty and Absence of Viability Evidence

The SPD proposes a contributions regime with the following financial characteristics:

- contributions may be reviewed and revised as the IDP is updated;
- costs may be re-apportioned over time as infrastructure schemes evolve;
- indexation applies from the date of the Section 106 agreement; and
- interest is charged on late payments.

These features mean that the financial burden on any given development parcel is not fixed at the point of planning permission. It may increase as the IDP changes. The “grace period” during which contributions are protected from review is not defined.

This creates significant difficulties for:

- land valuation (since residual land value cannot be calculated against an uncertain contributions liability);
- scheme viability assessment (since the total development costs are not fixed); and

- investor confidence in the development programme as a whole.

Separately, the SPD states that contributions will be informed by viability testing, but:

- no viability evidence has been published alongside the consultation draft;
- no assumptions, inputs, or sensitivity testing are available for scrutiny; and
- no assessment has been made of the differential impact across sites with different land values, development costs, and delivery timescales.

Without published viability evidence, consultees cannot assess whether the proposed regime is consistent with the National Planning Policy Framework, which requires that planning obligations not make development unviable.

**Recommendation:** Full viability evidence, including assumptions, inputs and sensitivity testing across different site types and corridors, should be published and consulted upon alongside the SPD. Contributions should be fixed at the point of permission with clear and limited review provisions.

## 8. Equalisation Mechanisms and Deliverability Risks

The SPD requires landowners to enter equalisation agreements where one party provides land or undertakes works in kind, so that the cost of providing that infrastructure is shared amongst all benefitting owners on a proportionate basis. Where agreement cannot be reached, it contemplates arbitration or expert determination.

Whilst the principle of cost equalisation is understandable in a large multi-landownership development, the practical difficulties of delivering this through an SPD framework should not be underestimated:

- the mechanism spans three local authority areas, multiple development sites, and potentially dozens of landownership interests;
- equalisation agreements are private contractual arrangements; the SPD cannot compel parties to reach agreement on commercially sensitive matters within any reasonable timescale;
- the arbitration or expert determination route creates a further procedural layer with uncertain cost and timing implications; and
- in the absence of a masterplan or development corporation for the combined site, there is no entity with the authority or capacity to manage the equalisation process.

The SPD does not adequately address what happens if equalisation agreements cannot be reached – whether development is blocked, whether contributions are adjusted, or whether the framework breaks down. That is a fundamental gap in the deliverability case.

**Recommendation:** The SPD should acknowledge the practical risks of the equalisation mechanism more candidly and should identify fallback provisions, including what happens if agreement cannot be reached within a defined period. Consideration should be given to whether a statutory vehicle – such as a Development Corporation – would be more appropriate for managing cross-boundary obligations of this complexity.

## 9. Process and Governance Concerns

A number of procedural points arise in connection with the way in which the SPD has been advanced.

First, the timetable is acknowledged within committee reports as ambitious. The consultation period is a minimum of four weeks, the dates were not fixed at the time of the NWLDC committee meeting, and officers recognised that the programme has resource implications. The pressure to adopt the SPD by 30 June 2026 appears to be driving the timetable rather than the state of the evidence.

Second, the committee report indicates that the IDP, once finalised, may itself be the subject of “some form of consultation”. If that occurs, stakeholders will have had two fragmented consultations on different components of the same framework, rather than a single integrated consultation on a coherent and evidenced document. This is contrary to good plan-making practice.

Third, at the NWLDC committee meeting on 18 March 2026:

- the SPD was introduced late to the agenda via an Additional Paper;
- no legal officer was present with the specialist knowledge to address queries on the legal compliance of the SPD; and
- Members had been advised by the Monitoring Officer not to rely on my earlier representation about legal risk without the further legal advice of the Council.

These are matters of governance as well as process. Members making decisions with significant legal implications are entitled to proper legal advice at the point of decision. The absence of such advice at this meeting is a concern that should be addressed in the NWLDC response.

**Recommendation:** A single, integrated consultation should be undertaken once the IDP is complete and all core documents are available. The adoption timetable should be driven by the state of the evidence, not by an external deadline. Legal advice on the matters raised in this representation should be sought and its substance made available to Members and consultees.

## 10. Internal Instability of the SPD

The draft SPD itself signals, at multiple points, that it is not a settled document:

- the infrastructure lists for each site are described as indicative only and will be “updated and replaced” by the IDP;
- the SPD will itself be updated when emerging local plans are adopted;
- contributions and obligations may be reviewed as the IDP evolves; and
- the framework Section 106 agreement is yet to be developed.

Taken together, these qualifications mean that what is being consulted upon is not a piece of finished guidance, but a framework for producing future frameworks. That is an unusual and legally fragile position for an SPD to occupy.

It also means that the current consultation cannot be the meaningful engagement the Regulations require, since the document will change materially before adoption and again after the IDP is finalised.

**Recommendation:** The SPD should only be progressed to adoption once it represents a stable and finalised framework supported by settled evidence. Adopting a placeholder document with the intention of updating it significantly creates uncertainty and legal risk.

## 11. Requests for Clarification

To ensure the Regulation 18 consultation is legally robust and that Members and consultees are properly informed, I request formal written responses to the following questions:

1. Has formal legal advice been obtained on whether the SPD, and its supporting evidence document, remains within the lawful scope of a supplementary planning document? If so, can the substance of that advice be made available to consultees?
2. On what basis have the Councils concluded that the spatial distribution and quantification of strategic warehousing logistics floorspace requirements that underpin the SPD do not constitute spatial strategy or new policy for the purposes of the Planning and Compulsory Purchase Act 2004?
3. Has National Highways formally endorsed the infrastructure packages proposed at Junction 24, or been consulted on the scope and deliverability of those works? If not, at what stage is it anticipated that their agreement will be obtained?
4. Has SEA screening been undertaken in relation to the supporting logistics evidence document, and if so, what was the screening conclusion and its basis? If screening has not been undertaken, why not?
5. What steps will be taken to ensure that the “Other Benefitting Development” category is applied consistently and transparently, and how will the nexus and proportionality tests under Regulation 122 be discharged in relation to that category?
6. When will viability evidence be published, and will it be subject to public consultation before any contribution rates are fixed?
7. If the Councils considers that the absence of an adopted Local Plan policy basis, or the current Regulation 18 status of the North West Leicestershire Local Plan, does not increase the legal risk associated with the SPD, can it explain why?

## 12. Conclusion

This representation does not oppose the principle of co-ordinated infrastructure delivery for the East Midlands Freeport or the wider advanced manufacturing and logistics allocation programme. It does not dispute the evidence of logistics demand in North West Leicestershire.

The concerns raised are procedural and constitutional. They go to whether the SPD, in its current form, is being advanced on a lawful and evidence-based footing.

In summary, the SPD as currently drafted is:

- premature, given the absence of the IDP;
  - legally vulnerable, in that it appears to exceed the proper scope of a supplementary planning document;
  - insufficiently evidenced, in particular on strategic transport and viability;
  - weakly grounded in policy, relying on plans not yet adopted or examined;
  - uncertain in financial terms, with no fixed cost base or published viability testing;
  - potentially deficient in terms of SEA compliance in relation to the supporting document;
- and

- internally incomplete, as it is avowedly a framework for future frameworks rather than a settled piece of guidance.

I ask respectfully that this representation is formally recorded, that written responses are provided to the questions in Section 11, and that the Council gives genuine consideration to pausing the consultation timetable until the evidential and legal foundations are secure.

Yours sincerely,

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