

**SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL
RECORD OF EXECUTIVE / CHIEF OFFICER DECISION**

This form should be used to record key and other decisions made by individual Portfolio Holders and key decisions made by Chief Officers. The contact officer will ensure that the signed and completed form is given to Democratic Services as soon as reasonably practicable after the decision has been taken.

Unless permission has been obtained from the Chairman of Council and the Chairman of the Scrutiny and Overview Committee that this decision be treated as a matter of urgency under Rule 12.19 of the Scrutiny and Overview Committee Procedure Rules, this decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless called in under Rule 7 of the Budget and Policy Framework Procedure Rules or Rule 12 of the Scrutiny and Overview Committee Procedure Rules.

Portfolio	Planning Portfolio Holder
Subject Matter	Section 106 Obligations following Ministerial Statement of 28 November 2014
Ward(s) Affected	
Date Taken	Wednesday, 18 February 2015
Contact Officer	Jo Mills, Planning and New Communities Director jo.mills@scambs.gov.uk (jo.mills@scambs.gov.uk)
Date Published	Wednesday, 18 February 2015
Call-In Expiry	N/A
Key Decision?	No
In Forward Plan?	No
Urgent?	Yes

Purpose / Background
<p>Purpose</p> <p>The purpose of this report is to agree the Council's approach to s106 agreements following the Ministerial Statement of 28 November 2014.</p> <p>The statement provided that 'Due to the disproportionate burden of developer contributions on small scale developers, for sites of 10 units or less, and which have a maximum combined gross floor space of 1000 square metres, affordable housing and tariff style contributions should not be sought.'</p> <p>Background</p> <p>The Council assessed the potential impact of the ministerial statement. In brief, there could be £2m from previous agreements; and for current applications there could be a loss of £1m for affordable housing and £1m for tariff contributions for open space and community facilities.</p> <p>The Chair of the Planning Committee wrote to the Secretary of State on 23 December outlining the implications for SCDC, and asking that South Cambridgeshire be treated as a Designated Rural Area. This would reduce the effect of the Ministerial statement to affect only schemes of five homes or fewer.</p> <p>West Berkshire Council and Reading Borough Council have sought a Judicial Review of the government's actions, seeking the quashing of the policy declared in the ministerial statement and related changes to NPPG. The key grounds relied on for the claim are:</p> <ul style="list-style-type: none"> • Government consultation informing the change was defective (by not consulting on full

- changes actually made, and by not taking into account consultation responses received).
- Inconsistency with EU derived Strategic Environmental Assessment regime by introducing material considerations that override SEA compliant local policy (the LDF). SEA regime of direct effect in UK unable to be overridden by domestic provisions.
- Changes result in economic distortion by inflating land value of affected sites, are akin to unfair exemption from tax, and amount to unlawful state aid.
- Alleged irrationality in that the principal effect will not be to secure more housing (and necessarily to deliver less affordable housing) by overriding local policies already tested for soundness and economic necessity.
- Changes disregard existing statutory and policy based processes informing correct application of planning obligations that already take into account viability of delivery.
- Inconsistency with statutory law by 'trumping' local development policy.

DCLG has yet to file grounds for resisting the claim, after which we will know if permission has been given for the JR. The Council has provided a Witness Statement to West Berkshire Council, based on the letter from the Chair of SDCD Planning Committee to the Secretary of State. The timing and outcome of the Judicial Review is unknown, but likely not to be before April. The Council will continue to monitor progress regarding the Judicial Review.

The Council is seeking Counsel Advice as to possible steps for SDCD to introduce CIL ahead of the Local Plan being adopted, and which could potentially accelerate CIL receipts by a number of months.

Considerations

The Council has sought Counsel Advice on the options open to SDCD following the Ministerial Statement, including on whether a s106 Agreement could include a 'conditional clause'. On 12 February, Counsel advice was received. It stated that the use of 'conditional wording' would be ultra vires. The Council's Monitoring Officer has advised that the Council must not adopt a conditional approach.

The Council has received a significant number of enquiries and complaints regarding delay in issuing permissions, pending Counsel Advice. These planning applicants and their agents are keen to draw down their permissions in order to proceed with development, and in some cases, in order to conclude their land purchase and mortgage arrangements. Delay in issuing permissions will cause reputational risks, and potential risk to New Homes Bonus.

Recommended Option

It is proposed that the Council take the following action regarding the issuing of planning permissions for sites of fewer than 11 homes with a combined gross floor space of 1,000 square metres, as follows:

- a) To issue permissions without a s106 agreement, in accordance with government policy.
 - This option would enable planning permissions to be issued in a timely manner. It would have the effect of bringing forward the position for community infrastructure payments from 1 April 2015 to the date of this decision.
- b) To use a Condition requiring an Affordable Housing Scheme be used for all planning permissions where such a contribution would have been required through a s106 agreement.

Further, it is recommended that the Council write to DCLG outlining the impact of the 'Rule of 5', and seeking an extension to October 2015 (extra six months). Government had originally set a date of April 2014, and then extended this by twelve months.

N.B. There are a number of permissions where the Planning Committee resolved to grant

permission subject to the satisfactory resolution of a s106 agreement. The Planning Committee shall be asked to ratify what the Portfolio holder had agreed as an expediency.

Declaration(s) of Interest
Record below any relevant interest declared by any executive Member consulted or by an officer present in relation to the decision.
 None.

Dispensation(s)
In respect of any conflict(s) of interest declared above, record below any dispensation(s) granted by the Council's Standards Committee.
 None.

Consultation
Record below all parties consulted in relation to the decision.
 Legal and Democratic Services Manager.

Other Options Considered and Reasons for Rejection

a) To issue no permissions until the outcome of the Judicial Review is known.

b) To issue permissions with a s106 agreement in line with the Council's adopted policies.

Final decision	Reason(s)
<p>To take the following action regarding the issuing of planning permissions for sites of fewer than 11 homes with a combined gross floor space of 1,000 square metres, as follows:</p> <p>a) To issue permissions without a s106 agreement, in accordance with government policy. - This option would enable planning permissions to be issued in a timely manner. It would have the effect of bringing forward the position for community infrastructure payments from 1 April 2015 to the date of this decision.</p> <p>b) To use a Condition requiring an Affordable Housing Scheme be used for all planning permissions where such a contribution would have been required through a s106 agreement.</p> <p>Further, that the Council write to DCLG outlining the impact of the 'Rule of 5', and seeking an extension to October 2015 (extra six months). Government had originally set a date of April 2014, and then extended this by twelve months.</p> <p>N.B. There are a number of permissions where</p>	<p>Option a) is not recommended. It does not secure s106 payments for community infrastructure nor affordable homes. The Council would be liable to appeals on the basis of non-determination and is likely to suffer reputational damage due to the impact on planning performance.</p> <p>Options b) is not recommended. It is estimated that perhaps 10 of the outstanding 91 permissions for single dwellings would agree to this, which might secure contributions of £50k in total for open space and community facilities. Most applicants would not agree to draw down their permission until after 1 April, when all such payments would no longer be applicable because SCDC has not yet introduced CIL. This would have a clear negative impact upon housing delivery, and upon the relationship between the Council and its planning applicants. Considerable concern has already been expressed regarding delays in issuing planning consent.</p>

