



Report To: Planning Committee
Lead Officer: Jo Mills, Executive Director

4 March 2015

Changes to Planning Obligations for Smaller Residential Developments

Purpose

1. To seek approval to changes in Council practice on planning obligations for smaller residential developments.
2. This is not a key decision because, although the effects of the changes on local communities could be significant, they are a consequence of Government policy and outside the discretion of the Council.

Recommendations

3. It is recommended that:
 - (a) decisions on planning obligations and associated legal agreements, where there has been a resolution to grant planning permission by the Planning Committee on smaller residential development, be delegated to the Executive Director for Planning and New Communities, in accordance with government policy and
 - (b) a planning condition be used requiring submission and approval of an Affordable Housing Scheme for developments of 3 or more new dwellings, or 4 or more dwellings where an existing dwelling is to be demolished.

Reasons for Recommendations

4. Following receipt of Counsel's advice, an urgent Executive Chief Officer decision was taken, as approved by the Planning Portfolio Holder and Leader on 20 February 2015. The Chairman of the Council and the Chairman of Scrutiny & Overview Committee agreed that the decision was reasonable and urgent, due to the many enquiries from planning applicants and agents regarding delays to date and to assist in the promotion of residential development in the district.

Background

5. On 28 November 2014, the Minister announced changes in the development thresholds for planning obligations. 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.'
6. Early in the New Year, West Berkshire and Reading Councils sought a Judicial Review of the Government's actions, seeking to have the policy in the Ministerial statement quashed. The outcome of this challenge is unlikely to be known for some weeks, if not months, but the Council will continue to monitor progress and has offered a witness statement. In view of the challenge, the Council, similar to several

others, deferred completion of legal agreements on planning approvals, which along with previous delays created a backlog of 143 cases.

7. In the meantime, the Council sought Counsel's advice on legal options open to it and whether a conditional, or 'either/or', clause could be used in the period up to the decision upon the judicial challenge. Counsel's advice was that any such clauses would be ultra vires.
8. The Council has received many enquiries from planning applicants and agents regarding the delays to date. Many of them are anxious to conclude land sale agreements or complete funding to start on site. Delays are causing reputational and financial risks to the Council and it is considered there are now no alternative options, so the Planning Portfolio holder has approved an urgent decision to issue permissions without legal agreements, in accordance with the government changes in policy.

Considerations

9. The wider context to these changes is that from 5th April this year all planning obligations of a general tariff nature will be subject to the "Rule of 5", and so may no longer be applicable. The Council is seeking Counsel's Advice as to possible steps for SCDC to introduce CIL ahead of the Local Plan being adopted, and which could potentially accelerate CIL receipts by a number of months. In the meantime, all cases will be individually assessed, with no tariff based rules applied. Larger residential developments and obligations that meet the tests of relevance and are needed to make a development acceptable, may still be required.

Options

10. All options to mitigate the impacts of the changes in national planning policy have been explored, including not issuing permissions until the outcome of the JR is known. This approach, however, would not secure s106 payments for community infrastructure. The Council would be liable to appeals on the basis on non-determination and is likely to suffer reputational damage due to the impact on planning performance.
11. An alternative would have been to only issue permissions where a s106 agreement had been secured in line with the Council's adopted policies. However, it is estimated that only a very limited percentage (perhaps no more than 10%) of the outstanding 91 permissions for single dwellings would agree to enter into a section 106 Agreement on such a basis. It is thought that most applicants would not agree a section 106 requiring tariff style payments and would hold off drawing down their permission until after 5th April, when "subject to the rule of 5" most if not all such payments would no longer be applicable. 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 consents.

Implications

12. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, there are no significant implications, other than legal, which are implicit in the recommendations.

Consultations

13. In view of the urgent and legal nature of this report, no consultations have been undertaken.

Effect on Strategic Aims

14. The reduction for the period up to 5th April 2015 in development funding of infrastructure in villages from smaller residential developments will impact on the Council's engagement with local communities. This report sets out the steps taken to require some affordable housing provision for such schemes.

Background Papers

Affordable Housing SPD – Website

Planning Practice Guidance – Planning Portal website

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