

## **Changes to the threshold for Developer Contributions**

### **Purpose of the Report**

**To advise members of changes to the threshold for Section 106 Obligations announced on 28 November 2014 by the Minister of State for Housing and Planning**

### **RECOMMENDATION**

**That the changes be noted and applied by the Committee when making decisions on planning applications**

### **Summary of Changes**

1. On 28 November 2014 the Minister of State for Housing and Planning made a Written Statement to Parliament on 'Support for small scale developers, custom and self-builders'. This followed a consultation on Planning Contributions (or Section 106 Planning Obligations) which the Borough Council had responded to earlier in the year
2. The Statement announced changes to national policy with regard to planning contributions and has been mirrored in amendments to the National Planning Practice Guidance (referred to as the PPG).
3. The changes in national policy outlined are as follows :-
  - that affordable housing and tariff style planning obligations should not be sought from small scale and self-build development i.e. developments of 10 units or less (and which have a maximum combined gross floorspace of no more than 1000 sq m).
  - For rural areas designated under section 157 of the Housing Act 1985, authorities may choose to implement a lower threshold of 5-units or less, beneath which affordable housing and tariff style contributions should not be sought.
  - The changes in national planning policy will not apply to Rural Exception Sites which, subject to the local area demonstrating sufficient need, remain available to support the delivery of affordable homes for local people.
  - A financial credit, equivalent to the existing gross floorspace of any vacant buildings brought back into any lawful use or demolished for re-development, should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This will not however apply to vacant buildings which have been abandoned.

### **The impact on decisions by this Local Planning Authority**

4. The main changes that affect the Borough are the introduction of a policy that affordable housing requirements and tariff style contributions for development should not be sought for sites of 10 units or less and developments which have a maximum combined gross floor space of 1000 square metres.
5. This Council's threshold for securing affordable housing in planning applications in the urban area, as set out in its adopted 2009 Affordable Housing Supplementary Planning Document (SPD) and Core Strategy (CS) Policy CSP6 is 15 or more dwellings. Therefore the ability of the Council to seek the provision of affordable housing in the urban area will not be affected by the new national policy.

6. However, in the rural areas, this Council's threshold is 5 or more dwellings as set out in the SPD and the CS. CS Policy ASP6 (part of the approved development plan for the area) states that new residential development within the rural areas, on site of 5 dwellings or more will be required to contribute towards affordable housing.
7. This authority does not have any Designated Rural Areas (under section 157 of the Housing Act 1985) and therefore can no longer require the provision of affordable housing for schemes of less than 10 dwellings or developments which have a maximum combined gross floor space of 1000 square metres in the rural areas of the borough.
8. This change in national policy will clearly have an adverse impact on the provision of affordable housing in the rural area, where developments have tended to be under the 10 unit threshold, and it will make the Council reliant upon larger developments to provide affordable housing in the rural area – a point which the promoters of those developments will no doubt refer to. Concerns were raised by a number of local authorities in the consultation but the government considers these types of requirements can place disproportionate burdens on small scale developers and developments which can otherwise help to boost house building in order to deliver growth.
9. In effect the previous local policy, even though set out in part of the Development Plan the Core Strategy, has now been superceded and rendered out of date by the Ministerial Statement. Your officers are aware that at least one Council (Shropshire Council) has decided to continue with its previous policy of seeking contributions from sites of all sizes, as contained within its more recently adopted Core Strategy, but such a course of action is not recommended. A Written Statement by the Secretary of State constitutes government policy, and as such it has the status of a material consideration in decision-making. Were the Council to disregard this policy change it would be most unlikely to be able to sustain that position in any appeal and indeed any attempt to do so would be likely to lead to an award of costs against the Council as it would almost certainly be deemed 'unreasonable behaviour'
10. In terms of 'tariff-style' contributions the LPA will no longer be able to secure (in relation to developments of 10 units or less) such contributions.
11. 'Tariff-style' contributions are described in the PPG as contributions to pooled funding 'pots' intended to provide common types of infrastructure for the wider area and it states that for sites where the threshold applies, planning obligations should not sought to contribute to pooled funding pots intend to fund the provision of general infrastructure in the area. Your Officer notes that education contributions are calculated (by the County Council) on a proposal specific basis rather than per dwelling, to reflect the projected spare capacity at the catchment schools, and provided they are applied on a school specific basis they should comply with the new policy even for sites where the threshold applies. Public open space contributions are already only sought for developments of 10 units or over, so the national planning policy change does not alter matters in that respect. Other contributions that may be sought will have to be considered on a case by case basis in the context of the new policy.
12. The purpose of planning obligations is to mitigate the impact of development which benefits local communities and supports the provision of local infrastructure. It could be said that the changes that have been introduced, regarding 'tariff-style' contributions reinforce the existing statutory tests – that obligations or contributions 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. The changes will require contributions to be more specific to development proposals thus mitigating specific impacts or providing specific benefits to the local communities

13. Members may also be aware that as from the 6<sup>th</sup> April by reason of Regulation 123 of the CIL Regulations, as amended, it will become unlawful, in the determination of planning applications to take into account an obligation which provides for the funding or provision of an infrastructure project or type of infrastructure where 5 or more separate planning obligations that
- a. relate to planning permissions granted for development by this Council; and
  - b. which provide for the funding or provision of that project, or type of infrastructure,
- have been entered into since between 6<sup>th</sup> April 2010 and the date that the obligation was entered into

The implications of this change are being assessed and are the subject of some uncertainty in that there are as yet no test cases, but Regulation 123 will have to be addressed in future application reports.