

## REPORT TO DEVELOPMENT MANAGEMENT PLANNING COMMITTEE

### Local Finance Considerations in the determination of planning applications

#### Purpose of the Report

To advise Members as to when local finance considerations are a material consideration and the weight that can be given to such matters in the determination of planning applications – in response actions agreed by Cabinet following the Planning Peer Review.

#### Recommendations

**That Planning Committee note that reports on applications, whether to the Committee or to the decision taker where a decisions being made under delegated powers will not include a section on local finance considerations unless:-**

- (a) The applicant, or third parties, refer in their submissions to New Homes Bonus (NHB), non-domestic domestic rate, Council tax or any other local finance considerations in support of the application, and the weight that can be given will then be addressed within the key issues or discussion section of the report; or**
- (b) Such a time arises when NHB, non-domestic domestic rate or Council tax is spent by the Council in a manner which is directly connected to the development and contributes towards making that development acceptable.**

#### 1. Background

The Planning Peer Review Team gave a recommendation to the Council to:

*“5. Develop systematic links between financial planning and local plan development / monitoring to help focus on costs and income in relation to non-national domestic rate, council tax and new homes bonus .”*

In giving their feedback the Review Team commented as follows

*“while the planning service does support growth and investment in the borough, the Council now more fully appreciates that it needs to bring the service ‘front and centre’ to deliver its corporate priority of ‘delivering opportunity’. The borough needs more homes and more jobs to meet local demand. Critically, development is required to fund infrastructure needs such as roads, drainage and services. And without new development, locally generated income in the form of council tax, business rates or new homes bonus will not replace diminishing government grant.”*

and that there should be an improved understanding between planning and finance including of the new homes bonus

Cabinet on the 12<sup>th</sup> November 2014 in resolving to agree an Action Plan in response to the Planning Peer Review Team’s report agreed to the following action - to include within hte review of decision reports structure a specific section on finance considerations and weight to be given to them.

#### 2. Legislation

Section 70 of the Town and Country Planning Act 1990 sets out general considerations in the determination of applications and at (2), following amendments through the Localism Act 2011, it now states the following:

*“In dealing with ... an application the authority shall have regard to  
(a) the provisions of the development plan, as far as material to the application,  
(b) any local finance considerations, as far as material to the application, and  
(c) any other material considerations.”*

Section 70 (4) of the Act defines a local finance considerations as a grant or other financial assistance that has been, that will or that could be provided to a relevant authority by Minister of the Crown, or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

This includes the New Homes Bonus (NHB)..

3. Is the receipt of New Homes Bonus a material consideration that can be given any significant weight in the determination of applications for residential development?

In the determination of applications the Planning Authority needs to ensure that it has regard to only material considerations and disregards immaterial considerations. The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend upon the circumstances of the case and is ultimately a decision for the courts. Provided it has regard to all material considerations, it is for the decision taker (the Council) to decide what weight is to be given to the material considerations in each case.

Guidance set out in Planning Practice Guidance (PPG) (previously known as National Planning Practice Guidance) at paragraph 11 of the section on ‘Determining a Planning Application’ indicates that whether or not a ‘local finance consideration’ is material to a particular decision will depend on whether it could help to make the development acceptable in planning terms. The PPG goes on to advise that it would not be appropriate to make a decision on the potential for the development to raise money for a local authority or other Government body. It concludes by advising that in deciding a planning application where a local finance consideration is material, decision takers need to ensure that the reasons supporting the decision clearly state how the consideration has been taken into account and its connection to the development. The guidance suggests that even where anticipated NHB payments are not a material consideration in making planning decisions, they can be noted for information in committee reports on applications for housing, but where this is done, care will be required not to imply that Bonus payments are relevant to the decision before the Committee

The Council has not put in place a Community Infrastructure Levy (CIL) Charging Schedule so the only potential “local financial consideration” for the Borough is NHB

Most of the projected NHB that the Council expects to receive for 2015/16 will following approval of the budget by Council on the 25<sup>th</sup> February 2015, be spent on the revenue budget (£1.255 m) with a lesser proportion (£545K) being spent on the Housing Capital Programme. Of that £545K the intention is to spend £20k on Empty Homes, £100k on emergency assistance with health and safety issues in the homes, £40K to match fund accredited landlord improvements, 75K for home loans and £300k for Disabled Facilities Grants. That expenditure is not related to the residential developments that have generated the Bonus. Therefore at this point in time it could not be said that the receipt of such money is a material consideration that can be given any weight in the determination of a planning application in the Borough.

A number of appeal decisions that have made reference to the NHB have not given any significant weight to such a local finance consideration in the absence of a direct connection between the payment of the NHB and the proposed development. Such appeal decisions include the recent Gateway Avenue, Baldwins Gate appeal where the Inspector listed NHB as an economic benefit but in drawing what he terms the planning balance and setting out his overall conclusions NHB did not factor in his final conclusion.

#### 4. Conclusion

In consideration of the guidance in PPG and in recognition of the decision of the Council to spend NHB primarily on disabled facilities grants rather on matters that are directly connected to the proposed development in at this point in time little weight can be given to such matters. Whilst the Action Log that was agreed by Cabinet following the Peer Review recommendations anticipated that it would be appropriate to have a local finance consideration section within all reports it is considered that such a section would not assist in reaching a decision, in that even if care were taken not to imply that such payments were relevant to the decision, members might overlook such advice. The introduction of such a section which would always say that no significant weight can be given to such local finance considerations furthermore would, arguably, be contrary to one of the other actions arising from the Peer Review relating to the need to review committee reports, particularly for effectiveness and use of Plain English.

It will, however, be necessary to address within reports NHB and other local finance considerations if the applicant seeks to refer to such matters in support of the proposed development.

Date report prepared 15<sup>th</sup> May 2015