

REPORT TO PLANNING COMMITTEE

WHERE FINANCIAL CONTRIBUTIONS IN LIEU OF ON-SITE PROVISION OF AFFORDABLE HOUSING MAY BE SPENT

Purpose of the Report

In August 2016, while considering a planning application, the Planning Committee requested that a report be produced on the policy that is within the affordable housing Supplementary Planning Document as to where within the district financial contributions from developments towards affordable housing can be spent. The purpose of this report is to address that issue.

Recommendations

- 1. That the Committee do not resolve that such commuted sums should have to be spent in areas where they have been generated from**
- 2. That officers do, upon the receipt of such sums, consult with the relevant Parish Council or Councils on whether or not there are opportunities to expend such sums within the areas of those Councils**

Background

The Affordable Housing SPD was adopted in 2009. It states “in accordance with Government guidance, the Council will seek to ensure that affordable housing is provided on site in the first instance. Only in very particular, agreed circumstances will either another site or payment in lieu of on site provision be considered as an acceptable alternative.”

This report is concerned with the location where payments in lieu are to be spent.

The SPD refers to such payments being held by the Council in a ring-fenced Affordable Housing Fund and that they will be used for capital funding to enable the provision of affordable housing. A number of examples of the possible uses of commuted sums generated from affordable housing are given

- Purchase of land by the Council for development by an RSL partner
- Grant contribution to RSL partners towards site development and/or construction costs
- Bringing private sector empty properties back to use for affordable housing
- Purchase of existing satisfactory dwellings (ESD's) for transfer to a RSL partner
- Grant contributions to other local housing initiatives

The SPD goes on to indicate that as the use of commuted sums is to enable the provision of affordable housing it will be inappropriate to spend the commuted sums in the following ways

- For repair or refurbishment of existing RSL housing stock
- To bring RSL Housing stock to the Decent Homes Standard
- To fund development work by the Council/RSL partners unless they are specifically directed to the provision of additional affordable units

It also indicates that an element of the commuted sum may be used to contribute towards the Council's revenue and associated administrative costs in facilitating or developing a strategic approach to affordable housing.

To date there have been a very limited number of planning applications where Developers have entered into planning obligations which potentially may result in the payment of financial contributions towards the provision of affordable housing elsewhere other than on the application site. Such obligations have been entered into unilaterally in one case and by agreement in the others

- 15/01004/FUL - The Hawthorns Keele Village (agreement)
- 13/00426/OUT - Land At End Of Gateway Avenue Baldwins Gate (unilateral)
- 15/00759/FUL - Former Blue Bell Inn New Road Wrinehill (agreement).
- 14/00968/FUL – Former T G Holdcroft, Knutton Road, Wolstanton (agreement)

Members may recall that the Planning Committee at its meeting on the 8th November agreed with respect to an application for a housing development on land adjacent to the Sheet Anchor Public House in Baldwin's Gate (application 16/00609/FUL) to require the developer to enter into a planning obligation securing inter alia the payment of sum towards off site affordable housing. That planning obligation has at the time of writing not yet been secured

The Council has received a payment in connection with the development at the former Former Blue Bell Inn New Road Wrinehill, which has been placed in an account identified as affordable housing contributions.

Planning obligations are the subject of discussion and negotiation between the Local Planning Authority and normally the applicant and landowners. Obligations are either secured by agreement or by means of what are termed unilateral undertakings where the agreement of the Local Planning Authority is not sought.

Of the three planning obligations referred to above they have identified the geographical areas in which the affordable housing contribution should be spent in the following way

- In the case of the Hawthorns Keele development – the Borough Council has entered into an obligation to use such contribution as it may receive “within the Borough”, for any of the following purposes -
 - capital funding including the purchasing of land by the Council for development by a registered provider, grant contribution to a Registered Provider towards site development and/or construction costs, bringing private sector empty properties back into use for affordable housing, purchase of existing satisfactory dwellings for transfer to a Registered Provider and grant contributions to other local housing initiatives
 - meeting the Council's revenue and associated administrative costs in facilitating and developing a strategic approach to affordable housing

The Council has also accepted a requirement that should the contribution not be expended for the above purposes within 5 years from receipt of the sum then it shall then refund the unexpended part with interest, to the party who has paid the original sum

- In the case of the Gateway Avenue development, where some onsite provision of affordable housing is to be made, no obligation has been imposed upon the Council as to where within the Borough and by when it should spend the affordable housing contribution – the purpose of which is not expressly specified in the unilateral undertaking

- In the case of the Blue Bell development no obligations have been entered into by the Council as to where within the Borough the affordable housing “commuted” sum will be spent, or on exactly what, and there is no repayment requirement should it not be spent within a certain period of time
- In the case of the McCarthy & Stone development on the former TG Holdcroft site on Knutton Road, Wolstanton the Council has entered an obligation to use the money for the provision of Affordable housing (as defined in the agreement), and to pay back any of that money, with interest, that is not spent for that purpose within 5 years

Issues

When negotiating S106 Agreements or advising the Committee on offers received, the starting position for officers is to follow the guidance in the Supplementary Planning Document. This states that “the commuted sums will not be spent exclusively in the geographical areas where the financial obligation has been generated, an inclusive approach will be taken and the commuted payments will be spent within Newcastle-under-Lyme on schemes that are considered appropriate. The decision of allocating the commuted sums will be delegated to the Head of Service”.

The rationale for the Council to adopt a borough wide approach as opposed to an area based one, is that housing markets areas can encompass ward boundaries and housing need that arises in one of the part of the Borough is often met by provision which exists in another ward of the Borough and as such this approach allows the Council the flexibility to designate funding for suitable projects within the Borough

The Affordable Housing SPD, dating as it does from 2009, is undoubtedly out of date in a number of respects (in that subsequent national policy changes have occurred since then). However a formal review of the SPD, involving the full requirement of consultation on a new draft revised SPD, and the associated adoption procedures, is not considered at this point in time an appropriate use of the Council’s plan-making resources – which are currently focussed on the Joint Local Plan and support for Neighbourhood Planning. Furthermore any review should be undertaken in the context of the new Joint Local Plan, as supplementary planning documents are not intended to make new policy, but to be based upon existing and up to date statutory development plans – which the Core Strategy cannot be considered to be as it predates the NPPF.

Accordingly all members are being invited to consider is whether to indicate that they wish officers to adopt a different approach to the issue of where such sums should be spent.

By reason of Regulation 122 of the Community Infrastructure Levy Regulations 2010, as amended planning obligations may only constitute a reason for granting planning permission if they are

- (a) Necessary to make the development acceptable in planning terms
- (b) Directly related to the development
- (c) Fairly and reasonably related in scale and kind to the development

At the time when the Affordable Housing SPD was drawn up the statutory tests of relevance when considering whether to grant planning permission were previously set out as policy tests in the now cancelled Circular 05/2005 Planning Obligations and now reflected in both the NPPF and the national Planning Practice Guidance.

There is no reason to consider that the approach set out in the Affordable housing SPD – “that the commuted sums will not be spent exclusively in the geographical areas where the

financial obligation has been generated” i.e. they may be spent throughout the borough – is contrary to the above statutory tests.

A further rationale for adopting this position, in addition to that indicated above, is that it affords greater flexibility to the Council and does not ‘tie our hands’, particularly as it is usual, when an agreement rather than a unilateral undertaking, is being negotiated, for the applicant to insist upon obligations upon the Council to refund any unexpended sum within a certain period. The NPPG advises that LPAs are expected to use all of the funding received by way of planning obligations in order to make development acceptable in planning terms and that agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not. Within the Borough that period is usually 5 years from receipt of the sum but it can be more, or less depending upon the circumstances of the case.

The borough wide approach allows the Council the ability to designate commuted sums that may be received, to projects that are deemed appropriate anywhere within the borough; be this within the urban or the rural areas.

Alternatively, it could be argued, and this may be the view of some Parish Councils and some ward councillors, that as the off-site contributions are as a result of development within particular areas then they should be spent in such locations, particularly if there is an acute need for affordable housing within that Parish.

Therefore, there appears to be a difference in views on the designation of geographical areas for the spending of commuted sums; a view that this should be borough wide and another view that the designation of areas should be specific and local.

Officers are of the view that when and where it is justifiable that commuted sums should be directed to specific areas then this can be achieved by the current SPD position and does not require changes to be made to the document. The current wording of the SPD is general and inclusive. In any case as already indicated the option of currently formally amending the SPD document is not available to the Council.

It is the views of Officers, that the decision making process about how commuted sums should be spent and to which areas they should be directed is an important mechanism and this should involve the Parish Councils, who should be consulted prior to any decisions being made subsequent to the completion of the planning obligation.

If the Committee was to resolve, either in relation to specific applications or more generally, that commuted sums should be spent in areas where they have been generated then this will become restrictive and will not allow the Council the flexibility to direct the commuted sums to other areas of the Borough, and it could well lead to the situation where it does not prove possible to spend money in a particular area and the sum has to be returned to the party who originally paid it. That in turn could lead to a situation where the Council as Local Planning Authority could in effect stimulate the submission of planning applications for development of affordable homes on sites that had been selected more for their location within a parish than for their sustainability. Furthermore, there would have to be clarification provided on the term ‘area’, which could range from being the immediate vicinity of the development, or within a particular radius or being as wide as the parish boundary.

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