

## Planning Obligations

Report to: **Hub Committee**  
Date: **7 June 2016**  
Title: **Planning Obligations Thresholds**  
Portfolio Area: **Strategic Planning and Housing**  
**Cllr G Parker**  
Wards Affected: **All**  
Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:  
(e.g. referral on of recommendation or implementation of substantive decision)

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### Recommendations:

1. The Hub Committee is asked to note that the NPPG incorporating revised policies 013-020 is a material planning consideration carrying great weight in the determination of planning applications.
2. The Hub Committee **recommends to Council** that, with the exception of applications within the settlement boundaries of Tavistock, Okehampton and areas with special designations i.e. AONB, planning obligations to provide Affordable Housing in accordance with the Core Strategy will be sought from planning applications for 6 or more units of residential accommodation.
3. In Tavistock and Okehampton if the planning site does not fall within a designated special area i.e. AONB, planning obligations will be sought on 11 units or more.

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### **1. Executive summary**

- 1.1 On the 28th November 2014 the government announced changes to national planning policy with regard to affordable housing thresholds and other tariff style contributions such as open space. This resulted in the authority being unable to collect commuted sums or on site provision where 10 units or less of housing was proposed. A Lower threshold of 6 units or more could be implemented for authorities whose boundaries covered Designated Rural Areas, National Parks and Areas of Outstanding Natural Beauty (AONB).
- 1.2 At the full council meeting on the 17<sup>th</sup> February 2015 the proposal to adopt and implement the lower threshold of 6 or 10 units was agreed.
- 1.3 Subsequently on the 31<sup>st</sup> July 2015 the government's decision to implement the change in policy was quashed by the High Court. This followed a successful legal challenge by Reading and West Berkshire Councils. West Devon Borough Council provided letters of support to Reading and West Berks in their legal challenge. This legal challenge resulted in paragraphs 012-023 of the guidance on planning obligations being removed. The Judgement is available under R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin).
- 1.4 The government successfully challenged the West Berkshire and Reading decision in the Court of Appeal. As a result the National Planning Practice Guidance (NPPG) was revised on 20 May 2016 to re-introduce the thresholds first mooted in the guidance of 28th November 2014.
- 1.5 The revised NPPG is a material consideration for the Council when determining planning applications, to be weighed against the Core Strategy.
- 1.6 The loss of on-site units and commuted sums in our rural areas could jeopardise delivery of affordable housing and, therefore, officers advise that the lower threshold should be introduced. Therefore, it is recommended that in respect of Affordable Housing requirements of planning applications, determined from the date of the Full Council Meeting, the Council:
  - Should not seek contributions on developments of less than 6 units in the rural areas or application sites which fall within the AONB.

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- Should not seek contributions on applications for residential accommodation of 10 or less dwellings in Tavistock and Okehampton.

## 2. Background

- 2.1 Following the government's successful appeal against the High Court's decision in the case R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin) the government has revised the National Planning Policy Guidance to remove the requirement for small developments (over 10 dwellings) to provide Affordable Housing.
- 2.2 There are exceptions to the over 10 threshold if the authority falls within a Designated Rural Area, Area of Outstanding Natural Beauty or a National Park. In those exceptional areas, an authority could adopt a lower threshold of 6 units or more. In West Devon, the lower threshold could be applied everywhere except Tavistock and Okehampton unless a proposal for the Tavistock area falls within the AONB. The Authority may also ask for contributions where the floor space of the proposed development exceeded 1000m<sup>2</sup>.
- 2.3 To assist members in understanding the revisions authorised by the appeal court, Paragraphs 013-020 are attached (appendix 1).
- 2.4 In accordance with Section 38(6) of the 2004 Act, the local planning authority must take decisions in accordance with the Development Plan unless material considerations (including the NPPG) indicate otherwise.
- 2.5 New paragraphs 013 – 020, introducing the thresholds are set out in appendix 1, are not yet incorporated into legislation but are likely to be incorporated in the near future. Therefore it is considered that they should be accorded great weight.  
The Council has a corporate priority to deliver homes including much needed affordable housing for people currently on the Devon Home Choice register. There is an acute need for affordable housing throughout the Borough and the changes to the grant regime over the years have resulted in these contributions made via planning applications being invaluable in order to deliver projects.

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- 2.6 A significant number of planning applications comprise small developments. Therefore, if the Council does not take up the government's invitation to implement the lower thresholds, our communities and partners will undoubtedly miss out on affordable housing within their area.

### 3. Outcomes/outputs

- 3.1 Affordable Housing contributions are monitored by the Place Making Community of Practice, and use of these funds are agreed by members in order to bring forward specific housing projects.
- 3.2 There is an acute shortage of affordable housing across the UK, and West Devon is no different. By having regard to the NPPG and implementing the lower thresholds, this will help to address the needs of our communities.
- 3.3 Providing timescales for members to see results will be difficult as this is dependent on planning applications being approved, schemes being viable, the properties being developed, projects identified and the money being paid to the council. Regular reports on the amount of commuted sums held can be provided to Overview & Scrutiny.

### 4. Options available and consideration of risk

- 4.1 The only alternative to the Council implementing the thresholds set out by government is to choose not to implement them. This is likely to lead to successful appeals by developers at some cost and no benefit to the community.

### 5. Proposed Way Forward

- 5.1 Members are asked to note that the revised NPPG is a material consideration with considerable weight and to agree to seek Affordable Housing contributions based on the lower thresholds.

### 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The legal implications are set out in detail throughout the report but are particularly detailed

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		in Sections 1 and 2. Legal advice has been sought throughout and when drafting this report. The report is necessary in order to provide clarity and certainty to the planning process, to avoid potential challenges to the Council's decisions
Financial	Y	The financial position and risks are highlighted throughout the report.
Risk		The risks are detailed throughout the report however, the particular risks is the planning appeals process and the costs to the authority following any challenge.  Discussions have taken place with SLT and Legal with regard to the risks and they have been captured throughout the report.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	No issues identified
Safeguarding	N	No issues identified.
Community Safety, Crime and Disorder	None	No issues identified
Health, Safety and Wellbeing	None	Maximise housing available to meet the need.
Other implications	None	None.

## **Supporting Information**

### **Appendices:**

Appendix 1 - Paragraphs 013 – 020 of the NPPG

### **Background Papers:**

Planning Obligations Thresholds of 17<sup>th</sup> February 2015 and 22<sup>nd</sup> September 2015  
PPG paragraphs 013 - 020

## **Planning Obligations**

### **Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes</b>
SLT Rep briefed	<b>Yes</b>
Relevant Exec Director sign off (draft)	<b>Yes</b>
Data protection issues considered	<b>Yes</b>
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	<b>Yes/No</b>