

Report to: **Development Management Committee**

Date: **8 June 2016**

Title: **Affordable Housing Obligations**

Portfolio Area: **Customer First – Cllr Bastone**

Wards Affected: **All**

Relevant Scrutiny Committee: Overview and Scrutiny Panel

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

Date next steps can be taken: N/A

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Recommendations:

That the Development Management Committee agree:

- 1. That S106 Agreements on small scale residential development previously considered by the Development Management Committee be completed without the requirement for affordable housing or an affordable housing contribution; and**
- 2. That in cases where the S106 Agreement for a small scale residential development only related to the provision of affordable housing or a financial contribution to affordable housing, the applications are approved without the requirement for a S106 agreement.**

1. Executive summary

- 1.1 The DM Committee had previously granted conditional approval on a number of applications, subject to satisfactory completion of s106 agreements that included affordable housing or an affordable housing contribution.

- 1.2 Following a recent Court of Appeal decision relating to West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government, it is necessary to advise DM Committee Members of the impact of that decision on the previously granted applications.

2. Background

- 2.1 On the 28th November 2014 the Government announced changes to National Planning Policy Guidance 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).
- 2.2 At the full Council meeting on the 12th February 2015 the proposal to adopt and implement the lower threshold of 6 or 10 units was agreed.
- 2.3 Subsequently on the 31st 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. 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).
- 2.4 At the special Council meeting on the 10 September 2015, Members agreed to revoke the interim planning obligations decision made by the Council on 12 February 2015 and revert to the previous adopted policy. Members also agreed that in order to keep the Council's policy in line with any further changes to Government guidance that if the Government introduce a higher affordable housing threshold, the Council would revert automatically to its 6 to 10 unit threshold policies agreed at the Council meeting on 12 February 2015 to avoid future delays in waiting for an appropriate committee to revert to a previously approved policy.
- 2.5 The Government successfully challenged the West Berkshire and Reading decision in the Court of Appeal and as a result reissued planning Practice Guidance (PPG) on 20 May 2016 which re-introduced the higher thresholds (with exceptions for rural and designated areas) in line with the original guidance of 28th November 2014.

- 2.6 The Court referred to the submissions of the Government previously that there remains the possibility for a Local Planning Authority to submit for examination local plan policies with thresholds below those in the national policy. It will then be for the Inspector to consider whether the LPA's evidence base and local circumstances justify the LPA's proposed thresholds. If he concludes that they do and the local plan policy is adopted, then more weight will be given to it than to the new national policy in subsequent decisions on planning applications.

Until the Council can demonstrate that it has a clear evidence base to support thresholds lower than those recommended in the guidance it will not be able to successfully defend any challenge.

3. Outcomes/outputs

- 3.1 There are a small number of applications for residential development of a scale below the re-imposed thresholds that have been considered by the Development Management Committee.
- 3.2 These applications have been granted delegated approval subject to the satisfactory completion of a S106, where the S106 has not, as yet, been completed and the committee resolution includes an affordable housing provision or contribution.
- 3.3 Agreement is sought to complete these S106 agreements without the provision of the affordable housing/affordable housing contribution in line with the re-imposed Government guidance.
- 3.4 The applications are set out below:
- a. 56/2221/15/O, Outline application with all matters reserved for 8no. three bedroomed houses with 8 parking spaces, Cocos Nursery, Ashburton Road, Totnes, TQ9 5JZ:
S106 in respect to affordable housing and open space, sport and recreation
 - b. 41/1023/15/F, Demolition of existing dwelling and erection of building to contain 6No apartments with associated landscaping and car parking, Spion Lodge, Bennett Road, Salcombe TQ8 8JJ:
S106 in respect to Affordable housing, Education and Open space. Sport and recreation.
 - c. 2659/15/FUL, Conversion of part of redundant premises to form two dwellings, Crooked Spire Inn, The Square Ermington, PL21 9LP:
S106 in respect of Affordable housing.

4. Options available and consideration of risk

- 4.1 The only alternative would be to continue with the Committee recommendations to approve the applications, following the completion of a s106, including the affordable housing provision. It is unlikely that the applicants would agree to the s106 given the circumstances as set out above. The likely outcome would be an appeal against the non-determination of the application and this could have cost implications to the Council.

5. Proposed Way Forward

- 5.1 Following the Court of Appeal decision, it is proposed to complete the previously agreed s106 agreements without affordable housing or affordable housing contributions, in line with re-imposed government guidance

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance		The legal implications are set out within the background section of the report. The report is necessary to provide clarity to the planning process and avoid potential challenges to the Council's decisions
Financial		There are no direct financial implications to this report if the recommendations are adopted
Risk		These are addressed in the body of the report
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	
Health, Safety and Wellbeing	N	
Other implications		

Supporting Information

Appendices:

None

Background Papers:

Report to full Council 12 Feb 2015

Report to Special Council 10 September 2015

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).

Approval and clearance of report

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