

Report to: **Full Council**  
Date: **29 September 2015**  
Title: **PLANNING OBLIGATIONS THRESHOLDS**  
Portfolio Area: **Customer First**

Wards Affected: **All**

Relevant Scrutiny Committee:

Urgent Decision: **Y** 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:**

**That Members agree to revoke the interim planning obligations decision agreed at full Council on 17 February 2015.**

**1. Executive summary**

On 28 November 2014, the government announced changes by way of a Ministerial Statement 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).

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. (Report attached)

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). (available on the Council website or on request from Member Services).

We are therefore seeking to revoke the interim policy which members adopted on 17<sup>th</sup> February 2015 and to revert back to the adopted policy in the Core Strategy (SP9) and the accompanying Affordable Housing Code of Practice. This will allow West Devon Borough Council to collect contributions on any residential developments, subject to viability. There are exceptions within SP9 where a contribution will not be sought and these are detailed below:

- Developments of 100% Affordable Housing
- Wholly flatted developments up to and including 9 units or more
- Developments with a condition limiting the use of the dwellings on that development so that they are not available for market sale or rent, to include agricultural dwellings and holiday lets
- Replacement dwellings or conversions, which do not provide additional residential units, unless the nature of such dwelling differs significantly from what they are replacing. The Borough Council will determine what constitutes a significant change but examples may include flats being replaced by houses or a dwelling which is much larger than the original unit.
- Hostels, educational establishments with accommodation directly linked to educational facilities on site and residential care/nursing homes.

### **Viability**

If an applicant feels that the project is not viable to pay an affordable housing contribution, even in the case of a single dwelling, the application should not be registered until this information is received as per the validation checklist which applicants should adhere to.

It is unclear whether further changes around tariff style contributions will be re-introduced in the future. The government could decide to appeal the West Berks decision or reintroduce by new statutory provisions at a later stage. If there are future changes introduced by the government through an appeal or new policy members will be updated and we will look at addressing this through the emerging "Our Plan".

Clearly, the introduction of the higher thresholds has had a negative impact on the Council's ability to deliver affordable housing, either through financial contributions or on-site delivery. As such, there is a need to revoke the previous decision and return to the policy provisions as set out in the Core Strategy and in particular policy SP9.

## **2. Background**

### 1) What's the issue?

On 28 November 2014 the government issued a ministerial statement with regard to planning obligations. It stated that tariff style obligations could not be sought on small scale developments of 10 units or less. The National Planning Practice Guidance (NPPG) was updated to reflect this.

There were exceptions to the over 10 threshold if the authority falls within a Designated Rural Area, Area of Outstanding Natural Beauty or a National Park. If an authority chose to, it could adopt a lower threshold of 6 units or more. In West Devon the lower threshold could be applied everywhere except the parishes of Tavistock and Okehampton unless a proposal for the Tavistock area falls within the AONB.

The Authority additionally could ask for contributions where the floor space of the proposed development exceeded 1000m<sup>2</sup>.

Members adopted the lower threshold of 6 or 10 units or more on the 17<sup>th</sup> February 2015 which meant that contributions to affordable housing and sport and recreation could be made where developments on a scale of 6 units or more were proposed, or more than 10 units in the non-rural areas.

### 2) Why does the Council need to take action and why now?

The grant regime for affordable housing has reduced significantly over the last few years. The Section 106 contributions for affordable housing that we previously collected from developers are used to help to deliver affordable housing schemes in the absence of public sector funding. Schemes such as this may not be feasible without financial support from the local authority. Therefore the ability to be able to collect contributions on the basis of the adopted policy (SP9) provides us with more opportunity to collect funds to support affordable housing delivery across the Borough.

Dartmoor National Park Authority agreed to rescind their interim policy which was implemented by their members on the 9<sup>th</sup> January to ensure that they had the ability to meet affordable housing need within their area. Cornwall Council has also reverted to their previous policy. A number of other rural councils have and will be considering this to ensure delivery of affordable housing.

## **How does this fit in with national or Council policy/priorities? Who does the issue affect (communities, services, partners etc)?**

The NPPG has removed paragraphs 0012 – 0023 and therefore the policy basis for affordable housing contributions returns to the adopted Core Strategy and Affordable Housing Code of Practice.

The Council has a corporate priority to deliver homes including much needed affordable housing for those applicants that are currently on the Devon Home Choice register.

If we do not revert to the Core Strategy policy and Affordable Housing Code of Practice, our communities and partners are missing out on affordable housing within their area. There is an acute need for affordable housing throughout the Borough. The changes to the grant regime have resulted in these contributions being invaluable in order to deliver projects.

### **3. Outcomes/outputs**

Subject to Member approval, the ability to collect affordable housing contributions in line with adopted policy will be reintroduced with immediate effect.

The contributions are monitored by the Place & Strategy Community of Practice, use of these funds are agreed by members in order to allocate to bring forward specific housing projects.

There is an acute shortage of affordable housing across the UK, and West Devon is no different. By revoking the policy and returning to the previous thresholds, this will help to address the needs of our rural communities.

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.

### **4. Options available and consideration of risk**

1. To continue to apply the threshold of 6 or 10 units or more but the Council would potentially lose contributions over a period of time. Whilst the lower threshold has been used, WDBC has managed to secure £80,000 towards the delivery of affordable housing. Risk: the Council are not acting within the confines of adopted policy and are jeopardising the delivery of affordable housing needs.

2. Revert back to policy SP9 and the Affordable Housing Code of Practice as the basis for requiring contributions to affordable housing. The current balance of funds available to support affordable housing is £213k.  
Risk: this poses the least risk as it is simply returning to our adopted policy basis which has been tested at independent examination.
3. There is always a risk that developers/agents/householders may submit an application to try to circumvent policy in avoiding payment of contributions. However this is addressed in the planning process.
4. The government may ask for leave to appeal this decision although the information acquired so far does not seem to substantiate this. If the government or High Courts make any changes then members will be informed.

## 5. Proposed Way Forward

Members agree to rescind the decision of the 17<sup>th</sup> February and agree that the Core Strategy Policy SP9 and Affordable Housing Code of Practice remain the basis for requiring contributions towards affordable housing until such time as replaced by Our Plan or other adopted policy. This fits with West Devon's adopted policies and the corporate priority to deliver homes including affordable housing for applicants in the Borough who are on the Devon Home Choice Register.

## 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 in Sections 1 and 2. Legal advice has been sought throughout and when drafting this report.

Financial	Y	The financial position and risks are highlighted throughout the report in particular in section 4 where the risk and amount of contributions potentially not collecting is discussed.
Risk		The risks are detailed throughout the report but particular reference can be made to section 4.  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:**

A: Council Report – 17 February 2015; and  
B: Affordable Housing Code of Practice.

#### **Background Papers:**

#### **Reading and West Berkshire Judgement**

<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/No</b>
Data protection issues considered	<b>Yes</b>
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	<b>Yes/No</b>