

Report to: **Planning and Licensing Committee**

Date: **26 July 2016**

Title: **Affordable Housing Obligation**

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

Wards Affected: **All**

Relevant Scrutiny Committee: Overview and Scrutiny Internal Committee

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

Date next steps can be taken: N/A

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**Recommendations:**

**That the Planning and Licensing Committee agrees:**

- 1. That S106 Agreements on small scale residential development previously considered by the Planning and Licensing 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 P&L 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 P&L

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 17<sup>th</sup> 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 29<sup>th</sup> September 2015, Members agreed to revoke the interim planning obligations decision made by the Council on 17<sup>th</sup> February 2015 and revert to the previous adopted 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<sup>th</sup> May 2016 which re-introduced the higher thresholds (with exceptions for rural and designated areas) in line with the original guidance of 28<sup>th</sup> 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 Application 01182/2015 is for one residential unit, which is of a scale below the re-imposed thresholds and was the subject of a resolution of P&L Committee of the 1<sup>st</sup> March 2016.
- 3.2 The application is the subject of a resolution to approval subject to the satisfactory completion of a S106. 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 the S106 agreements without the provision of the affordable housing/affordable housing contribution in line with the re-imposed Government guidance.
- 3.4 The application is an outline application with all matters reserved for change of use of land and construction of live work accommodation. The location is Glebelands, Hatherliegh, Okehampton.

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

- 4.1 The only alternative would be to continue with the Committee recommendations to approve the application, 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 17 Feb 2015

Report to Special Council 29 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**

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