

Report to: **Special Council**
Date: **10 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:

1. Members agree to revoke the interim planning obligations decision agreed at full Council on 12th February 2015
2. Members agree that in order to keep the council's policy in line with any further changes to government guidance by way of appeal or changes to the statutory framework, to adopt the additional 'reversion clause'.

1. Executive summary

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).

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. (Report attached at Appendix A)

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. South Hams District Council provided letters of support to Reading and West Berks in their legal challenge. This 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) (Appendix B refers).

We are therefore seeking to revoke the interim policy which members adopted on 12th February 2015 and to revert back to the 2 to 10 Affordable Housing threshold. This will allow South Hams District Council to collect contributions on 2 units or more dependent on viability. This was initially adopted in the affordable housing SPD (September 2008).

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 the government restore the 6 or 10 unit thresholds the Council may prefer to re-implement the Members decision of the 12th February 2015 immediately to avoid delays in re-presenting reports to members and updating the policy again.

The loss of onsite units and commuted sums in our rural areas could jeopardise delivery of affordable housing and other community benefits if the proposal to reinstate the previous threshold of 2 units or more is not agreed by members.

2. Background

1) What's the issue?

On the 28th 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 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 South Hams the lower threshold could be applied everywhere except Dartmouth, Totnes, Ivybridge and Kingsbridge unless any of the main towns had areas which fell within an AONB.

The Authority additionally could ask for contributions where the floor space of the proposed development exceeded 1000m².

Members adopted the lower threshold of 6 or 10 units or more on the 12th 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 in the absence of public sector funding. One example of this is a small brown field site in Thurlestone. The development enabled the Council to provide much needed affordable homes for local people. The affordable homes have all been built to Level 5 of the Code for Sustainable Homes which means residents benefit from low running costs. This development won the Best Rural Development award in the 2014 Devon Rural Development Awards. Schemes such as this would not be feasible without financial support from the local authority

Dartmoor National Park Authority agreed to rescind their interim policy which was implemented by their members on the 9th 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 members are able to revert to the previously policy in the Affordable Housing Supplementary Planning Document.

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 previous policy our communities and partners are missing out on affordable housing within their area. There is an acute need for affordable housing throughout the district. The changes to the grant regime have resulted in these contributions being invaluable in order to deliver projects.

3. Outcomes/outputs

It is hoped that rescinding the decision by members in February 2015 will be implemented immediately as per the removal of the paragraphs contained in the NPPG and contributions can then be sought.

The contributions are monitored by the Place & Strategy Community of Practice and a capital programme is agreed by members in order to allocate funds to specific housing projects.

There is an acute shortage of affordable housing across the UK, and South Hams is no different. By revoking the policy and returning to the 2 unit threshold we will be able to see outcomes as we have seen in Blackawton where 10 units of housing were proposed which included 5 much needed affordable homes. 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, 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. We could continue with the threshold of 6 or 10 units or more but would potentially lose contributions over a period of time. Whilst the lower threshold has been used SHDC has only managed to secure £23,000.00

We could revert back to the initial policy and collect on 2 units plus to assist. Contributions currently collected and held in the bank in South Hams from the previous policy is £538,238.40. It is important to note that money has previously been committed and spent in the past to support projects and this is just what is held in funds at present. These projects have been reported to members through the housing capital programme at Executive committee.

2. 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.
3. The government may ask for leave to appeal this decision although the information acquired so far does not seem to substantiate this. The higher thresholds may be reintroduced in the future and therefore officers are asking members to agree that the 6 to 10 unit policy can be reintroduced if this is still fit for purpose without re-presenting this to full council committee.
4. Consultation is not required as this is simply revoking the interim policy stance of the 12th February 2015 to revert to an agreed policy which was subject to a consultation process prior to adoption.

5. Proposed Way Forward

Members agree to rescind the decision of the 12th February and to agree that the threshold of 2 units or more is reintroduced. This fits with South Hams adopted policies and the corporate priority to deliver homes including affordable housing for applicants in the district who are on the Devon Home Choice Register.

To agree that, if the government formally introduce a higher affordable housing threshold the Council will revert automatically to its 6 to 10 unit threshold policies to avoid future delays in waiting for an appropriate committee to revert to a previously approved policy.

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 need.
Other	None	

implications		None.
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Supporting Information

Appendices:

Only include appendices if the information is needed to make the decision but cannot be put within the report, such as a strategic plan or corporate policy.

Background Papers:

Planning Obligations Thresholds of 12th February 2015 Reading and West Berkshire Judgement

[under provisions of the Local Government Act 1972]

List any background papers used to prepare your report or say none. You do not have to include anything that is already publicly available online or in hard copy. Do not include reference to material that is exempt or confidential within the meanings given in the Access to Information Procedure Rules.

Approval and clearance of report

All reports must have Finance Service clearance and Legal Service clearance. Your report will only receive clearance if the implications in Section 6 are considered by the Finance and Legal Services to be complete and accurate. Make sure you contact the Finance Service and the Legal Service early on for advice where there are potentially financial or legal implications. If there are other resource implications you must forward your report to the appropriate officer for clearance. If those clearing the report make amendments they will advise you of that fact and refer you to the relevant changes. As report author you are responsible for finalising the report and its content but you are required to have regard to the comments of the Finance and Legal Services and clear reasons for not following their advice.

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. (Committee/Scrutiny)	Yes/No