

REPORT TO:	Environmental and Development Services Committee	AGENDA ITEM: 8
DATE OF MEETING:	29 January 2015	CATEGORY: DELEGATED
REPORT FROM:	Director of Community and Planning Services	OPEN
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SUBJECT:	New Government Policy: Section 106 contributions	REF:
WARD(S) AFFECTED:	All Wards	TERMS OF REFERENCE: EDS

1.0 Recommendations

1.1 That the Council's 'Policy' be amended to reflect the latest government guidance.

2.0 Purpose of Report

2.1 To inform Members of the change in Government policy in respect of Section 106 contributions for small scale developments effective from 28 November 2014 which would necessitate a change in policy previously set by the Committee.

3.0 Executive Summary

3.1 On 28 November 2014 the National Planning Policy Guidance changed to exclude developments of 10 dwellings or less and which have a maximum combined gross floorspace of no more than 1000sqm from making tariff style contributions under Section 106 of the Town and Country Planning Act 1990. This has a direct impact on the Council's adopted policy which currently seeks contributions at 5 dwellings or more.

4.0 Detail

4.1 On 28 November 2014, Brandon Lewis, the Minister of State for Communities and Local Government announced changes to government policy in respect of planning obligations (S106 agreements or unilateral undertakings). This resulted in an amendment to the National Planning Practice Guidance (NPPG) as follows:

- Contributions for affordable housing and tariff style planning obligations should not be sought from development of ten units or less and which have a maximum combined gross floorspace of no more than 1000sqm.
- Tariff style contributions are defined as planning obligations contributing to pooled funding pots intended to provide common types of infrastructure.
- Authorities can still seek obligations for site specific infrastructure - such as (by way of example) improving road access where this is appropriate to make a site acceptable in planning terms.

- 4.2 The Council's threshold for affordable housing contributions as set out in Policy H20 in the emerging Local Plan is developments of 15 or more dwellings and therefore it is not affected by this change to government policy.
- 4.3 The main impact on Council planning policy is therefore the continued implementation of adopted policy set out in the document '*Section 106 Agreements – a Guide for Developers*' which seeks contributions to recreational open space, education, healthcare, national forest planting and River Mease contributions from all new residential development over 4 dwellings. These are all tariff style contributions.
- 4.4 The updated guidance does not impact on highways or other contributions which are not pooled, albeit these are not commonly sought for schemes of this scale in any case.
- 4.5 The guidance also sets out that there is a situation where there is another exception. Members will recall a relatively recent addition to the Council's usual list of infrastructure requirements in the Guide for Developers being the Developer Contribution Scheme towards improvements to schemes for improving water quality in the River Mease as a European Special Area of Conservation. The modest contribution per dwelling levied in the River Mease catchment area enables developments to proceed which may otherwise have a net detrimental effect on water quality in the river. This special European designation is cited as an exception to the policy in that in the NPPG (at Paragraph 020 Reference ID: 23b-020-20141128) states: '*...They [authorities] may also seek contributions to fund measures with the purpose of facilitating development that would otherwise be unable to proceed because of regulatory or EU Directive requirements.*' As such this contribution would be unaffected and charging would continue for any number of dwellings.
- 4.6 By way of background Paragraph 215 of the National Planning Policy Framework (NPPF) states that:

'... due weight should be given to relevant policies in existing plans [i.e. the adopted Local Plan and to a lesser extent the emerging Local Plan] according to the degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).'

It was made clear that the government announcement on 28 November 2014 was the introduction of government policy and this has since been placed in the Planning Practice Guidance which accompanies the NPPF. It is therefore the government's intention that this policy can and should be given the same weight as the NPPF when making planning decisions. As such, where the Development Plan is not in accordance with government policy, it can only be given very limited, if any weight and the government policy takes precedence.

- 4.7 As a result, it is proposed that with immediate effect any outstanding planning applications for a development of ten dwellings or fewer and which have a maximum combined gross floorspace of no more than 1000sqm, (which would tend to exclude sites of larger detached houses which may still be caught) there will no longer be a requirement to enter into a S106 agreement.
- 4.8 Where the application is for outline (as opposed to full) planning permission and details of the numbers of residential units and floorspace cannot be ascertained, a negatively worded condition can be attached containing a requirement to enter into a S106

agreement prior to the commencement of the development should the threshold be reached. This would typically be evident at the submission of reserved matters.

5.0 Financial Implications

5.1 It is unlikely that the ensuing shortfall from reduced contributions would be made up from other Council monies; rather it is probable that fewer projects would receive such contributions that would otherwise have been due under a S106 agreement. It is not possible to forecast the impact with any degree of certainty.

6.0 Corporate Implications

6.1 The proposal has implications for the following themes of the Corporate Strategy:

“Sustainable growth and opportunity” in that the policy would be likely to have a limited economic impact and could be argued to result in a less sustainable development as impacts on infrastructure for these small developments could not be mitigated.

7.0 Community Implications

7.1 The proposal has implications for the following themes of the Sustainable Community Strategy:

- “Vibrant communities” in that the policy would result in less access to upgraded community facilities for incoming and existing residents.
- “Sustainable development” in that the policy would be likely to result in less sustainable development as impacts on infrastructure for these small schemes could not be mitigated.

8.0 Conclusions

8.1 Given that the PPG is effectively mandatory, the Council has no option other than to observe its provisions and adopt it as an amendment to current policy which will result in a number of smaller development schemes being exempt from contributing towards some local infrastructure requirements.

8.0 Background Papers

Planning Practice Guidance (as amended 28 November 2014)
SDDC - Section 106 Agreements - A guide for Developers (Version 8, April 2010)