

## RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: 30 JUNE 2016  
 title: NEW GOVERNMENT POLICY / SECTION 106 AGREEMENTS  
 submitted by: DIRECTOR OF COMMUNITY SERVICES  
 principal author: ROBERT MAJOR

### 1 PURPOSE

1.1 To update Members of the impact of the recent High Court Challenge in relation to affordable housing contributions in respect to Section 106 contributions for small scale developments, which follows the order of the Court of Appeal dated 13 May 2016, which gave legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014.

1.2 To advise Members of the possible impact of this change on the implementation of the appropriate policies within the adopted Core Strategy.

#### 1.2 Relevance to the Council's ambitions and priorities

- Community Objectives - } To be a well managed Council providing efficient services and this would include delivery of affordable
- Corporate Priorities - } housing and infrastructure improvements utilising
- Other Considerations - } funds where appropriate.

### 2 BACKGROUND

#### 2.1 Section 106 Contributions

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 (Section 106 Agreements or Unilateral Undertakings). The Ministerial Statement was established as national guidance and was a significant material consideration in decision making. Following this statement, the National Planning Practice Guidance (NPPG) was amended as follows.

- Contributions for affordable housing and tariff style planning applications should not be sought for development of 10 units or less and which have a maximum to combined gross floor space of no more than 1000m<sup>2</sup>.
- Tariff style contributions are defined as planning obligations contributing to pooled funding pots intended to provide common types of infrastructure such as open space, recreation facilities, education facilities.
- Local planning authorities may choose to apply a lower threshold of 5 units or less to developments in designated rural areas being areas as defined under Section 157 of the Housing Act 1985 and also includes National Parks and Areas of Outstanding

Natural Beauty. No affordable housing or tariff style contribution should then be sought from these developments. Only in cases of the lower threshold Councils should only seek contributions from developments of between 6-10 units as a financial contribution and not on site. Any payments made should also be commuted until after completion of units within developments.

- Authorities can still seek obligations for site specific infrastructure such as improvements to road access or a specific project.

2.2 In January 2015 Reading and West Berkshire Councils challenged this legislation on the grounds that this change in policy would severely impact their delivery of affordable housing. In August 2015 their legal challenge was successful in the High Court and resultantly the above Ministerial Statement was removed from the National Planning Policy Guidance and authorities were free to seek tariff style contributions in accordance with their own Local Policies.

2.3 The Department for Government and Local Communities challenged the decision of the High Court and in May 2016 the Court of Appeal overturned the High Court's decision. As a result of this the NPPG was updated on 19 May 2016 with Paragraph 31 of the "Planning Obligations" section of the NPPG now reading as follows:

*"As set out in the Starter Homes Written Ministerial Statement of 2 March 2015, starter homes exception sites should not be required to make affordable housing or tariff-style section 106 contributions. There are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development. This follows the order of the Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014 and should be taken into account. These circumstances are that:*

- *contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm;*
- *in designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development. This applies to rural areas described under section 157(1) of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty;*
- *affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home"*

2.4 This change in the NPPG equates to the introduction of government policy and this change supersedes local policies within the Ribble Valley Core Strategy. It is therefore vital that weight is given to this change in policy when making planning decisions,

- regardless of whether or not the Core Strategy is in accordance with this new national policy.
- 2.5 At present Key Statement H3 (Affordable Housing) of the Ribble Valley Core Strategy states *“On developments of 5 or more dwellings (or sites of 0.2 hectares or more irrespective of the number of dwellings) the Council will require 30% affordable units on site.”*
- 2.6 The new national policy states that affordable housing, or other tariff style contributions, are not required for any development which seeks consent for five or less houses, and this therefore supersedes the section of Key Statement H3 which requires sites of 0.2 hectares or more to provide affordable housing. As such the Council can no longer seek affordable housing contributions for any development for five or less houses, regardless of the size of the site.
- 2.7 A recent example of the impact of this change in policy is highlighted within application 15/2015/0313/P – Whalley Road, Mellor Brook. This application sought consent for four dwellings, and as the site area measured more than 0.2 hectares the Council had successfully negotiated that one of these dwellings would be an affordable unit in accordance with Key Statement H3 of the Core Strategy. During the course of this application the change in policy came into effect and as the development was for less than six dwellings the Council could no longer seek an affordable unit on site, or an off-site financial contribution, as part of this scheme. The application has therefore been approved with no affordable unit on site because of the recent legislation change.
- 2.8 The new national policy also states that developments for between 6 – 10 dwellings can only seek affordable housing contributions where the site is within a rural location. This differs from Key Statement H3 which requires all developments for five or more dwellings, regardless of whether they are within a rural location or not, to provide affordable housing, either on site or via an off-site contribution. Consequently the Council can now only require affordable housing be provided for developments of between 6 – 10 houses if the site is located within a designated rural location. It is the author’s opinion that these financial contributions do not have the same benefits as the provision of an affordable unit on site, as a number of contributions would need to be pooled together to have sufficient finances for an affordable development scheme. Additionally, in rural locations the availability of sites that can be developed for affordable housing is severely restricted, and therefore whilst the Council can still seek financial contributions for developments of between 6 – 10 dwellings in rural locations, the practicality of delivering affordable housing units in these locations has been significantly impacted by this change in policy.
- 2.9 The list of rural locations for Ribble Valley includes the parishes of Bolton-by-Bowland, Bashall Eaves, Chatburn, Clayton-le-Dale, Dinckley, Dutton, Gisburn, Great Mitton, Horton, Hothersall, Little Mitton, Mearley, Middop, Newsholme, Osbaldeston, Paythorne, Ramsgreave, Read, Ribchester, Rimington, Salesbury, Simonstone, Waddington, West Bradford, Wiswell and Worston. The borough is also subject to an Area of Outstanding Natural Beauty which would include numerous other parishes such as Chipping, Slaidburn and other rural areas. Therefore, within these rural areas affordable housing can still be required for developments of between 6 – 10 dwellings.
- 2.10 It should be noted that some of the parishes that are excluded from the rural location designation include amongst others, Wilpshire, Langho, Billington, Mellor and Mellor Brook and the main settlements of Clitheroe, Longridge and Whalley.

- 2.11 In relation to applications for 11 or more dwellings, affordable housing will be required regardless of the location, and the requirements of Key Statement H3 will therefore be applied.
- 2.12 It is evident that current and future planning applications that the Council would have in the past sought an element of affordable housing, will no longer have to do so, and this change in policy will undoubtedly make it more difficult for the Council to meet its affordable housing requirements throughout the borough.

### 3 ISSUES

- 3.1 It is clear that this change in guidance and the previous restriction on the number of pooled Section 106 Agreements (which came into force from April 2015) will have an impact on the ability to resource affordable housing within the borough. It will potentially have significant financial implications and also impact upon the assessment of the planning balance of any planning application if it is no longer possible to insist on an element of affordable housing within a development proposal or request contributions for infrastructure schemes such as education and recreation improvements.
- 3.2 The updated Guidance within the NPPG also states that where a contribution is required for developments of between 6 – 10 units (in rural locations), Local Planning Authorities should only seek affordable housing contributions as financial contributions and not affordable housing units on site. Whilst Key Statement H3 of the Core Strategy does allow for consideration of a financial contribution in certain circumstances, the new guidance only permit contributions rather than new build units on site.
- 3.3 It is clear that many LPA's are concerned about the impact of the new legislation, particularly that the changes will result in Authorities missing out on contributions for community improvements including highways, education and the provision of affordable housing. These concerns resulted in the judicial review undertaken by Reading and West Berkshire Council's which delayed the implementation of this legislation by over 18 months. However the recent High Court decision has overturned the judicial review and the legislation change is now in effect (as of 19 May 2016) and supersedes local policies within the Core Strategy. It is therefore a material consideration when determining planning applications.

### 4 CONCLUSION

- 4.1 Committee note this report and the impact of the High Court decision in relation to the impact this would have on the deliverability of affordable housing.

ROBERT MAJOR  
PRINCIPAL PLANNING OFFICER

JOHN HEAP  
DIRECTOR OF COMMUNITY SERVICES

## BACKGROUND PAPERS

Ministerial Statement from Brandon Lewis dated 28 November 2014.

Revisions to National Planning Practice Guidance – 28 November 2014.

Revisions to National Planning Practice Guidance – 14 August 2015.

New Government Policy Section 106 Agreements – report of Director of Community Services sent to Planning and Development Committee 12 February 2015.

Revisions to National Planning Practice Guidance – 19 May 2016.

For further information please ask for Robert Major, extension 4516.