

REFORMING PLANNING OBLIGATIONS - A CONSULTATION PAPER

1 SUMMARY

- 1.1 This report seeks Members' views on proposals for alterations to the current system of Planning Obligations (Section 106 Agreements).

2 INTRODUCTION

- 2.1 Planning obligations are agreements between Local Planning Authorities and developers, negotiated as part of a planning application. They provide a mechanism to ensure that developers contribute towards the infrastructure and services necessary to facilitate proposed developments.
- 2.2 The Government has recognised that the existing system has many faults and has, in parallel with the Green Paper on the planning system, published a consultation document outlining options for change. A copy of the questions raised in the consultation document is attached as Appendix One to this report.
- 2.3 The Government considers that the present planning obligation system:
- tends to operate in a way that is inconsistent, unfair and lacking in transparency
 - takes an unacceptably long time to negotiate and involves unnecessarily high legal costs, leading to delays or even abandonment of development proposals.

3 THE PROPOSALS

- 3.1 In summary, the Government proposes that:
- Local Authorities should set standardised tariffs for different types of development through the plan-making process
 - tariffs would contribute to meeting a range of planning objectives, including the provision of affordable housing
 - the current and future system of planning obligations will be available for inspection on the statutory Planning Register

- there is value in the use of standard contractual terms for negotiated planning obligations.
 - there should be a dispute resolution procedure where a Local Authority and developer cannot agree on the value of site specific costings.
- 3.2 Information about local policies towards planning obligations is important for developers in order to provide some financial predictability about the scale of contributions they may be required to make when they contemplate a development. The provision of more information and a more structured approach through the Local Plan will help to improve this situation, the consultation paper argues.
- 3.3 Under the Green Paper's proposed system of Local Development Frameworks (LDF's), one set of policies would set out the arrangements for tariffs and another set would set out the purposes to which receipts from the tariff would be put. Local Authorities would have discretion to determine the types, sizes and locations of development on which the tariff would be charged and how it would apply in different circumstances.
- 3.4 In some cases, a tariff approach alone will not be sufficient and an obligation will be required to deal with specific constraints such as site conditions or access. In these circumstances, the Government concludes that a single planning obligation should be prepared, negotiated around the tariff.
- 3.5 In other situations, a Local Authority may not wish to pursue a tariff because the scheme contributes to sustainable development in its own right for example. The core policies in the LDF would set out the criteria where a lower tariff would apply.
- 3.6 The consultation paper suggests various options for setting the tariff. (See Appendix One, question 4). In addition, it is proposed that smaller developments (below 200 metres gross commercial floorspace or 150 metres residential) should not pay a tariff.

Affordable Housing

- 3.7 The issue of affordable housing provision is dealt with at length in the consultation paper. The Government proposes to withdraw current policy guidance and incorporate the contribution towards affordable housing within the planning obligation tariff. Local Authorities would need to define the proportion of the tariff to be used to deliver affordable housing, essentially based on an assessment of housing need.

- 3.8 The tariff would be paid by both residential and commercial development and the starting point for contributions would be development schemes above the threshold sizes mentioned in paragraph 3.6 above. A decision about how much affordable housing to be provided on site and its type would be for Local Authorities to agree with the developer.
- 3.9 Given that it would not be appropriate to provide affordable homes within a commercial area, sites would need to be identified for this provision. The consultation paper points out that sites, if allocated in this way, would need to be consistent with the objective of creating mixed and balanced communities.
- 3.10 Local Authorities will have to make clear in their Development Plans what proportion of the tariff will be devoted to affordable housing. In addition, need may not be confined to administrative areas and co-operation between Local Authorities will be expected in certain circumstances.

4 DISCUSSION

- 4.1 It is clear from the Summary of the consultation paper in Section 3 above, that a major proportion of the Government's concerns about adjustments to planning obligations have been linked to ways of improving the delivery of affordable housing through the planning system.
- 4.2 There is no doubt that the existing arrangements for planning obligations are less than effective and it is considered that a system based on tariffs will have significant advantages.
- 4.3 Leaving aside affordable housing for a moment, the tariff approach should be supported and be set on a cost per dwelling basis for residential and gross floorspace for residential development. The proposed threshold limits suggested below, showing which schemes would be exempted from a tariff, appear reasonable.
- 4.4 In respect of affordable housing, the tariff-based approach tied to Local Plan policies does seem to offer significant advantages over the existing arrangements. Developers will easily understand the required level of contribution unless there are exemptions specified in the Local Plan. In addition, the ability to require a contribution from commercial development makes sense, particularly if it is possible to provide the housing close by.
- 4.5 Allocating sites in the Local Plan specifically for affordable housing would make sense if contributions are to be provided from commercial

developers. However, the number of sites allocated and their location would need to be based on the findings of an up to date housing needs assessment.

- 4.6 In terms of the questions listed in Appendix One and, subject to comments in the report, it is suggested that a response be prepared to the consultation paper as follows:-

- Q.1 - support
- Q.2a - agree
- Q.2b - agree
- Q.3 - no
- Q.4b - support
- Q.5 - agree
- Q.6 - support
- Q.7 - agree
- Q.8 - difficult to achieve
- Q.9 - in favour
- Q.10 - welcome.

6 RECOMMENDATION

It is proposed that the Committee **RESOLVES**

That, subject to comments from Members, the Council's response to the consultation paper "Reforming Planning Obligations" be based on this report. (HPS)

Shaun Scrutton

Head of Planning Services

Background Papers:

"Reforming Planning Obligations" - DTLR January 2002

For further information please contact Shaun Scrutton on:-

Tel:- 01702-318100

E-Mail:- shaun.scrutton@rochford.gov.uk

APPENDIX 1

REFORMING PLANNING OBLIGATIONS

- Q.1 Do you support refocusing of the planning obligation system around the objective of sustainable development? Support/not support
- Q.2 Do you agree that we should:
 a) introduce a standardised tariff-based approach for planning obligations? Agree/disagree
 b) incorporate the provision for affordable housing within the standard tariff? Agree/disagree
- Q.3 Do you believe that any of the other options listed in annex A provide a better solution than our preferred option? Yes/No
- Q.4 How do you think the tariff should be set?
 a. on a gross floorspace basis
 b. on a per dwelling basis
 c. as a proportion of development value
 d. other (specify)
- Q.5 Do you agree that sites should be identified within the planning system specifically for affordable housing? Agree/Disagree
- Q.6 Do you support the provision of central guidance about how the tariff-based should work, while retaining local flexibility on the details of implementation? Support/Not support
- Q.7 Do you agree we should retain negotiated agreements where they are needed to address, principally, site-specific issues? Agree/Disagree
- Q.8 Should we enable local authorities to pool contributions should they wish to? Yes/No
- Q.9 Are you in favour of the use of a dispute resolution mechanism? If so how might it work? In favour/Not in favour
- Q.10 Would you welcome new good practice guidance About monitoring, accounting and the use of model clauses for planning obligations? Welcome/Not welcome