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## DRAFT REVISED CIRCULAR ON PLANNING OBLIGATIONS

### 1 SUMMARY

- 1.1 This report seeks Members' views on the Government's proposals for revisions to Circular 1/97 on Planning Obligations (often referred to as Section 106 agreements).

### 2 BACKGROUND

- 2.1 In 2003, the Government published a consultation report (Contributing to sustainable development – a new approach to planning obligations) with proposals for reforms to the negotiated system of planning obligations and also proposed an Optional Planning Charge.
- 2.2 Prior to publishing final proposals, the final report of the Barker Review of Housing Supply was published, and this recommended the introduction of a Planning-Gain Supplement (PGS). The principle of the PGS is that it would allow part of landowner development gains to contribute to wider benefits for the community. The Government is reviewing these proposals and intends to make a decision by the end of 2005.
- 2.3 In the meantime, this consultation paper identifies a number of non-legislative changes that can be put in place through the revision of Circular 1/97, and the publication of a good practice guide. Responses to the consultation are required by 25 January 2005.

### 3 PROPOSED REVISIONS TO CIRCULAR 1/97

- 3.1 The key revisions to the Circular are:

- Retention/simplification of the policy tests
- New typology for the use of planning obligations
- Clarification of the policy on contributions for affordable housing
- Clarification on pooled contributions
- Encouragement of joining up across all public sector infrastructure providers
- Encouragement for the use of formulae and standard charges
- New guidance on the use of standard agreements/undertakings
- Encouragement of the use of unilateral undertakings
- New guidance on monitoring of implementation of planning obligations

#### **Policy Tests**

- 3.2 The revised Circular will retain the policy tests from 1/97. However, the first test is to be revised to make it very clear that a planning obligation must be necessary to make the proposed development **acceptable in planning**

**terms.** This change is intended to remove any ambiguity over what is 'necessary' for a development to proceed.

### **Contributions for Affordable Housing**

- 3.3 The revised Circular seeks to clarify the rationale for including affordable housing in obligations. It has been argued that affordable housing is somewhat distinct from the other 'impact mitigation' measures that are often provided by a developer. The revisions make it clear that in seeking the delivery of affordable housing through a S106, Local Authorities are prescribing the nature of the development in line with PPG3, rather than mitigating its impacts.

### **Infrastructure Providers**

- 3.4 The revised Circular introduces the concept of the joined-up approach towards the provision of contributions to all aspects of public infrastructure that may be affected by development (eg, health, education, flood defence, highways, culture and sport).

### **Formulae and Standard Charges**

- 3.5 These are intended to lead to a quicker resolution of negotiations and provide greater certainty for developers. Local Authorities will be required to publish the levels of standard charges and formulae in advance, though there is no obligation to address all matters in this way, and other matters may be negotiated on a site-specific basis.

### **Standard Agreements**

- 3.6 These are intended to speed up the preparation of the agreement. In addition, Local Planning Authorities will be encouraged to raise the contents of agreements at an early stage and preferably during pre-application discussions.

### **Unilateral Undertakings**

- 3.7 In most cases, it is expected that obligations will be finalised by agreement between the Local Planning Authority and the developer. However, where it is possible to identify the requirements of the Local Planning Authority in advance, a developer is encouraged to submit a unilateral undertaking with a planning application in the interests of speed. These unilateral undertakings can be drafted so that they come into effect when planning permission is granted.

## **4 DISCUSSION**

- 4.1 The proposed revisions to Circular 1/97 are really little more than tinkering with current advice. Indeed many of the issues that are subject to clarification have been utilised by Local Planning Authorities in order to try and improve the arrangements for preparing planning agreements.

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- 4.2 Legal agreements are very often lengthy and time consuming to prepare and since they can involve extended discussions between legal representatives, the majority of agreements make it virtually impossible for Local Planning Authorities to deliver planning permissions within the statutory timescales. There is then a need for significant improvements in the process.
- 4.3 It may be that standard agreements and published lists of charges will help the situation, but these will only be useful where the requirements placed on a developer are limited. For example, Rochford does now have standard formulae for education contributions. However, it is rare for a development to require only a single contribution; usually larger development schemes will have a mix of contributions and in these circumstances it is difficult to avoid a full legal document.
- 4.4 Similarly, in some circumstances a unilateral undertaking from a developer may be all that is required, and these have been used from time to time in Rochford. Again though, the key to their value is dependent on the requirements being simple and probably specified through a standard charge.
- 4.5 The clarification proposed in the revised Circular to make it very clear that an item included in an agreement must be necessary to make the proposed development acceptable **in planning terms**, is interesting. The draft wording in the Circular amplifies this point by explaining that planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. The Government perspective on this point is that it has caused problems with some Local Authorities in the past, where developers have offered 'inducements'. In any event, whilst clarification is useful, Circular 1/97 did not intend items included in a S106 to go beyond what is necessary to make a development acceptable.
- 4.6 The inclusion of a contribution towards the provision of affordable housing has not often been questioned in recent years, particularly where there is a local plan policy in place to explain the Planning Authority's requirements. However, the delivery of affordable housing is at the top of the Government's agenda and the revisions to the Circular are intended to remove any lingering doubt that a contribution can be sought, not to mitigate the effects of a development, but rather to fulfil a policy requirement, particularly the positive planning objective of the creation of mixed communities.
- 4.7 Overall then the revisions to Circular 1/97 are by way of clarification and they do not provide the major change that is really required to a system that is cumbersome, long winded and unduly bureaucratic. The few positive proposals, standard formulae and agreements, for example, do little more than articulate the creative ways Local Planning Authorities have found to try and improve the arrangements.
- 4.8 The proposed good practice guide will no doubt be helpful in developing arrangements to improve the process.

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**5 ENVIRONMENTAL IMPLICATIONS**

- 5.1 The items included in a S106 agreement will very often result in environmental improvements in an area that might not have been possible to achieve otherwise, but these must be required to mitigate the impact of the proposed development and not sought simply to implement a planned improvement, for example.

**6 LEGAL IMPLICATIONS**

- 6.1 Whilst there may be some improvement in the speed of preparation of agreements through the use of standard clauses and unilateral undertakings from developers, it is considered that by and large most legal agreements will continue to extend the period for the issue of planning permissions beyond the statutory period.

**7 RECOMMENDATION**

- 7.1 It is proposed that the Committee **RESOLVES**

That, subject to comments from Members, this report forms the basis of the Council's response to the consultation on the revisions to Circular 1/97.

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**Background Papers:-**

Draft Revised Circular on planning obligations, ODPM, November 2004.

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