

2 February 2015

Report of	Head of Commercial Services	Author Karen Syrett ☎ 506477
Title	Changes to the Use of Planning Obligations	
Wards affected	All	

The Local Plan Committee is asked to note the national changes to the use of planning obligations and agree an interim position on small sites.

1. Decision(s) Required

- 1.1 To note the national changes to planning policy regarding the use of planning obligations on small sites and agree an interim policy position in advance of the local plan review.

2. Reasons for Decision

- 2.1 On 28th November 2014 Brandon Lewis, the Minister of State, Department for Communities and Local Government published a written ministerial statement on support for small-scale developers, custom and self-builders.
- 2.2 This report sets out the implications of this statement and proposes an interim position for the Council in response.
- 2.3 A full copy of the ministerial statement is attached as Appendix A.

3. Alternative Options

- 3.1 Officers consider that an interim resolution is the most appropriate option at this point in time but members could decide to rely on national policy and the existing Local Plan until such time as the new Local plan is adopted.

4. Supporting Information

- 4.1 In March 2014 the Government consulted on a series of measures intended to tackle what they identified as “the disproportionate burden of developer contributions on small-scale developers, custom and self-builders.” The measures included introducing into national policy a threshold beneath which affordable housing contributions should not be sought. The suggested threshold was for developments of ten-units or less (and which have a maximum combined gross floor space of no more than 1,000 square metres). Rural exception sites would be exempted from any threshold introduced following consultation.
- 4.2 The Government consultation also asked whether the threshold should be extended to include tariff style contributions that some authorities seek in order to provide general funding pots for infrastructure. This Council has used tariff based contributions for a

number of years in order to secure funding from new development towards Community Facilities and Open Space, Sport and Recreation.

- 4.3 Over 300 consultation responses were submitted, including one from this Council, which objected to the proposal to introduce a threshold of 10 units for both affordable housing and tariff based contributions. Not surprisingly developers, development representative bodies, and some members of the public generally supported the proposed changes. The Councils response pointed out that;

Colchester Borough Council has and continues to be successful in facilitating new development through its operation and management of the planning process. Colchester continues to sustain growth and has consistently delivered high numbers of new homes in recent years.

It has achieved this within the existing s106 regime and has adapted its approach to enable viability issues to be satisfactorily accommodated. The existing system is considered to remain fit for purpose and no changes are required.

Setting a random threshold of 10 units could lead to sites being subdivided and schemes being purposely designed to avoid making any contribution.

In many areas very few sites over 10 units are developed and having such a threshold will limit the number of new homes that can be delivered. The Council's evidence base for its adopted Core Strategy contained information to justify setting lower thresholds than the national threshold at the time which was 15 units. This evidence demonstrated "that villages are continuing on the incremental small scale pattern of growth and change that has characterised their historic development. During the period 2003-07, the majority of planning permissions were for small schemes under 15 units (198 permissions for a total of 324 units). There were only 2 schemes approved for larger schemes of over 15 units, and 150 of the 167 units provided were at one site... The existing Local Plan threshold of 25 units accordingly was set far too high to provide benefit for rural housing, and a threshold of ten units is also considered to be too high to provide any affordable housing given the small scale nature of schemes coming forward...

(In respect of tariffs) ... there are many developments under 10 units; these taken cumulatively can have a significant impact on infrastructure. The Community Infrastructure Levy Overview published November 2010 (paragraphs 4 and 6) acknowledges that "even small developments can create a need for new services. The levy creates a fairer system, with all but the smallest building projects making a contribution towards additional infrastructure that is needed as a result of their development." The document also states "Almost all development has some impact on the need for infrastructure, services and amenities - or benefits from it - so it is only fair that such development pays a share of the cost.

There is no minimum threshold for CIL which is a statutory charge and therefore not even subject to a viability appraisal. For consistency purposes there should not be a threshold for S106 contributions."

- 4.4 After consideration of these responses, the Government made the following changes to national policy with regard to Section 106 planning obligations:

- Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less, and which have a maximum combined

gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions.

- For designated rural areas under Section 157 of the Housing Act 1985, which includes areas of outstanding natural beauty, authorities may choose to implement a lower threshold of 5-units or less, beneath which affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions. Within these designated areas, if the 5-unit threshold is implemented then payment of affordable housing and tariff style contributions on developments of between six to ten units should also be sought as a cash payment only and be commuted until after completion of units within the development.
- These changes in national planning policy will not apply to rural exception sites.

4.5 The national Planning Practice Guidance (PPG) has accordingly been changed to reflect this position.

4.6 **Implications for Colchester**

The next section of the report considers the implications of these changes to local policy. The current Local Plan (the Development Plan) includes policies addressing the provision of affordable housing and S106 planning obligations. Planning law requires applications be determined in accordance with the development plan unless material considerations indicate otherwise. Policies within the National Planning Policy Framework (NPPF) and the supporting PPG are material considerations which local planning authorities should take into account. It is important therefore to consider if there is any conflict between the local policies and the NPPF and PPG.

4.7 The PPG now states the following (Paragraph: 012 Reference ID: 23b-012-20141128);
Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?

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.

- *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*

4.8 **Affordable Housing**

Policy H4 of the Core Strategy was revised in 2014 and includes the following section relevant to the changes;

The Borough Council is committed to improving housing affordability in Colchester. The Council will be seeking to secure 20% of new dwellings (including conversions) to be provided as affordable housing (normally on site), as follows:

- In Colchester Town and Stanway, Tiptree, Wivenhoe and West Mersea, affordable housing will be required on housing developments for 10 or more dwellings.*
- In the other villages, affordable housing will be required on housing developments for 5 or more dwellings.*
- An equivalent financial contribution will also be sought for developments below these thresholds.*

4.9 There is general consistency between this policy and the new government guidance but further clarity could be added to confirm the affordable housing policy will be applied to new development **above** 10 units and **above** 5 units in designated rural areas.

4.10 In accordance with section 157(1) of the Housing Act 1985 the following villages are classified as designated rural areas;

Abberton	Aldham	Birch
Boxted	Chapel	Copford
Dedham	East Donyland	East Mersea
Eight Ash Green	Fingringhoe	Fordham
Great Horkesley	Great Tey	Langenhoe
Langham	Layer Breton	Layer Marney
Layer de la Haye	Little Horkesley	Messing cum Inworth
Mount Burns	Peldon	Salcott
Wakes Colne	Wormingford	

4.11 The following areas are not designated rural areas, according to the Housing Act, and therefore the policy would only apply to schemes above 10 units;

Marks Tey	Myland	Stanway
Tiptree	West Bergholt	West Mersea
Wivenhoe		

4.12 **Tariff Style Contributions**

The Council also has policies on the use of S106 agreements/planning obligations, although these are less specific than the affordable housing policy. Core Strategy Policy SD2 – Delivering Facilities and Infrastructure (Revised July 2014) states;

New development will be required to provide the necessary community facilities, open space, transport infrastructure and other requirements to meet the community needs arising from the proposal. Development will also be expected to contribute, as appropriate, to strategic projects that support sustainable development and the wider community.

The Council will seek to ensure that new development makes a reasonable contribution to the provision of related facilities and infrastructure. This will either be through a planning obligation (usually contained within a Section 106 agreement) and/or, if applicable, through a Community Infrastructure Levy (CIL) payment, following adoption of a CIL charging schedule.

4.13 Development Policy DP3: Planning Obligations and the Community Infrastructure Levy (Revised July 2014) states;

The Council may choose to implement a Community Infrastructure Levy (CIL), further to the enabling provisions in the 2008 Planning Act. The CIL will be a charge used to help fund necessary local and sub-regional infrastructure which supports the objectives of the Core Strategy and the development of the area. A CIL charging schedule would stipulate a charge, per square metre of gross internal floorspace, for each main use class of development. A proportion of CIL funds would be passed to Parish/Town councils. The Council will work with partners to deliver key infrastructure projects, as identified in the Core Strategy. The Council will continue to seek planning obligations through Section 106 agreements with details set out in Supplementary Planning Documents.

- 4.14 Although there is no conflict between these local policies and the NPPF and PPG, unlike the affordable housing policy there is no distinction between the larger settlements and rural areas. It would therefore be inappropriate to seek tariff style contributions on sites of ten or fewer units as there is no evidence to support this approach.
- 4.15 There is however inconsistency in the following two Supplementary Planning Documents;
1. Provision of Community Facilities SPD
 2. Provision of Open Space, Sport and Recreation Facilities SPD

Both these documents incorporate an approach in which all new development that creates new units of accommodation contributes towards the provision and maintenance of facilities. The documents will need to be revised to clarify that only those developments above the thresholds (5 and 10 units) will be expected to make a contribution towards community facilities and sport, recreation and open space. These documents do not carry the same weight as adopted policy or the NPPF/PPG; it is clear in decision making that the PPG would outweigh the SPD's in this respect.

5. Proposals

- 5.1 It is proposed that The Local Plan Committee agree the following interim resolution to clarify the Council's position in relation to planning obligations from small sites;
- 5.2 The Use of Planning Obligations on Small Sites

In November 2014 the Government published a ministerial statement and updated the Planning Policy Guidance (PPG) in respect of the use of planning obligations on small sites. In light of this updated guidance, the Council recognises that it needs to clarify its own policy and approach in relation to the use of planning obligations on small sites. In the intervening period, until the Local Plan is reviewed, the following statement sets out the Council's interim policy position in relation to the use of planning obligations on small sites, which should be read alongside the Council's adopted policies H4, SD2 and DP3, as well as the National Planning Policy Framework and Planning Policy Guidance.

Affordable Housing

The Council will seek to secure 20% of new dwellings to be provided as affordable housing, as follows:

- In Colchester Town, Myland, Stanway, Tiptree, Wivenhoe, West Mersea, West Bergholt and Marks Tey affordable housing will be sought on developments of more than 10 dwellings. (The affordable housing will normally be required on site)
- In the other villages, an affordable housing contribution will be sought on housing developments for more than 5 dwellings. Where a contribution is sought from a

development of between 6 and 10 units it will be in the form of a cash payment which will be commuted until after completion of the units within the development.

Other Contributions

Standard charges will not be applied to developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1000sqm. Site specific contributions will still be sought where necessary to make the development acceptable but they must be directly related to the development and fairly and reasonably related in scale and kind to the development.

6. Strategic Plan References

- 6.1 The Strategic Plan Action Plan includes a commitment to regenerate the Borough through buildings, employment, leisure and infrastructure and provide more affordable homes across the Borough. National policy and the Council's position in relation to developer contributions have a bearing on the achievement of these objectives.

7. Consultation

- 7.1 Consultation was undertaken by the government in 2014. In total 325 organisations and individuals responded to the consultation. Nearly half (48%) were on behalf of local authorities including parishes. 22% were from developers or those with a development interest, 7% from representative bodies, such as the Local Government Association and the Home Builders Federation, and 23% of replies were from individuals, both members of the public and persons with a role in the local government or development sectors.

8.0 Publicity Considerations

- 8.1 Further publicity is unlikely because the Council is only seeking to clarify its position.

9. Financial Implications

- 9.1 This change in national policy will have financial implications for the Council. Until the change was introduced the Council sought tariff style contributions from all new residential developments regardless of size, based on the number of new dwellings. The new approach means we cannot seek contributions from developments of ten units or less.
- 9.2 A rough spreadsheet analysis for the period 1st April 2013 to 31st March 2014 demonstrated that of the 90 applications with S.106 agreements, 62 were on sites of under 10 units. Those sites, if development came forward, would contribute over £600,000 in Community Facilities and Open Space Contributions.

10. Equality, Diversity and Human Rights implications

- 10.1 An Equality Impact Assessment has been prepared for the Local Development Framework and is available to view on the Colchester Borough Council website by following this pathway from the homepage: Your Council > How the Council works > Equality and Diversity > Equality Impact Assessments > Commercial Services > Strategic Planning and Research.
- 10.2 No particular Human Rights implications have been identified.

11. Community Safety Implications

11.1 None identified.

12. Health and Safety Implications

12.1 None

13. Risk Management Implications

13.1 The use of S106 agreements will need to be managed carefully to avoid conflict with national policy.

Appendices

Appendix A – Ministerial Statement

COMMUNITIES AND LOCAL GOVERNMENT

Small-scale developers

The Minister of State, Department for Communities and Local Government (Brandon Lewis):

I would like to update hon. Members on the action that the Coalition Government have taken to free up the planning system and the further new measures we are now implementing to support small-scale developers and help hard-working people get the home they want by reducing disproportionate burdens on developer contributions.

Section 106 obligations imposed on small-scale developers, custom and self-builders

We consulted in March this year on a series of measures intended to tackle the disproportionate burden of developer contributions on small-scale developers, custom and self-builders. These included introducing into national policy a threshold beneath which affordable housing contributions should not be sought. The suggested threshold was for developments of ten-units or less (and which have a maximum combined gross floor space of no more than 1,000 square metres).

We also proposed a similar policy for affordable housing contributions be applied to all residential extensions and annexes. Rural exception sites would be exempted from any threshold introduced following consultation. Our consultation asked whether the threshold should be extended to include the tariff style contributions that some authorities seek in order to provide general funding pots for infrastructure. We also consulted on restricting the application of affordable housing contributions to vacant buildings being brought back into use (other than for any increase in floor space). This latter proposal was to boost development on brownfield land and provide consistency with exemptions from the community infrastructure levy.

We received over 300 consultation responses many of which contained detailed submissions and local data. After careful consideration of these responses, the Government are making the following changes to national policy with regard to Section 106 planning obligations:

28 Nov 2014 : Column 55WS

Due to the disproportionate burden of developer contributions on small-scale developers, for sites of 10-units or less, and which have a maximum combined gross floor space of 1,000 square metres, affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions.

For designated rural areas under Section 157 of the Housing Act 1985, which includes national parks and areas of outstanding natural beauty, authorities may choose to implement a lower threshold of 5-units or less, beneath which affordable housing and tariff style contributions should not be sought. This will also apply to all residential annexes and extensions. Within these designated areas, if the 5-unit threshold is implemented then payment of affordable housing and tariff style contributions on developments of between six to ten units should also be sought as a cash payment only and be commuted until after completion of units within the development.

These changes in national planning policy will not apply to rural exception sites which, subject to the local area demonstrating sufficient need, remain available to support the delivery of affordable homes for local people. However, affordable housing and tariff style contributions should not be sought in relation to residential annexes and extensions.

A financial credit, equivalent to the existing gross floor space of any vacant buildings brought back into any lawful use or demolished for re-development,

should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes. This will not however apply to vacant buildings which have been abandoned.

We will publish revised planning guidance to assist authorities in implementing these changes shortly.

By lowering the construction cost of small-scale new build housing and home improvements, these reforms will help increase housing supply. In particular, they will encourage development on smaller brownfield sites and help to diversify the house building sector by providing a much-needed boost to small and medium-sized developers, which have been disproportionately affected by the Labour Government's 2008 housing crash. The number of small-scale builders has fallen to less than 3,000—down from over 6,000 in 1997.

We estimate that the policy will save, on average, £15,000 in Section 106 housing contributions per new dwelling in England—some councils are charging up to £145,000 on single dwellings. Further savings will be made from tariffs, which may add additional charges of more than £15,000 per dwelling, over and above any housing contributions. Taken together, these changes will deliver six-figure savings for small-scale developers in some parts of the country.

The Home Builders Federation confirmed that these changes will provide a boost to small and medium builders, stating:

"This exemption would offer small and medium-sized developers a shot in the arm. The time and expense of negotiating Section 106 affordable housing contributions on small sites, and the subsequent payments, can threaten the viability of small developments and act as another barrier to the entry and growth of smaller firms"

Similarly, the Federation of Master Builders said:

28 Nov 2014 : Column 56WS

"The new ten unit threshold for affordable housing contributions is a sensible and proportionate approach to help alleviate the pressure on SME house builders who have been squeezed out of the housing market in recent years. This is important because without a viable SME house building sector we won't be able to build the number of new homes that are needed to address the housing crisis"

Promoting custom and self-build housing

These changes to Section 106 policy complement the Coalition Government's wider programme of reforms to get Britain building, including measures to actively support the custom and self-build sector that will help people design and build their own home.

Specifically, we have exempted custom and self-builders from paying the Community Infrastructure Levy. The £30 million investment fund for custom build homes has so far approved or is currently considering loan funding of £13 million. We have launched a new £150 million investment fund to help provide up to 10,000 serviced building plots. The first bidding round closed in September and applications received are currently being assessed by the Homes and Communities Agency.

In addition we continue to work in partnership with industry to provide better support and information to custom and self-builders and we are helping community-led custom projects by enabling them to apply for £65 million under the affordable housing guarantee programme and £14 million of project support funding.

We are also providing £525 million through the Builders' Finance Fund (2015-16 to 2016-17) to provide development finance to unlock stalled small housing sites.

A shortlist of 165 small housing schemes was announced on 8 September. We are also opening up the Builders Finance Fund to support small building firms schemes, from five units in size upwards.

We also published a consultation on the Right To Build in October. The idea is simple: prospective custom builders will have a right to purchase a plot of land from their local Council to build their own home. To underpin the consultation we are working with a network of 11 Right to Build vanguards to test how the Right can work in practice and we are supporting the hon. Member for South Norfolk (Richard Bacon) Self-Build and Custom Housebuilding Private Members' Bill which has now passed its Second Reading in this House.

Getting empty and redundant land and property back into use

We have introduced a range of measures to help communities get empty and surplus land and property back into productive use.

We have reformed permitted development rights to cut through complexity, free up the planning system and encourage the conversion of existing buildings. The changes help support town centres, the rural economy and provide much-needed homes.

Changes to Community Infrastructure Levy rules now provide an increased incentive for brownfield development, through exempting empty buildings being brought back into use. To assist extensions and home improvements, we have also exempted them from Community Infrastructure Levy, stopped plans for a so-called 'conservatory tax', stopped any council tax revaluation which would have taxed home improvements, and introduced a new national council tax discount for family annexes.

28 Nov 2014 : Column 57WS

Conclusion

We expect implementation of these measures to have a significant positive impact on housing numbers by unlocking small-scale development and boosting the attractiveness of brownfield sites. This will provide real incentive for small builders and to people looking to build their own home. They will increase house building and help reduce the cost of such housing.

These latest policy changes illustrate how this Government continue to deliver the reform to our planning system which will enable more houses to be built, giving more power to local communities, helping people move on to and up the housing ladder.

Source: Hansard