REPORT FOR INFORMATION

Bury COUNCIL

Agenda Item	7

DECISION OF:	**PLANNING CONTROL COMMITTEE**
DATE:	**16th DECEMBER 2014**
SUBJECT:	**NEW NATIONAL GUIDANCE ON SECTION 106 PLANNING OBLIGATIONS**
REPORT FROM:	**DEVELOPMENT MANAGER**
CONTACT OFFICER:	**JOHN CUMMINS**
TYPE OF DECISION:	**For information only**
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	The report confirms the new national guidance introduced on the 28th November 2014 by Government regarding s.106 contributions.
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to the note the report.

IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A
Wards Affected:	All listed

Scrutiny Interest:	N/A

TRACKING/PROCESS **DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

On 28 November 2014, the Government issued new advice within the National Planning Practice Guidance (NPPG) on Section 106 Planning Obligations which provides that 'tariff style' planning contributions should not be sought from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres. Tariff style contributions are defined as those which are collected towards 'pooled funding 'pots' intended to provide common types of infrastructure for the wider area'.

The release of this guidance presents two key issues for the Council going forward:

- The guidance must be taken into account as a material consideration in decisions on planning applications from 28 November 2014 onwards;
- Supplementary Planning Document 1 – Open Space, Sport and Recreation Provision in New Housing Development" adopted on 1 February 2012 (SPD1) is now in conflict with Government guidance in respect of seeking developer contributions for housing developments between 1 to 10 units.

2.0 Determining planning applications

Because of the new guidance, as of 28 November 2014, the Council will be unable to apply the provisions of SPD1 in seeking developer contributions for housing developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 square metres.

3.0 Revision of SPD1

As the current SPD1 conflicts with the new guidance it will need to be amended to reflect the fact that the Council is no longer able to request the current "tarrif style" contributions for developments of 10 units or less and which have a maximum combined gross floorspace of no more than 1,000 sqare metres.

Furthermore, as of 6 April 2015, the Community Infrastructure Levy (CIL) Regulations will impose restrictions on pooling Section 106 contributions which will affect developments of all sizes, preventing the pooling of more than five Section 106 contributions for a project or type of infrastructure that is capable of being funded by the CIL. The current system of collecting generic 'recreation' contributions will no longer be permitted.

Officers are currently undertaking a review of SPD1 to bring it in line with updated guidance and Regulations, with a view to preparing a revised version for Cabinet approval on 21 January 2015 prior to a 4-week public consultation.

The revised SPD1 will include updated guidance on the spending of Section 106 monies to ensure it is in accordance with the NPPG and with the CIL Regulations. Following the receipt of comments received from public consultation changes will be made as appropriate and the intention is for the SPD to be adopted prior to 6 April when the new restrictions will take effect.

4.0 CONCLUSION

That the item be noted.

List of Background Papers:- Extract from NPPG

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Extract - Changes to the National Planning Practice Guidance

28th November 2014.

S.106 Obligations

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

Revision date: 28 11 2014

Paragraph: 013 Reference ID: 23b-013-20141128

Do the restrictions on seeking planning obligations apply to Rural Exception Sites?

The restrictions on seeking planning obligations contributions do not apply to development on Rural Exception Sites – although affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex or extension within the curtilage of the buildings comprising an existing home.

Revision date: 28 11 2014

Paragraph: 014 Reference ID: 23b-014-20141128

What are tariff-style contributions?

Some authorities seek planning obligations contributions to pooled funding ‘pots’ intended to provide common types of infrastructure for the wider area.

Planning obligations mitigate the impact of development which benefits local communities and supports the provision of local infrastructure. In applying the planning obligations local planning authorities must ensure that these meet the three tests that are set out as statutory tests in the Community Infrastructure Levy Regulations 2010, and as policy tests in the National Planning Policy Framework. These are: that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. For sites where the threshold applies, planning obligations should not be sought to contribute to pooled funding ‘pots’ intended to fund the provision of general infrastructure in the wider area.

Revision date: 28 11 2014

Related policy

National Planning Policy Framework

- Paragraph 204

Paragraph: 015 Reference ID: 23b-015-20141128

Can planning obligations be pooled where the threshold does apply?

For sites where the threshold applies, planning obligations should not be sought to contribute to pooled funding ‘pots’ intended to fund the provision of general infrastructure in the wider area.

Revision date: 28 11 2014

Paragraph: 016 Reference ID: 23b-016-20141128

How does the 10-unit threshold relate to the statutory definition of major development?

For the purposes of section 106 planning obligations only the definition of 10-units or less applies. This is distinct from the definition of major development in article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.

Revision date: 28 11 2014

Paragraph: 017 Reference ID: 2a-017-20141128

Are there any exceptions to the 10-unit threshold?

Local planning authorities may choose to apply a lower threshold of 5-units or less to development in designated rural areas being areas as described under section 157 of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty. No affordable housing or tariff-style contributions should then be sought from these developments.

Where this lower threshold is applied, local planning authorities should only seek affordable housing contributions from developments of between 6 to 10-units as financial contributions and not affordable housing units on site. Any payments made (whether as an affordable housing contribution or contribution to a pooled funding pot for general infrastructure provision) should also be commuted until after completion of units within the development.

Revision date: 28 11 2014 See revisions

Paragraph: 019 Reference ID: 23b-019-20141128

What is the procedure for claiming a commuted contribution under a planning obligation?

The terms of commuted contributions should form part of the discussions between a developer and a local planning authority and be reflected in any planning obligations agreement. Agreements should include clauses stating when the local planning authority should be notified of the completion of units within the development and when the funds should be paid. Both parties may wish to use the issue of a building regulations compliance certificate (called a completion certificate when given by a local authority and a final certificate when given by an approved inspector) as a trigger for payment.

Revision date: 28 11 2014

Paragraph: 020 Reference ID: 23b-020-20141128

Does this mean that no planning obligations can be sought for development under these 5 or 10-unit thresholds?

Some planning obligations may still be required to make a development acceptable in planning terms. For sites where a threshold applies, planning obligations should not be sought to contribute to affordable housing or to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area. Authorities can still seek obligations for site specific infrastructure – such as improving road access and the provision of adequate street lighting – where this is appropriate, to make a site acceptable in planning terms. They 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.

Revision date: 28 11 2014

Paragraph: 021 Reference ID: 23b-021-20141128

What is the vacant building credit?

Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions would be required for any increase in floorspace.

Revision date: 28 11 2014

Paragraph: 022 Reference ID: 23b-022-20141128

What is the process for determining the vacant building credit?

Where there is an overall increase in floorspace in the proposed development, the local planning authority should calculate the amount of affordable housing contributions required from the development as set out in their Local Plan. A ‘credit’ should then be applied which is the equivalent of the gross floorspace of any relevant vacant buildings being brought back into use or demolished as part of the scheme and deducted from the overall affordable housing contribution calculation.

Revision date: 28 11 2014

Paragraph: 023 Reference ID: 23b-023-20141128

Does the vacant building credit apply to any vacant building being brought back into use?

The vacant building credit applies where the building has not been abandoned.

Revision date: 28 11 2014