
Meeting: Development Management Committee
Date: 24 March 2010
Subject: Flexible Approach to the Implementation of the Council's adopted Planning Obligation Strategy
Report of: Director of Sustainable Communities
Summary: The report seeks the support of the Development Management Committee for the introduction of a more flexible approach to the implementation of the Council's adopted Planning Obligation Strategy.

Contact Officer: Andrew Davie,
Public/Exempt: Public
Wards Affected: All Wards
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

Financial:

Current delegated authority identified in paragraph 2.2 allows for officers to negotiate and agree contributions under Section 106. In the current economic climate this needs to be seen more flexibly which is the purpose of this report. This will result in a reduction in Section 106 contributions both capital and revenue which will impact upon the ability of the Council to create sustainable communities. However each case will be considered on a risk basis to the authority to minimise the risk to both development and financial loss to the council as much as possible.

Legal:

None

Risk Management:

None

Staffing (including Trades Unions):

None

Equalities/Human Rights:

None

Community Safety:

None

Sustainability:

None

RECOMMENDATION(S):

that until the adoption of a formal policy setting out the approach to be taken to the implementation of the Planning Obligation Strategy and the negotiation of Section 106 Agreements the Development Management Committee endorses the following:

- (a) Where a credible viability case has been put forward for market development, contributions to be off set on a pro rata basis or principal contributions identified and secured through the agreements / unilaterals.**
- (b) In cases where all contributions are proposed to be waived these cases are only pursued after consultation with the Portfolio Holder for Sustainable Development.**

1.1 Introduction

- 1.1 This report seeks the support of the Development Management Committee for the introduction of a more flexible approach to the implementation of the Council's adopted Planning Obligation Strategy and the negotiation of Section 106 Agreements in this period of economic slow down.
- 1.2 Planning Obligations are a recognised delivery mechanism for matters that are necessary to make a development both sustainable and acceptable in planning terms. They are legally binding and can be delivered through either a unilateral undertaking made by the applicant or an agreement made jointly between the local authority and a developer.
- 1.3 The Planning Obligations Strategy is a Supplementary Planning Document (SPD) and recognises that in certain circumstances, viability can be an issue. Therefore, where a developer considers that the requirements of the Council would significantly harm the viability of the proposal, the onus will be on the applicant to demonstrate this. This as we recognise is an issue that has come to the fore given the current economic slowdown.

2. Background

- 2.1 The Central Bedfordshire Constitution at 4.3.95 delegates to Officers the ability to determine planning applications subject to a list of stated criteria. At 4.3.95.2.3 this ability is withdrawn where the application or matter is contrary to other approved Council Planning policies or Supplementary Planning Guidance and is recommended for approval.
- 2.2 Paragraph 4.3.128 enables Officers to negotiate and enter into agreements or obligations under Section 106 of the Town and County Planning Act 1990 and to implement the provisions of such agreements, including the disposal and management of land and monies. This is to be undertaken in consultation with the Assistant Director Legal and Democratic Services and except as may be otherwise indicated by the Development Management Committee.
- 2.3 The adopted Planning Obligation Strategy (SPD) states at paragraph 9.2 that the Council has not adopted a 'blanket approach' to the application of planning obligations. All obligations will be assessed on a site by site basis.
- 2.4 The combination of the relevant clauses in the Constitution and the paragraphs with the SPD provide Officers with a degree of flexibility in terms of the implementation and negotiation of Agreements and Obligations under Section 106.
- 2.5 The Planning Service is currently working on a formal policy to respond to the economic downturn and the obligations but in the interim there are a number of applications within the system that need to be considered and where an agreed approach to the viability cases that have been put forward by applicants must be established.

3. Considerations

- 3.1 In the absence of a formal policy that sets out the approach the Council will take to off setting Section 106, where a justified viability case has been put forward by an applicant an interim position needs to be established. In cases the Authority has sought to discount all the required contributions on a pro rata basis. Another approach that has been adopted is to waive certain contributions so that others are paid in full. These two approaches have resulted in an overall reduction in contributions being extracted from new development but still secures a proportion of the applicable contributions.

3.2

However there are currently within the system some more extreme cases, particularly relating to schemes involving Registered Social Landlords (who provide affordable housing) where the viability test indicates that all contributions should be waived to allow the delivery of the affordable housing. Officers within Housing Services have recommended that these contributions should be waived to ensure that the grant money available to deliver this affordable housing does not fall away if the grant of planning permission is delayed or refused. This has led to a situation where case officers are being asked to waive substantial contributions that would normally be sought as part of these developments. However, these contributions need to be balanced against the ability of development to proceed on the ground.

Appendices:

None

Background Papers: (open to public inspection)

None

Location of papers: Priory House, Chicksands