

Agenda item No. 7

Title: **The reconsideration of the requirement for commuted sums for affordable housing contributions in respect of 7 planning applications for single dwellings within village policy limits.**

Reporting officer: **David Hubbard, Development Control Manager.**

Purpose

Following recent changes to the council's affordable housing policy for single dwellings within village policy limits as set out in the Supplementary Planning Guidance on Affordable Housing this report is for the committee to consider whether to continue to seek a contribution for affordable housing in respect of seven planning applications for single dwellings within village policy limits.

Background

Since the adoption of the Local Plan in 2004 and the Supplementary Planning Guidance on Affordable Housing in 2005, the Council has been securing commuted sums in lieu of affordable housing up to the value of 50% of new single dwellings within village policy limits.

At its meeting of 5th September, Cabinet resolved to change the affordable housing supplementary planning guidance by removing the requirement for this commuted sum. The Cabinet decision was called in to Scrutiny Committee on 19th September. Scrutiny Committee resolved not to request Cabinet to reconsider its decision regarding single dwellings in rural areas.

That means that the council will not now be seeking a commuted sum towards the provision of affordable housing in respect of proposals for single dwellings within village policy limits.

All other aspects of affordable housing policy and the SPG remain as before including a requirement to seek commuted sums towards affordable housing of 2 dwellings or above within village policy limits.

Main Issues

There are a number of planning applications currently with the council which are affected by the change. In particular there are seven applications where the committee had previously passed resolutions that planning permission be

granted at a future date in the event of the Development Control Manager being satisfied as to the prior completion of a Legal Agreement to secure commuted sums towards an affordable housing contribution in accordance with the council's Supplementary Planning Guidance on Affordable Housing.

It is considered that the requirement for this contribution should be reconsidered in respect of these applications as set out in the table below:

C'ttee Date	Application No.	Proposal	Site
16/02/2006	07/00768/OUT	Dwelling	rear of 523 Semington Road, Melksham
14/09/2006	06/02214/FUL	Dwelling	Rear of The Elms, Bratton
05/10/2006	06/00470/FUL	Conversion of one dwelling to two dwellings	Priory Cottages, Stradbrook, Bratton
16/11/2006	06/01395/FUL	Dwelling	Land adj Mill House and 1 Lower Road, Bratton
25/01/2007	06/03404/FUL	Demolish Bungalow and build two dwellings	1 Orchard Close, West Ashton
02/08/2007	06/01723/FUL	Cottage	65 High Street, Heytesbury
24/08/2007	07/01393/FUL	Conversion of an annexe to a dwelling	42 Lower Westwood, Westwood

In considering again whether to continue to require an affordable housing contribution in respect these applications, Members should be aware of the following:

- The policies and guidance which should apply are those which are in place at the time the planning application is decided. Previous resolutions by the Committee authorised the Development Control Manager to grant planning permission on completion of the section 106 agreement. The decision by the council is not taken until that resolution is acted upon. A change of policy or guidance between the resolution and the decision should be taken into account in reaching the final decision,
- Applicants could submit a repeat application which would be considered under the revised guidance. The Council would no longer have a reasonable case to seek an affordable housing contribution. In respect of such repeat applications
- If challenged at appeal based on a refusal based on no commuted sum being agreed towards affordable housing or because of non determination the council's position would be weak given the change in guidance. It is

likely that any appeal would be allowed with a strong possibility of costs being awarded against the council.

In view of the change to the affordable housing supplementary planning guidance, it is recommended that the committee should not continue to require a section 106 agreement to secure a contribution for affordable housing in respect of the applications listed in the table above

For Members Information

The following categories of applications for single dwellings in village policy limits where decisions have been made or resolutions made in the past which are affected by the change:

- Applications (8 in number) being considered under delegation and where negotiations for a s106 agreement for a contribution have commenced.

These applications will be considered in accordance with the revised guidance. As the applications can be determined under delegated powers any decisions not to proceed with a s106 agreement seeking an affordable housing contribution need not be referred to this committee. Ward members who were consulted on the need for an agreement previously will be re-consulted about removing that requirement.

- Applications (6 in number) where a section 106 agreement has been completed but the payment of the contribution has not been triggered.

Advice has been sought from the legal services manager on appropriate action with regard to these applications. A further report will be brought to this committee in due course if necessary.

- Appeals (2 in number) where the ground of appeal relates to of affordable housing

Both appeals are to be heard an informal hearings, the appellants have been advised of the change to the guidance and that the council will not be defending the affordable housing contribution issue. Responses from the appellants are being considered.

Financial Implications

The Council will not receive a commuted payment towards affordable housing in respect of the proposals listed above. (The principle of this financial implication was accepted by Cabinet in reaching its decision to amend the supplementary planning guidance).

The council will also have to refund legal fees paid by applicants for the service of drafting the S106 agreements which will now not be needed. The costs of work done so far on these agreements will have to be met by the council.

There are no other financial implications if committee agrees to remove the previous requirement for a legal agreement seeking affordable housing commuted payments in respect of these applications.

So far the council has processed these applications in accordance with the policies and guidance relevant at any particular time. The removal the requirement for affordable housing commuted payments at this time would accord with current guidance

For those applications at appeal because of a refusal based on no contribution towards affordable housing or because of non determination the council's position would be weak given the change in guidance. Whilst it is likely any appeal would be allowed, there would be also a possibility of costs being sought by appellants against the council. However any such claims will be resisted as the council has followed its current policy throughout the determination of the applications and was quick to advise appellants of the change to policy when it occurred.

Legal Implications

The policies and guidance which should be applied are those which are in place at the time the planning application is decided. Previous resolutions by the committee authorised the Development Control manager to grant planning permission on completion of the section 106 agreement. The decision by the council is not taken until that resolution is acted upon. The change to Supplementary Planning Guidance between the resolution and the decision should be taken into account in reaching the final decision.

Recommendation:

The committee amend its previous resolutions in respect of the applications listed in the table above to those which do not require a section 106 agreement to secure a commuted sum for affordable housing.

All conditions and informatives previously agreed in respect of these applications will continue to apply.

Background Papers

West Wiltshire District Plan 1st Alteration, June 2004
Supplementary Planning Guidance on Affordable Housing, 2005
The planning application files listed in the table in the report