

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

- **06/00515/OUT – Proposed dwelling – land rear of Old Telephone Exchange, I Sandfield, Sutton Veny.**
- **06/02554/FUL – Proposed residential unit, garage, access and two parking spaces - Land adj 587, Semington Road, Melksham.**

Reporting Officer: **David Hubbard, Development Control Manager**

Purpose

The report is made as a result of 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. It is to consider two requests to discharge section 106 agreement requirements for a contribution for affordable housing in respect of the above planning applications for single dwellings within village policy limits.

In each case a section 106 agreement has been completed requiring a financial contribution to be made towards affordable housing and planning permission granted. However, work has not commenced on any of the sites and the payment of the financial contribution would not be triggered until completion. The requirement for affordable housing is the sole clause in the section 106 agreement. The planning permissions were granted in November and December 2006.

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.

At the meeting of 25th October 2007 this committee resolved to amend its previous resolutions in respect of seven applications where section 106 agreements to secure a commuted sum for affordable housing had been requested. In all seven cases the committee resolved not to continue to seek such an agreement

Main Issues

This request is different from those considered in October 2007 in that the applicants have entered into the agreement to pay a commuted sum before the change to the affordable housing SPG was made. Work has not started on site in either case and the requirement to pay the commuted sum would not be triggered until any development is completed.

A planning obligation can be modified or discharged by agreement between the authority by whom the obligation is enforceable and the person or persons against whom it is enforceable.

Sec.106A provides that if an obligation "no longer serves a useful purpose" it should be discharged. In this case there is a strong case to be made that the agreement no longer serves a useful purpose because of the change that has been made to the council's affordable housing supplementary planning guidance.

Seeking discharge of the agreement is one of four possible courses of action open to the applicants.

The others are

- The applicants could submit a further planning application for the proposed development which would be determined in accordance with the policy as it is now written. Planning permission would be granted therefore without a requirement for an affordable housing contribution
- The applicants could commence work on the unauthorised development without paying the commuted sum. The council could then instigate action to seek compliance with the agreement but because of the changes to the SPG, the council would not have a strong case in taking forward such a case.
- The applicants have the right to challenge whether the obligation any longer serves a useful purpose serves any useful purpose after five years. Again because of the changes to the SPG, the council would not have a strong case in fighting such a challenge.

In considering this request members' attention is also drawn to a recent appeal decision in respect of a proposal to convert the Workman's Hall at Bath Road, Atworth to a single dwelling. Following the changes to the SPG, the council was not in a position to defend its position relating to affordable housing. In considering an application from the appellant for costs against the council, the inspector considered that the council had not behaved reasonably by continuing to seek contributions for affordable housing in respect of proposals for single dwellings in village policy limits where it could not demonstrate evidence of exceptional circumstances following an appeal decision at Hilperton in May 2006.

In considering this report members should be aware that there are two further similar proposals where similar requests could be made by the applicants. The decision taken in respect of this report will provide a strong indication of how similar further requests should be considered

Financial Implications

The Council will not receive a commuted payment towards affordable housing in respect of the proposals listed above. The actual figure the council would receive is not finalised as

The final assessment of this would take place at completion of the development. For both sites together the likely amount is expected to £70,000 to £80,000. (The principle of this financial implication was accepted by Cabinet in reaching its decision to amend the supplementary planning guidance).

It is not considered that the council will also have to refund legal fees paid by applicants for the service of drafting the S106 agreements.

Costs have been awarded against the council in respect of one appeal where the issue was the council's previous guidance on affordable housing in village policy limits. The amount of these costs has not yet been agreed. A second appeal decision is pending and it is anticipated that a similar costs claim could be awarded against the council.

Legal Implications

If the council find itself in a position of trying to defend a legal challenge or seeking to enforce a breach of either agreement, the council would not have a strong case because of the change which has been made to the Affordable Housing SPG and the comments made to two planning inspectors about the guidance on affordable housing for proposed single dwellings within village limits before the changes which were made in September 2007.

Conclusion

It is concluded that the agreements should be discharged and that as a consequence no contribution is made from either proposals towards affordable housing.

There are alternative actions which the applicant could take which would leave the council in a position where it would be highly unlikely to secure affordable housing contributions.

Repeat applications would have to be considered in accordance with the council's current policies and guidance which would not enable a contribution to affordable housing to be required. Any fee income generated by further planning applications would be taken up by the costs of processing those applications.

The council could find itself defending challenges to the agreements and would not have a good case in fighting such challenges.

Recommendation:

- 1 That the section 106 agreements relating to planning applications 06/00515/OUT and 06/02554/FUL be discharged in respect of the requirements to make commuted payments in respect of affordable housing.**
- 2 That decision on further requests to discharge section 106 agreement requirements for a contribution for affordable housing in respect of the above planning applications for single dwellings within village policy limits be delegated to the Development Control Manager.**

Background Papers

West Wiltshire District Plan 1st Alteration, June 2004

Supplementary Planning Guidance on Affordable Housing, 2005

The planning application files 06/00515/OUT and 06/02554/FUL

West Wiltshire