



## **DRAFT** PORTFOLIO HOLDER DECISION NOTICE

### **PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR THE BUILT ENVIRONMENT**

### **TOPIC – GOVERNMENT CONSULTATION – PLANNING PERFORMANCE & PLANNING CONTRIBUTIONS**

### **PROCEDURAL INFORMATION**

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Chief Operating Officer, the Chief Executive and the Chief Finance Officer are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

**If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Democratic Services Officer by 5.00pm on Thursday 1 May 2014.**

**Contact Officers:** Simon Finch/Simon Maggs, Tel: 01962 848271/848203,  
Email: [sfinch@winchester.gov.uk](mailto:sfinch@winchester.gov.uk) [smaggs@winchester.gov.uk](mailto:smaggs@winchester.gov.uk)

**Case Officer:** Simon Finch/Simon Maggs, Tel: 01962 848271/848203,  
Email: [sfinch@winchester.gov.uk](mailto:sfinch@winchester.gov.uk) [smaggs@winchester.gov.uk](mailto:smaggs@winchester.gov.uk)

**Democratic Services Officer:** Nancy Graham, Tel: 01962 848 235,  
Email: [ngraham@winchester.gov.uk](mailto:ngraham@winchester.gov.uk)

### **SUMMARY**

This draft decision notice sets out the recommended response to a consultation by the Department of Communities and Local Government (DCLG) entitled Planning Performance and Planning Contributions. The consultation relates to measures to improve the performance of Councils in determining major planning applications and proposes changes to reduce the burden of planning obligations on small housing development. Comments must be submitted to DCLG by 4 May 2014.

The Autumn Statement 2013 included a commitment to consult on a new threshold for designating local planning authorities as underperforming, and on a proposed new 10-unit threshold for section 106 affordable housing contributions. The

consultation suggests the threshold for the speed of decisions should increase to 40% or fewer of decisions made on time, based on the speed of deciding applications for major development. The threshold may be raised further at a future stage and authorities that have dealt with an average of no more than two applications for major development, over the two year assessment period, would be exempt from designation based on their speed of decisions.

The consultation also proposes to introduce a 10-unit and 1,000 square metres gross floorspace threshold for affordable housing contributions through S106 planning obligations. Schemes of 10 or fewer units would therefore be exempt from making affordable housing contributions. It suggests that this will aid the delivery of small scale housing sites, but Rural Exception Sites would be excluded from this threshold.

### **PROPOSED DECISION**

That the recommended answers to the consultation questions set out at Appendix 1 be submitted as the City Council's response to the Planning Performance and Planning Contributions consultation document.

### **REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

#### Planning Performance

The Government is proposing to change the threshold for designating authorities as under performing, based upon the proportion of major applications determined in time, from 30% to 40% measured over a 2 year period (excluding councils that have dealt with an average of no more than 2 applications over the period). The next round of designations will be made in October 2014 with performance measured between July 2012 and June 2014.

It is acknowledged that efficient decision making in relation to major development proposals is important in order to support economic growth and increase the supply of housing. As a result, it is reasonable to expect authorities to decide applications in a timely manner, either within the statutory 13/16 weeks, or such longer period as may be agreed with the applicant.

To this end, increasing the threshold for designation from 30% to 40% is considered reasonable, as Government expectations regarding planning performance have been known for over 12 months, so authorities have had some time to respond to this new measure. However, this is a significant increase (10%) and, given the long and somewhat arbitrary reporting period (2 years dating back to July 2012), raising the bar above 40% would not be reasonable at this point, especially as councils did not know at the start of the period what Government expected in terms of their performance. It is agreed, however, that the threshold for designation should be reviewed, and increases in future may be appropriate as all authorities strive to further improve their performance.

The Government also needs to correct an apparent anomaly between their stated position in the consultation paper, where they say that applications subject to an agreed extension of time count as being determined in time (as if they had been decided in 13/16 weeks), and the way the data is currently collected by DCLG (where such applications are seemingly excluded from the percentage decided in time calculations). It is entirely reasonable for applications decided within an agreed extended decision period to be treated as decided in time, because in such cases a longer determination period will have been voluntarily agreed by the applicant and this helps to deliver better outcomes which are beneficial to all parties.

Such cooperative working should therefore be positively reflected in the way decisions on these applications are used to calculate performance figures. It would be illogical to only count decisions as having been made in time if they are made within the (shorter) statutory time limits, rather than an agreed extended decision period. Such an approach would also mean there is less incentive for councils to use extensions of time, and this would counter-productive to good quality decision making. In areas where applicants consider that the quality of the service being delivered by the authority is inadequate, they are under no obligation to agree extensions of time and can exercise their right of appeal against non-determination if the council fails to decide their application in 13 weeks.

It is sensible, however, to allow any councils at risk of designation the opportunity to explain circumstances which they consider to be exceptional, and which affected their performance over the assessment period, and the tests outlined in the consultation paper are reasonable in this regard. Similarly, councils dealing with very small numbers of major proposals should not be at risk of designation, although the proposed threshold of 2 applications is very low. 5 applications during the reporting period seems more reasonable.

#### Amending section 106 planning obligations

The consultation proposes a new 10-unit threshold for section 106 affordable housing contributions and suggests that this will help 'address the disproportionate burden being placed on small scale developers, including those wishing to build their own homes, and which prevents the delivery of much needed, small scale housing sites'. It suggests that before any request for S106 affordable housing contributions can be considered, authorities should 'have to have regard to national policy that such charges create a disproportionate burden for development falling below a combined 10-unit and maximum of 1,000 square metres gross floor space threshold'.

The consultation also makes clear the Government's intention that authorities should not seek affordable housing contributions for residential extensions or annexes and that Rural Exception Sites would be outside the scope of the proposed 10-unit /1000sq m threshold.

If implemented, the proposed changes would impact directly on the City Council's ability to implement the affordable housing policy in the recently-adopted Local Plan

Part 1 (policy CP3). This expects all residential development to contribute towards affordable housing provision (through on-site provision for sites of 5 or more dwellings and by a financial contribution for sites of fewer than 5 units). Under the proposed changes, the Council would only be able to seek affordable housing contributions (on-site or financial) on sites of more than 11 units/greater than 1000sq m

The Council's policy has been examined by the Local Plan Inspector, who considered, amongst other things, its impact on development viability. The Inspector found that the policy requirement would not generally undermine development viability (as did the Inspector that examined the CIL Charging Schedule), but in any event the Local Plan allows for applicants to provide evidence of viability issues where they believe there is a problem. As a result, viability assessments have been submitted with a number of planning applications and, where the Council agrees with their conclusions, the affordable housing provision/contribution has been appropriately reduced.

The new policy has already achieved significantly increased affordable housing provision in its first year, compared with the requirements of previous policy (which included a 5 or 15 dwelling threshold depending on the site's location in the District). Appendix 2 sets out an analysis of planning applications granted since the introduction of the policy (March 2013 to January 2014) and compares the 'full' policy requirement with what has been achieved and what would have been achieved under the previous Local Plan policy.

Appendix 2 shows that viability considerations have resulted in the 'full' policy requirements being relaxed in some cases, although in fact the policy requirement is being met because it is qualified by the need to take account of viability in individual cases. Although the increase in on-site provision of affordable housing is very modest at 35 units, the increased financial contributions secured (over £1.5m) are considerably higher than they would have been under the previous policy. It is, therefore, clear that the new policy has produced increased contributions towards affordable housing, whilst at the same time having the flexibility to avoid rendering development unviable.

The Government's proposed changes would prevent the Council from seeking physical provision or financial contributions towards affordable housing on sites of 10 or fewer dwellings/less than 1000sq m. Appendix 2 does not identify these sites but, given experience of the type of sites that are making contributions, the proposed changes would be expected to have a major and adverse impact on the financial contributions that the Council is able to secure. The consultation provides no analysis or evidence that affordable housing policies are stopping housing delivery or that the proposed thresholds have any basis in research or are underpinned by viability evidence. Based upon the experience in Winchester since the adoption of Policy CP3 last year, they appear to be a very blunt measure and, in the absence of specific data, a poorly-evidenced way of tackling what may be a perceived rather than real problem.

Authorities that have policies for affordable housing provision on sites of less than 10 dwellings will have had them examined for soundness and NPPF-compliance by a planning Inspector. Government policy already requires that the cumulative impact of planning policy requirements does not cause development to become unviable. This is written into the City Council's policies and it would be expected that this is also the case more widely. There are, therefore, already safeguards in place to maintain viability in the (probably limited) cases where local plan policies seek affordable housing on smaller sites.

Accordingly, the proposed changes seem both unnecessary and are lacking any evidential justification, particularly in relation to the threshold proposed and the likely impact on the delivery of affordable housing. Indeed, it is likely that the changes would be counter-productive in terms of the Government's other housing aims of increasing the supply of affordable homes.

For example, the emphasis on encouraging small sites and self-build schemes is likely to encourage developers to focus on small sites, in order to avoid affordable housing contributions, with larger sites potentially being delayed or given lower priority. There is also a risk that developers will purposely design schemes to meet the threshold and avoid any affordable housing provision, even in cases where sites are capable of accommodating more than 10 units, thereby further reducing the supply of housing. This would be at odds with the widely-recognised need for a substantial boost in housing delivery and affordability, which is most efficiently achieved through the promotion of larger sites. Therefore, the recommended draft response at Appendix 1 states that the City Council opposes the introduction of the proposed changes and submits various objections to them.

The consultation also invites comments on whether self-build developments should be exempt from tariff-type S106 requirements. It argues that it would be inconsistent for self-build developments to pay tariff-type contributions (under S106) when such developments have been granted an exemption from CIL. The City Council is unable to seek tariff-type contributions (e.g. the former open space and transport contributions) now that it has introduced CIL (outside the South Downs National Park), so this question is not relevant to this Council. It is also likely to be of diminishing relevance to most authorities, as CIL is introduced more widely in advance of the cut-off for tariff-type contributions of April 2015.

It is, however, recommended that the Council questions the consultation's emphasis on self-build developments, given the small number of schemes involved, the fact that these should by definition be more affordable anyway, and because they still generate a need for relevant infrastructure and services.

The consultation document also proposes that affordable housing should not be required through S106 agreements, where empty buildings are brought back into use (provided the buildings have been occupied for 6 months in the previous 3 years). While the aim of encouraging the re-use of buildings and brownfield sites is to be welcomed, any additional costs should be taken into account through viability assessments, rather than through a blanket exemption. In practice, such a proposal

would have limited effect if the proposed 10 dwelling threshold is introduced (other than for very large conversions) but it is recommended that, if the Council objects to the threshold, it should also oppose the proposed exemption for re-use of empty buildings.

**RESOURCE IMPLICATIONS:**

No implications in responding to the current consultation. The changes proposed by the consultation could have substantial resource implications if the Council was deemed to be underperforming in relation to the proposed standards for major proposals, because in areas where councils are “designated”, applicants can choose to apply directly to the Planning Inspectorate for a decision on their application and the authority does not retain the fee, so income is reduced. Given the fact that major applications generate the largest fees, the impact is potentially very significant.

Furthermore, introducing a blanket exemption for affordable housing provision/contributions from smaller developments would be likely to significantly reduce funds available to the Council to deliver affordable units across the District.

**CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION**

The Portfolio Holders for Built Environment and Housing have been consulted.

**FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE**

N/a

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED**

None.

**DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

n/a

**Approved by: (signature)**

**Date of Decision**

**Councillor Weston – Portfolio Holder for Built Environment**

## **APPENDIX 1 – Recommended Responses to Consultation Questions**

### Planning Performance

*Question 1: Do you agree that the threshold for designating authorities as underperforming, based on speed, should increase to 40% or fewer of decisions made on time?*

The Council has no objection to increasing the threshold to 40% at this point in time but it is important to allow councils at risk of designation the opportunity to explain whether there were exceptional circumstances which mean that designation would be inappropriate.

*Question 2: Do you think there is scope to raise the threshold for underperformance above 40% (for example to 45% or 50%); and, if so, by when?*

Yes and it would be logical to review the situation in 2015 and annually thereafter.

However, this is a significant increase (10%) and, given the long and somewhat arbitrary reporting period (2 years dating back to July 2012), raising the bar above 40% would not be reasonable at this point, especially as councils did not know at the start of the period what Government expected in terms of their performance.

The Government also needs to correct an apparent anomaly between their stated position in the consultation paper, where they say that applications subject to an agreed extension of time count as being determined in time (as if they had been decided in 13/16 weeks), and the way the data is currently collected by DCLG (where such applications are seemingly excluded from the percentage decided in time calculations). It is entirely reasonable for applications decided within an agreed extended decision period to be treated as decided in time, because in such cases a longer determination period will have been voluntarily agreed by the applicant and this helps to deliver better outcomes which are beneficial to all parties.

Such cooperative working should be positively reflected therefore in the way these applications are used to calculate performance figures. It would be illogical to only count decisions as having been made in time if they are made within the (shorter) statutory limits, rather than an agreed extended decision period. In areas where applicants consider that the quality of the service being delivered by the authority is inadequate, they are under no obligation to agree extensions of time and can exercise their right of appeal against non-determination if the council fails to decide their application in 13 weeks.

*Question 3: Do you agree that authorities that have dealt with no more than two applications for major development, over the two year assessment period, should be exempt from designation based on their speed of decisions?*

It is agreed that councils dealing with very low numbers should be excluded but 5 applications in the reporting period seems more sensible than 2.

*Question 4: Do you agree that the tests set out at paragraph 21 of this consultation are appropriate for taking exceptional circumstances into account, prior to*

*designations being confirmed?*

Yes, so long as applications where the decision is made within an agreed extension of time are treated, for the purposes of calculating major application performance, as having been decided in time, which is the position as stated in the consultation paper (see response to question 2 above for further details).

Amending section 106 planning obligations

*Question 5: Is the Government's objective of aiding the delivery of small scale housing sites and expanding the self build housing market supported by:*

- *the introduction of a 10-unit and 1000 square metres gross floor space threshold for section 106 affordable housing contributions; and*
- *the exclusion of domestic extensions and annexes from making section 106 affordable housing contributions?*

No. The Government has provided no evidence that affordable housing requirements are causing a problem in the delivery of small sites or self-build schemes. It is likely that any local authority requirements for affordable housing will have been justified in terms of viability, impact on housing delivery and NPPF-compliance through recent Local Plan examinations. They will also be subject to the advice in the NPPF about the cumulative impacts of affordable housing and other contributions on viability (NPPF paragraph 174). There is therefore no need for a blanket ban on affordable housing contributions, given existing advice regarding viability, which has just been reinforced through the National Planning Practice Guidance (section 10).

In fact, the proposed changes would work against the Government's aims of increasing the supply of housing and its affordability. They would give smaller developments an unwarranted and unfair advantage and be seen as a penalty on larger schemes. It is larger schemes that need to be encouraged to achieve the step change in housing provision (market and affordable) that is widely acknowledged to be needed. There is also a risk that developers will purposely design schemes to meet the threshold and avoid any affordable housing provision even in cases where sites are capable of accommodating more than 10 units thereby further reducing the supply of housing.

At a time when the housing market is recovering, there is an opportunity to capture increases in development value to benefit the provision of affordable housing, rather than introducing unjustified and counterproductive measures that will simply benefit landowners through increased land values. The City Council therefore objects to the introduction of thresholds for affordable housing contributions, but supports the exclusion of extensions and annexes from such contributions (and does not currently seek these anyway).

*Question 6: Should the proposed exemption apply beyond affordable housing to other tariff style contributions based on standard formulae?*



No. There is no evidence that such an exemption is needed or justified for self-build development, which has the same impact on infrastructure and services as other housing. In any event, such exemptions would be unnecessary as tariff-style contributions will have to come to an end in April 2015 under the CIL Regulations.

*Question 7: We would like your views on the impact on the Government's policy objectives to incentivise brownfield development through proposed national policy change. This would reduce the financial burden on developers by requiring that affordable housing contributions should not be sought where buildings are brought back into any use – other than proportionately for any increase in floor space.*

The aim of encouraging the re-use of buildings and brownfield sites is to be welcomed, but any additional costs should be taken into account through viability assessments, rather than through a blanket exemption. There is no evidence that such an exemption is needed or justified for residential re-use/conversions, which are potentially a valuable source of additional affordable housing.

## **APPENDIX 2 – Local Plan1 Policy CP3 – Performance April 2014**

### **Background**

Local Plan 1 Policy CP3 requires 40% of the housing on all market-led development sites to be set aside for affordable housing unless this would render proposals economically unviable. Provision (with exceptions, most notably on sites of less than 5 units) should generally be on-site.

The Policy has been subject to scrutiny through the Council's Residential Viability Report and by Government Inspectors at the Local Plan1 EIP and CIL Examination.

The policy is fully compliant with the National Planning Policy Framework (NPPF).

The old Local Plan Policy H5 required 30% of housing (on sites of 5 or more units in smaller settlements; 15 or more in larger) and 40% (on sites of 15 or more in Winchester and on MDAs).

Policy CP3 has resulted in a modest increase in the number of on-site affordable homes and substantially increased financial contributions towards the provision of new affordable homes secured compared to what would have been achieved using old Local Plan policies.

### **Housing Supply**

Local Plan Part 1 sets a housing supply target of 12,500 dwellings, with 8000 on Strategic Allocations (Barton Farm, West of Waterlooville, North of Whiteley), 2000 (other) are in Winchester Town and 2,500 in the Market Towns and Rural Areas. Many of these dwellings are already consented. The Strategic Allocations are large greenfield sites.

In Winchester Town, future development (excluding existing consents) is likely to come predominantly from commercial sites, car parks etc. rather than through greenfield sites or the redevelopment of housing or garden land. In the Market Towns and Rural Areas, (excluding existing consents) the vast majority of new housing is expected to be built on greenfield sites rather than through the redevelopment of housing or garden land.

The Council's Residential Viability Report presented as evidence to the CIL Examination concluded that "a small number of new development sites will arise on land that is currently is residential use".

### **Performance of Local Plan 1 Policy CP3**

<b>Qualifying Sites</b>	<b>Actual Financial Contribution Secured</b>	<b>Financial Policy Requirement</b>	<b>Actual On-Site Provision Secured (units)</b>
46	£1,576,488	£6,612,680	35

Data Source: Planning Permissions granted since Local Plan 1 Adoption (excludes all applications not yet consented.)

### **Context**

Approximately 450 new affordable homes have been provided over the last 5 years. This has been on market-led sites and sites developed by Registered Providers in both urban and rural areas. Around 78% of these new homes in this period have been provided on market-led sites using (old) Local Plan Policy H5. The inclusion of site size thresholds in policy H5 means that only in one or two cases has less than the on-site policy requirement been accepted for viability reasons.

Collection of financial contributions was reasonably rare, largely fractions of dwellings where the policy generated a requirement, for example, for 2.5 dwellings. Milesdown in Winchester was a notable exception when the full policy financial contribution (in excess of £1m) was secured.

The removal of site size thresholds gives the opportunity to secure affordable housing (on-site or a contribution) from smaller sites that would not have delivered any affordable housing under Policy H5. In addition to this supply, the Council now has a programme of Council house building, with its capital programme providing 165 dwellings over the next 5 years.

The bulk of supply will, however, continue through on-site provision negotiated using Policy CP3 on market led sites, based on historic permissions, slightly under 100 /year in the short term. In numerical terms, the majority of affordable housing will come from the Strategic Allocations and other larger developments.

### Summary

In summary, Policy CP3 is fully compliant with the NPPF and has been recently tested at examination by Government Inspectors. The Policy allows for affordable housing provision at less than the headline 40% in circumstances where viability requires this. Consequently, schemes that, as a result of viability, provide less than the headline 40% are still regarded as policy-compliant.

As in the past, the future bulk of supply of new affordable housing is likely to come from market-led sites using Policy CP3. Most (overall) housing development is likely to take place on greenfield or large brownfield sites. Only a small number of new dwellings will arise on land that is currently in residential use and planning policies do not rely on this as a key source of housing provision.

Past experience and modelling of future developments suggest that it is, generally, only small sites that are currently in residential use, and where uplifts in value as a result of development are low, that suffer viability constraints such that the delivery of affordable housing is adversely affected.

On the other hand, the adoption of Policy CP3 and the removal of site thresholds has allowed for contributions towards affordable housing from sites that would not have otherwise delivered any affordable housing. Policy CP3 has resulted in an increase in the number of on-site affordable homes and significantly increased financial contributions towards the provision of new affordable homes compared to what would have been achieved using old Local Plan policies.