

INSPECTOR'S INITIAL QUESTION ON THE SUBMITTED BRADFORD COMMUNITY INFRASTRUCTURE LEVY (CIL)

27th May 2016

Introduction

Following submission of the Bradford CIL, the Inspector has asked the Council for a response to an initial question in relation to the Court of Appeal judgement of 11 May 2016 and whether this would have any implications in relation to the Examination of the Submitted CIL.

The Council's position is that the CIL Draft Charging Schedule version as approved by Full Council and submitted, strikes an appropriate balance between the need to fund infrastructure and ensuring the viability of development.

The Council consider that the issue raised through the Inspector's further question will not have any implications on the Examination of the CIL as set out below.

Inspector's Question

1. Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441: Planning obligations and affordable housing & tariff style contributions

I refer to the above Court of Appeal judgement of 11 May 2016. I would be grateful for your prompt response as to whether this would have any implications in the setting of residential rates within the draft Charging Schedule (DCS)? If so, please let me know if any modifications are likely to be proposed to the DCS, and whether any further viability evidence would be provided. This would have implications on the timing of any hearings as further public consultation would be required.

Council's Response

The Council is aware of the Court of Appeals latest judgement and that the Ministerial Statement relating to circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought should again be treated as a material consideration. Also in addition following the Court of Appeals latest judgement the Government has reinstated the previous changes to the National Planning Practice Guidance for Planning Obligations on the 19th May 2016 as set out in Appendix 1.

The Council's approach to Affordable Housing policy is set out in Core Strategy Policy HO11. The Core Strategy is still at Examination. The Inspector undertaking the Examination into the Core Strategy has asked the Council to respond to a question on 12th May 2016, in regards to thresholds for seeking affordable housing contributions and the Court of Appeal's judgment of 11th May 2016. The Council have provided a response to the Inspector suggesting a further modification to Policy HO11, to ensure the policy is consistent with the latest National Planning Policy for seeking planning obligations. This response is set out in Appendix 2.

In regards to the CIL Examination and Inspectors question, the impact of CIL on a range of residential sites have been tested through the CIL Viability Evidence (CIL-003 & CIL-004). The proposed CIL residential rates have been informed by the viability evidence. The council consider that the CIL Draft Charing Schedule is supported by robust and appropriate available evidence.

The Council consider that the impact of the update to the NPPG and proposed modification to Core Strategy HO11 will be relatively limited – specifically there will be no adverse effect on the ability of development to withstand the proposed charging levels – and therefore not require any further modifications or viability testing. The council do not currently collect ‘pooled’ tariff style contributions for infrastructure (such as education and open space) for developments of less than 10 units. As such the implication of the Court of Appeal Judgement and update NPPG for planning obligations will not impact the majority of development sites in the District. The Council’s threshold for affordable housing is 15 units or more in the majority of the District. Again as the majority of potential residential development sites in the District are located in areas with the 15 unit threshold for affordable housing contributions there will be no impact on the majority of development sites in the District. The Council therefore consider that the overall impact will be relatively limited.

It is recognised that there may be a small increase in viability of some residential developments of 10 units or less in Wharfedale and the villages listed in Core Strategy Policy HO11 Criteria C due to the removal of the requirement for affordable housing for these schemes. It is the Council’s view that the implication of this may improve the viability of smaller schemes below 10 units in these areas. However, as smaller residential schemes are generally developed by small scale developers, custom and self-builders, which do not have economies of scale and therefore potentially higher build costs, it is the council’s view that the implication of this will be to provide a further additional viability buffer for smaller schemes below 10 units. The Council therefore consider that the proposed CIL rates are still appropriate given the need to ensure CIL is set at a level which does not threaten the viability of development schemes.

In summary, it is the Council’s view that the Court of Appeal judgement of 11th May 2016 and proposed modification to Core Strategy Policy HO11 in regards to lower thresholds for affordable will not result any in the need for any further viability testing or any modifications being required. There should therefore not be any implications on the timing Examination of the CIL.

Appendix 1: Planning Obligations NPPG as updated 19/05/16

Paragraph: 031 Reference ID: 23b-031-20160519

Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?

As set out in the Starter Homes Written Ministerial Statement of 2 March 2015, starter homes exception sites should not be required to make affordable housing or tariff-style section 106 contributions.

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. This follows the order of the Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014 and should be taken into account.

These circumstances are that;

- 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: 19 05 2016 See revisions

Paragraph: 013 Reference ID: 23b-013-20160519**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: 19 05 2016 See revisions

Appendix 2: Council's Response to Core Strategy Further Question

Bradford Local Plan

Core Strategy Examination

Further Statement:

Implications of recent Court of Appeal Decision and Changes to National Planning Policy Guidance, in relation to Affordable Housing Thresholds contained within policy HO10

May 2016

1. Introduction

- 1.1 This statement sets out the Council's position in response to the Inspector's question on 12th May 2016 raised in relation to Planning obligations and affordable housing & tariff-style contributions in regards to thresholds for seeking affordable housing contributions and the Court of Appeal's judgment of 11 May 2016.

Background

- 1.2. Core Strategy Policy HO11 sets out the Council's approach to delivering affordable housing in the District. Part C of Policy HO11 sets out the thresholds for seeking affordable housing contributions. The thresholds in Policy HO11 require affordable housing contributions on developments of 15 dwellings or more, with a lower threshold of 5 dwellings or more in Wharfedale and the villages listed in Part C.
- 1.3 On 28 November 2014 the Government introduced changes to the National Planning Practice Guidance (NPPG) aimed at boosting development on small sites. These changes introduced a threshold under which contributions for affordable housing and tariff style planning obligations should not be sought. The NPPG was further amended on the 27th of February 2015 as set out below:

National Planning Practice Guidance: Planning obligations

Paragraph: 012 Reference ID: 23b-012-20150227

Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?

National planning policy defines 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, as set out in the Written Ministerial Statement on small-scale developers.

- 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: 27 02 2015

Revision date: 27 02 2015

- 1.4 During the Core Strategy Examination the council provided a response to the Inspector's question raised in relation to Matter 4F Affordable Housing in regards to the proposed thresholds for seeking affordable housing contributions and consistency with the latest Nation Planning Policy (PS/F073 - CBMDC FS - Policy HO11 affordable housing thresholds). This response proposed a main modification to Policy HO11 and the supporting text to ensure the policy was in line with the latest national planning policy in the NPPG as set out below:

C. Affordable housing will be required on sites ~~of 15 dwellings units or more and on sites over 0.4 hectares in size.~~ **developments** of 15 dwellings units or more and on sites over 0.4 hectares in size. The site size threshold is lowered to 5 **11** dwellings units or more in Wharfedale, and the villages of Haworth, Oakworth, Oxenhope, Denholme, Cullingworth, Harden, Wilsden, and Cottingley.

- 1.5 Following the publication of the council's response (PS/F073) to the Inspector, the Government's policy change to the NPPG in regards to minimum site thresholds was legally challenged. This legal challenge was successful and the High Court quashed the planning

guidance in the NPPG that exempted affordable housing contributions for small developments and vacant buildings brought back into a lawful use. Following the High Court judgement, the Government deleted the relevant policy from the National Planning Practice Guidance on planning obligations. The council took the view that the High Court ruling meant that the Ministerial Statement and quashed change to NPPG in relation to affordable housing thresholds no longer constituted national planning policy. The council therefore proposed the following main modification to Policy HO11 (PSG004a Proposed Main Modifications):

Amend criterion C under Policy HO11 as follows: ‘C. Affordable housing will be required on sites **developments** of 15 dwellings units or more ~~and on sites over 0.4 hectares in size.~~ The site size threshold is lowered to 5 dwellings **units or more** in Wharfedale, and the villages of Haworth, Oakworth, Oxenhope, Denholme, Cullingworth, Harden, Wilsden, and Cottingley. ‘

- 1.6 This proposed main modification (published in November 2015) was considered at the time be in line with the latest national planning policy. However following publication of the main modifications to the Core Strategy in November 2015, the Secretary of State successfully appealed against the judgment of the High Court. The Inspector subsequently wrote to the council seeking a response to the Court of Appeal’s judgement and implications of Policy HO11 (PS/H003a Note 120516). The Inspector has stated that subsequent to the Court of Appeal’s judgment, the policies in the Written Ministerial Statement relating to the specific circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought from small-scale and self-build development, must once again be treated as a material consideration in development management and development plan procedures and decisions, and in the exercise of powers and duties under the Planning Acts more generally.

Council’s Response

- 2.1 The council recognise the Court of Appeals latest judgement and that the Ministerial Statement relating to circumstances where contributions for affordable housing and tariff-style planning obligations should not be sought must again be treated as a material consideration. Following the Court of Appeals latest judgement the Government has reinstated the previous changes to the National Planning Practice Guidance for Planning Obligations on the 19th May 2016 as set out in Appendix 1.
- 2.2 As previously set out through the Core Strategy Examination the Council considers that the high level of need as indicated in the SHMA, issues of affordability in the higher value areas of the District and more limited supply of larger sites within the smaller settlements justify a lower threshold being set in Wharfedale and the villages listed in Part C of Policy HO11. The lower threshold is also considered to be justified in relation to viability. The Affordable Housing Economic Viability Assessment (AHEVA) 2010 tested site size thresholds for affordable housing and found that a threshold of 5 units on sites in higher value areas can produce developable, deliverable sites. The Council therefore considers a lower threshold than 15 dwellings in for affordable housing in Wharefdale and Rural Villages in Criteria C is justified in regards to evidence of housing need, affordability and viability. However, it is

recognised that Policy HO11 is not consistent with the latest NPPG in regards to minimum thresholds for affordable housing contributions.

- 2.3 In conclusion based on the weight given to the Ministerial Statement on 28 November 2014 and latest update to National Planning Practice Guidance introducing a threshold beneath which affordable housing contributions should not be sought for planning obligations, the council considers that the main modification to Policy HO11 and the supporting text proposed in the council's previous response (PS/F073 - CBMDC FS - Policy HO11 affordable housing thresholds) could again be made to ensure Policy HO11 is in line with the latest national planning policy in the NPPG. These changes are outlined below (new text is indicated in underlined and yellow highlight and deleted text is struck through). It should be noted that the changes within this note relate solely to the issues raised above.

Proposed Modification to Policy HO11: Affordable Housing

C. Affordable housing will be required on sites ~~of 15 dwellings units or more and on sites over 0.4 hectares in size.~~ **developments** of 15 dwellings units ~~or more~~ **11** dwellings units or more in Wharfedale, and the villages of Haworth, Oakworth, Oxenhope, Denholme, Cullingworth, Harden, Wilsden, and Cottingley.

Supporting Text

To meet the identified need for affordable housing in the district the council will aim to ensure that 20 to 25% of the total housing delivery is affordable housing. The council will aim to achieve this target by utilising funding sources to support the delivery of affordable homes, maximising opportunities offered by council owned land and through developer contributions. Given pressures upon development viability in parts of the main urban areas in order to meet the overall district wide affordable housing target, grant funding and any other forms of subsidy and funding for affordable housing should be directed towards development in the areas of highest need. The council will seek affordable housing from residential developments in accordance with the stated thresholds and percentages as set out in Policy HO11.

Figure HO2 shows the areas that the policy and the thresholds will apply to. This equates the following quotas:

- Wharfedale up to 30%
- Towns, suburbs and villages up to 20%
- Inner Bradford and Keighley up to 15%

Within Wharfedale and the villages listed in Part C of Policy HO11 affordable housing contributions will be required on developments of 11 units or more or which have a maximum combined gross floorspace of more than 1000sqm, in accordance with the minimum threshold for affordable housing contributions as set out in the National Planning Practice Guidance.

~~Irrespective of the thresholds,~~ Policy HO11 will be applied to developments which have been manipulated in size (either in area or yield) in an attempt to avoid the provision of affordable housing, or which constitute piecemeal development. On smaller sites a commuted sum may be appropriate where this is justified by viability issues.