

# PLACES SCRUTINY PANEL

24 April 2014

## SECTION 106 POLICY REVIEW

Report of the Director for Places (Development and Economy)

STRATEGIC AIM:	<b>Building our infrastructure</b> <b>Creating an active and enriched community</b> <b>Creating a sustained environment</b>
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### 1 PURPOSE OF THE REPORT

- 1.1 This report is to:
- i) Summarise how the Community Infrastructure Levy (CIL) and Section 106 (S106) policy are being brought into line through recent CIL reforms, proposed changes to S106 policy and the release of the final version of the National Planning Practice Guidance; and
  - ii) Consider how the approach to the Council's S106 policy could be revised now in response to i) above before it is taken forward to Cabinet.

### 2 RECOMMENDATIONS

- 2.1 **That Places Scrutiny Panel note the contents of this report and consider the revised approach to Section 106 Policy on residential extensions, annexes and self-build housing as set out in Appendix C of this report before it is taken forward to Cabinet.**

### 3 BACKGROUND

- 3.1 A new set of amendments to the CIL regulations was announced by government on the 24<sup>th</sup> February 2014. Amongst other things, they introduce a new mandatory exemption for self-build housing, residential annexes and extensions.
- 3.2 Further proposed reforms have now also been taken forward in a DCLG consultation document on S106 planning obligations policy (published end of March 2014). It makes it clear government propose to exclude small residential projects from charges aimed at supporting the development of affordable housing. It also says that people building domestic extensions and annexes should be excluded from having to make payments towards affordable housing provision under the Section 106 regime.
- 3.3 The consultation document goes on to say "Government has already amended Community Infrastructure Levy regulations explicitly to exempt self-build, extensions and annexes. However, this may lead to a situation where self-build development could be subject to section 106 tariff-style contributions in councils which have not yet adopted the Community Infrastructure Levy; whereas, such charges would not be levied in councils where tariffs had been incorporated into the levy. This is inconsistent. Moreover, the fact that the Community Infrastructure Levy is not levied

on self-build provides a strong argument for not levying any tariff-style contributions via Section 106 mechanisms either, given the desire of the Government to reduce burdens on self-builders.”

#### **4 IMPLICATIONS OF THE REVISED APPROACH TO S106**

- 4.1 Whatever the Council decides on the way forward for CIL it is suggested that the Council reviews its current position on S106 policy on house extensions, annexes and self-build given the reformed CIL regulations that now apply and the content of the consultation paper on S106 policy referred to above.
- 4.2 Where a Local Planning Authority (LPA) has implemented CIL the exemptions for self-build housing, residential annexes and extensions does not necessarily completely rule out the scope for a S106 Agreement to be entered into in relation to these forms of development but there is a far stricter application determining where it can be deemed *necessary* to do so.
- 4.3 Guidance on this is already given in the Council’s adopted Supplementary Planning Document (SPD) on Planning Obligations and Developer Contributions (June 2010) (see Appendix A for relevant extract). Guidance on the Council’s priorities identifies as “Priority One” investment in the physical infrastructure needed to deliver the project, as “without this the scheme will not proceed”. Lower priorities are also identified in the SPD as a second call on developer contributions which fall within the loose term “tariff style” obligations. Under the CIL reforms a S106 Agreement could not be entered into in order to pool such contributions under Rutland County Council’s S106 tariff-style’ policy.
- 4.4 The current “Planning Obligations and Developer Contributions” SPD is not written so prescriptively that it explains we will seek S106 “tariff-style” contributions on extensions, annexes and self-build. It does say however that the Council will seek contributions on “all new residential development”. The Council has already made decisions not to seek S106 contributions where there are small extensions below the CIL threshold of 100sqm. Where there is a replacement dwelling the Council only applies S106 to the net increase, again to match the CIL regulations as originally passed. Thus, the Council has already adapted its approach to applying S106 to “all forms of residential development” to be “CIL compliant”.
- 4.5 It is also important that the Council applies S106 to take account of viability. There are many examples where development is not taking place because agreement cannot be reached on the level of contribution being sought (see Appendix B, Table 1). There are also examples of where the contributions sought have been reduced following the developers submission of independently audited viability assessments (see Appendix B, Table 2). Most of these developments are small scale and many are likely to be self-build or other forms of residential development now exempt from CIL.
- 4.6 As well as being lost opportunities for new additions to housing stock, residential development withdrawn means less funding to the Council for infrastructure investment as well as lost New Homes Bonus and Council Tax. This has to be considered in the context of Government’s National Policy Planning Framework which requires a positive planning policy regime to secure investment in new housing to meet identified needs
- 4.7 It is therefore recommended that the application of S106 policy with respect to residential annexe, replacement dwellings and self-build housing is modified to bring it into line with the approach that will have to be taken when CIL is adopted.

- 4.8 Guidance on how this adjustment will be applied is attached at Appendix C. This guidance is drawn from the CIL reforms that set out the exemption arrangements for residential extensions, annexes and self-built housing. The CIL reforms help define what is meant by residential extensions, annexes and self-built housing.
- 4.9 The revised approach to S106 Policy was considered and supported by the Local Plan Members Working Group at its meeting on 10th April 2014.
- 4.10 A final point of clarification is required to explain that the proposed exemption as described above does not mean that a Section 106 Agreement will no longer be entered into to secure contributions towards the provision of Affordable Housing. Where the proposed development is a residential annexe or a self-build house the Council will still apply, subject to viability, its S106 policy on Affordable Housing contributions. This is set out in the Council's Developer Contributions to Off-site Affordable Housing (2012) SPD (as amended by Cabinet on 19th March 2013).
- 4.11 Although there is a current consultation exercise on government proposals to make the provision of Affordable Housing exempt from Section 106 planning obligations (whether through on-site provision or through commuted sums towards off-site provision) a decision on implementing such a change has yet to be made.

## **5 FINANCIAL IMPLICATIONS**

- 5.1 The impact of any agreed adjustments to current S106 Policy will need to be monitored but assessing the net impact of the change proposed is complex as explained above at paragraph 4.5.
- 5.2 It is important to bear in mind that when CIL is finally put in place at a charging level that is demonstrably viable to the development industry, it will not require a S106 legal agreement to be negotiated on each and every development proposal in order to secure 'pooled tariff style' contributions. CIL revenues will simply be paid, 'up front' by the developer giving the Council a legitimate right to then invest in its local infrastructure priorities.
- 5.3 As part of monitoring the impact of this, the Council will quite easily be able to see how much the application of CIL generates in revenue (e.g. in relation to the overall scale of residential development activity) and compare this to the levels of funding from residential development secured through S106 funding in pre-CIL years.
- 5.4 CIL rates will need to be reviewed in the light of the monitoring of its application – the guidance suggests this should, be looked at quite soon after the first CIL is adopted.

## **6 NEXT STEPS**

- 6.1 Following consideration by the Places Scrutiny Panel, this report will be put forward to Cabinet on 6th May 2014.
- 6.2 If approved, the S106 Policy exemption outlined above will apply to all new applications and those existing applications that are still under negotiation for self-build housing, residential extensions and annexes for which a Decision Notice has yet to be issued by the Council.

## 7 RISK MANAGEMENT

<b>RISK</b>	<b>IMPACT</b>	<b>COMMENTS</b>
<b>Time</b>	<b>High</b>	There is a statutory requirement governing the application of S106 policy ('the necessity test') and issues of developer viability to consider. Government policy is changing the way in which S106 policy should be applied and it is of critical importance to respond to those changes in order to avoid unnecessary burdens being imposed on development.
<b>Viability</b>	<b>Medium</b>	It can be anticipated that the proposed changes to the way in which the Council's S106 policy is applied will enhance the viability of small scale development projects that cumulatively can have a significant impact on housing provision.
<b>Finance</b>	<b>Low</b>	The revised approach will involve a lower level of S106 contributions but it may increase income over the medium term as more development is likely to take place. The impact of any agreed adjustments to current S106 Policy will need to be monitored.
<b>Profile</b>	<b>Medium</b>	The Council's approach to S106 has attracted attention in the media and with developers and applicants, but it is of more limited interest to the public unless they are directly involved in the development and planning process.
<b>Equality and Diversity</b>	<b>Low</b>	An equality impact assessment is not required as it involves a revised approach to S106 and the existing S106 SPD is not being changed.

### **Background Papers**

The Community Infrastructure Levy  
(Amendments) Regulations 2014  
Supplementary Planning Document (SPD) on Planning  
Obligations and Developer Contributions (June 2010)

### **Report Author:**

Brett Culpin  
Senior Planning Officer

Tel No: (01572) 722577  
e-mail: enquiries@rutland.gov.uk

A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.