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<b>PART B:</b>	<b>RECOMMENDATIONS TO COUNCIL</b>
<b>REPORT TO:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>5 JULY 2016</b>
<b>REPORT OF THE:</b>	<b>HEAD OF PLANNING AND HOUSING GARY HOUSDEN</b>
<b>TITLE OF REPORT:</b>	<b>DEVELOPER CONTRIBUTIONS FROM SMALL SITES</b>
<b>WARDS AFFECTED:</b>	<b>ALL</b>

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## **EXECUTIVE SUMMARY**

### **1.0 PURPOSE OF REPORT**

- 1.1 For Members to consider the implications of recent changes to the national Planning Practice Guidance (PPG) and to subsequently agree this Council's position.

### **2.0 RECOMMENDATIONS**

- 2.1 That Council resolves to :

- (i) Continue to negotiate the on-site provision of affordable housing in line with Policy SP3 of the Ryedale Plan with the exception that on-site affordable housing contributions will not be sought from sites of 10 dwellings or less and which have a maximum combined gross floorspace of no more than 1,000square metres
- (ii) Continue to negotiate the on-site provision of affordable housing in line with SP3 of the Ryedale Plan with the exception that on sites of between six and ten dwellings in parishes outside of Malton, Norton and Pickering, financial contributions will be sought in lieu of the existing on-site policy requirement and that financial contributions of an equivalent of 40% of provision will be sought on such sites in west and south west Ryedale
- (iii) Not seek financial contributions from small residential sites through the planning process towards affordable housing on sites of five dwellings or less under Policy SP3 of the Ryedale Plan

### **3.0 REASON FOR RECOMMENDATIONS**

- 3.1 Following a recent Court of Appeal judgment, national policy guidance on developer contributions from small sites has been amended. This Council has development plan policies which seek to secure financial contributions from small sites towards affordable housing and open space. It is important that members are aware of the implications of the recent change and that the Council clarifies its position in relation to the implementation of these policies.

### **4.0 SIGNIFICANT RISKS**

- 4.1 Changes to national planning policy are a material planning consideration. It is considered that significant weight needs to be given to this in the decision making process. Failure to do so would lead to an increase in planning appeals and increase the risk of costs being awarded against the authority in any appeal situation.

### **5.0 POLICY CONTEXT AND CONSULTATION**

- 5.1 This report specifically relates to Policies SP3 (Affordable Housing) and SP11 (Community Facilities and Services) of the Ryedale Plan. Although Policy SP22 of the Ryedale Plan covers Planning Obligations, Developer Contributions and the Community Infrastructure Levy, it is generic and covers key principles. It is not specific to contributions from small sites.

### **6.0 REPORT DETAILS**

#### **Background**

- 6.1 Members will be aware that national policy relating to developer contributions from small sites has been in a state of flux over the past two years. A brief chronology of events is summarised below:
- Following a Coalition Government consultation in March 2014, a Written Ministerial Statement was issued on 28 November 2014. The Ministerial Statement set out national policy in respect of developer contributions from small sites. It made it clear that:
    - For sites of 10 units or less and which have a maximum combined gross floorspace of 1,000 square metres, affordable housing and tariff style contributions should not be sought
    - In designated rural areas (under Section 157 of the Housing Act 1985), authorities may choose to implement a lower threshold of five units or less, beneath which affordable housing and tariff style contributions should not be sought. If this threshold is implemented then affordable housing and tariff contributions on developments of between 6-10 units should be sought as a financial payment only and only be commuted until after the completion of units within the development
    - 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.
  - On the 10 February 2015, members of the Planning Committee considered a report which proposed a response to the statement. The recommendations to apply the

national policy were subsequently agreed by Council.

- In response to the Ministerial Statement, a Judicial Review (sought by West Berkshire District Council and Reading Borough Council) found the policy promulgated by the Secretary of State in the Ministerial Statement to be unlawful.
- Following that judgment, the Council reverted to giving full weight to its development plan policies for planning applications relating to small sites.
- In the meantime, the Secretary of State appealed the judicial review decision and in May 2016, the Court of Appeal allowed the Secretary of State's appeal and handed down a judgment which gives legal effect to the policy set out in the Written Ministerial Statement of November 2014.
- Following the order of the Court, the Government recently amended the national Planning Practice Guidance to set out the specific circumstances where contributions for affordable housing and tariff style planning obligations should not be sought from small scale and self-build development. This reflects the details of the policy of the November 2014 Ministerial Statement (as summarised above).

6.2 It is against this background that this report has been prepared and why it effectively mirrors the advice and recommendations of the report to Planning Committee in February 2015.

#### **Implications for the implementation of the Ryedale Plan and the decision making process**

6.3 Members are aware that the adopted Ryedale Plan- Local Plan Strategy specifically seeks to secure the following contributions from residential development sites:

SP3: In the Market Towns and Service Villages

- Pro-rata financial contributions from all residential development below the threshold of 5 dwellings/ 0.2ha
- 35% of dwellings on-site to be affordable on sites of 5 dwellings/ 0.2ha (with a financial contribution equivalent to a further 5% of provision in west and south west Ryedale)

SP11: Financial contributions towards open space provision

6.4 Policies SP3 and SP11 form part of the adopted development plan. Members are also aware that Local Planning Authorities are required to make decisions in accordance with the development plan unless material considerations indicate otherwise. Officers consider the change in national policy to be a significant material consideration which in effect, outweighs the provisions of the development plan in respect of those policies that seek to secure financial contributions from smaller residential development sites.

6.5 Ryedale receives a steady stream of applications to which this national policy change would apply. For this reason, it is considered important that the Council clarifies its position in relation to this matter. In essence, the Council has two options. It could selectively review the development plan and bring policies in line with national policy or alternatively, it can recognise the implications of national policy and formally agree

a position to be applied through the decision making process.

- 6.6 It is emphasised that officers do not consider a 'do nothing' scenario to be realistic or appropriate. It is considered that the primacy which is afforded to the development plan can only remain intact for as long as its policies reflect current national policy. A good test to apply in such circumstances would be to consider whether current development plan policies would be found to be sound if examined against current national policy. Elements of Policies SP3 and SP11 are now inconsistent with national policy.
- 6.7 It is inevitable that national policy changes will occur over the life of a development plan. Given the complexity, cost and length of time involved in the plan making process, any decision to review a plan requires careful consideration. It is considered that in this instance, the national policy changes do not in themselves, warrant a review of the plan. They are limited in the extent to which they affect the Plan as a whole and they render only parts of SP3 and SP11 inconsistent with national policy.
- 6.8 As an alternative, it is considered that Council could formally resolve to acknowledge the implications of these national policy changes and to agree a position in terms of the implementation of Policies SP3 and SP11. These policies would not be formally changed but Council would resolve to apply greater weight to the national policy as a significant material consideration in the determination of relevant planning applications.
- 6.9 It should be noted that the impact of the national changes on Policy SP11 is considered to be largely negligible now that Community Infrastructure Levy (CIL) charges have been brought into effect in Ryedale. Although Policy SP11 seeks financial contributions towards open space from all residential development, the policy is designed to operate in conjunction with the CIL. Now that CIL is in operation in Ryedale, off-site open space provision and improvements will be funded through the levy rather than Section 106 contributions.
- 6.10 Most of Ryedale (with the exception of Malton, Norton and Pickering) is a designated rural area under the Housing Act 1985 and as such, the national policy changes would support the authority seeking to secure financial contributions for sites of between 6-10 dwellings (as opposed to the current position where on-site provision is sought on sites of 5 or more). The authority would no longer be able to secure affordable housing contributions from sites of 5 dwellings or less. The provisions of SP3 to seek on-site affordable housing provision on larger sites would continue to apply.
- 6.11 A less straightforward element of SP3 relates to the differential policy target which applies across the District. Policy SP3, in effect seeks a 40% affordable housing contribution in west and south west Ryedale which is split in terms of on-site provision and a financial contribution. It is considered that this should be applied as a 40% financial contribution from sites of between 6-10 houses in order to reflect national policy.
- 6.12 There is some risk that the Council will be accused of amending its affordable housing policy outside of the plan making process. However the suggested way forward is less onerous on developers and landowners than current local policy which itself has been recently justified in terms of housing need and development viability. Additionally, the approach would only bring the implementation of the existing

development plan policy in line with national policy. For this reason, this risk is considered to be relatively low.

## **7.0 IMPLICATIONS**

7.1 The following implications have been identified:

a) Financial

The national policy change has undoubted implications for Policies SP3 and SP11 of the Ryedale Plan and if appropriate weight is not given to this, this will give rise to additional planning appeals and potential costs on appeal.

b) Legal

The national policy change is a significant material consideration which has implications for the weight which can be afforded to relevant development plan policies.

c) Other (Equalities, Staffing, Planning, Health & Safety, Environmental, Crime & Disorder)

Under the approach less financial contributions will be sought towards affordable housing provision. However, Members are reminded that the Ryedale Plan does not rely on small residential sites to deliver significant contributions to affordable housing or to make significant contributions to housing land supply.

## **8.0 NEXT STEPS**

8.1 Officers will prepare some text to clarify the Council's response to the national policy changes and to clarify the implementation of Policies SP3 and SP11, which will be placed on the Ryedale Plan pages of the web-site.

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### **Background Papers:**

Written ministerial statement to Parliament by Brandon Lewis MP on support for small-scale developers, custom and self-builders. Delivered on 28 November 2014. First published 1 December 2014. (DCLG)

Court of Appeal. Secretary of State for Communities and Local Government and West Berkshire District Council and Reading Borough Council. [2016] EWCA Civ 441

Planning Practice Guidance. Planning Obligations. Paragraph 012

**Background Papers are available for inspection at:**

<https://www.gov.uk/government/speeches/small-scale-developers>

<http://planningguidance.planningportal.gov.uk/revisions/23b/012>

