



**DEMOCRATIC AND ELECTORAL SERVICES**

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Dear Councillor

**SUSTAINABLE DEVELOPMENT POLICY ADVISORY GROUP – SUPPLEMENTARY AGENDA NO.1**

The next meeting of the Sustainable Development Policy Advisory Group will be held as follows:

DATE: **THURSDAY, 11TH JUNE, 2015**

TIME: **5.00 PM**

VENUE: **ROOM 5, CAPSWOOD, OXFORD ROAD, DENHAM**

**Please note that this meeting is not open to the public**

Only apologies for absence received prior to the meeting will be recorded.

Yours faithfully

Jim Burness

**Director of Resources**

To: The Sustainable Development Policy Advisory Group

Mr Naylor  
Mr D Dhillon  
Mrs Gibbs  
Mrs Lowen-Cooper  
Mr Samson  
Mr Vincent





**Declarations of Interest**

Any Member attending the meeting is reminded of the requirement to declare if he/she has a personal interest in any item of business, as defined in the Code of Conduct. If that interest is a prejudicial interest as defined in the Code the Member should also withdraw from the meeting.

**SUPPLEMENTARY AGENDA NO.1**

(Pages)

**7. Reports Likely to Lead the Portfolio Holder making a Recommendation to Cabinet**

**(a) Update on Changes to Council Affordable Housing Procedures following changes made to Government Guidance**

To consider report of the Director of Services.

**(1 - 16)**

The next meeting is due to take place on Thursday, 10 September 2015

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<b>SUBJECT:</b>	Update on Changes to Council Affordable Housing Procedures following Changes made to Government Guidance
<b>REPORT OF:</b>	<i>Sustainable Development Portfolio Councillor Peter Martin CDC and SBDC Councillor Nick Naylor</i>
<b>RESPONSIBLE OFFICER</b>	<i>Bob Smith Director/Head of Service – Peter Beckford Head of Sustainable Development</i>
<b>REPORT AUTHOR</b>	<i>David Waker, 01494 732267, <a href="mailto:dwaker@chiltern.gov.uk">dwaker@chiltern.gov.uk</a></i>
<b>WARD/S AFFECTED</b>	<i>All Chiltern District And South Bucks District Council wards.</i>

### 1. Purpose of Report

To advise the Cabinet on recent changes made to the affordable housing regime by central Government and to outline the implications of those changes on the Council's affordable housing policies and methods of collecting affordable housing contributions. In relation to Chiltern District in addition to recommend that the Council applies a lower threshold for seeking affordable housing contributions for developments which might be proposed within the areas of the district contained within the Area of Outstanding Natural Beauty.

### RECOMMENDATION

1. That Cabinet notes the changes made to the National Planning Practice Guidance in relation to affordable housing schemes.
2. That for the purposes of applying the NPPG Chiltern District Council adopts the lower threshold of 5 units in designated rural areas, meaning that contributions for affordable housing will be sought for 6 to 10 units within the AONB.
3. That when calculating floorspace in association with National Planning Practice Guidance the floorspace to be included in any gross internal measurement will include all built functional spaces forming part of the development, for example including basements, integral or attached garages and all detached buildings such as free standing garages or outbuildings.
4. That South Bucks District Council remove the requirement that when calculating floorspace in association with the national Planning Practice Guidance this will be measured taking external building measurements as this is now contrary to national guidance.
5. That Cabinet notes the revised approach to the methods of collecting financial contributions arising from planning obligations given the current National Planning Practice Guidance.
6. That Cabinet note the suggested approach to requests to vary existing planning obligations, including the potential payment of refunds of planning obligation funds already committed and that Cabinet delegate authority to determine if refunds of affordable housing contributions should be made on a case by case basis to the Head of Sustainable Development in consultation with the Head of Legal Services

7. That Cabinet agree to the drafting of a common planning application validation list for both Chiltern and South Bucks District Councils and authorise public consultation on the revised list once the draft has been agreed by the appropriate committees at each council.
8. That Cabinet notes the implications of the changes in national government guidance on the content of the Councils Affordable Housing SPD.

## **2. Executive Summary**

The report sets out the background to the recent changes to the Government policy on affordable housing and the levels for which planning obligations can be sought.

Following the decision by South Bucks District Council to apply a lower threshold for affordable housing contributions within its district Chiltern District Cabinet is advised to similarly decide to apply the lower threshold within the AONB which includes some larger settlements to maximise the potential amounts of affordable housing which could be sought in the district. Based on the assumption that the Councils will apply the national guidance, in terms of affordable housing thresholds, the report outlines that it would be useful to include a definition of what each council will include in any floorspace calculation. The report also indicates that part of the floorspace measure previously agreed by South Bucks is now superseded by further changes in the government guidance and should be rescinded.

A consequence of following the national policy is that the methods of collecting planning obligation funds, where these are still necessary, needs to be reviewed. The report recommends that both councils would be advised to change the collection trigger from commencement until completion of the development. This is because the NPPG states that on smaller housing sites planning obligations only trigger payments upon completion and the guidance advises a similar approach for larger schemes. The report indicates that completion would be recorded by the issuing of a Building Regulations compliance notice.

The report also sets out the approach that the Councils will adopt in the event of requests being made for variations to existing obligations, refunds of payments made and enforcing non-compliance with obligations.

A further consequence of the Government changes to national affordable housing policy is that the two Councils' validation lists are now out of date. With the movement towards a shared planning service across the two councils the report recommends the formation of a common validation list and requests both councils Cabinets to agree consultation on such a list subject to agreement by each councils own approval processes.

Finally the report indicates that as a result of the national changes in affordable housing policy the councils two Affordable Housing SPDs are now out of date. The report discusses the content of the SPDs and suggests the best approach at this time in relation to the work on the emerging local plans is to leave the SPDs in place but accept that some elements of the Council's respective guidance will be superseded by the national policy.

## **3. Reasons for Recommendations**

The recommendations set out above are regarded as being the best course of action to continue to maximise the provision of affordable housing within both district Council areas within the limitations imposed by national guidance. The recommendations are made with the aim that, if agreed, they will improve clarity for both councillors, officers and potential developers regarding the councils affordable housing approach and to avoid the council in any potentially costly legal action regarding the retention of planning obligation fees no longer required by government policy and in relation to validation requirements which are clearly out of sync with the national guidance. Finally the recommendation to retain the Affordable housing SPDs is regarded as the best course of action given that to take any other action would be time consuming with little associated benefits given that these documents will need to be re-drafted once both councils have their new local plans in place and as any future level of contributions would have to be set out in the local plans.

#### 4. Content of Report

For report see Appendix 1

#### 5. Consultation

*Not Applicable*

#### 6. Options

*All options should be identified and explored with a justification for the preferred option. This needs to relate back to the recommendation.-*

*Recommendation 1 - to note the changes in government guidance- it is important that members of both authorities are updated on the latest guidance. The alternative is to not provide members with an update on the current position regarding guidance which would mean they were possibly not aware of the implications of the changes for their respective council's affordable housing ambitions. One option would be to ignore the guidance and stick with locally adopted policy position. This would risk the likely loss of appeals and potential costs against the council's.*

*Recommendation 2 – to recommend that Chiltern District apply a lower threshold for affordable housing contributions within the AONB as allowed for in the Guidance. To not apply the lower threshold further lowers potential amounts of affordable housing and does not meet the council's objectives. Applying the lower threshold gives the councils the best opportunity within the constraints of the national guidance to increase affordable housing provision.*

*Recommendation 3 -to agree a definition of how floorspace will be measured to accord with government guidance measuring requirement - Not clarifying definition of floorspace could lead to confusion between officers and applicants, potential issues on appeal and lack of clarity. To have a precise definition avoids all those negative issues.*

*Recommendation 4 – South Bucks District to remove external floorspace requirement from its agreed definition of floorspace measurement. To keep the South Bucks approach would be contrary to the revised government guidance and potentially lead to issues at appeal and or costs being awarded against the council as its method of measuring floorspace is contrary to the national guidance.*

*Recommendation 5 - the revised approach to the methods of collecting planning obligations – the councils could continue to collect money on commencement of the development however for smaller schemes 6-10 this would be contrary to national policy and in larger schemes likely to be contrary to national guidance. It is better to have a consistent approach for all types of legal agreement covering all site sizes.*

*Recommendation 6 - note the suggested approach to refunds of planning obligation funds – the councils could consider not returning planning obligation monies. Given change in guidance this approach could face potential legal challenges and potential additional costs in defending their position. To enable each case to be considered on its merits against the advice for completing section 106 agreements it is recommended that the actual decision on making a refund is assessed on a case by case basis and that authority to do so is delegated to the head of Sustainable Development. To set up a fixed approach to allowing refunds could limit the council in resisting such refund where in an individual case part or all of the section 1086 agreement and related financial contribution is still deemed to be relevant.*

*Recommendation 7 - agree to the drafting of a common planning application validation list for both Chiltern and South Bucks District Councils – validation lists require updating to take account of changes in guidance – could continue with two separate validation lists but this would not aid future harmonisation of planning services across both councils. Could leave validation lists unchanged but this would mean they are out of date and could lead to issues in relation to validation of planning applications. To have a common validation list would simplify procedures and ensure both councils have an up-to-date-validation procedure in place.*

*Recommendation 8 - note the implications of the changes in national government guidance on the content of the Councils Affordable Housing SPD two other options are possible – could revise the SPDs this would require a full re-write and then a minimum 6 week consultation on each document. This level of work is not justified given that documents will likely be revised following adoption of new local plans for both councils or content maybe included in the local plans. Another option would be to revoke SPD however this would lose those elements of guidance which are still applicable affordable housing schemes which meet the government thresholds for contributions to affordable housing to be made. Therefore best option is to retain the SPDs whilst acknowledging some elements are superseded by Government guidance.*

## **7. Corporate Implications**

*Reports must include specific comments addressing the following implications;*

### **3.1 Financial**

*It is impossible to specify a specific figure, depending on the approach taken regarding affordable housing contributions and the views of the Government Planning Inspectors, on the effect of the NPPG on amounts of income generated for affordable housing. Off-site contributions may reduce. Additionally if the existing policy is followed in preference to the government guidance the Council may well be open to more appeals with greater resource implications and increased risk of costs and possibly special measures. However given the NPPG constrains the suggested approach it is considered overall the income from affordable housing contributions will fall for both councils.*

### **3.2 Legal**

*The councils will need to ensure that planning decisions are taken in accordance with s38(6) of the Planning and Compulsory Purchase Act 2004, which requires that the Development Plan having due regard to and weight to all other material considerations at the time including in this case, more recent government policy*

### **3.3 Social Inclusion**

*Affordable housing provision relates to all sectors of the community as such there are not considered to be any equalities implications.*

### **3.4 Sustainability**



*Provision of affordable housing is an important part of meeting local housing need and therefore a reduction in the ability to secure affordable housing will undermine deliverability of sustainable development.*

## 8. Links to Council Policy Objectives

### Vision for the Chiltern and South Bucks areas by 2026:

A wide range of high quality housing, including a good supply of affordable homes to help meet community needs and maintain our services and communities;

*Objective 1 - Efficient and cost effective customer focused services – the ability to provide affordable housing or to collect contributions towards affordable housing enables the council to focus on customers in housing need.*

*Objective 2 - Safe, healthy and cohesive communities housing people in housing need in modern affordable homes spread through the new developments enables healthy and cohesive communities and the suggested approach is the best that could be taken in the circumstances*

*Objective 3 - Conserve the environment and promote sustainability- by creating new affordable homes within new development or existing settlements the council is able to position the homes to conserve the environment and preserve sustainability.as part of its decisions on relevant planning applications*

## 9. Next Step

The decisions will formally clarify the council's current position on affordable housing schemes and the way it will handle planning obligations. This should establish the council's position until either new government guidance is issued or more evidence is available to suggest a different approach via the emerging local plan.

<p><b>Background Papers:</b></p>	<p>The Planning Practice Guidance – note is only available online and is constantly updated <i>will insert link guidance website not working this morning 21/5/15</i></p> <p><b>Chiltern District –</b>  core strategy <a href="http://www.chiltern.gov.uk/corestrategy">http://www.chiltern.gov.uk/corestrategy</a>  Affordable Housing SPD <a href="http://www.chiltern.gov.uk/ahspd">http://www.chiltern.gov.uk/ahspd</a></p> <p><b>South Bucks District</b>  Core Strategy -<a href="http://www.southbucks.gov.uk/CoreStrategy">http://www.southbucks.gov.uk/CoreStrategy</a>  Affordable housing SPD -  <a href="http://www.southbucks.gov.uk/article/3699/Affordable-Housing-SPD">http://www.southbucks.gov.uk/article/3699/Affordable-Housing-SPD</a></p> <p>- It is a legal requirement that we make available any background papers relied on to prepare the report and should be listed at the end of the report (copies of Part 1 background papers for executive decisions must be provided to Democratic Services )</p>
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Appendix 1

- 4.1 Background - On 28th November 2014 the Government made changes to the section of the National Planning Practice Guidance (NPPG) which relates to Planning Obligations. Specifically, changes were made to the thresholds at which affordable housing (and other tariff style) contributions could be sought. Further changes were made to this same section in March 2015.
- 4.2 The amendments to the NPPG (in November 2014) relate to the scale of developments from which local planning authorities require planning obligations from developers for all types of obligation. For affordable housing and/or tariff related planning obligations, new thresholds are provided. The starting point for all obligations at a national level is now schemes of 11 dwellings upwards with councils able to set a lower threshold for all planning obligation types of 5 units or less in designated rural areas. However for affordable housing contributions the guidance specifies that contributions can only be sought from 6 units upwards.
- 4.3 Designated rural areas are defined in the 1985 Housing Act. In Chiltern and South Bucks Districts the designated rural area is limited to the area covered by the Chilterns Area of Outstanding Natural Beauty (AONB). In Chiltern, the AONB covers 72% of the district and whilst most of this is outside the main built up areas the AONB does cover the built up area of Great Missenden and Prestwood. In South Bucks District the area of AONB is much less extensive with only a small rural area covered containing only 7 dwellings
- 4.4 The then Government's reason for the changes was to reduce the burden on small developers which would in turn lead them to develop more housing to meet needs and support economic growth.
- 4.5 The Government undertook a consultation on the proposed changes in March 2014. Chiltern District Council on behalf of the Bucks Authorities objected to the proposals stating that they would not produce more developments but would limit the supply of affordable housing. In Chiltern's case 97.5% of all housing permissions have come from sites under 10 units.
- 4.6 Definition of Affordable Housing Contributions- This report refers throughout to affordable housing contributions so for the purposes of this report housing contributions includes provision of affordable housing on site or an in-lieu contribution to fund the delivery of affordable housing off site. Both authorities would be seeking on-site provision on sites of more than 10 units (unless there are viability issues etc.) and financial contributions on sites of 6-10 units in AONB.
- 4.7 Legal advice - Both Chiltern and South Bucks District Councils sought legal Counsel's advice on the Governments changes to the NPPG and the potential impact the changes could have on the two councils respective Adopted affordable housing policies. (For ease of reference the two council's respective affordable housing policies are attached at Appendix 2). Counsel's opinion was obtained and following that advice Chiltern determined that greater weight should be accorded to its Development Plan Policies whereas South Bucks determined that greater weight should be accorded to the NPPG.

- 4.8 Further Government changes and ministerial announcements- since the legal advice was sought the Government has felt it necessary to make further changes to the text of the NPPG to clarify its purpose. The main changes made were to insert text to state, in several of the paragraphs changed in November, that the advice was in fact national policy. Ministerial statements further stated that the changes made to the guidance were national policy and that some councils had misinterpreted the role of the guidance. 'We have previously revised national policy on Section 106 thresholds to help small builders and to encourage empty buildings to be brought back into use. Some councils have misinterpreted the written ministerial statement of 28 November 2014, official report, column 54WS as just a change in guidance – to clarify, this was a change in national policy and we will be updating the online planning guidance/policy website to make this crystal clear' Eric Pickles Planning update 25/3/2015. In fact it has been stated that any ministerial statement made or laid down in the House of Commons is in fact national Government policy whether it appears in the national planning practice guidance or not.
- 4.9 Legal Challenge – Two Councils, West Berks Council and Reading Council, applied for a judicial review of the Government's changes to the National Planning Practice Guidance. At the time of writing this report (18-5-2015), the case had been heard by the High Court and judgment is awaited. Members will be updated verbally if the decision has been issued by the time this report is presented to members. (note if decision is known before the final reports are drafted for Cabinet the outcome of the legal challenge can be inserted before the report is published)
- 4.10 Reports to members - following the initial changes to the national guidance and the legal advice reports were made to both Councils' Sustainable Development Policy Advisory Groups (PAG).
- 4.11 SOUTH BUCKS - The report to South Bucks District Council PAG outlined the changes made to the guidance, that the NPPG would be a material consideration in the determination of developments involving affordable housing and that the decision taker would determine the weight to be given to each consideration. Therefore each decision would be made on a case by case basis with the Core Strategy and Affordable Housing SPD being the starting point. The PAG agreed with the recommended course of action and requested that all such applications should be submitted to the planning committee and not determined under delegated powers. Subsequently a report to the Cabinet repeated an outline of the main changes made and recommended that South Bucks Council applied a lower threshold for Affordable housing contributions within the AONB and set a definition for the calculation of floorspace in association with the advice in the NPPG which does not itself define how floorspace should be measured. These recommendations were agreed and it was further recommended to the Council that where officers consider a planning application should be determined on the basis that the NPPG outweighs the Council's adopted affordable planning policy such applications will be determined by the Planning Committee and not under delegated powers. Following concerns about the numbers of applications that would need to be determined by the planning committee this recommendation was not carried forward to the Council. It remains open to members who are concerned about any particular planning application where affordable housing is an issue to request that application to be determined by the Planning Committee.

- 4.12 CHILTERN - The report to the Chiltern PAG also set out the changes to the NPPG – that legal advice was that each planning application decision should be made on its merits but that strong evidence would be needed to defend application of the policy over the national guidance. The report noted that whilst the Council's approach to seeking affordable housing contributions, from every net gain in units, had been supported by an economics study this was now somewhat dated. The report outlined how the Council had spent affordable housing contributions to date, where they could be spent in future and the implications of not being able to acquire so many affordable contributions in future if the national guidance was followed. The report then set out options to either give more weight to the adopted Core Strategy: Policy or to give more weight to the guidance. Members considered that the need for affordable housing was great and that this need meant the Council should continue to apply the adopted policy and although each case would be dealt with on its merits, as it always should be, the NPPG would not automatically outweigh the policy.
- 4.13 Given the above decision to stay with the Adopted policy a report the Chiltern District Council's Cabinet was not required and as such in Chiltern's case no formal decision has been made on the application of a lower affordable housing threshold within the AONB.
- 4.14 In Chiltern's case a number of planning appeals were received in the intervening months where affordable housing was an issue. From these decisions it was clear that the Planning Inspectorate were treating the NPPG as government policy and that in their view where affordable housing issues were discussed they considered the national guidance to outweigh the policy. Following these decisions and the Government changes to the wording of the guidance it was decided that in future officers would give more weight to the NPPG. The option remains for members to call in any such application for determination by the Planning Committee.
- 4.15 Setting a lower threshold for affordable housing contributions within Chiltern District – as outlined above South Bucks have already set a lower threshold for applications involving affordable housing which fall within the AONB. Within Chiltern the extent of AONB coverage is wider and whilst it mostly coincides with the Green Belt which would limit larger developments, there are the settlements of Prestwood and Great Missenden which could potentially accommodate some schemes of 6 dwellings or more. Therefore to maximise the amounts of affordable housing that can be provided by development within Chiltern District, which accord with the national guidance, it is recommended that the Council seek to apply a lower threshold covering sites from 6 to 10 dwellings within the AONB. It should be noted that in accordance with the NPPG for the sites of 6 to 10 dwellings, affordable housing provision will have to be in the form of cash payments and not provision on site as required generally by the Council's adopted affordable housing policy (CS8).
- 4.16 Interpretation of how to measure 1000m<sup>2</sup> thresholds - the NPPG guidance states that contributions should not be sought from developments of 10 units or less and which have a maximum combined floorspace of no more than 1000sqm. The original changes in November 2014 did not define how that 1000m<sup>2</sup> should be measured. Therefore for the avoidance of doubt the South Bucks Cabinet report recommended that South Bucks should define how such floorspace would be measured by the authority. The recommendation was that floorspace would be derived by:

- a) Taking external building measurements and
- b) Including all functional spaces forming part of the development for example including basements, integral or attached garages and all detached buildings such as free standing garages or outbuildings

SOUTH BUCKS - Since the floor space measuring criteria were agreed by South Bucks District Council the Government amended the text of the NPPG in particular adding the words '(gross internal area)' at the end of the relevant text. As such part a) of the South Bucks floorspace measuring criteria is now contrary to government guidance.

BOTH COUNCILS - It is therefore suggested that for both Councils the agreed measuring of floorspace should accord with the NPPG gross internal area. It is recommended that the part b) of the South Bucks agreed measuring criterion is useful to explain what the Council will be looking to measure on any scheme and that this criterion could usefully be adopted by Chiltern District.

SOUTH BUCKS - It is therefore recommended that South Bucks District remove part a) of its floorspace measuring criterion and that

BOTH COUNCILS - both Chiltern and South Bucks adopt the part b) criterion as a guide to officers and developers on what both councils will measure on such schemes.

CHILTERN – the interpretation of 1000 m<sup>2</sup> measurement thresholds is different from the way measurements were taken in relation to the Chiltern Affordable Housing SPD. The SPD requirements used in the worked examples (Box 2) and the associated level of contributions calculated for previous applications are different to those now proposed. For the avoidance of doubt it is suggested that the proposed way of measuring floorspace will not be applied retrospectively in relation to the potential re-payment contributions which would need to be based on the original method of calculation used. Otherwise this could have unintended consequences.

- 4.17 Payments of Planning obligations – the national guidance specifically states that for schemes of 6 to 10 dwellings affordable housing contributions should be taken in cash payments to be made on the completion of the development. The guidance is less clear as to when financial contributions should be paid for schemes of 11 dwellings or more. However paragraph 19 (23b-019-20141128) indicates that agreements should include clauses within obligations stating when the local planning authority should be notified of the completion of units within the development and when payments should be paid. It also indicates that both parties may like to use the issue of a building regulations compliance certificate as a trigger for payment. Whilst this does appear to be guidance for larger sites it is considered that developers will seek to use this as policy to achieve later payments on larger schemes. Given that the Council has to use completion for payments on smaller schemes in the AONB (6-10 units) it is considered practicable to change the method of payment for all affordable planning obligations to the completion of the development and to use the Building Regulations completion certificate in the majority of cases. However, there are occasions where a developer may not finally complete a development in terms of the building regulations even though the scheme has been sold and occupied. To avoid such circumstances it is recommended that the trigger for payments from a section 106 agreement be the

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completion certificate under the building regulations or a time period of 1 year from the commencement of the development.

- 4.18 The guidance indicates councils should use model templates for Section 106 agreements to speed up the process of reaching agreements. Both Councils have their own standard templates, with the formation of a joint legal team the templates are being standardised across the two Councils and revised to reflect the changed timing of planning obligation payments.
- 4.19 Monitoring Fees – Currently Chiltern charges £150 per planning obligation as a monitoring fee. Whereas South Bucks District Council charges a 3.5% affordable housing contribution fee in addition to the planning obligation agreed sum. A recent High Court decision implied that monitoring of planning agreements was a local planning authority function and that therefore an additional charge for monitoring would have to be fully justified and show how the monitoring fee would be used to provide services over and above the council normal functions.
- 4.20 CHILTERN - The Chiltern monitoring fee was introduced alongside the adoption of the Core Strategy Policy CS8. There is no costed formula or evidence of how that figure was arrived at or indeed any evidence specifically how funds received to date have been spent. On this basis it is considered that Chiltern District should no longer charge a specific monitoring fee.
- 4.21 Where monitoring fees have already been submitted to Chiltern District Council and the planning obligation was entered into after 3rd February 2015, where requested by a developer/landowner or their agent the Council will have to refund the monitoring fee as currently the Council could not defend the need for a specific monitoring fee. It is not known how many such requests are likely to be made. However, as the fee was only £150, developers may consider that the resources they will expend in seeking such a refund will outweigh the cost of the fee itself.
- 4.22 SOUTH BUCKS - The South Bucks contribution fee is not, however, considered to be a monitoring fee and therefore subject to evidence of how it is spent could be retained. The Housing team are evaluating how the 3.5% payments to-date have been spent and also if the 3.5% figure is still appropriate. A future report will be made on this aspect and if the amount cannot be justified then a further recommendation maybe to remove the 3.5% fee from South Bucks affordable housing legal agreements.
- 4.23 Affordable housing contributions – requests for refunds and non-payment of agreed fees – The change in government guidance/policy on affordable housing contributions initially took place on the 28th November 2014 with further minor amendments and clarifications on guidance versus policy since. In the normal planning application processes for both Councils some applications had been determined before the change, some were decided after the changes and in the case of Chiltern some were agreed before or after the change subject to the signing of a legal agreement before permission can be formally given.
- 4.24 Developers and their agents, with applications in all stages of approval from those examples listed above, have sought guidance on both Councils' positions regarding the collection and need for affordable housing contributions on smaller schemes i.e. those under 11 units. Some have sought to resist agreed payments and others

have decided not to proceed with agreed legal agreements. Appeal decisions have also found in favour for developers in stating affordable housing agreements including those made as a unilateral undertaking are no longer required in relation to the national guidance.

- 4.25 Given the above circumstances there is a mixed position for applications and legal agreements which will vary on a case by case basis. As such both councils are advised that in approaching any requests for discharging planning obligations or repayments or in deciding whether to pursue any breach of an obligation that the Councils will determine such matters in accordance with the relevant tests as set out in Section 106A, in other words whether having regard to the Development Plan and all other material considerations the obligation still serves a useful planning purpose. As this will require a specific judgement on each request it is recommended that authority is delegated to the Head of Sustainable Development in consultation with the Head of Legal Services to determine the appropriateness of giving a refund on each specific request.
- 4.26 Assuming all developers who had approvals for developments, including affordable housing which now fall below the national government thresholds for affordable housing contributions, request a refund or vary their planning permissions both Councils will suffer significant losses in affordable housing funds. The full implications of this are not known at this stage. Some developers may not wish to contest the payments and in some cases developments may never have proceeded for other commercial reasons. The likely impact on both Councils' ability to further their affordable housing ambitions will be the subject of further reports once the full impacts of reduced financial funding for affordable housing become known.
- 4.27 Validation - both Councils have their own respective planning application validation lists. Both validation lists require updating to take account of the changes to affordable housing contributions and the needs for agreed planning obligations and where necessary viability assessments. In Chiltern's case for affordable housing related applications the validation list needs to be amended to require draft planning obligations prior to validation, based upon the standard templates, and in those cases where the application will not provide affordable housing in accordance with the national guidance and local policy for the developer to submit an agreed financial viability appraisal.
- 4.28 In addition to affordable housing related changes both validation lists need amendments to take account of other changes for example changes in flooding legislation and sustainable urban drainage requirements. As both Councils move towards a shared development management/development control service there is logic in creating a common validation list for both authorities. For a validation list to be formally approved it has to undergo a public consultation. Guidance on validation procedures does not set a specific period for such consultation and so it is considered appropriate to follow the advice in both Councils' Statements of Community Involvement (SCI) that all policy documents would go through a period of at least 6 weeks public consultation.
- 4.29 The approval route for the validation list is different between the two authorities however it is expected that any proposals will involve consultation with the relevant Sustainable Development PAG and the relevant Planning Committee before sign off by the appropriate Cabinet. Therefore at this stage the recommendation is for the

Cabinet to approve the drafting of a common validation list for South Bucks and Chiltern District Councils for consultation in line with the appropriate SCI requirements. The formal approval of the Local validation list to be a matter for the respective Cabinet's following consultation and consideration of the responses by the appropriate committees of each council.

- 4.30 Affordable Housing Supplementary Planning Documents – both Councils have produced affordable housing SPDs to supplement their respective Core Strategy Affordable housing policy. Both documents now contain guidance which is contrary to the current government policy. However both documents do give other advice and both give an indication of the level of contributions that should be made where a financial contribution is required.
- 4.31 CHILTERN - In addition Chiltern has an approved approach to the level of financial contributions which should form a starting point in negotiations in exceptional circumstances where an on-site provision is required by the policy but for site specific reasons is not appropriate. Where such off site provision is accepted in lieu of onsite provision the financial contribution is higher than the financial contributions from sites below 5 because the level represents the costs for the provision of units on site, as required by the Core Strategy Policy CS8.
- 4.32 SOUTH BUCKS - The South Bucks Affordable Housing SPD – sets levels for commuted sum payments for off-site provision of affordable housing. It also states that these figures will be reviewed on an annual basis and updated as necessary. The current Government guidance states that 'supplementary planning documents should not be used to add unnecessarily to the financial burdens on development and should not be used to set rates or charges which have not been established through development plan policy'. However the adopted SPD is in place and Housing officers have reviewed the figures, and although levels have altered slightly, it is not necessary to change the figures in the SPD.
- 4.33 CHILTERN - The Chiltern SPD sets a figure for off-site contributions for small schemes (i.e. those below 5 units) but as the National Government guidance precludes affordable housing contributions from sites below 6 units this is no longer applicable and the stated aim to review the figures as set out in the SPD (Box 1) is no longer necessary. Separately to the SPD Chiltern District has set a figure for provision of affordable housing in lieu of the required on-site provision from larger sites. This figure is set out on the council's website and is not part of the SPD and is used as a starting point for negotiations for off-site provision of affordable housing on the limited occasions where on site provision is accepted by the council as not being appropriate. Given the change in the NPPG it is recommended that these figures are used as a starting point to assess the financial contributions required for sites of 6 to 10 dwellings where onsite provision is no longer allowed. The wording of the adopted policy and the NPPG both allow for viability to be taken into account and the approach to in lieu contributions in exceptional circumstances provides a framework for negotiation about the level of contributions to be secured. As part of this process developers will be able to provide FVA information. This is the mechanism for linking the approach to site specific viability issues.
- 4.34 BOTH COUNCILS - Given that the respective Council's Affordable Housing SPDs provide general guidance and explanation about affordable housing and how any financial contributions may be spent, etc. it is recommended that despite elements



of the documents being contrary to government guidance they are retained on the basis that national guidance will supersede elements of the documents. Revised guidance in the form of new SPD's or local plan policy can be provided once the two districts affordable housing needs have been set as part of the assessment of objectively assessed housing needs for their respective emerging Local plans and once housing need evidence has been incorporated in the local plan process new affordable housing policies will be developed in the light of the government guidance in place at the time.

## Appendix 2

### Chiltern District and South Bucks District Adopted Affordable Housing Policies

#### Chiltern District Council

Chiltern's Affordable housing policy is contained within its adopted Core Strategy. The Core Strategy was adopted in November 2011

#### **POLICY CS8: AFFORDABLE HOUSING POLICY**

The Council will aim to achieve the following targets for the provision of affordable housing.

In new developments which contain 15 dwellings or more, at least 40% of dwellings within the development shall be affordable. In developments with less than 15 dwellings, there should be:

- At least four affordable housing units on sites which have 12 to 14 dwellings;
- At least three affordable housing units on sites of 10 or 11 dwellings;
- At least two affordable housing units on sites of 8 or 9 dwellings;
- At least one affordable housing unit on sites of 5 to 7 dwellings;
- On sites of 1 to 4 dwellings, a financial contribution for each new dwelling towards the provision of affordable housing elsewhere in the District.

The Council recognises that there will be occasions where it is not financially viable for developers to meet the targets in this policy. Where these targets cannot be met the Council will require clear evidence to demonstrate why it is not viable to do so. The Council will review this evidence and where appropriate will negotiate with the developer to establish the affordable housing content or contribution that can be secured without the scheme viability being compromised.

On rural exception sites as described in Policy CS9, all the dwellings must be affordable.

#### South Bucks District Council

South Bucks affordable housing policy is contained within its adopted Core Strategy. The Core Strategy was adopted in February 2011.

#### **Core Policy 3: Affordable Housing**

**350-500 affordable dwellings will be provided in South Bucks District between 2006 and 2026.**

**At least 40% of all dwellings in schemes of 5 units and above (gross), or on sites of 0.16 hectares and above (where there is a net gain in the number of dwellings) should be affordable, unless it is clearly demonstrated that this is not economically viable. The Council will seek affordable housing on smaller sites where these could reasonably form part of a larger developable area.**

**On qualifying sites, about two thirds of the affordable units provided should be social rented, with the remainder as intermediate affordable dwellings. The precise**

**tenure split will vary from place to place, and should reflect the evidence in the latest SHMA.**

**Affordable housing should normally be provided on-site. However, where there are sound planning or other reasons, and the developer and Council agree, a financial contribution (or off-site provision) in lieu of on-site provision, may be acceptable. In addition, a partial commuted payment will be sought on sites where, by virtue of the number of dwellings proposed, it would not be possible to deliver 40% affordable housing on-site.**

**The development of small scale sites for 100% affordable housing within or adjacent to villages within designated parishes ('Rural Exception sites') will be supported in principle, where there is a demonstrable local need for such dwellings, and local community support.**

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