ENVIRONMENT OVERVIEW AND SCRUTINY PANEL – 13 SEPTEMBER 2013
COMMUNITY OVERVIEW AND SCRUTINY PANEL – 17 SEPTEMBER 2013

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CONTRIBUTIONS REQUIRED TO SUPPORT PLANNING APPLICATIONS AND HOW VIABILITY ARGUMENTS ARE ADDRESSED

1. INTRODUCTION

This report will identify what Section 106 contributions are required to support planning applications, and the policy background that supports such requests. It will then consider the government and other advice that applies before running through some worked examples taken from recent cases to show how viability arguments are considered in line with the latest Royal Institute of Chartered Surveyors (RICS) Guidance Note.

2. WHAT CONTRIBUTIONS ARE REQUIRED

The main contributions collected are in respect of affordable housing, transportation and open space. These are all required as a result of locally adopted Core Strategy Policy CS15 regarding Affordable Housing and CS25 concerning other contributions, notably highways and open space. Policy CS25 states that economic viability considerations will be taken into account, Policy CS15 notes that where viability issues are raised they can be negotiated, based upon either the tenure or quantum of the affordable housing proposed. Extracts from
the Plan are attached as Appendix One.

3. NATIONAL PLANNING GUIDANCE

The National Planning Policy Framework (NPPF) sets out the government's overall position and creates a strong emphasis in favour of development, given the overall social, financial and environmental benefits it can bring. Paragraph 173 notes that viability and costs are an important consideration in plan making, to ensure that sites are not overburdened to the extent that their ability to be developed is threatened. It states:

"The costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal costs of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable"

In terms of dealing with applications, Paragraphs 203 to 206 of the NPPF consider conditions and contributions, or obligations as the document calls them, and notes that they must be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind. In particular:

"Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, whenever appropriate, be sufficiently flexible to prevent planned development being stalled."

In April 2013 the government provided advice on Affordable Housing Requirements in terms of review and appeal. While not strictly relevant to the processing of more routine planning applications, the advice is considered applicable in terms of the government's wider position. The first paragraph talks about the positive approach to be applied to bring development forward whenever possible and how the planning system ought to:

"Proactively drive and support sustainable economic development"

Specific advice is provided on viability with the key test being that:

"The current cost of building out the site is at a level that would enable the developer to sell all the market units on the site at a rate of build out evidenced by the developer, and make a competitive return to a willing developer and willing landlord"

If this is not the case, when contribution requirements are applied, the developer must demonstrate why viability is an issue through the submission of clear, up to date and appropriate evidence.

Since the publication of the NPPF in March 2012 and in line with the direction of travel evident in the later documents, the government's announcements and actions have reinforced the overall position about positive planning and there is evidence that the Planning Inspectorate are allowing more planning appeals than used to be the case, including those when viability is an issue. Further specific guidance on contributions and viability has been promised, but in its absence specific reference needs to be made to the latest Royal Institute of Chartered Surveyors Guidance.

4. ROYAL INSTITUTE OF CHARTERED SUREVEYORS GUIDANCE

The Royal Institute of Chartered Surveyors produced guidance on financial viability in planning in 2012. The document was produced by a working party with representatives from the industry, government and the public sector. Its aim is to provide a definitive and objective methodology framework and set of principles that can be applied to development management.

It provides

"An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations whilst ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer on delivering that project"

The guidance contained is used by the Council when considering Financial Viability Assessments. It should be noted that in advising planning and the Planning Development Control Committee the Council's Valuers do not simply use the information provided by a developer but undertake their own independent viability assessment that they can advise on at Committee and defend at appeal.

The main inputs to a viability assessment undertaken using the RICS Guidance are:

- Scheme details including floor areas / site area etc
- Forecast Gross Development Value
- Agent's Selling / Letting fees of completed development
- Forecast construction costs including external works
- Abnormal development costs if any
- Sustainability allowance for building to Code Level 4
- Demolition costs if any

- Building contingency
- S106 Contributions
- Professional fees including Architect, QS, CDM etc
- Local Authority fees including Planning and Building Control
- Planning consultancy fees••
- Land acquisition fees
- Stamp duty on land purchase
- Valuation and survey fees
- Interest Charges on cost of purchasing land
- Interest Charges on construction costs
- Interest charges incurred during forecast selling period
- Bank loan set up fees
- Legal fees on acquisition and disposal
- Developers profit & overhead
- Existing Use Value

From the above it is quite clear that the government's pro- active stance with regard to development influences their position regarding development viability, and that where it can be shown that a development cannot afford to pay contributions permission should not be refused. The reasons development cannot afford contributions fall into certain broad categories, notably relating to existing site value, development costs and likely sales prices. These are all considered in more detail in the following Case Studies.

5. CASE STUDIES

The Case Studies set out in Appendix Two identify why contributions were not sought in these particular instances. They are attached to show general issues rather than site specific considerations.

Case Study One - High Existing Site Value.

Development entailed the purchase and demolition of a detached family dwelling on a generous plot in a popular location.

Case Study - Two High Development Costs

Development on a plot with trees required a special construction technique to protect tree roots.

Case Study Three - Insufficient End Value of Proposed Development

The property was to be built on garden land but the final value did not create enough return to pay the Affordable Housing Contribution.

Answers to frequently asked questions regarding viability are provided in Appendix Three. These provide a further insight into development viability and the factors that influence whether contributions can be secured.

6. FINANCIAL IMPLICATIONS

The collection of contributions required to offset the impact of development help support the Council's overall aims in terms of the provision of Affordable Housing, Open Space and

Highways improvements. It is also important that the collection of funds is maximized, having taken viability issues into account as required.

7. CRIME AND DISORDER IMPLICATIONS

None

8. EQUALITY AND DOVERSTIT IMPLICATIONS

None

9. CONCLUSIONS

Viability is a key issue in the planning process and, while at first sight, it may appear extremely unreasonable that a site cannot pay its way and fund the necessary contributions, experience shows that a variety of factors can unfortunately lead to this being case. A model exists for determining viability issues and it is rigidly applied by this Council, using its own in-house professional expertise. All decisions on viability are ultimately taken by the Planning Development Control Committee and comprehensive information is available to them on the day, with the Valuers present to explain their position.

It is clear that viability issues require a methodical and structured approach, based on high-level professional knowledge, and that this means the answers are carefully weighed. This work, of necessity, takes into account case specifics and frequently requires obtaining additional information as well as challenging and clarifying information submitted. Our Valuers carry out their own research on appraisal inputs in order to secure an objective approach.

10. RECOMMENDATION

That the Community and Environment Overview Panels consider the contents of the report and decide if they wish to convene a task and finish group to look into these issues in more detail.

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Background Papers:

Relevant Government Advice

NFDC Core Strategy

RICS Guidance Note re viability in planning

Appendix One

Policies CS15 and CS25 of the NFDC Core Strategy

Policy CS15 Affordable housing contribution requirements from Developments

Private developments creating new dwellings will be required to contribute towards the provision of affordable housing by making provision as set out below, under one of requirements (a) to (d). Affordable housing provision will not be required where the development is:

- **a single replacement dwelling**
- **an agricultural/ forestry workers dwelling or commoners' dwelling (but the removal of an occupancy condition will require an affordable housing contribution)**
- **the conversion or subdivision (without significant extension) of an existing dwelling**
- **a residential redevelopment scheme for 4 or less dwellings, involving the demolition of at least 1 dwelling, and where the site size is smaller than 0.1 hectare.**

(a) On greenfield housing site allocations (except for those covered by (b) below) the target is 50% affordable housing, of which 35% of the total dwellings will be social rented housing and 15% of the total dwellings will be intermediate housing. At least 50% of the affordable dwellings provided should be family housing.

(b) On greenfield housing sites released specifically to meet an identified local need for affordable housing which will not otherwise be met (under Policy CS12), the target will be a minimum of 70% affordable housing. The development should provide a minimum of 40% social rented housing and 30% intermediate affordable housing. The remainder of the site should be developed for low-cost market housing which could include starter homes, self-build units and extra-care housing. At least 50% of the affordable dwellings provided should be family housing.

(c) Within the defined settlements of Lymington, Everton, Hordle and Milford-on-Sea and Bransgore, the target is for 50% of all new dwellings on the site to be affordable housing, of which 35% of the total dwellings will be social rented housing and 15% of the total dwellings will be intermediate housing.

(d) Within the other defined towns and villages[3], the target is for 40% of all new dwellings to be affordable housing, of which 25% of the total dwellings will be social rented housing and 15% of the total dwellings will be intermediate housing.

Provision will normally be made on site. The affordable housing should reflect the type and size of the development as a whole, and should include family housing if that is provided as part or all of the market provision.

Where it can be demonstrated that provision of the target level of social rented and/or intermediate affordable housing is not economically viable the Council will: First, seek to maximise the potential for affordable housing contributions from that development by allowing a higher proportion of intermediate housing to be provided to meet the overall housing target; Second, seek to negotiate a percentage of affordable housing as close as possible to the target level set in this policy, having regard to a site specific economic viability assessment.

In the following circumstances the affordable housing contribution may be made by payment of a fixed affordable housing contribution/ tariff rather than on site provision. This will be additional to any other planning charges or tariffs (including Community Infrastructure Levy) required by the development.

- **On developments of 4 or less dwellings in the defined built-up areas of Totton, Hythe, Lymington, New Milton and Ringwood;**
- **On developments of 1 or 2 dwellings in all other defined settlements.**

The contributions will be used to enable additional affordable housing provision on alternative sites, or to subsidise the provision of social rented housing on sites where social rented housing cannot be achieved without public subsidy.

In settlements where the site size threshold for affordable housing provision had previously been set at 15 or more dwellings[4], on developments of 14 or fewer dwellings,

the above affordable housing contributions will be applied subject to a 50% discount in the affordable housing provision required until 31 December 2010.

7.3.20 Sheltered housing and extra care housing[5] all come within the scope of this policy.
7.3.21 A Supplementary Planning Document on Affordable Housing requirements and mechanisms will be produced to give detailed guidance on the implementation of this policy.

Policy CS25 Developers' contributions

Development proposals will be required to provide, or meet the reasonable costs of providing, the on-site and off-site infrastructure, facilities and/or mitigation necessary to make a development acceptable in planning terms, including the mitigation of the effect of cumulative developments.
Where the provision or improvement of infrastructure or other works or facilities is needed to meet community or environmental needs associated with new development or to mitigate the impact of development on the environment or existing communities, standard charges and/or standard formulae as appropriate may be imposed for the payment of financial contributions towards such infrastructure, works or facilities to ensure that all such development makes an appropriate and reasonable contribution to the costs of provision.
Where standard charges and/or standard formulae have been set in other Local Development Documents, the requirement to pay such charges may be reassessed in cases where actual provision of such infrastructure, works or facilities normally covered by standard charges is provided as part of the development proposal.
Provision may be required for subsequent maintenance where contributions are secured for facilities which are predominantly for the benefit of users of the development concerned.
The mechanism by which developers' contributions are achieved will be reviewed in the light of changes in national policy. Tariff-based approaches and, subject to legislation, the Community Infrastructure Levy will be considered where this would simplify procedures and better ensure the provision of necessary social, physical and green infrastructure.
In implementing this policy regard will be had to economic viability considerations, consistent with meeting the Core Strategy Objectives.

Appraisal Summary — **Case Study 1 - Affordable Homes Contribution Not Possible Due to Insufficient End Value of Proposed Development.**

Site Address: Land Adjacent 8 Sandilands Way, Hythe, SO45 3HH
Description of Development: New 3B Detached House on Existing Estate.

Forecast Revenue			
Gross Value of Completed Development			200,000
Costs of Selling Completed Development	3,300		
Net Proceeds of Development			196,700
Forecast Development Costs			
Main Build Cost	111,052		
Site Prep, Services and Landscaping etc	6,500		
Extra-over cost allowance for Code Level 4	4,886		
Building Contingency	3,673		
Public Open Space Contribution	3,504		
Transport Contribution	3,745		
Affordable Homes Contribution	25,070		
S106 Legal Fees (both parties)	1,000		
Professional & Planning Fees	13,596		
Interest Charges on Construction Cost	1,700		
Land Acquisition Costs	900		
Funding & Interest Charges on Land Cost	375		
Interest Charges During Sales Period	1,342		
Total of forecast development costs		177,344	
Developers Profit at 15% GDV		30,000	
Total of Development Costs & Profit			207,344
Sum available for Land Purchase			-10,644
Existing Use Value of Garden Plot			10,000

Appraisal Summary

Case Study 2 - Affordable Homes / S106 Contributions Not Possible Due to Abnormally High Development Costs.

Site Address:	Land Adjacent 10 Linford Close, New Milton		
Description of Development:	New 3B Detached House in Wooded Setting		
Forecast Revenue			
Gross Value of Completed Development			400,000
Costs of Selling Completed Development	8,000		
Net Proceeds of Development			392,000
Forecast Development Costs			
Main Build Cost	200,000		
Site Prep, Services and Landscaping etc	16,000		
Tree Related Abnormal Dev Costs	46,030		
Extra-over cost allowance for Code Level 4	10,900		
Building Contingency	7,861		
Public Open Space Contribution	3,504		
Transport Contribution	3,745		
Affordable Homes Contribution	36,720		
S106 Legal Fees (both parties)	1,000		
Professional & Planning Fees	20,985		
Interest Charges on Construction Cost	3,603		
Land Acquisition Costs	750		
Funding & Interest Charges on Land Cost	413		
Interest Charges During Sales Period	0		
Total of forecast development costs		351,510	
Developers Profit at 15% GDV		60,000	
Total of Development Costs & Profit			411,510
Sum available for Land Purchase			-19,510
Existing Use Value of Garden Plot			12,500

Appraisal Summary **Case Study 3 - Full Affordable Homes Contribution Not Possible Due to High Existing Use Value (EUV)**

Site Address:	7-9 Belmore Lane, Lymington		
Description of Development:	Conversion of existing pair of Semi-detached houses to 6 flats		
Forecast Revenue			
Gross Value of Completed Development			992,500
Costs of Selling Completed Development	18,369		
Net Proceeds of Development			974,131
Forecast Development Costs			
Main Build Cost	256,854		
Site Prep, Services and Landscaping etc	0		
Extra-over cost allowance for Code Level 4	0		
Abnormal Development Costs	0		
Building Contingency	0		
Public Open Space Contribution	0		
Transport Contribution	4,390		
Affordable Homes Contribution	5,000		
S106 Legal Fees (both parties)	0		
Proffesional & Planning Fees	25,548		
Interest Charges on Construction Cost	4,236		
Land Acquisition Costs	7,500		
Funding & Interest Charges on Land Cost	15,000		
Interest Charges During Sales Period	7,542		
Total of forecast development costs		326,070	
Developers Profit at 15% GDV		148,875	
Total of Development Costs & Profit			474,945
Sum available for Land Purchase			499,186
Existing Use Value of Existing Pair of Houses			500,000
Surplus / Deficit			-814

RS106 Viability - Some FAQ's Answered from a Practical Valuation Perspective

Q) What makes S106 Payments Possible?

A) The ability to obtain S106 payments depends up the creation of additional land value over and above Existing Use Value (EUV) through the grant of planning permission.

Q) How is Existing Use Value Assessed?

A) The EUV is normally what a property could be sold for in its entirety in the open market with the benefit of its existing planning consent (disregarding potential alternative uses). In circumstances of a partial sale of property (as is often the case with garden land), EUV may be recognised as a sum representing the depreciation in value of the retained property if this is greater than what could be achieved by selling the surplus land in the open market for its current use.

Q) How is S106 'Affordability' Assessed?

A) Through preparing a Financial Viability Assessment (FSA). The total forecast costs of creating the development (plus developers overhead / profit) are subtracted from its forecast end value. This is known as Residual Valuation methodology. If the resulting sum is above the EUV there is potential to meet all or part of the target S106 obligations.

Q) Should land owners receive an incentive above EUV in order to motivate them to sell the land for development?

A) In view of the political desire to stimulate development an incentive is frequently allowed over and above EUV to land owners in order to drive forward the release of land for development, this is evidenced in appeal decisions; however there is no set percentage allowance above EUV. At NFDC we are not automatically making allowances for an incentive in our appraisals, this is assessed on the desirability of the development and the specific circumstances of the case.

Q) Isn't it the high level of developer's profit that has prevented payment of S106 contributions?

A) The amount allowed for profit, as with various other development appraisal inputs, is guided through appeal decisions and generally accepted practice. However, profit levels also vary according to the level of perceived risk and uncertainty involved in undertaking the development. The profit is not clear profit, but includes the developers' overheads incurred in running their business.

Q) Is an obligation to provide on-site Affordable Homes more or less viable than cash payments for off-site provision?

A) In some cases, such as with small developments of 'high end' dwellings or good quality flat developments an obligation to provide on-site Affordable Homes may have a greater impact on scheme viability than off-site cash contributions, furthermore such developments may struggle to provide dwellings that are suitable for Affordable Housing on the grounds of construction cost. In cases where policy requirements for on-site provision cause a scheme to become unviable, it may be considered appropriate for the development to be re-assessed on the basis of an off-site cash AH contribution in lieu of on-site provision or for there to be a combination of the two.

Q) What are the key factors that help or hinder making S106 Contributions Affordable?

A See the table below:

Factors that Aid Development Viability	Factors that Inhibit Development Viability
Low Existing Use Value e.g.: Garden Land	High Existing Use Value e.g.: Needing to demolish existing dwellings
Problem Free Development e.g.: Green field nearby existing services	Abnormally High Development Costs e.g.: Contaminated land requiring remediation, poor ground conditions, high service connection costs, trees, poor access etc, etc.
High End Value relative to costs. e.g.: Site is located in desirable area	Low End Value relative to construction costs. e.g.: Site is located in relatively low value area.
Normal Risk levels.	Additional Risk factors. e.g.: Poor economic conditions mixed residential / commercial development, uncertainty concerning end value and selling period. This is reflected in developers profit / bank lending requirements.
A combination of the above	A combination of the above