

To: Council

Date: 23 September 2015

Report of: Head of Planning and Regulatory

Title of Report: Affordable Housing contributions in the light of the successful legal challenge to the Planning Practice Guidance

Summary and Recommendations

Purpose of report: To confirm how affordable housing contributions will be sought in the light of the successful legal challenge to parts of the Planning Practice Guidance on 31 July 2015

Report Approved by: David Edwards, Executive Director of Regeneration and Housing

Finance: David Watt

Legal: Michael Morgan

Policy Framework: Relating specifically to Policies HP3 and HP4 of the adopted Sites and Housing Plan

Recommendation(s): That Council:

1) Acknowledges that the *West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin)* judgement of 31 July 2015 quashes paragraphs 012-023 from the Planning Practice Guidance: Planning Obligations and declares the related Ministerial Statement of 28 Nov 2014 to be immaterial for planning purposes.

2) Notes that from 31 July 2015 the Council is applying Sites and Housing Plan Policies HP3 and HP4 in their entirety and with full weight

Main matters

1. On 28th November 2014, the Government made amendments to the Planning Practice Guidance (PPG). These changes affected the ability for the Council to apply Sites and Housing Plan policies HP3 and HP4 in their entirety and meant that:

- the City Council could not seek contributions towards affordable housing from sites of 10 or fewer dwellings and which have a maximum combined gross floorspace of no more than 1000sqm; and
 - that applicants could net off existing vacant building floorspace on the site from any affordable housing contribution required from larger sites, known as the 'Vacant Building Credit'.
2. A report was brought to Council on 2nd February 2015 to explain this and to clarify the Council's approach. That Council report also indicated at paragraph 9 that "*The Council consider this to be a hiatus from the requirement for these financial contributions and should the Government's position change again, or other material changes take place, then the City Council may review this approach and revert back to applying HP4 in its entirety.*"
 3. There has now been a material change in circumstances. West Berkshire District Council and Reading Borough Council legally challenged the Department for Communities and Local Government on these changes to the PPG and on 31st July 2015 the judgement *West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government [2015] EWHC 2222 (Admin)* was published. The judgement is not appended to this report as it is a 51 page document but it is public available on the British and Irish Legal Information Institute website here <http://www.bailii.org/ew/cases/EWHC/Admin/2015/2222.html>
 4. In summary, the judge upheld the grounds of challenge made by the two Councils and quashed the relevant sections of the PPG (Planning Obligations paragraphs 012-023) and declaring the preceding Ministerial Statement of 28 Nov 2014 to be immaterial to the exercise of planning functions. The paragraphs of the PPG have now been removed from the Government website.

In determining planning applications

5. The effect of the judgment is that from 31st July 2015 the approach to the determination of applications (and all other planning functions) is as it was before the making of the Ministerial Statement and the alterations to the PPG. The City Council must now revert back to applying Policies HP3 and HP4 in their entirety.
6. This applies to every application that has not yet been determined by the despatch of a decision notice. The prospect of a Government appeal does not change this. The Council has to determine applications on the basis of the situation as it is when the determination is made.

In relation to recent determinations

7. If an application was refused for non-HP3 or HP4 reasons (highways safety, design, principle of development etc.) and it is being appealed, and HP3 or HP4 now applies and would also justify refusal it will be raised with PINS at the earliest opportunity and should be considered by the Planning Inspector.

Legal issues

8. The quashing of parts of the PPG and the Ministerial Statement does not alter the core approach to determining planning applications in accordance with the Development Plan unless material considerations indicate otherwise (under s38(6) of the Planning and Compulsory Purchase Act 2004).

Financial Issues

9. Endorsing this approach is likely to result in an increase in financial contributions towards affordable housing. At this stage it is difficult to predict the likely additional contributions that will be received because the decision of whether or not to pursue a current qualifying applications and the decision to submit a new qualifying planning application is led entirely by the developer or applicant. The level of affordable housing contributions received is monitored through the Annual Monitoring Report.

Name and contact details of author: Laura Higgins lhiggins@oxford.gov.uk
01865 252173

Background papers: none

This page is intentionally left blank