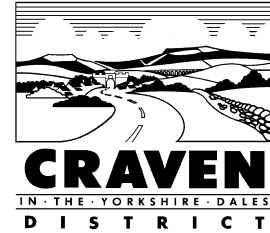


**Planning Committee: 20<sup>th</sup> October 2014.**

## **REVIEW OF AFFORDABLE HOUSING REQUIREMENTS**



Report of the Development Control Manager.

Ward(s) affected: All

### **1. Purpose of Report –**

1. To update Members in relation to changes introduced by the Growth and Infrastructure Act relating to the review of s106 Agreements.
2. To seek an amendment to the Scheme of Delegation to grant delegated authority for the Strategic Manager for Planning and Regeneration to determine any such applications in consultation with the Chair of Planning Committee (or Vice Chair in the absence of the Chair).

### **2. Recommendations –**

Members are recommended to:

- 2.1 Note the procedure under s106BA of the Town and Country Planning Act 1990 to review s106 Agreements.
- 2.2 To grant delegated authority to the Strategic Manager for Planning and Regeneration in consultation with the Chair of Planning Committee (or Vice Chair in the absence of the Chair) to determine applications under s106BA of the Town and Country Planning Act 1990 and any consequential applications to vary affordable housing conditions.

### **3. Review and appeal procedure in relation to s106 affordable housing requirements**

#### **Background**

- 3.1 Members will be aware that the Government is keen to encourage development to come forward, to provide more homes and to promote construction and economic growth.
- 3.2 In response to concerns that unrealistic requirements in s106 Agreements is an obstacle to house building, the Growth and Infrastructure Act inserts new sections 106BA, BB and BC into the Town and Country Planning Act 1990. These sections introduce a new application and appeal procedure for the review of planning obligations on planning permission which relate to **affordable housing**.

- 3.3 The application and appeal procedure will assess the viability of affordable housing requirements only; it does not open any other planning policy considerations or review the merits of the scheme.
- 3.4 Affordable housing obligations on sites granted in accordance with a Rural Exceptions Site policy are exempt from this procedure.
- 3.5 An application can be made under s106BA as soon as a s106 Agreement has been agreed.
- 3.6 A copy of the Department for Communities and Local Government Guidance "Section 106 affordable housing requirements" is attached at **Appendix A**.

### **Viability Test**

- 3.7 The obligation is on the applicant to establish to the Local Planning Authority that the affordable housing obligations as currently agreed makes the scheme unviable in current market conditions.
- 3.8 The test for viability is that the evidence indicates that the **current** cost of building out the entire site (at today's prices) is at a level that would enable the developer to sell all the **market** units on the site (in today's market) at a rate of build out evidenced by the developer, and make a competitive return to a willing developer and a willing landowner.

### **Application and Evidence**

- 3.9 An application is made to the Local Planning Authority. The application should be in writing (no prescribed form) and should contain the following information;
- i. a description of the land to which the application relates;
  - ii. the nature of the applicant's interest in the land;
  - iii. a status report on progress of the development;
  - iv. the original s106.
- 3.10 The applicant will need to submit clear up to date evidence that the affordable housing element of the existing s106 Agreement means that the scheme is unviable. Where possible this should take the form of an open book review of the original viability appraisal (where submitted) and identify how and why the original proposals are not viable in current market conditions.
- 3.11 A list of potentially relevant key variables is set out in Annex A to the Guidance (provided at Appendix A).
- 3.12 The applicant must also provide a revised affordable housing proposal (which could be nil) based on viability.
- 3.13 The Local Planning Authority has 28 days to determine the application unless both parties agree in writing to extend this period.

### **Determination**

- 3.14 Determination is based solely on viability.
- 3.15 In considering any application the Local Planning Authority can undertake its own viability appraisal or comment on the evidence that has been submitted. It is anticipated that in most circumstances detailed consideration of the viability appraisal submitted in support of the application and commentary by a valuation surveyor on behalf of the Local Planning Authority will be appropriate.
- 3.16 If the Local Planning Authority agrees with the revised proposal the obligation is modified once written notice is given. There is no need for a new s106 or Deed of Variation.
- 3.17 A determination can be time limited. On successful appeal any relaxation will be valid for 3 years.

### **Appeal**

- 3.18 There is a right of appeal by the applicant to the Secretary of State where the Local Planning Authority does not agree with the revised proposal for affordable housing or does not determine the application.

## **4. Scheme of Delegation**

- 4.1 Members will note that the assessment of the application is based solely on viability and the Local Planning Authority has only 28 days to make a determination. An amendment to the Scheme of Delegation is sought to grant delegated authority to the Strategic Manager for Planning and Regeneration in consultation with the Chair of Planning Committee (or Vice Chair in the absence of the Chair) to determine applications under s106BA of the Town and Country Planning Act 1990 and any consequential applications to vary affordable housing conditions.

## **5. Implications**

- 5.1 Financial Implications** – None directly.
- 5.2 Legal Implications** – None other than as set out by this report.
- 5.3 Contribution to Corporate Priorities** – The provision of affordable housing is a corporate priority; however this priority is not relevant to this decision that has to be made purely on the viability of the development proposal.
- 5.4 Risk Management** – None, although a decision to refuse consent has to be fully justified otherwise there is a risk of an award of costs against the Council.
- 5.5 Equality Impact Assessment:** -

The Council's Equality Impact Assessment Procedure **has not been** followed. Therefore neither an Initial Screening or an Equality Impact Assessment has been undertaken on the proposed policy, strategy, procedure or function to identify whether it has/does not have the potential to cause negative impact or discriminate against different groups in the community based on •age • disability •gender • race/ethnicity • religion or religious belief (faith) •sexual orientation, or • rural isolation.

**6. Author of the Report –**

Lisa Lord – Solicitor, x 46314

Ian Swain – Development Control Manager, x46465

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

**7. Appendices –**

Appendix A -

Department for Communities and Local Government Guidance "Section 106 affordable housing requirements