

**Bolsover District Council**

**Planning Committee**

**5th April 2017**

**Best Practice approach towards S106 Financial Contributions**

**Report of the Joint Assistant Director of Planning and Environmental Health**

**Purpose of the Report**

- To promote and encourage best practice with regard to early member engagement in respect of development proposals that would normally be expected to make a financial contribution towards infrastructure in the District.

**Report Details**

**1. Background**

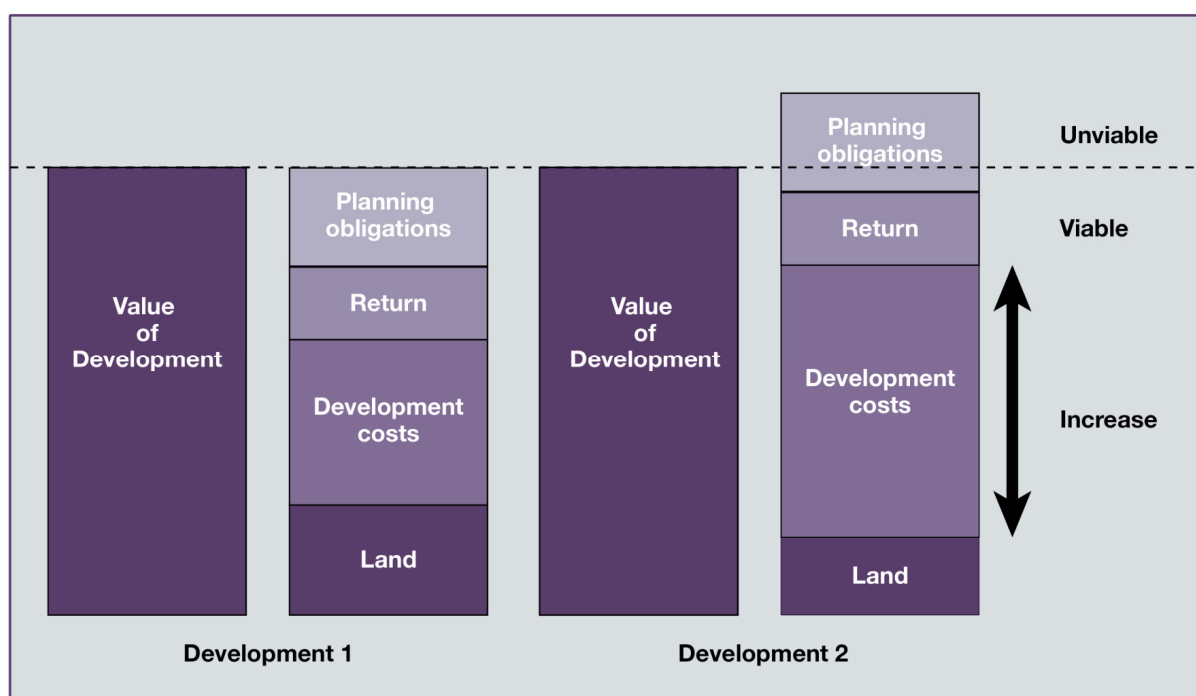
- 1.1 Delivery of new residential development is needed in the District to support growth and meet housing need. The emerging Local Plan says that to meet the objectively assessed housing needs of the District over the next fifteen years: delivery of a minimum of 3,600 dwellings is required. This means around 240 new homes will need to be completed in the District each year over fifteen years if the figures in the emerging Local Plan were to be adopted.
- 1.2 New infrastructure is needed to support this level of growth and accommodate the scale of residential development needed in the District. The need to bring forward this amount of residential development across the District will also put extra pressure on the District's existing infrastructure. There is an expectation residential development will make financial contributions towards new infrastructure through planning obligations secured by a s.106 legal agreement.
- 1.3 The emerging Local Plan says financial contributions (by way of planning obligations) will be sought where the implementation of planned for residential development would create a need to provide additional or improved infrastructure, amenities or facilities or would exacerbate an existing deficiency. The emerging Local Plan goes on to say contributions, where they are necessary and relevant, will be sought towards the delivery of physical infrastructure such as highway improvements; social infrastructure such as health, education and community facilities; and green infrastructure
- 1.4 However, where the need for infrastructure and other requirements arising from development is proven to exceed that which can be viably funded through the development, priority will be determined by the District Council based on the

importance of the infrastructure and other policy requirements with regard to the viability and deliverability of housing schemes.

## 2. Current Position

- 2.1 House prices in Bolsover District remain below the national average and many sites in the District are difficult to build out, which often leads to high development costs relative to the market value (estimated selling prices) of a proposed housing scheme. Figure 1 (below) shows two scenarios. The first pair of columns shows where the sales value of a development proposal is equal to the cost of development, including all requested financial contributions. In this scenario the development would remain viable whilst making financial contributions towards infrastructure.

Figure 1: Viability Model



- 2.2 The second pair of columns shows that where development costs are higher: a scheme might not be able to make all requested financial contributions towards infrastructure and remain viable. This second scenario indicates that any requirements for financial contributions towards infrastructure will need to be reduced where a development has high development costs if it is to remain viable, and therefore deliverable.
- 2.3 There have been a number of recent examples where officers have been faced with this second scenario where development that is otherwise acceptable in planning terms has not been sufficiently viable to make all requested financial contributions. Recent examples include the proposals for 47 houses at Hill Top, Shirebrook and the proposals for 250 houses on land off Blind Lane, Bolsover.
- 2.4 In these types of cases, officers often need to make a planning judgement on whether to recommend approval of residential development that cannot make all

requested financial contributions, including assessing which type of contributions to prioritise, on a case by case basis. These types of cases are always brought to the Council's Planning Committee for a final decision not least because these applications will often be of strategic importance to the Council. The key issues in the determination of these applications often rest on the provisions of **Paragraph 173 of the National Planning Policy Framework: Ensuring viability and deliverability.**

- 2.5 Paragraph 173 of the Framework: Ensuring viability and deliverability says that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened.
- 2.6 Paragraph 173 of the Framework goes on to say to ensure viability, 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 cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.
- 2.7 Therefore, national planning policies prioritise viability and delivery and where the need for infrastructure and other requirements arising from development is proven to exceed that which can be viably funded through the development; officers seek agreement from the Council's Planning Committee in terms of how contributions towards infrastructure and other policy requirements should be prioritised when recommending approval of these types of schemes.
- 2.8 This approach is consistent with policies in the emerging Local Plan other than once the emerging Local Plan has been adopted: the need for contributions towards infrastructure will continue to be assessed on a case by case basis but will be guided by the latest version of the **Council's Infrastructure Study and Delivery Plan**. In the interim period, there are a number of potential problems with the current approach.
- 2.9 In particular, whilst officers will always seek to get the most for the District from any development proposal; many members might not be aware of the issues involved until the application gets to Planning Committee. This can lead to difficulties at Committee if the officer recommendation is not accepted, for example, which may mean that development proposals may need to be reassessed at a very late stage in the process, which in turn can result in decisions being delayed or an officer recommendation being overturned.
- 2.10 Whereas members are always entitled to disagree with an officer recommendation based on the individual planning merits of a particular application, the Council should provide a framework within which decisions on planning applications can be made with a high degree of predictability and efficiency. This means that it is generally best practice to ensure that there are 'no surprises' at the Committee stage for applicants, officers or members and one way to help achieve this objective is to promote member involvement in major applications at an early stage.

### 3. Member Involvement

- 3.1 Promoting early member engagement with major applications should help officers to **maximise community benefits** and minimise adverse impacts of development on the local community by gaining a better understanding of the issues that matter most to local residents. In particular, early engagement should improve the ability of members to influence development proposals and guide officer negotiations especially where priorities need to be agreed with developers. Members would also have an opportunity to raise issues that are of particular interest or concern to the local community at an early stage.
- 3.2 Developers would also gain more confidence to bring schemes forward, if they gained more certainty as to what members are looking for at an early stage. Understanding which way members would be pre-disposed towards a proposal helps to **'de-risk'** development by reducing the potential for overturns at Planning Committee and by helping to avoid delays resulting from deferrals and re-consultation. Understanding members concerns and priorities at an early stage also allows the developer more scope to address these types of issues prior to submission.
- 3.3 Consequently, officers consider that **early member engagement** with major applications would accord with the Council's growth strategy and align with best practice in terms of development management. In these respects, officers propose inviting members from Wards likely to be affected by major development proposals to pre-application meetings with officers and the Chair and Vice Chair of the Planning Committee.
- 3.4 Where applications have not been subject to pre-application discussions, or where appropriate, officers propose inviting members from Wards likely to be affected by major development proposals to a meeting with officers and the Chair and Vice Chair of the Planning Committee once all consultation responses have been received to discuss the proposals. This would normally be anticipated to be around six to eight weeks after an application has been validated.
- 3.5 Officers would recommend that the threshold for engagement should be schemes of 20 or more houses. This is because schemes of less than 20 houses would be unlikely to be able to provide any contribution as they fall below the policy thresholds (Affordable Housing/25 dwellings, Public Open Space/20 dwellings).
- 3.6 Officers also consider that there would be some benefits to be gained from inviting local members to discuss major employment schemes at an early stage where the proposals include 5000m<sup>2</sup> or more of new floor space. These types of large commercial schemes are the most likely to give rise to issues around traffic generation, for example, but also most likely to contribute towards regeneration and job creation within the District.

#### **4. Recommendation**

4.1 By suggesting a proposed approach to promote member involvement at an early stage in the planning process, officers are not seeking to adopt a new policy or introduce a formal protocol. Therefore, members are asked to note this report, which will be presented at the Planning Committee, and offer their support for the following best practice approach:

- **Officers will invite Local Members to a pre-application meeting with the Chair and Vice Chair of the Planning committee for all major applications of 20+ dwellings and major employment schemes of 5000m<sup>2</sup> or more.**
- **Where appropriate, Officers will invite Local Members to a meeting with the Chair and Vice Chair of the Planning committee to discuss major applications of 20+ dwellings and major employment schemes of 5000m<sup>2</sup> or more, between week 6 and week 8 in the determination period following receipt of consultation responses.**

#### **5 Consultation and Equality Impact**

5.1 There has been no public consultation in respect of this report, and there are no negative equality impacts identified. Officers consider that increasing member involvement in major applications should promote **equality** of opportunity for local residents through their local members to engage in the planning process.

#### **6 Alternative Options and Reasons for Rejection**

6.1 There is no statutory requirement to promote early member engagement in planning applications. However, Government guidance strongly encourages elected members to participate at the pre-application stage, where it is appropriate and beneficial for them to do so.

#### **7 Implications**

##### **Finance and Risk Implications**

7.1 None.

Effective pre-application engagement should lead to quality development that meets the needs of the community and leads to planning permission being granted more quickly. This is generally accepted by developers and the Council, both of whom stand to gain when this discussion works well.

##### **Legal Implications including Data Protection**

7.2 None

By 2009, the courts had already drawn a distinction between pre-disposition and pre-determination but Section 25 of the Localism Bill makes it clear that views

expressed by members prior to a decision making meeting (e.g. prior to the meeting of the Planning Committee), should not be regarded as pre-determination.

## Human Resources Implications

7.3 None.

## 8 Decision Information

<b>Is the decision a Key Decision?</b> (A Key Decision is one which results in income or expenditure to the Council of £50,000 or more or which has a significant impact on two or more District wards)	No.
<b>District Wards Affected</b>	All
<b>Links to Corporate Plan priorities or Policy Framework</b>	<ul style="list-style-type: none"> <li>• Unlocking Our Growth Potential (main aim);</li> <li>• Providing our Customers with Excellent Services</li> <li>• Supporting Our Communities to be Healthier, Safer, Cleaner and Greener;</li> <li>• Transforming Our Organisation.</li> </ul>

## 8 Document Information

Appendix No	Title
PPT	<b>S.106 Financial Contributions –Proposed approach for early member engagement</b>
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
n/a	
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