

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING AND DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: 11 OCTOBER 2012  
title: CONSULTATION DOCUMENT/RENEGOTIATION OF SECTION 106  
AGREEMENTS  
submitted by: DIRECTOR OF COMMUNITY SERVICES  
principal author: JOHN MACHOLC, HEAD OF PLANNING SERVICES

## 1 PURPOSE

- 1.1 To request Committee's ratification in relation to the consultation document on renegotiation of Section 106 Agreements and also to agree a mechanism which would defer and delegate the responses of future consultation documents to the Head of Planning Services in conjunction with the Chairman and Vice Chairman of Planning and Development Committee or an appropriate working group at a later date.
- 1.2 Members will be aware of various recent consultation documents, many of which are aimed at relaxing planning restrictions and focused at kick starting development schemes. This specific document relates to the ability for developers to seek formal modifications of a Section 106 Agreement.
- 1.3 Relevance to the Council's ambitions and priorities:
  - Council Ambitions – The delivery of affordable housing and economic growth are key ambitions of the Council and the renegotiations of Section 106's to kickstart development could assist in this regards.
  - Community Objectives – To encourage appropriate economic development throughout the borough. The need to reconsider stalled developments could aid the economic growth
  - Corporate Priorities – The promotion of suitable balanced developments is a key priority and the need to reassess proposals in the light of economic circumstances is an important consideration.
  - Other Considerations – to be a well managed council, to provide an efficient services based on identified customer need.

## 2 BACKGROUND

- 2.1 The document was published on 13 August 2012 with a closing date for consultation responses by 8 October 2012. It is for that reason that the Head of Planning Services has forwarded comments which are attached to this report and Committee are asked to ratify the response.
- 2.2 This is one of many recent consultation documents issued by the DCLG inviting stakeholders to comment. It is often difficult for a consultation document to be taken to a Planning and Development Committee for a formal decision within the

timeframe and therefore it is suggested that when it is not possible to take reports to Planning and Development, that authorisation be given to the Director of Community Services or Head of Planning Services in consultation with the Chairman and Vice Chairman of Planning and Development Committee or a subsequent working group to respond on behalf of the Council. It is then suggested that any response should just be reported as an information item similar to how planning appeals are reported.

### 3 ISSUES

- 3.1 In November 2011, the government's Housing Strategy 'Laying of Foundations: A Healthy Strategy for England' was published, which set out a number of proposals to help unlock stalled developments. One of the issues related to planning obligations that would have been negotiated in different economic conditions which now make the sites economically unviable which has resulted in no development or subsequent benefits to the community.
- 3.2 Although it is possible to alter Section 106 Agreements prior to five years from the date of the Agreement on a voluntary basis, the consultation document advocates that developers should be able to formally request reconsideration of planning applications prior to the five year period. It is suggested that this would apply to planning obligations agreed prior to 6 April 2010 and Agreements outside of that date would remain the subject of current legislation.
- 3.3 Currently Section 106a of the Town and Country Planning Act allows voluntary renegotiation of a planning obligation anytime. Where voluntary agreement cannot be reached, there may be a formal request to reconsider an obligation when obligation is five years old. It is to be noted that the department has, in many instances, accepted minor changes to Section 106 Agreements within this period on various schemes but has not formally altered any schemes relating to significant changes to affordable housing. Members will be aware that minor modifications such as alterations to the tenure has been agreed by Committee, in certain circumstances prior to the five year period lapsing.
- 3.4 One of the suggested changes is that obligations prior to 6 April 2010, should be possible for the applicant to formally renegotiate the terms of the Section 106 Agreement after one month after introduction of a new regulations. It is important to emphasise that for agreements after 6 April 2012, the period of five years would remain but there is still the option of renegotiations on a voluntary basis.
- 3.5 The intent of the change is to assist in bringing forward developments. It is advocated there must be strong justification for any change. The consultation document poses three questions.

Q1. Is the Government's objective to encourage formal reconsideration of Section 106s on stalled development supported by the shortened relevant period given in the draft regulations?

In relation to this question, I am of the opinion that the current regulations are adequate given that there is still scope to modify any Section 106 Agreement on a voluntary basis. There is also some concern that there may be unreasonable requests to modify agreements which will put further pressure on existing

resources and result in unnecessary applications. Although it is recognised that every effort should be made to encourage development to take place, I am of the opinion that the imposition of Section 106 Agreements themselves which would have an effect on the viability of the scheme, is not the only reason for development being stalled. It is clearly evident that there is a raft of other economic issues such as low market demand, difficulty in obtaining finance as well as the general economic condition. On that basis, I recognise that there is a need to make every effort to encourage sustainable development proposals which would assist in the creation of affordable housing units, I remain of the opinion that this minor change would not have a significant effect on the Borough Council's ability to provide affordable housing.

Q2. Does the 6 April 2010 represent a reasonable cut off for a proposed change?

It is my opinion that although there may be a need for a starting date, it needs to recognise that many councils such as Ribble Valley Borough Council continue to consider reasonable requests for renegotiation of Section 106s irrespective of any date. In the specific case of the date suggested, this would have little impact to developments within the borough as there are very few Section 106 Agreements within the proposed time frame.

Q3. What approaches could be taken to secure affordable housing delivery through revised obligations?

It is essential that there is a need for the borough to secure affordable housing and that given the high market prices, it makes it difficult for people to enter into the housing market and therefore any reduction in delivery, would exacerbate the problem. In assessing the affordable housing element, the Council continues to examine the best way in delivering the service and has modified agreements to enable units to be occupied when it has not been possible for people to obtain mortgages. It is also important that some affordable housing is provided at an early stage but realistic phasing needs to be considered.

It is therefore suggested that it is proper to examine all alternatives and options that would help promote the development of affordable housing but this should not lead to an inappropriate development scheme.

## 4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – This report is a consultation response and therefore the implications would not have any significant effects on existing resources. No implications identified.
- Technical, Environmental and Legal – No implications identified.
- Political – No implications identified.
- Reputation – No implications identified.

- Equality & Diversity – No implications identified.

**5 RECOMMENDED THAT COMMITTEE**

5.1 Ratify the attached report.

5.2 Authorise the Director of Community Services and/or Head of Planning Services to formally respond to key consultation documents as appropriate in conjunction with the Chairman and Vice Chairman of the Planning and Development Committee or any designated working group.

JOHN MACHOLC  
HEAD OF PLANNING SERVICES

JOHN HEAP  
DIRECTOR OF COMMUNITY SERVICES

**BACKGROUND PAPERS**

Renegotiation of S106 Consultation document DCLG  
Head of Planning response dated 25/09/12

For further information please ask for John Macholc, extension 4502.

REF: JM/EL/P&D111012