

# London Borough of Bromley

Report No.  
[ELS05036]

PART 1 - PUBLIC  
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Agenda  
Item No.

**XX**

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Title: **ODPM DRAFT REVISED CIRCULAR ON PLANNING OBLIGATIONS**

Decision Maker: **Development Control Committee** Decision Date: **Feb 2005**

Decision Type: Non-Urgent Non-Executive Non-Key

Budget/Policy Framework: Within policy and budget

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Ward: Borough-wide

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## 1. SUMMARY

- 1.1 The consultation document draft revised Circular on Planning Obligations was published in November 2004. The consultation seeks views on the Government's proposals for reforming and improving the current system of planning obligations in England in the short to medium term. The Government's aim is to create a system that is faster, more transparent and accountable and which gives greater clarity and certainty to all concerned.
- 1.2 The response from the Association of London Government (ALG) is attached as an appendix. A copy of the consultation document is also available in the Members room, together with the associated document; 'Reforming Planning Obligations: the Use of Standard Charges' and appendices.
- 1.3 The closing date for comments for this draft Circular was 25<sup>th</sup> January 2005, however, it is considered that the response from the ALG to this draft Circular generally reflects the views of Council officers.

## 2. RECOMMENDATIONS

- 2.1 Members note the report.

### 3. COMMENTARY

- 3.1 The consultation document draft revised Circular on Planning Obligations was published in November 2004. The consultation seeks views on the Government's proposals for reforming and improving the current system of planning obligations in England in the short to medium term. The Government's aim is to create a system that is faster, more transparent and accountable and which gives greater clarity and certainty to all concerned.
- 3.2 The draft Circular sets out some possible interim changes to the current negotiated system of planning obligations to be made in advance of potentially more major reforms to the system that may come forward in the next 2-3 years, in response to the recommendations of the final report of the Barker review of Housing Supply (March 2004).
- 3.3 The proposed changes to the current system of planning obligations set out in the draft Circular seek to clarify existing policy and build on some of the proposals made for streamlining the current system. The Government also seeks to bring the planning obligation system into line with the new system of spatial planning established by the Planning & Compulsory Purchase Act 2004.
- 3.4 The draft Circular will be supported by good practice guidance, which will not be published for consultation until the policy contained in the circular has been finalised.
- 3.5 Planning obligations are private agreements negotiated in the context of planning applications, between local planning authorities and persons with an interest in of land. They are intended to make acceptable development, of what would otherwise be unacceptable in planning terms. Planning obligations might be used to prescribe the nature of a development (e.g. by requiring that a given proportion of new homes are affordable); or to secure a contribution from a developer to compensate for loss or damage created by a development (e.g. loss of open space) or to mitigate a development's impact on a locality (e.g. through increased public transport provision).
- 3.6 In this revision of Circular 1/97 several subject areas have emerged which for ease of reference are highlighted below.
- 3.7 Retain five policy tests: The revised Circular retains the policy tests from Circular 1/97, namely that a planning obligation must be necessary to make the proposed development acceptable in planning terms; that it is relevant to planning; that it is directly related to proposed development; that it is fairly and reasonably related in scale and kind to the proposed development; that it is reasonable in all respects.
- 3.8 However there is clarification of the first policy test for acceptable planning obligations, by placing greater emphasis on the requirement for obligations to be necessary in order to make the development acceptable in planning terms. The draft revised Circular is therefore proposing in that S106 should continue to be an impact mitigation or positive planning measure linked to planning necessity and that it should not be used for "tax-like" purposes such as the capture of land value increases or for purposes not directly necessary for development to proceed.
- 3.9 Stronger emphasis on national, regional, and local plan policies: The draft revised Circular states it is acceptable to require contributions (where not in the application and not met through conditions), where they comply with agreed policies. This places more emphasis on local, regional and national policies. The draft revised Circular requires local Authorities to include general obligation policies in their Local Development Framework (LDF) documents: and to set out their detail on what obligations should deliver in their Supplementary Planning Documents (part of the LDF).

- 3.10 Encourage “joining up” across all public sector infrastructure providers: The draft revised Circular encourages “joining up” across all public sector infrastructure providers. Included is the principle of involvement of all sectors and tiers of government or other public agencies responsible for physical and community infrastructure in setting planning obligation policies, formulating site-specific obligation requirements.
- 3.11 Clarify policy on affordable housing. The draft revised Circular clarifies the policy on affordable housing. Many stakeholders have found it difficult to relate requests for affordable housing to the general policy basis for obligations set out in Circular 1/97. The draft revised Circular separates affordable housing and identifies it as a positive planning measure, while requiring it to comply with the circular’s policy tests. This is in line with the Barker Review of Housing Supply (March 2004), which draws the distinction between impact mitigation and affordable housing.
- 3.12 Formulae and Standard Charges: The draft revised Circular encourages Local Planning Authorities to adopt the use of formulae and standard charges. These should be published in advance to indicate the likely size and type of contribution in advance. The ODPM regard that formulae and standard charges can make a considerable contribution to promoting certainty and predictability, increasing speed in the resolution of negotiations.
- 3.13 Maintenance payments: The draft revised Circular allows LPAs to require contributions for maintenance of infrastructure from developers for a limited period, in cases where the new infrastructure is primarily related to the development or where it cannot immediately be supported by mainstream public funding. This is on condition that the contributions should be time-limited and that LPAs and developers should agree in advance how the payments will be made. Where an asset is intended for wider public use, the costs of maintenance should normally be borne by the body or authority, which will be responsible for it.
- 3.14 Pooled contributions: The draft revised Circular also sets out guidance on the use of pooled contributions, where they are clearly linked to specific infrastructure, where they can support development and to ensure fairer and more equitable distribution of costs of infrastructure. This pooling can take place between developments or between LPAs. According to the revised Circular, LPAs should set out in advance the need for the infrastructure and the likelihood of a contribution being sought. In the event that contributions are made towards specific infrastructure provision but the infrastructure is not provided within an agreed timeframe, arrangements may be made for contributions to be returned to developers.
- 3.15 Standard agreements/undertakings: The draft revised Circular sets out new guidance on the use of standard legal documents, which are considered as a method to speed up negotiations. It encourages LPAs, where possible to use and publish standard heads of terms, standard agreements/undertakings and model clauses. It is intended that any difficult clauses or terms in the standard document should be raised by developers in the course of pre-application discussion or negotiation with the Local planning authority.
- 3.16 Independent third parties: The draft revised Circular addresses the use of involving expert third parties. This can take the form of mediation, validation or expert advice. LPAs may in terms of the draft Circular wish to employ mediation to help in the process of negotiation; to resolve a dispute which is delaying negotiations; or to employ a third party to validate factual information.
- 3.17 Cost recovery: The draft revised Circular also gives guidance on recovering negotiating costs through contributions from developers. It can be acceptable for developers to make contributions towards funding of LPA officers, legal fees, monitoring and implementation- where it can be demonstrated that the contributions make a significant contribution to the

speed and efficiency of negotiating, and where the rate or level of contributions is specified in advance.

- 3.18 Unilateral undertakings: The draft revised Circular sets out guidance on two uses of unilateral undertakings, one well established, the other less so. Developers commonly submit a unilateral undertaking at appeal or inquiry, where there are difficulties in resolving negotiations. But the draft Circular also encourages the use of unilateral undertaking to speed up the resolution of a planning application, where the LPA has set out clearly the requirements.
- 3.19 Monitoring: The draft revised Circular stresses the importance of monitoring the implementation of planning obligations in a systematic and transparent, to ensure contributions are spent on their intended purposes, and the associated development contributes to sustainability and has effect.
- 3.20 The consultation period closed on the 25<sup>th</sup> January 2005 with the Final Circular due Spring 2005 along with the Good Practice Guide.

### 3.21 POLICY IMPLICATIONS

- 3.22 The Planning & Compensation Act 2004 has lead to a re-examination of the Legal agreement process, which will have implications for the way these agreements are sought on planning applications. Policy IMP5 of the 2<sup>nd</sup> Deposit Draft Unitary Development Plan 2002 is in accordance with the revised Draft Circular. The Council is awaiting the Inspectors Report due February 2005.

## 4. FINANCIAL IMPLICATIONS

- 4.1 Financial implications may occur where infrastructure is not provided with an agreed timeframe; arrangements may be made for contributions to be returned to developers (para 3.14).
- 4.2 Financial cost recovery from developers (para 3.17). Where it can be demonstrated that the contributions make a significant contribution to the speed and efficiency of negotiating, and where the rate or level of contributions is specified in advance.

<b>Non-Applicable Sections:</b>	Legal Implications. Personnel Implications
Background Documents: (Access via Contact Officer)	ODPM Draft revised Circular on planning obligations. Consultation document November 2004. ODPM Reforming Planning Obligations: the Use of Standard Charges: A survey of current practice and examination of issues. November 2004 ODPM Reforming Planning Obligations: the Use of Standard Charges Appendices. November 2004. Barker Review of Housing Supply (March 2004) Circular 1/97 Planning Obligations Contributing to sustainable communities – a new approach to planning obligations. Consultation Document November 2003.

Association of London Government Officer's response to the draft Circular on Planning Obligations dated 24<sup>th</sup> January 2005.