

**WARDS:**

**AGENDA ITEM NO.**

**DUDLEY METROPOLITAN BOROUGH COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE – 14<sup>th</sup> FEBRUARY 2005**

**REPORT OF THE DIRECTOR OF THE URBAN ENVIRONMENT**

**CONSULTATION DRAFT REVISED CIRCULAR ON PLANNING OBLIGATIONS**

**1.0 PURPOSE**

- 1.1 To advise members of the publication of the consultation on Draft revised circular on planning obligations and to seek approval for the Council's response to the consultation.

**2.0 BACKGROUND**

- 2.1 The existing framework for the current system of planning obligations is set out in section 106 of the Town and Country Planning Act 1990 (as substituted by the 1991 act) and in existing Department of the Environment Circular 1/97. The system of planning obligations has been criticised for being complex and for causing delay in the planning process. Furthermore, in recent years case law has confirmed a wider interpretation of the type of developer contribution that can be agreed under s106 than that which is stated in existing circular 1/97.
- 2.2 The ODPM published consultation in November 2003 entitled 'contributing to sustainable communities – a new approach to planning obligations' which provided detail on a number of proposals to reform the system of planning obligations. A report was presented to and endorsed by Development Control Committee in February 2004 in relation to that Consultation. The Government have now published this draft circular together with a pre consultation outline of the good practice guidance which the Government intends to publish alongside the circular (a copy will be available in the Members' Library). The Government have sought to address the representations raised at the November 2003 consultation stage and have sought to create a speedier, more certain, transparent and accountable system. The proposed changes also seek to reflect the new spatial planning approach which is established in the Planning and Compulsory Purchase Act 2004. The Office of the Deputy Prime Minister is seeking responses to the consultation on the circular by the 25<sup>th</sup> January 2005. Given the timescale, Officer comments have been forwarded.

**KEY ISSUES FOR DUDLEY**

- 2.3 In principle the proposals to speed up, create certainty and transparency and make the system more accountable can be welcomed. The principle of

stronger emphasis on national, regional and local plan policy is also welcomed. This allows local planning authorities to set out in their Local Development Frameworks the approach to be taken in seeking planning obligations from developers. The introduction of the standard clauses in principle can also be supported. The circular seeks to improve delivery and in part this is sought by creating formulae and standard charging and standard agreements and undertakings. Dudley MBC already utilise Borough specific formulae in considering planning obligations, which is a useful tool to allow consistency and transparency and it works well in practice. Whilst there is clearly merit in this practice, it must be recognised that there must be an element of local diversity and this must be allowed to be reflected in these formalised standard mechanisms. It would, for example, be inappropriate if a formulae was imposed upon a Council if it was inappropriate to the Borough's circumstances.

- 2.4 Whilst most of the circular can be supported, there are elements where there should be expressions of caution and this is reflected in the response detailed at Appendix 1. The paragraphs in the draft circular which detail information regarding maintenance payments (paragraph 18) needs careful consideration to ensure that the Council is not left liable for maintenance payments or being responsible for implementation and delivery where this is not appropriate. Appendix 1 details comments which relate to the need for the circular to make clear that when required section 106 obligations are recognised as essential methods of ensuring sustainable development.
- 2.5 Section 106 agreements are key methods of delivering affordable housing to ensure that the communities housing needs are sufficiently fulfilled. The draft seeks to link the affordable housing contribution given by a developer to the planning policy set out in the Borough's Development Plan. This means that the contributions that are sought from developers will be required to be linked to the Borough's Local Development Framework policy and the Borough will be able to formulate policies particular to its own needs and diversity.
- 2.6 The Government have also published pre consultation overview of the contents of proposed good practice guidance alongside the circular which in principle can be supported.

### **3.0 PROPOSAL**

- 3.1 It is proposed that Members note the content of the report and authorise Officers to make representations to the Office for the Deputy Prime Minister as detailed at appendix 1.

### **4.0 FINANCE**

- 4.1 This draft circular details the Government's position on how the Council negotiates planning obligations with developers. It sets out, in draft, a new approach to gaining contributions and will have direct implications on how some infrastructure projects related to developers are financed. This could have resource implications for the Council.

## **5.0 LAW**

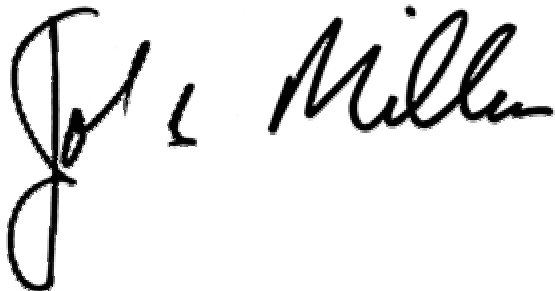
5.1 This is currently a draft circular. Once the circular is formalised by the Office of the Deputy Prime Minister it will replace existing guidance on section 106 obligations. Section 54a of the Town and Country Planning Act 1990 states that where, in making any determination under the planning acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. When this draft Circular is formally published as guidance it will be a material consideration and development decisions will need to be made after taking it into account where relevant.

## **6.0 EQUAL OPPORTUNITIES**

6.1 The circular seeks to ensure that proposed developments contribute to the creation of sustainable communities, particularly by securing contributions towards the provision of necessary infrastructure and facilities required by local and national planning policies.

## **7.0 RECOMMENDATION**

7.1 That the proposal outlined in section 3 of the report is approved

A handwritten signature in black ink, appearing to read 'John B. Millar'. The signature is written in a cursive style with a large initial 'J'.

**Director of the Urban Environment - John B. Millar**

**Contact Officer:** Annette Roberts 4081

### **Background Papers:-**

Draft Revised Circular on planning Obligations Consultation Document November 2004.

Report for the Director of the Urban Environment – Consultation Draft on contributing to sustainable communities – a new approach to planning obligations. February 2004

**Name of respondent/Organisation**

Sandra Ford  
Dudley Metropolitan Borough Council

**Brief Description of organisation**

Local Planning Authority. Metropolitan Unitary Authority

**If replying on behalf of a representative body, please provide a brief description of the people/organisations you represent**

N/A Local Planning Authority

**Contact information, if you would be willing to discuss your response further with ODPM officials if appropriate (optional)**

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**Any specific requests re handling of response**

N/A

**Revised Circular and Good Practice Guidance**

Circular Para No	Topic	Comments
1-10	Retention/simplification of policy tests	<p>In principle it is accepted and welcomed. Increased transparency in decision making is efficient and helps to create good planning decisions.</p> <p>Dudley MBC welcome the statement in para 3 of the draft guidance which states that it is "intended to make acceptable development which would otherwise be unacceptable in planning terms".</p> <p>Welcome the reference in paragraph 3 that states that "The outcome of all three of these uses of planning obligations should be that the proposed development concerned is made to comply as far as practicable with published local, regional or national planning policies". Welcome that the obligations need to be tied into the Local Regional and National policies. The Council feels that this ensures consistency with established and tested policy objections at all levels of government policy on planning matters. Nevertheless the Council feels that there could also be a useful reference to sub regional studies.</p> <p>The Council furthermore welcomes the statement in para 4 that states that there are no "hard and fast rules about the size or type of development that should attract obligations". This is welcomed as it allows a degree of flexibility to allow</p>

		<p>for local circumstances and local diversity whilst adhering to the development plan and the policy contained in the circular.</p> <p>The Council considers that the statement in para 9 regarding the acceptability of obligations will be important. In particular it states that “ for example, developers may reasonably be expected to pay for or contribute to the to the cost of all, or part of, infrastructure which would not have been necessary but for their development”. The council considers that this is sensible and therefore welcomes the paragraph. Nevertheless, para 10 also states that “where the development is needed to meet the needs of the development plan, it is for the local authority and other public sector agencies to decide what is to be the balance of contributions made by developers and by the public sector infrastructure providers in its area supported, for example, by local or central taxation. If, for example, a local authority wishes to encourage development, it may wish to provide the necessary infrastructure itself, in order to enable development to be acceptable in planning terms” This in some cases may well be appropriate, nevertheless, there is a danger that in some circumstances that in areas where there is low development pressure, there maybe pressure for local authorities to resource infrastructural requirements or community benefit themselves so as to ensure development takes place. Often, in some Authorities, section 106 obligations are the only method of securing such important funds. This may leave some Authorities with development which do not contribute to sustainable mixed communities or not providing open space provision within developments. The Council would consider that this is a concern that needs to be expressed.</p> <p>Para 10 of the circular states that “decisions on the level of contributions should be based on negotiation with developers over the level of contribution that can be demonstrated as reasonably being made whilst still allowing development to take place” The Council believes that whilst in principle the kernel of this is acceptable, there must, in the circular, be a reference to state that this must comply with the policy laid out in the Local Development Framework. The Council considers that the LDF policy is essential and should set out the parameters when planning obligations are required, and what obligations will be sought for, for example affordable housing, open space provision etc. It should also set out the factors which are to be taken into account in the determination of the level of the contribution obtained.</p>
3, 11 -16	Typology for use of planning obligations	<p>The Council welcomes the statement in para 3 that describes how planning obligations can be executed through the system. This provides clear guidance and is welcomed. The Council also welcomes the statement that states that planning obligations should be made to comply as far as practicable with published local, regional or national planning policies. The Council considers that this is an effective way of ensuring that the obligations procedures deliver the objectives set out in the Local Development Frameworks and that they are executed in a fair, open transparent and plan led fashion.</p>

		<p>The Council welcome the allowance for a degree of local flexibility which is mentioned in para 11. This is to be welcomed and is not something which should be prescribed at a National level as the needs of communities will differ across the Country. The externalities of each development will be complex and will be a matter which should be taken on their merits and not something which can be prescribed.</p> <p>The Council welcomes at para 12 the positive mention of affordable housing. The reference to the link to the LDF is also welcome at para 13. This allows local housing needs and affordability requirements to be taken into account. The Council have reservations regarding the open statement in para 14 stating the possible appropriateness of off site contributions. This is likely to be required in some circumstances, However, the Council consider that it should only be in extreme circumstances when all other options have been considered and that this should be made clearer in the Circular. The Council feels that the LDF should set out the circumstances when this is appropriate.</p> <p>The Council welcome the clarification at para 16 that states that where a development requires a facility that cannot be attained through the use of conditions a proposed development is not acceptable in planning terms, then it is acceptable to seek planning obligations. This is a useful clarification of existing policy.</p>
12-14	Contributions for affordable housing	<p>Paragraph 12 of the draft circular states that affordable housing should be provided through the planning obligation. This is welcomed and reinforces the ability of the Council to seek an appropriate level of affordable housing in the Borough to meet the needs of the residents.</p> <p>Para 14 states that affordable housing when required, is required on site. However the paragraph does recognise that there may be some circumstances when affordable housing may not be necessary on site, and where a contribution on another site or a financial contribution may be more appropriate. The paragraph also states that these circumstances should be set out in the Local Development Framework. Whilst there is a balance to be struck between prescriptiveness and guidance, the Council welcomes this strong link between the application of the provision of affordable housing and the Local Development Framework as this allows the provision of affordable housing to be responsive to local circumstances and allow the application of local distinctiveness. The Council considers that this is an important method of achieving sustainable development and achieving mixed and balanced neighbourhoods and thus ensuring that affordable housing issues and needs are addressed in both the circular and the Good Practice Guide. It is an essential prerequisite of delivering more sustainable environments. The circular needs to deliver and ensure affordable housing and balanced communities should be emphasised in the circular.</p>
18	Maintenance Payments	<p>Paragraph 18 states that where an asset is intended for wider public use, the costs of subsequent maintenance should normally be borne by the body or authority in which the asset is to be vested. The Council recognises that each circumstance is different, however the Council would wish to express concerns regarding this assumption. The principle of providing the Local Authority with a liability would cause specific problems for some Authorities. Local</p>

		<p>Authorities may be in a position whereby they are not able to provide long term financial support, for example, for open space, and thus may be in a position where they cannot guarantee they are in a position to be liable financially for them in the long term. This may lead to local authorities being forced to not seek contributions in the first instance. Clearly this must be avoided and the circular would need to address this.</p>
19-21	Pooled contributions	<p>Paragraphs 19-21 deal with pooled contributions. It states that cross local authority pooled contributions may also in some circumstances be appropriate. Para 20 sets out that it may be appropriate in some circumstances when there may be a requirement for future provision. Nevertheless the circular should emphasise that this is only appropriate if the Local Authorities LDF policy suggests so, and in what circumstances. The Council also recognises that if pooled resources implement specific projects outside the specific locality of the 'host' development then there would be political issues arising. The Council feels that this should be addressed more fully in the circular.</p> <p>Para 21 talks about returning contributions to developers if the infrastructure is not provided with a given timeframe. Whilst the Council recognises that this will help Local Authorities focus on delivery, it also recognises that there may well be real barriers to implementation and feel that it would be inappropriate for contributions to be returned if they are needed for necessary infrastructural requirements. This is often written into clauses at present, however it could be usefully reinforced in the guidance that this should only be appropriate in extreme circumstances.</p>
8,24-27	Local planning obligations policies	<p>The Council welcomes the clarification that is present in para 8 which states that the LDF process is the crucial pre determinant in justifying the seeking of any planning obligations since they set out the matters which must be addressed in order for development to proceed. The Council considers that this is an important clarification and strengthens the link between planning obligations and the planning context for the Borough set out in the LDF and reinforces the plan led approach. The Council feel that the circular should emphasis that the LDF policies must emphasise that they are required to secure sustainable communities and are essential, when required.</p> <p>The Council considers that the emphasis on the link between obligations and the LDF process set out in paras 24 – 27 is welcome. Furthermore the Council considers that para 25 which states that detailed policies which expand on the principles set out in the Development Plan Document for example the application to specific localities and likely quantum of contributions ought to be included in Supplementary Planning Documents. The Council also recognises the Government's intention to urge Local Authorities to prepare Supplementary Planning Documents in the transitional arrangements. The Council recognises the regional strategy for obligations which the draft suggests should contain details of planning obligations where they may be deemed necessary. The Council recognises that this allows the process to be integrated across all levels of strategic policy and allow more effective implementation of planning policies and speed up the delivery of plans and projects by avoiding elongated</p>

		discussion regarding obligation arrangements.
28	Joining up across public sector	The Council welcomes the emphasis placed upon joining up agency responsibilities to consider the externalities of proposed development proposals. This will allow for the proper and informed planning of the area. The Council also welcomes the reference in the paragraph which states that the Local Planning Authority retain the lead in the process of negotiating planning obligations with developers.
29-31	Formulae and standard charging	The Council welcomes the introduction of the formulae and standard charges. The Council recognises that these are able to speed up the process and avoid protracted discussions at planning application negotiation time. Indeed the Council already produce formulae, for example, on the provision of open space and children's play area. The formulae used by the Council is an effective method of ensuring consistency and transparency. The Council also considers that this process must allow for an element of local distinctiveness and diversity to be introduced and must not be prescribed in a one size fits all manner. This will allow greater certainty, however, there must be a degree of flexibility to allow the merits of each case to be considered. Therefore the Council welcomes the sentence that states "Standard charges and formulae should not be applied in blanket form regardless of actual impacts, but there needs to be a consistent approach to their application". Nevertheless the premise should always be that these considerations need to be set out in the LDF policy.
32	Standard agreements/undertakings	The Council welcomes the stance taken in para 32 of the draft circular which states that local planning authorities are encouraged to use and publish standard head of terms, agreements/undertaking or model clauses in the interests of speed. The Council however considers that the appropriateness and use of the standard agreements/heads of terms will depend greatly on the advice contained in the good practice guidance and must allow for local circumstances, for example, the Council would not wish to see prescriptive methods applied as circumstances vary greatly in each Borough.
33-35	Use of independent third parties	The Council recognises that the use of independent third parties, as detailed in the draft at para 33-35 can be an effective way of speeding up the process of delivery of proposals. The Council does however recognise the financial implications relating to this practice. The Council considers that the practice would be particularly worthwhile in the discussion regarding the validation of financial viability information.
36	Cost recovery	The Council considers that it is sensible to allow financial contributions to be channelled towards the provision of posts with a specific duty for planning obligations.
38-40	Use of unilateral undertakings	The Council considers that the paragraphs in the draft detailing unilateral undertakings aim to deliver speed and efficiency in the process. However, if a Unilateral Undertaking is offered at an appeal or Inquiry, the Local Authority must be given sufficient time period to consider it.
41	Monitoring and implementation of obligations.	The Council welcomes the increase in monitoring of the use of obligation monies attained by the local authority. The Council considers that this is appropriate and highly welcomed. The Council also considers that the transparency of this information is also important and welcomes paragraph 41 that states that the Local Authority should ensure that information is readily available to developers and to members of the public.



	OTHER ISSUES	<p>Para 37 of the draft highlights the role of public involvement. The Council considers that the practice of considering that planning obligations are public information is welcomed. Nevertheless, the Council recognise that there may in some circumstances be developer sensitivity surrounding some information, for example financial information and viability and consider that the good practice guidance should consider this issue in detail.</p> <p>Para 42 reiterates that the first preference for securing the minimal external impact from a development proposal, or the gain to be achieved from a development proposal should always be for conditions to be imposed before planning obligations are sought. This is welcomed.</p>
	Comments on the proposed good practice guidance	<p>The Council will welcome the examples of good practice in the determination of the viability of proposals (the necessity test). Nevertheless whilst good practice is a useful tool in many circumstances, the issues surrounding planning obligations and financial contributions are often particularly sensitive to the local circumstances, the local economy and any particular area of sensitivity or protection. There is therefore a need for a robust yet flexible method of ensuring accountability, fairness and appropriateness allowing for local distinctiveness and site specific issues to be factored into the equation.</p> <p>The Council welcomes the principle good practice detailing information on contributions. The Council welcomes information on the phasing of payments including appropriate payment dates. The Council also welcomes information on the pooling of contributions and appropriate LDF policies and methodologies for assessing impacts and proportionate contributions. The Council would wish to see it made clear that these should not be prescribed 'in a one size fits all manner'.</p> <p>The Council welcomes the information that is outlined to be included in the good practice guidance in terms of the administration of the obligations process, in particular, the Council welcomes improving skill levels, for example enabling LPAs to be more effective in negotiations. The Council recognises that this will be beneficial to service delivery, nevertheless recognises that this will bring with it resource requirements.</p> <p>The Council welcomes the good practice guidance on local planning obligation policies which are proposed to be included with Local Planning Authorities Local Development Frameworks. The Council particularly welcomes the guidance on the use of area action plan policies to secure contributions in areas of change.</p> <p>The Council welcomes the outlined advice to be contained in the Good Practice Guidance which will provide advice on formulae, standard charging and monitoring.</p> <p>The Council furthermore welcomes advice on drafting of standard agreements. In principle, the Council considers that this is a method of ensuring faster delivery and implementation.</p> <p>In principle the Council supports the contents in the outlined good practice guidance and considers that the effective</p>

		<p>implementation and interpretation of the circular will depend on the appropriateness and effectiveness of the good practice guidance.</p> <p>The Council however considers that the guidance should detail in more certainty and clarity the methods of achieving Affordable housing contributions through the obligations process.</p>