

IN THE MATTER OF LAND AT TODDINGTON LANE, LITTLEHAMPTON,
WEST SUSSEX, BN17 7PP (“the Site”)

OPINION

Introduction and Summary of Conclusions

1. I am instructed on behalf of BB Investments Property Ltd (“BBIP”) and asked to advise as to whether section 106 contributions can be demanded for a planning application for 10 residential units at the Site. The local planning authority is Arun District Council (“the Council”).
2. In summary, my advice is that national planning policy contained in the Planning Practice Guidance (“PPG”) states that the Council is unable to seek its proposed section 106 contributions for the development.

Factual Background

3. BBIP has submitted a planning application (ref: LU/162/17) seeking planning permission for 10 residential units (C3 Use) with associated open space, landscaping, parking and access (“the Development”) at the Site.
4. Due to the size of the scheme, BBIP has not proposed to provide section 106 contributions as part of the planning application. That is because the “Planning Obligations” section of the PPG states as follows (at paragraph 31):

“Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?”

As set out in the Starter Homes written ministerial statement of 2 March 2015, starter homes exception sites should not be required to make affordable housing or tariff-style section 106 contributions.

There are specific circumstances where contributions for affordable housing and tariff style planning obligations (section 106 planning obligations) should not be sought from small scale and self-build development. This follows the order of the

Court of Appeal dated 13 May 2016, which give legal effect to the policy set out in the written ministerial statement of 28 November 2014 and should be taken into account.

These circumstances are that;

- *contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area)*
- *in designated rural areas, local planning authorities may choose to apply a lower threshold of 5-units or less. No affordable housing or tariff-style contributions should then be sought from these developments. In addition, in a rural area where the lower 5-unit or less threshold is applied, affordable housing and tariff style contributions should be sought from developments of between 6 and 10-units in the form of cash payments which are commuted until after completion of units within the development. This applies to rural areas described under section 157(1) of the Housing Act 1985, which includes National Parks and Areas of Outstanding Natural Beauty*
- *affordable housing and tariff-style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.”*

5. Notwithstanding this, the Council has requested tariff style planning obligations in accordance with its Open Space and Standards Supplementary Planning Guidance (2000) (“the Open Space SPG”) and West Sussex County Council’s Supplementary Planning Guidance document “The Provision of Service Infrastructure Related to New Development in West Sussex – Part 1” (“the Infrastructure SPG”).
6. Its justification for doing so is set out in an email from Mr. Andrew Wood (a Senior Planning Officer at the Council) dated 1st August 2017, “*the view of the Department is that the government Planning Practice Guidance you quoted relates to affordable housing and tariff style contributions relating to affordable housing.*” (emphasis added).
7. The Council has indicated that the application will be refused unless these contributions are provided.

Analysis

8. The Council's interpretation of the policy in the PPG is incorrect.
9. The PPG prevents local planning authorities seeking any tariff style contributions where the 10-unit threshold applies; even if they are unrelated to affordable housing.
10. That is clear from the wording of paragraph 31 itself, which simply refers to "*tariff style planning obligations*" and "*contributions*", without limiting this to tariff style planning obligations which relate to affordable housing.
11. This is confirmed by paragraph 15 of the same part of the PPG, which states, under the heading "*Can planning obligations be pooled where the threshold does apply?*" (with emphasis added):

"For sites where the threshold applies, planning obligations should not be sought to contribute to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area."

12. In my view, therefore, it is beyond argument that the PPG imposes a blanket restriction on all tariff style contributions where the threshold applies.
13. This is also the approach that has been taken by numerous Planning Inspectors deciding planning appeals. For example, appeal ref: APP/X1118/W/16/3161403, where the policy was applied to open space contributions; and appeal ref: APP/B5480/W/16/3156253, where the policy was applied to education contributions.
14. Given this, I am firmly of the opinion that the Council's proposed contributions cannot be sought here:
 - (1) There is no dispute that the PPG threshold is met, because the Development is of ten units or less and is not in a designated rural area.
 - (2) I do not understand it to be disputed that the contributions sought by the Council are "tariff style" contributions. These are defined (in paragraph 14 of

the PPG) as being “*contributions to pooled funding ‘pots’ intended to provide common types of infrastructure for the wider area*”. They are to be contrasted with “*site specific infrastructure*”, such as “*improving road access and the provision of adequate street lighting*”, which can be claimed where the threshold applies (see paragraph 20 of the PPG).

- (3) Here, the contributions are required for infrastructure improvements in the wider area, rather than site-specific mitigation. Further, the amount requested is derived by multiplying the number of dwellings (in the case of the open space contribution) and new school children (in the case of the education contribution) by a fixed amount; a feature typical of a tariff style contribution. This is also confirmed by a number of appeal decisions. For example, in appeal ref: APP/M1710/W/14/3001900 (at paragraph 12), the Inspector found that a Council’s policy of setting the amount payable by reference to the size and nature of the proposed development was a tariff style contribution. Similarly, in appeal ref: APP/B5480/W/16/3150417 (at paragraph 17) a policy which set out a requirement for a contribution of £6000 per dwelling towards education provision was classed as a tariff style contribution.

15. For all of the above reasons, my advice is that national planning policy contained in the PPG states that the Council is unable to seek its proposed section 106 contributions for the Development.

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