

**SOUTH EAST ENGLAND REGIONAL ASSEMBLY
REGIONAL PLANNING COMMITTEE**

Date: 8 December 2004

Subject: **ODPM Consultation on a Draft Revised Circular on Planning Obligations**

Report of: Head of Spatial Planning

Recommendation:

That the Committee inform ODPM that in response to the consultation on the draft Revised Circular on Planning Obligations the South East England Regional Assembly:

1. support the measures proposed to speed up the planning obligations system and make it more open and less complex and unpredictable, including the use of formulae and standard charges and the use of standard heads of terms, agreements or model clauses;
2. consider that advice on the formulae and standard charges to be used in calculating contributions should reflect regional cost differences;
3. welcome the clarification of advice in Circular 1/97, in particular on affordable housing;
4. welcome the emphasis on the links between planning obligations and national, regional and local planning policies;
5. consider that the importance of including small sites within the planning obligations system should be recognised to help address the cumulative impact of development;
6. while supporting an integrated approach to planning obligations involving all tiers of Government and other public agencies consider that private sector service providers should also be involved at the appropriate stage;
7. urge the Government to bring forward its decision on the Barker recommendation that a proportion of the uplift in land values associated with development should be used to provide wider community benefits. A more far-reaching review of the planning obligations system should then be undertaken.

1. Purpose of Report

- 1.1 To inform members of the Government's proposals to reform and improve the current system of planning obligations set out in a draft revised Circular and to put forward a suggested response to the consultation from the Committee on behalf of the Regional Assembly.

2. Background

- 2.1 The framework for the current system of planning obligations is set out in section 106 of the Town and Country Planning Act 1990 and in DOE Circular 1/97. Planning obligations are typically agreements negotiated between local authorities and developers in the context of granting planning permission. They provide the means for securing contributions towards the infrastructure and services required to facilitate proposed development. It is also an important tool for delivering affordable housing.
- 2.2 The Government has for some time recognised the need to reform and improve the system in response to criticisms that it is too complex, inconsistently applied and lacks transparency. In 2001 it sought views on legislative proposals aimed at achieving greater simplicity and clarity. Subsequently, the Government decided that many of the necessary reforms could be achieved without legislation and published a further consultation on proposed changes to the system in November 2003.
- 2.3 The Government's proposals were reported to this Committee on 17 December 2003. The Committee welcomed the emphasis on providing greater openness, speed, consistency, flexibility and certainty for all stakeholders, but doubted whether the proposals would achieve these objectives. It therefore urged the Government to reconsider the introduction of a universal tariff system, varied according to a standard property value index calculated by the District Valuer.
- 2.4 Before the Government was able to publish final proposals for reform the Barker Review of Housing Supply was published. This recommended the introduction of a planning gain supplement tied to the grant of planning permission. Such a supplement would allow a proportion of the uplift in land values to be used to help fund wider community benefits. If this proposal were to be introduced Barker recommended that planning obligations be scaled back to cover direct impact mitigation only.
- 2.5 The Government has subsequently agreed that it is in principle acceptable for social housing and other measures to be funded from landowner development gains. It will decide by the end of 2005 whether a planning gain supplement should be introduced. In the meantime the Government has decided to consult on non-legislative changes to the current arrangements for negotiated agreements. The draft revised Circular, which is on the ODPM website (www.odpm.gov.uk), sets out the proposed changes that may be made in advance of potentially more major reforms to the system that may come forward in the next 2-3 years. When finalised it will contain good practice guidance on planning obligations. An outline of the guidance proposed is set out in section 6 of the consultation document.

3. Proposals for Reform

3.1 The main changes proposed to the existing guidance in Circular 1/97 are as follows:

- 3.1.1 Policy tests - The policy tests for acceptable planning obligations in Circular 1/97 are retained, but the first test related to the obligation being necessary for the development to go ahead is proposed to be modified to give greater emphasis on the link with relevant planning policies. The test would then read 'necessary to make the proposed development acceptable in planning terms'.
- 3.1.2 Affordable Housing - The revision to the first test would allow and legitimise the current practice of including in planning obligations contributions towards affordable housing. The delivery of affordable housing relates to the nature of development and thus differs from other impact mitigation/compensation elements of obligations, a distinction clearly brought out in the Barker Report. Contributions to affordable housing still need to be reasonable in relation to the size and type of development being proposed and should be related to policies and need assessments in local development frameworks (LDFs). While including a presumption that affordable housing requirements should be provided in-kind and on-site, the draft Circular recognises that there may be certain circumstances specified in LDFs where the provision could be made off-site or in the form of a financial contribution.
- 3.1.3 Clarification of guidance on maintenance payments and pooled resources - It is made clear that maintenance contributions may be sought for a limited period where a new piece of infrastructure is predominantly for the use of the development concerned or cannot be immediately supported by mainstream public funding. Pooled contributions may also be sought where the combined impact of a number of developments creates the need for infrastructure. Where pooled contributions towards major infrastructure in Growth Areas are required it may be appropriate to refer to these in the Regional Spatial Strategy.
- 3.1.4 Local policies - General planning obligations policies should be included in Development Plan Documents. The draft revised Circular also recommends that local planning authorities should set out in detail what they expect their planning obligations to deliver in Supplementary Planning Documents. This will help remove uncertainties and contribute to speeding up the process.
- 3.1.5 An integrated approach - A joined up approach towards obligations is recommended with local planning authorities involving other public infrastructure providers at the appropriate time.
- 3.1.6 Other measures to improve the process - In contrast to circular 1/97 the draft revised Circular explicitly encourages the use of formulae and standard charges. These can help speed up negotiations, ensure predictability and promote transparency in the process by making indicative figures public. Local authorities are also encouraged to use and publish standard heads of

terms, agreements or model clauses in the interests of speed and certainty. In addition, the draft Circular includes new guidance on the use of independent expert third parties and local authorities recouping some of their costs, encourages the use of unilateral undertakings and stresses the importance of monitoring planning obligations in a systematic and transparent way.

4. Comments on the Proposed Reforms

- 4.1 The reform of the planning obligations system is long overdue, not least for the reason that current practice and case law goes beyond the statements and definitions in Circular 1/97. Delays and complaints associated with negotiated agreements have also proved to be significant barriers to increasing housing provision, particularly in the affordable housing sector.
- 4.2 To the extent that the proposals in the draft Circular are aimed at speeding up the process and making it less complex and unpredictable they should be supported. In addition, statements clarifying existing advice are helpful, particularly those related to the provision of affordable housing and the use of maintenance payments and pooled receipts. The strong emphasis on links between planning obligations and national, regional and local planning policies is also welcomed, together with the intention to provide good practice guidance with the final version of the Circular.
- 4.3 In particular, the intended advice on drawing up formulae and standard charges, including detailed needs and cost information, and on publishing standard heads of terms, agreements or model clauses will help to address the concern expressed by this Committee in response to the previous consultation regarding the capacity and expertise available in smaller local authorities. Making available good practice examples will also help in this respect. The provision of advice will also go some way to ensuring some consistency of approach while allowing for local variations. Without this consistency there is a danger that the system could become as complex and confusing as the present arrangements.
- 4.4 It will be important, however, that the formulae and standard charges reflect regional differences.
- 4.5 The statement in the draft Circular regarding the pooling of contributions for the provision of infrastructure and affordable housing between developments and in some cases between authorities will to some extent help local authorities to deal with the cumulative impact of development. This is an issue of growing concern, given policies in the South East Plan to concentrate development in urban areas. However, it is important that specific support is given in the final Circular to the collection of contributions from sites smaller than those to which planning obligations normally apply to help fund infrastructure and services required as result of numerous small-scale developments in an area.

- 4.6 The integrated approach recommended towards negotiations on planning obligations involving all sectors and tiers of government is to be welcomed. However, private sector service providers should also be involved at the appropriate stage.
- 4.7 While the draft Circular includes a number of useful provisions to make the present system of planning obligations more open and effective the basic principles remain unaltered. Obligations must be relevant to planning, directly related and fairly and reasonably related in scale and kind to the proposed development. Obligations are not seen as the mechanism for securing wider infrastructure provision and community benefits. To a large extent the draft proposals may be seen as tinkering with a present unsatisfactory system when a more fundamental review is needed. They are unlikely to have a major impact on the delivery of affordable housing or on the provision of the infrastructure required to support future levels of growth envisaged in the South East Plan..

5. Conclusion

- 5.1 Reform and improvement of the present planning obligations system is urgently required to speed up the process and make it less complex and to deal with various uncertainties that have arisen in relation to Circular 1/97. Proposals in the draft revised Circular addressing these issues they should generally be supported. However, it is considered that a more far reaching review is needed as soon as possible. In this context the Government should be urged to bring forward their decision on the Barker recommendation that the uplift in land values associated with development should be used to provide wider community benefits.

Ray Bowers
Head of Spatial Planning
24 November 2004

Contact: Ray Bowers, Head of Spatial Planning
T: 01483 555231 E: raybowers@southeast-ra.gov.uk