

AGENDA MANAGEMENT SHEET

Name of Committee Regulatory Committee

Date of Committee 22nd December 2005

Report Title Conditions and Obligations

Summary This report introduces a presentation to be made at the meeting as part of the programme of planning training for Members undertaken by the Director of Performance and Development.

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Would the recommended decision be contrary to the Budget and Policy Framework? No

Background papers None

CONSULTATION ALREADY UNDERTAKEN:-

Details to be specified

- Other Committees
- Local Member(s)
- Other Elected Members
- Cabinet Member
- Chief Executive
- Legal
- Finance
- Other Chief Officers Director of Environment and Economy
- District Councils
- Health Authority
- Police

Other Bodies/Individuals

FINAL DECISION YES

SUGGESTED NEXT STEPS:

Details to be specified

Further consideration by
this Committee

To Council

To Cabinet

To an O & S Committee

To an Area Committee

Further Consultation

Regulatory Committee – 22nd December 2005

Planning Conditions and Obligations

Report of the Strategic Director of Performance and
Development

Recommendation

The Committee is asked to receive a presentation.

1. Background

- 1.1 There are two main means by which a planning authority can make development acceptable and make sure that it stays acceptable: planning conditions and planning obligations.
- 1.2 Planning conditions are imposed on a planning permission. They do not need to be agreed by the applicant but the applicant can appeal against them. Conditions can be enforced through statutory notices backed up by prosecution or injunction. There are important constraints on what planning conditions can do and in particular a planning condition cannot require the payment of money.
- 1.3 Planning obligations are usually agreed between a landowner and the planning authority, although a landowner can offer them unilaterally. They are promises which bind the landowner and any successors. Their use is not constrained in the same way as conditions and they can be used to promise money payments. There is no right of appeal and enforcement is through injunction or works in default.

2. Recent Developments

- 2.1 Government policy guidance on the use of conditions has been fairly settled since 1995, although cases in the Courts have continued to develop the legal principles governing their use. However, the Government has given a great deal of attention in recent years to reforming the system of planning obligations.
- 2.2 This eventually resulted in provisions being included in the Planning and Compensation Act 2004 to allow for the introduction of “optional planning

charges”, which would be standardised, formula-based money payments covering various kinds of general infrastructure costs towards which planning obligations commonly seek contributions.

- 2.3 Just when the Government appeared to have finally decided on the best way forward, the *Barker Review* of housing supply recommended the introduction of a “planning gain supplement” instead of the Optional Planning Charge. Planning Gain Supplement is a tax on the increase in land value resulting from the grant of planning permission, which would be collected by the Government and redistributed for use on the local and regional or strategic infrastructure needed to support or unlock growth.
- 2.4 The Optional Planning Charge was an ODPM idea and the *Barker Review* was a Treasury-led initiative. The Optional Planning Charge was, therefore, put on hold whilst the Chancellor decided whether or not to accept the recommendations of the *Barker Review*.
- 2.5 In the meantime, the ODPM issued revised and updated guidance on planning obligations, encouraging the move towards more standardised contributions, in Circular 5/2005 as an interim measure.
- 2.6 On 5th December, in his pre-budget statement, Gordon Brown announced that the Government would be consulting on implementing the Planning Gain Supplement and on the same day he and John Prescott published *Planning-gain Supplement: a consultation*. The move towards Planning Gain Supplement has been very much tied up with housing policy and this announcement was accompanied by a raft of initiatives to boost the supply of housing, and especially affordable housing, including the launch of consultation on a new Planning Policy Statement 3: Housing.
- 2.7 Planning Gain Supplement has thus replaced the Optional Planning Charge as the preferred way forward. Although the Supplement will be collected centrally, the Government promises that “a significant majority” will be returned to fund local infrastructure and priorities and predicts that local government overall will receive more money in this way than it presently recovers now from planning obligations. The Supplement would also be recycled to pay for regional, strategic infrastructure. However, the Government would not guarantee to return all the Supplement obtained in a locality or region to that same locality or region.
- 2.8 A consequence of the Planning Gain Supplement will be to scale back the use of planning obligations, possibly to the point where they only deal with the immediate environment of a development and with the provision of social housing.
- 2.9 Because the Government will control the redistribution of the Planning Gain Supplement, and because the use of negotiated planning obligations will be cut back, there is a risk that there will be a movement of influence from local to central and regional government.

3 The Presentation

- 3.1 The presentation will briefly explain the principles and policies governing the use of planning conditions and planning obligations, and summarise the proposals on which the Government is now consulting, in order both to enhance the understanding of Members as to the tools at their disposal and to inform their response to the debate begun by the Government as to the way forward.

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