



## Planning news

# Small sites exemption from affordable housing contributions: What does the reintroduction of the policy mean for developers?

Lee May, Partner at Brachers and Mark Batchelor, Associate at planning consultancy Peacock and Smith Limited analyse the impact of the Court of Appeal decision in *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016]* and the reintroduction of the small sites exemption from affordable housing contributions.

On 19 May 2016 the Government reissued its controversial policy exempting small sites from the requirement to pay affordable housing contributions.

The policy had originally been introduced in November 2014 via a Written Ministerial Statement (WMS) and was aimed at stimulating small scale residential developments. When introducing the policy the Government

had argued that fewer of these schemes had been coming forward because of the impact on viability of having to make financial contributions towards affordable housing.

The policy was opposed by many local authorities who considered that even small developments should be asked to contribute to the delivery of much needed affordable housing. On some schemes the affordable housing contributions can amount to tens or even hundreds of thousands of pounds.

West Berkshire District Council and Reading Borough Council challenged the WMS and on 31 July 2015 the High Court held that the policy was unlawful.

The Court ruled that the WMS was inconsistent with planning legislation, that the consultation process had been unfair, that material considerations had not been taken into account in making the decision,

and that the WMS had been adopted without complying with the public sector equality duty.

The Secretary of State appealed and on 11 May 2016 the Court of Appeal overturned the High Court's decision. Within days the Government reintroduced the policy by amending the National Planning Practice Guidance. The policy has been enshrined in updates to NPPG 23b – Planning Obligations and was issued on 19 May 2016, taking immediate effect. It establishes the following circumstances where infrastructure contributions through planning obligations should not be sought from developers.

Firstly, the policy confirms that starter homes exception sites should not be required to make affordable housing or tariff-style S.106 contributions.

Secondly, the Government's policy establishes that affordable housing and tariff style contributions should not be sought from the following small scale and self-build developments:

1. Contributions should not be sought from developments of 10 units or less, and which have a maximum combined gross floor area of no more than 1,000sqm;

2. In designated rural areas (i.e. National Parks and Areas of Outstanding Natural Beauty), authorities can apply a lower threshold of 5 units or less. Where this reduced threshold is applied, affordable housing and tariff style contributions should be sought from developments of 6-10 units in the form of cash payments which are commuted until after completion of units within the development; and
3. Affordable housing and tariff style contributions should not be sought from any development consisting only of the construction of a residential annex or the extension of an existing home.

It is important to note that affordable housing contributions will continue to be required on rural exception sites, apart from in association with householder developments (i.e. residential extensions and annexes).

Mark Batchelor and Lee May recently advised the developer in one of the first appeals to be decided on this issue since the reintroduction of the new policy. In his decision issued on 2 June 2016, the Inspector concluded that as a result of the Court of Appeal's decision and the reintroduction of the policy, the payment of affordable housing contributions for small sites would not be necessary to make the development acceptable in planning terms. Accordingly, such contributions could not be taken into account in determining the appeal.

The Council had sought to argue that the circumstances in their Borough were such that an exception should be made to the national policy. In a similar way, it is likely that Local Authorities responsible for delivering affordable housing will continue to resist the government's policy, particularly in areas such as London with high land values and historically low levels of affordable housing delivery.

The government will hope that by lifting the financial burden of making affordable housing contributions from small sites they will encourage development, adding to the housing stock and assisting home buyers at all levels. Whilst a further challenge to the of the Court of Appeal's decision cannot be ruled out, such an appeal would need to go to the Supreme Court. Unless and until this happens, the newly reintroduced policy is here to stay and will be applied by Inspectors.

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## About Brachers

Brachers are an award winning regional law firm in the South East, committed to delivering quality and value to our clients with a personal service.



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## About Peacock & Smith Ltd

Peacock & Smith Ltd is an independent town planning and development consultancy working throughout the UK from the Practice's offices in Leeds and London.



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