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18. Implementation

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Introduction

18.1 The implementation of Plan policies is dealt with, for the most part, by the explanatory text after each policy. It identifies, for example, which body is expected to fund the development, when it is likely to occur, and the nature of any planning constraints that might exist. This chapter serves essentially to introduce planning policies which relate solely to, and are crucial to, the successful implementation of this Plan. They deal with:-

- planning obligations;
- phasing large housing developments; and
- enforcement of planning control.

Government Guidance

18.2 Guidance about the implementation of Local Plans is set out in PPG12. Plans are required to:-

- have regard to the likely availability of resources (by taking account of national economic policies, the financial policies of the implementing agencies and the likely availability of land, labour and other resources);
- take account of the capacity of existing infrastructure and the need for additional facilities;
- incorporate an appropriate policy where an authority expects developers to enter into planning obligations on a regular basis;
- assess development requirements over the whole Plan period in the light of projections and national and regional policy guidance.

Planning Obligations

18.3 The Council can seek modifications or improvements to development proposals in order to have regard to the interest of the local environment and other planning considerations. This is generally known as "planning gain" although this term has no statutory significance.

18.4 "Planning gain" can be achieved through planning obligations. These comprise both legal agreements (between the Council and the developer) or 'unilateral undertakings' (whereby a developer, independently, commits himself to a legally-binding obligation). Such obligations may:-

- restrict development or use of the land;

- require operations or activities to be carried out;
- require the land to be used in a specified way; or
- require payments to be made to the authority either in a single sum or periodically.

18.5 PPG12 states that "... where a planning authority expects developers to enter into planning obligations on a regular basis ...it should set out its policy in the Local Plan."

18.6 Government guidance on the proper use of planning obligations is contained in Circular 1/97 "Planning Obligations". It sets out the circumstances in which certain types of benefit can reasonably be sought. The Circular states that the tests to apply for the use of planning obligations are that "...they should be necessary, relevant to planning, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, and reasonable in all other respects."

18.7 The guidance continues "... Acceptable development should never be refused because an applicant is unwilling or unable to offer benefits" and "Unacceptable development should never be permitted because of unnecessary or unrelated benefits offered by the applicant."

18.8 According to the guidance, in general it will be reasonable to seek, or take account of, a planning obligation if what is sought or offered is:-

- needed to enable the development to go ahead and, in the case of a financial payment, will meet or contribute towards the cost of providing such necessary facilities in the near future: or
- necessary from a planning point of view and is so directly related to the proposed development and to the use of land after its completion that the development ought not to be permitted without it.

18.9 The District Council welcomes the opportunities created by the guidance to bring about the implementation of the Local Plan in appropriate circumstances. It will consider the obligations put forward by developers in the light of its planning objectives. The scope offered is seen as enhancing the Council's 'enabling' role. The following policy will therefore apply:-

POLICY 11

IN APPROPRIATE CIRCUMSTANCES AND PRIOR TO GRANTING PLANNING PERMISSION, THE COUNCIL WILL REQUIRE DEVELOPERS TO ENTER INTO AN APPROPRIATE LEGAL AGREEMENT IN ORDER TO SECURE THE PROVISION OF, OR AN APPROPRIATE FINANCIAL CONTRIBUTION TOWARDS:-

- (i) THE REPLACEMENT OF ANY FACILITIES DISPLACED BY THE DEVELOPMENT;**
- (ii) ANY INFRASTRUCTURE NECESSARY TO ENABLE THE DEVELOPMENT TO PROCEED;**
- (iii) AFFORDABLE HOUSING BEING MADE AVAILABLE IN PERPETUITY TO THOSE IN HOUSING NEED;**
- (iv) THE PROVISION OF NEW WORKS OF VISUAL ART AND CRAFTS;**
- (v) THE REPLACEMENT OF OPEN SPACE OF AT LEAST EQUIVALENT COMMUNITY BENEFIT TO ANY LOST TO THE DEVELOPMENT;**
- (vi) NEW PLAYING PITCHES, PLAY AREAS AND ANCILLARY FACILITIES FOR WHICH THERE IS A RECOGNISED LOCAL NEED;**
- (vii) ANY OTHER COMMUNITY BENEFITS THAT ARE MADE NECESSARY BY THE PROPOSED DEVELOPMENT;**
- (viii) THE PROTECTION AND ENHANCEMENT, OR ADEQUATE ALTERNATIVE PROVISION, OF FEATURES OF NATURE CONSERVATION INTEREST;**
- (ix) ANY OTHER ENVIRONMENTAL IMPROVEMENTS THAT ARE MADE NECESSARY BY THE PROPOSED DEVELOPMENT;**
- (x) ANY ADDITIONAL PUBLIC CAR AND CYCLE PARKING FACILITIES MADE NECESSARY BY THE DEVELOPMENT; AND**
- (xi) DEVELOPMENT WHICH IS APPROPRIATELY PHASED.**

18.10 The legal agreements sought will be 'planning obligations' made under Section 106 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 or its replacement.

18.11 It is not possible to specify all the circumstances under which the Council will seek such agreements although standard documentation is readily available on request. Neither is it possible to indicate exactly what the obligation would be. The requirement will vary according to the scale of the proposed development, the particular circumstances associated with it, and its anticipated impact upon the community and the local environment. Developers should also bear in mind that the Council may seek agreements on more than one of the criteria set out in the policy.

18.12 The following examples, though not exhaustive, will, however, give some indication of the nature of the agreements that may be sought. They relate directly to the criteria set out in the policy:-

- (i) the replacement of any facilities either on the site or elsewhere;
- where it is not possible to replace the facility (e.g. through the loss of a major industrial site or other employment-generating use), a financial contribution towards an appropriate body which is in a position to help remedy the losses incurred (e.g. Forest Enterprise Agency Trust (FEAT));
- (ii) the partial or total funding of any new or improved roads, street furniture, traffic management arrangements and sewers;
- (iv) a financial contribution to a community arts facility;
- (vi) commitment to the provision of a facility for which there is an agreed scheme and an available site to meet a recognised need in the locality;
- in the case of a major residential development, the provision of a community hall and, where appropriate, children's play facilities;
- the provision of on-site and off-site recreational facilities related to the development or a contribution to nearby sport and recreation or open space provision.
- contributions towards the work of

- Countrycare on relevant sites;
- the protection, enhancement and suitable management of established habitats of local wildlife significance;
- the provision of alternative wildlife habitats where existing SINC's will be damaged or lost;
- (ix) the agreement of, and adherence to, a landscape management plan.
- providing land or premises for the relocation of a 'non-conforming industry' (see para 10.106);
- in the case of large retail development, a financial contribution towards the upgrading of a town centre likely to be most affected by it;
- (x) in the case of modest town centre developments, unable to provide adequate car and cycle parking facilities, a financial contribution towards the provision of the requisite number of public spaces elsewhere in the town centre;
- (xi) phasing in the case of development of large housing sites (see Policy I2).

Phasing Large Housing Developments

18.13 PPG12 allows for a broad measure of phasing of development, particularly in areas under severe pressure for development. In such areas phasing may be warranted by evidence that market demand would exhaust the total planned provision in the early years of the Plan.

18.14 According to PPG12, phasing should be clearly justified by practical considerations. It should allow for a reasonable degree of choice and flexibility and not amount to an artificial constraint. Very precise specification of the numbers of houses to be provided on a year-by-year basis is not appropriate. Phasing may need to be adjusted where the land supply either falls significantly short of requirements or exceeds expectations. Any such excesses may lead to some postponement of the release of land.

18.15 Epping Forest District is undoubtedly an area in which pressure for housing development is intense. Although the supply of land for housing in the District is likely to be more than adequate in terms of the identified "need" (see para. 9.19) it is not appropriate to release all the available land for

development immediately. This is because:-

- such an approach could result in the development of all available sites such that a five year land supply (see para. 9.7) could not be maintained throughout the Plan period;
- the loss of most sites to development would result in pressure to release yet more sites to maintain the building rate which would inevitably place more pressure on the Green Belt where the release of land for housing would be contrary to policy;
- it is necessary to try and meet the programming in the Structure Plan which although being "front-loaded" requires that some land is not developed until the latter part of the 1990s.

18.16 As a consequence, the aim must be to ensure that the available sites are not taken up too quickly. It is therefore necessary to phase the release of housing land in order to avoid premature exhaustion of the available supply prior to the end of the Plan period.

POLICY I2

BEFORE GRANTING PLANNING PERMISSION FOR RESIDENTIAL DEVELOPMENT ON LARGE SITES, THE COUNCIL WILL HAVE TO BE SATISFIED THAT APPROVAL WOULD NOT RESULT IN THE SUPPLY OF HOUSING LAND SIGNIFICANTLY EXCEEDING THE IDENTIFIED HOUSING NEED FOR THE ENSUING FIVE YEAR PERIOD. WHERE APPROVAL WOULD LEAD TO SUCH AN EXCESS IN THE SUPPLY OF HOUSING LAND THE COUNCIL WILL EITHER:-

- (i) **SEEK TO PHASE THE DEVELOPMENT SUCH THAT THE HOUSING LAND SUPPLY FOR THE ENSUING FIVE YEAR PERIOD IS NOT EXCEEDED SIGNIFICANTLY; OR**
- (ii) **REFUSE PLANNING PERMISSION WHERE APPROPRIATE PHASING CANNOT BE AGREED.**

18.17 Large sites are those which are 1 hectare or more. The policy will also be applied to sites of this size which would be appropriate for housing development but which are sub-divided into sites of less than 1 hectare through, e.g. either being sold off in parts, or the development proposals being phased.

18.18 The identified housing need is that derived from the suggested programming in the Structure Plan: First Alteration (see Appendix 6) plus the increased provision in the current Structure Plan, spread over the remainder of the Structure Plan period (see Appendix 6). It will also include any unmet needs from previous years.

18.19 The housing land supply comprises:-

- outstanding planning permissions on sites with a capacity for 12 or more dwellings although any known impediments to development will be taken into account;
- other potentially acceptable sites with capacity for 12 or more dwellings which are currently the subject of a planning application; and
- the anticipated supply from sites with scope for less than 12 dwellings, based on current experience.

18.20 The anticipated supply will not be allowed to exceed the need for the ensuing six years. The six year supply is obtained from combining the assumed annual needs for the relevant period (derived from the five year periods identified in the Structure Plan) and the needs not met in previous years. A period of six years is utilised in order that annual reviews will ensure that the minimum period against which the supply is assessed will be five years. It will also facilitate up to a 20% excess over the five year supply. Beyond that, any excess will be considered as significant.

18.21 Both the housing need and the housing land supply will be monitored on a regular basis. In determining the commencement and/or rate of development to be permitted, the Council will have regard to the extent to which the scheme, and any associated enabling development, will contribute to the achievement of the Plan's aims and the implementation of other policies.

18.22 It is anticipated that any phasing agreements would be made under Section 106 of the Town and Country Planning Act 1990 (see policy I1).

18.23 In considering planning applications for appropriate sites the Council will have regard to the policies relating to "affordable" housing provision (H4-H6), mobility housing (H7-H9), design, amenity space and car parking provision (DBE1 to DBE9).

Replacement Facilities

18.24 When the replacement or relocation of facilities (eg libraries, clinics, sports grounds and buildings) takes place it is important to ensure that the provision of the facilities is maintained throughout the transition period. Consequently, the existing facility should be retained until the new one is in place.

POLICY I3

THE COUNCIL WILL, WHERE PRACTICABLE, SEEK TO ENSURE THAT, WHERE REPLACEMENT FACILITIES ARE BEING PROVIDED, THE NEW FACILITY IS OPERATIONAL PRIOR TO THE CLOSURE OF THE EXISTING ONE.

18.25 This policy will be applied unless the Council is satisfied that there are adequate reasons for not insisting upon the continued provision of facilities and that adequate and appropriate replacement will be provided within an agreed period.

Planning Enforcement

18.26 Epping Forest District is a very pleasant area in which to live and work. The people who do so clearly attach a great deal of importance to the quality of the local environment. This is apparent from their concern to protect its attributes and to comment, enquire and complain when undesirable activity or change takes place without an appropriate level of environmental protection.

18.27 The Council places great store on the opinions of local people about what they consider to be unacceptable development. Communication is most important on what may be complex or technical issues, and some local residents do not wish their remarks to be made public. Confidentiality will be respected as far as possible. The over-riding priority is to ascertain the relevant facts so that a judgement can be made on what is expedient in terms of planning enforcement.

18.28 PPG18 points out that local planning authorities "... have a general discretion to take enforcement action, when they regard it as expedient." It is also stated that:-

- the ombudsman may accuse the authority of "maladministration" if it fails to take effective enforcement action which was plainly necessary;
- in considering action, the decisive issue should be whether the breach of control

- would unacceptably affect public amenity or the public interest; and
- negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required.

18.29 It also gives guidance for authorities where unauthorised development:-

- can be made acceptable by the imposition of conditions; or
- is unacceptable on the site and relocation is, or is not, feasible;
- is unacceptable and immediate remedial action is required;
- is by small businesses or the self-employed; and
- is by private householders.

18.30 In view of the importance which the Council attributes to the proper enforcement of planning control it will adhere rigidly to the following policy:-

POLICY 14

IN DETERMINING WHAT, IF ANY, ENFORCEMENT ACTION TO TAKE WHERE DEVELOPMENT HAS BEEN UNDERTAKEN EITHER WITHOUT THE REQUISITE PLANNING PERMISSION OR CONSENT OR IN BREACH OF A PLANNING CONDITION THE COUNCIL WILL:-

- (i) **TAKE PROMPT, APPROPRIATE ENFORCEMENT ACTION IN CASES WHERE:-**
 - (a) **IT CONSIDERS THE DEVELOPMENT TO BE DEMONSTRABLY HARMFUL TO PUBLIC AMENITY OR PUBLIC INTEREST AND WOULD NOT GAIN APPROVAL EVEN WITH THE IMPOSITION OF ANY PLANNING CONDITIONS; OR**
 - (b) **A PLANNING APPLICATION HAS BEEN INVITED BUT HAS NOT BEEN SUBMITTED;**
- (ii) **SERVE A BREACH OF CONDITION NOTICE IN CASES WHERE IT CONSIDERS THAT THE BREACH IS**

DEMONSTRABLY HARMFUL TO PUBLIC AMENITY OR PUBLIC INTEREST;

(iii) **SERVE A PLANNING CONTRAVENTION NOTICE OR SEEK A PROMPT PLANNING APPLICATION IN CASES WHERE IT CONSIDERS THAT THE DEVELOPMENT IS DEMONSTRABLY HARMFUL TO PUBLIC AMENITY OR PUBLIC INTEREST BUT COULD BE MADE ACCEPTABLE BY IMPOSING APPROPRIATE PLANNING CONDITIONS;**

(iv) **ALLOW AN APPROPRIATE AND REASONABLE PERIOD OF TIME FOR COMPLIANCE WITH ITS REQUIREMENTS WHILE ENSURING THAT GOOD PLANNING IS NOT PREJUDICED BY VIRTUE OF THE DEVELOPMENT HAVING BEEN UNDERTAKEN;**

(v) **WHERE POSSIBLE, ISSUE A STOP NOTICE IN CASES WHERE IT CONSIDERS THE DEVELOPMENT TO BE EXCEPTIONALLY HARMFUL TO PUBLIC AMENITY OR PUBLIC INTEREST;**

(vi) **COMMENCE APPROPRIATE LEGAL PROCEEDINGS IN CASES WHERE THERE IS EVIDENCE THAT AN OFFENCE HAS BEEN COMMITTED.**

18.31 The approach is intended to be a step-by-step one using the relevant powers in sequence, if need be, until the breach of control is resolved.

18.32 The Council currently deals with unauthorised activities by responding to complaints. It does not, as yet, monitor new schemes to any substantial degree to ascertain whether planning conditions have been adhered to. It does, however, intend to do so in line with Audit Commission advice, subject to the availability of finance.

Environmental Implications

18.33 The implementation of the policies in this chapter will contribute to the achievements of the following aims of the Plan (see pages 24 and 25):-

- (i) To promote and secure the optimum type and distribution of educational, health and social facilities to meet the needs of the District's residents both now and in the

future.

(xviii) To ensure that new development has adequate infrastructure.

(xxix) To undertake appropriate action against breaches of planning control.

18.34 Appendix 2 indicates the extent to which the policies will have an effect in environmental terms. I1 and I4 are expected to benefit both the urban and rural environments whereas I2, which addresses the phased release of land for housing, will protect the Green Belt