

THURSDAY 29TH SEPTEMBER 2016**REPORT OF THE PORTFOLIO HOLDER FOR REGENERATION****LOCAL PLAN AFFORDABLE HOUSING POLICY****EXEMPT INFORMATION**

None

PURPOSE

To seek approval to adopt a recent change to the National Planning Policy Framework in respect of affordable housing contributions for small developments.

RECOMMENDATIONS

- 1) That the Council no longer seek to secure affordable housing contributions from developments of 10 units and less**

EXECUTIVE SUMMARY

The Tamworth Local Plan adopted February 2016 sets out the Affordable Housing Policy (HG4) that seeks contributions from developers towards the delivery of Affordable Housing units on private sector developments. The Whole Plan Viability, Affordable Housing and Community Infrastructure Levy Study (2014) and Addendum (2015) included an affordable housing viability assessment. The study concluded that for sites of 1 and 2 units, there should be no on-site provision and no commuted sum for affordable housing. On sites of 3 to 9 units a commuted sum for an equivalent of 20% affordable housing should be sought and for all sites of 10 units or more, on-site provision of 20% affordable housing should be required (25% provision in the case of Land North of Coton Lane and Dunstall Lane sites). These recommendations were adopted in the Local Plan which also promotes a flexible approach as individual site factors will dictate the deliverability of the policy.

Following consultation in early 2014, the Secretary of State for Communities and Local Government published a Written Ministerial Statement on 28th November 2014 announcing a new policy and changes within the National Planning Policy Guidance (NPPG) on the application of affordable housing levies and tariff based contributions on new housing developments. The new policy set a threshold of 10 units or 1,000 square metres below which planning authorities should not be seeking affordable housing contributions through section 106 agreements. For clarification, the obligations will apply from the 11th unit upwards.

The revised policy was intended to streamline the delivery of housing in response to concerns that affordable housing discussions were delaying construction of new housing. Removing the requirement for smaller sites was viewed as assisting housing delivery. West Berkshire District Council and Reading Borough Council brought Judicial Review proceedings against the policy. In July 2015, in a judgement from the Administrative Court, the Secretary of State's Written Ministerial Statement and amendments to policy were found to be unlawful. The judgement upheld that the Written Ministerial Statement was inconsistent with the statutory planning regime; 'material considerations' were not taken into account; consultation was inadequate and the Secretary of State had failed to assess the impact of the proposals upon persons with protected characteristics. The Secretary of State appealed

against the High Court ruling and in May 2016, the Court of Appeal ruled in favour of the government dismissing the grounds of the previous appeal. It was accepted that the policy could be applied flexibly and local authorities had discretion in adopting the new policy, overriding the direction particularly where a viability assessment underpinned the affordable housing policy.

In 2015 when the Tamworth Local Plan was being prepared for examination the requirement for affordable housing contributions for developments of less than 10 units was initially removed to be in line with government policy. However, this was reinstated within the Local Plan following the successful Judicial Review as the affordable housing evidence supported this approach.

Government policy now requires a consideration for a higher threshold of affordable housing contributions (11 or more units). The Secretary of State's policy will need to be considered when decisions on applications for planning permission are made. However, the policy is not a binding requirement and local circumstances can be given more weight where it can be justified. It is acknowledged that the Tamworth Local Plan and Policy HG4 in particular, has a robust evidence base and the viability of the proposals within the policy have been tested. The existing policy could continue to be applied however, there is a risk that the policy will be challenged or case law will emerge to support government policy. In view of the likelihood of challenge it is recommended that government guidance is now adopted and implemented.

The revision to the policy is timely with the Community Infrastructure Levy being taken forward to examination. The Whole Plan Viability Assessment considered levels of tariff payments for both scenarios, where Affordable Housing contributions for development of between 3 and 9 units were either sought or removed and tariff payments were modelled on this basis. The assessment concluded that developments of between 3 and 9 units could provide a financial contribution through a Section 106 Agreement equivalent to a target of 20% on site Affordable Housing. Removing the financial contribution towards Affordable Housing for these developments would justify the application of a higher CIL rate for smaller developments. Exceptions to the above policies will be considered where satisfactory evidence is provided that meeting the policy will render the development financially unviable. Further information on proposed amendments to the Community Infrastructure Levy is detailed in another report on the same agenda.

Section 106 Agreements will continue to be used to secure planning obligations from developments as the CIL will not replace these agreements. Section 106 Agreements will be appropriate for major developments to ensure that they are carried out sustainably where improvements to open space, sport and recreation facilities as well as highway/transport infrastructure are required.

OPTIONS CONSIDERED

The Tamworth Local Plan has recently been adopted and the evidence base is up to date. On that basis, Policy HG4 could continue to be applied in its current form and Affordable Housing contributions sought for developments between 3 and 10 units; however this approach would be at odds with the NPPF and could potentially be challenged.

RESOURCE IMPLICATIONS

There are no further resource implications above those currently identified within the service area.

If approved there will be a reduction in Section 106 receipts for contributions towards provision of affordable housing but an increase in CIL receipts. It is not possible to quantify the reduction in Section 106 contributions towards affordable housing as these are negotiated on individual planning applications which cannot be anticipated. Furthermore,

there may be specific constraints on individual sites that impact upon the level of contribution. The application of the new charging regime should in theory balance out as the removal of the requirement to contribute to affordable housing provision should be compensated by the increased level of CIL for smaller developments.

LEGAL/RISK IMPLICATIONS BACKGROUND

The application of national policy needs to be considered on an individual basis. Departure from national policy would need to be justified and compelling evidence provided to support it. The Tamworth Local Plan currently promotes different threshold levels for the application of the affordable housing policy which is in contrast to the NPPF. Although there is evidence to support the current approach, it could be challenged and the justification eroded once case law supporting government policy emerges. Furthermore, as time moves on, the further away from the date of the evidence base the less weight it will have.

SUSTAINABILITY IMPLICATIONS

The Government proposals were designed to speed up the planning process by removing a constraint to the development of smaller sites. The reduced thresholds for requiring affordable housing contributions would compromise the Local Plan's ability to deliver sustainable development as evidenced in The Whole Plan Viability, Affordable Housing and Community Infrastructure Levy Study (2014). However the levies identified within the Draft Charging Schedule of the Community Infrastructure Levy will go some way towards compensating this.

BACKGROUND INFORMATION

None

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LIST OF BACKGROUND PAPERS

Cabinet Report 2nd April 2015 – Community Infrastructure Levy
Whole Plan Viability, Affordable Housing & CIL, 2014 and Addendum, 2015
Tamworth Borough Council Community Infrastructure Levy, Draft Charging Schedule for Public Consultation, October 2015
Tamworth Borough Council Local Plan 2006-2031, Adopted 23rd February 2016
National Planning Policy Framework – Department of Communities and Local Government

APPENDICES

None

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