

## CABINET

THURSDAY, 27 SEPTEMBER 2018

### REPORT OF THE PORTFOLIO HOLDER FOR HERITAGE AND GROWTH

#### PROPOSED REVISION TO THE INTERPRETATION OF THE AFFORDABLE HOUSING POLICY AND REVISION TO THE PLANNING OBLIGATIONS SPD

##### EXEMPT INFORMATION

None

##### PURPOSE

To update Cabinet on the impact of changes to national policy set out in the revised National Planning Policy Framework in relation to the provision of affordable housing and to seek endorsement of the proposed interpretation of Local Plan policy HG4 (Affordable Housing). Approval is sought to consult on revisions to the Planning Obligations Supplementary Planning Document to reflect these changes and to publish the revised document following the period of consultation. Further approval is sought to delegate authority to make minor amendments to the document in future.

##### RECOMMENDATIONS

1. That the Council revert to seeking to secure affordable housing contributions from developments of 10 units and more as set out in policy HG4 of the adopted Local Plan;
2. That the Council note that part c) of policy HG4 continues to be not in compliance with the NPPF and that little weight should be applied to it when assessing planning applications;
3. That references to specific paragraphs of the National Planning Policy Framework in the Planning Obligations Supplementary Planning Document are updated to reflect the revised National Planning Policy Framework;
4. That Cabinet approve a period of consultation on revisions to the Planning Obligations Supplementary Planning Document, as set out in recommendations 1 and 2, and approves publication of the revised document subject to the approval of the Portfolio Holder Heritage and Growth;
5. That future minor amendments (changes that would not require a period of public consultation and would not alter the scope or emphasis of the document) to the Planning Obligations Supplementary Planning Document are delegated to the Assistant Director Growth and Regeneration in consultation with the Portfolio Holder Heritage and Growth.

##### EXECUTIVE SUMMARY

Affordable housing policy interpretation and amended guidance

The Secretary of State for Communities and Local Government published a Written Ministerial Statement (WMS) on 28th November 2014 announcing a new policy and changes within the National Planning Policy Guidance on the application of affordable housing levies and tariff based contributions on new housing developments. The WMS stated that affordable housing should not be sought on schemes of fewer than 11 dwellings or where the gross floorspace would be less than 1,000 sqm.

On the basis of this national policy change, Cabinet approved a change to the Council's interpretation of the adopted Local Plan affordable housing policy (HG4 Affordable Housing) at the meeting on 29th September 2016 as follows:

- That the Council seek to secure on-site affordable housing on developments involving 11 or more dwellings, in line with the WMS, instead of 10 dwellings or more as originally set out in part a) of policy HG4; and
- That the Council no longer seeks a financial contribution towards off-site affordable housing provision as set out in part c) of policy HG4 to reflect Government policy set out in the WMS.

The altered interpretation was reflected in the Planning Obligations Supplementary Planning Document (SPD), which provides advice to applicants on how to interpret the policies of the Local Plan. The adoption of the SPD was approved at a meeting of the full Council on 17 July 2018 and the document was adopted on 01 August 2018.

The revised National Planning Policy Framework (NPPF) was published on 24 July 2018, in between the Council's resolution to adopt the SPD and its actual adoption date. The revised NPPF is the Government's most recent statement of national planning policy and as such previous statements of Government policy, including the 28 November 2014 WMS, should be disregarded.

The revised NPPF states that affordable dwellings should only be sought on '*major developments*' which is defined as '*development where 10 or more houses will be provided, or the site has an area of 0.5 hectares or more.*' This revised policy position means that there is no longer a requirement for the Council to interpret paragraph a) of Policy HG4 differently to how it is set out in the adopted Local Plan as this section of the policy is now NPPF compliant. It is therefore recommended that the Council revert to interpreting the part a) of policy HG4 of the adopted Local Plan as it is written in the Plan and return to seeking on-site affordable housing for developments of 10 dwellings or more.

For clarity, the Council should continue to apply little weight to part c) of policy HG4 (in relation to seeking financial contributions towards off-site affordable housing on schemes of 3 – 9 dwellings) as this continues to be not in compliance with current Government policy.

#### Consultation on a revised SPD

This section of the SPD will need to be updated to reflect the current position and it is considered that the change would be significant enough to require a period of consultation on the revised document in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). Cabinet approval is therefore sought to consult for a period of four weeks on the revised version of the document included in appendix A.

### Minor amendments

There may be further instances in future where minor amendments could be required to the text of the SPD to ensure that it remains accurate and up to date. This could include where any errors are identified in the text or where further changes to national policy may alter references to the relevant NPPF paragraphs contained within the section on national guidance. Such minor amendments would not require a period of public consultation and would not alter the scope or emphasis of the document. It is therefore considered that it would be appropriate to delegate authority for making such minor amendments to the Assistant Director Growth and Regeneration in consultation with the Portfolio Holder Heritage and Growth.

### Community Infrastructure Levy

The Community Infrastructure Levy Charging Schedule also reflects the Government policy set out in the WMS by incorporating a differential rate between developments providing 10 units or fewer (£68 per square metres) and developments of 11 units or more (£35 per square metre). The higher CIL charge reflects the additional headroom available on schemes that would not be required to provide affordable housing on site when using the previous Government policy as a guideline.

The CIL Charging Schedule came into effect on 01 August 2018 and any change to the chargeable rates would require a review of the Charging Schedule and a further examination in public. It is therefore considered that it would not be expedient to review the Charging Schedule at this point and instead consideration will be given to whether special circumstances apply for schemes of exactly 10 dwellings until such time as the Charging Schedule is updated.

### **OPTIONS CONSIDERED**

One option considered is to not amend the SPD to reflect the recent national policy changes. However this would lead to the SPD being not in compliance with the policies of the NPPF and may lead to difficulties when determining planning applications for schemes of 10 units in future. Although the risks associated with this are likely to be low, it is still considered expedient to update the SPD at this time.

The option of not consulting on the proposed changes has also been considered. Changes that would not significantly affect the content of the document, such as updating the references to national guidance, could be carried out without a period of consultation on the basis that they do not alter any of the guidance contained within the document. However, the purpose of Supplementary Planning Documents is to provide further advice and guidance on the policies contained within the Local Plan and so the proposed change to the interpretation of the affordable housing policy would alter a fundamental element of the document. As such it is considered that consultation should be carried out on the proposed changes, in accordance with the relevant regulations, as to not do so may leave any new version of the document open to challenge.

In relation to the delegation of the approval of future minor amendments to the document, the alternative option is to retain the requirement to seek Cabinet approval for any alteration. Bearing in mind that any such changes would be insignificant in nature, it would seem inefficient to seek Cabinet approval for all such changes. It is therefore considered that delegating authority for the approval of these changes is the most appropriate option.

## **RESOURCE IMPLICATIONS**

There are no further resource implications above those already identified within the service area in relation to the production of, and consultation on, an amended SPD. There are no direct resource implications resulting from the revised interpretation of the Local Plan affordable housing policy, however reducing the threshold down to developments of 10 dwellings may lead to the availability of additional affordable housing units within the borough.

Continuing to apply little weight to part c) of policy HG4 would mean that financial contributions towards affordable housing would continue not to be sought on smaller developments. However, as this part of the policy is considered to be not in compliance with the NPPF, it is unlikely that any such contributions could be sought in any case.

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise, and the revised NPPF is a material consideration in such decisions. The suggested interpretation of Local Plan policy HG4 would be in line with the policies set out in the NPPF and so the associated risk should be considered minimal.

The regulations governing the content, preparation and adoption of supplementary planning documents are included within the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). In particular, regulation 12 requires that, prior to adoption of a supplementary planning document; a local authority must make the document available for inspection for a period of four weeks to allow any person to make representations. Failure to comply with these regulations may leave the document open to legal challenge.

## **SUSTAINABILITY IMPLICATIONS**

Any sustainability implications are set out in other areas of the report.

## **BACKGROUND INFORMATION**

None.

## **REPORT AUTHOR**

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## **LIST OF BACKGROUND PAPERS**

House of Commons: Written Statement (HCWS50) 28 November 2014

National Planning Policy Framework (July 2018)

Cabinet Report 29 September 2016 – Local Plan Affordable Housing Policy

Planning Obligations Supplementary Planning Document (August 2018)

## **APPENDICES**

A) Draft revised Planning Obligations Supplementary Planning Document for consultation