



## AGENDA ITEM: 12

### SUMMARY

<b>Report for:</b>	<b>Cabinet</b>
<b>Date of meeting:</b>	<b>15 September 2015</b>
<b>Part:</b>	<b>1</b>
If Part II, reason:	
<b>Title of report:</b>	<b>Revocation of the Affordable Housing Clarification Note</b>
Contact:	<p>Cllr Andrew Williams, Portfolio Holder for Planning and Regeneration.</p> <p>James Doe, Assistant Director, Planning, Development and Regeneration (extension 2583),</p> <p>Laura Wood, Team Leader, Strategic Planning and Regeneration (extension 2661); and</p> <p>Sarah Pickering, Housing Development Lead Officer (extension 2914).</p>
Purpose of report:	To seek Cabinet's approval to revoke the Affordable Housing Clarification Note (March 2015) and revert to the adopted policy position set out in the Core Strategy and associated Affordable Housing Supplementary Planning Document (SPD).
Recommendations:	<p>That Cabinet recommend Council to:</p> <p>(a) Revoke the Affordable Housing Clarification Note (March 2015) and cease to apply it as a material planning consideration in relevant planning decisions and for use in the preparation of future planning documents; and</p> <p>(b) Add the statement attached as Appendix 1 to the Council's website to explain the reasons for this decision.</p>
Corporate Objectives:	The Council's affordable housing policies support the 'Dacorum Delivers' and 'Affordable Housing' objectives. They improve efficiency and effectiveness of services by enabling planning decisions to be approved within agreed time scales and through the provision of upfront and clear advice on the provision of affordable housing within new development. The

	<p>Affordable Housing Clarification Note was prepared to update the Council's approach to the provision of affordable housing in the light of changes to Government policy. Following a High Court decision this policy change has been reversed and the Clarification Note is no longer applicable. Higher levels of affordable housing (both on-site and via commuted sums) will be delivered through the reversion to the Council's adopted policy position.</p>
<p>Implications:</p> <p>'Value For Money Implications:'</p>	<p><u>Financial</u></p> <p>Reverting to our adopted policy (as set out in the Core Strategy and associated Affordable Housing Supplementary Planning document) will allow higher levels of contributions towards affordable housing to be sought and therefore help deliver a key corporate objective.</p> <p><u>Value for Money</u></p> <p>Providing clarity on the Council's affordable housing policies will ensure that contributions are successfully secured from appropriate developments and there are no undue delays to the processing of planning applications. It will also minimise the risk of applicants appealing planning decisions.</p>
<p>Risk Implications:</p>	<p>The Government has stated that they intend to appeal the judgement. There is therefore a risk that the previous approach could be reinstated. If this does occur, then Cabinet and Council will be asked to reinstate the Clarification Note for use in Development Management decisions from the date of the appeal decision. Officers consider that it would be a much greater risk to continue to implement an approach to calculating affordable housing contributions based on a Ministerial Statement which a High Court Judge has clearly stated should not be referred to as a material planning consideration, and to sections of the Planning Practice Guidance that have been deleted by Government.</p> <p>A full Risk Assessment has been prepared for the Local Planning Framework (of which the Core Strategy is part). This is updated monthly as part of CORVU monitoring processes.</p>
<p>Community Impact Assessment:</p>	<p>Equalities Impact Assessment prepared for the Core Strategy, which this guidance note supports. This will be translated into a new Community Impact Assessment when the plan is reviewed.</p>
<p>Health And Safety Implications:</p>	<p>There are no health and safety implications relating to this decision.</p>
<p>Monitoring Officer/S.151 Officer Comments:</p>	<p><b>Deputy Monitoring Officer:</b></p> <p>Following the High Court decision and the subsequent changes to planning policy guidance, the Council has no choice but to revoke the Affordable Housing Clarification Note to ensure that it is applying the most up to date planning</p>

	<p>policy. The decision to revoke should be kept under review if the government appeal the High Court decision.</p> <p><b>Deputy S.151 Officer:</b></p> <p>There are no direct financial consequences of this decision.</p>
Consultees:	<ul style="list-style-type: none"> <li>• Director of Housing and Regeneration</li> <li>• Assistant Director – Planning, Development and Regeneration</li> <li>• Group Manager – Legal Governance</li> <li>• Group Manager – Strategic Planning and Regeneration</li> <li>• Group Manager – Strategic Housing</li> <li>• Officers from Strategic Planning and Regeneration, Strategic Housing and Development Management teams.</li> </ul>
Background papers:	<ul style="list-style-type: none"> <li>• National Planning Policy Framework (NPPF).</li> <li>• National Planning Practice Guidance (PPG).</li> <li>• Dacorum Borough Council’s Core Strategy – adopted September 2013.</li> <li>• Affordable Housing SPD – adopted September 2013.</li> <li>• Ministerial Statement – November 2014 (reference HCWSS50)</li> <li>• Cabinet Report (March 2015) – Affordable Housing Clarification Note</li> <li>• High Court Judgement (reference CO/76/2015) re West Berkshire District Council and Reading Borough Council vs Department for Communities and Local Government (31 July 2015)</li> </ul>
Glossary of acronyms and any other abbreviations used in this report:	<p>NPPF – National Planning Policy Framework</p> <p>PPG – Planning Practice Guidance</p> <p>SPD – Supplementary Planning Document</p>

## Background

### 1. INTRODUCTION

#### Affordable Housing Policy

- 1.1 The Council’s approach to affordable housing is set out in its Core Strategy. This was adopted in September 2013, following an extensive consultation and examination process. Further detail is set out in the Affordable Housing Supplementary Planning Document (SPD), which was adopted alongside the Core Strategy. This SPD elaborates on the types of developments that will trigger the need for affordable housing contributions, and whether these

contributions will be in the form of on-site provision or commuted sums. Both the Core Strategy policies and SPD have been in place now for almost 18 months and are performing well.

### Impact of Ministerial Statement

- 1.2 On 28 November 2014, a written statement was issued by Brandon Lewis, the Minister of State for Housing and Planning (reference HCWS50). This Ministerial Statement set out a number of changes the Government was introducing to national policy in relation to planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended). These were reflected in amendments to the Government's Planning Practice Guidance (PPG) and so became material planning considerations.
- 1.3 The changes to the PPG made it clear that contributions for affordable housing and tariff style planning obligations should not be sought in the following scenarios:
  - Where developments in urban areas comprise 10 units or less and which have a maximum combined gross floor area of no more than 1000 sq.m
  - Where a development is located in a designated rural area and comprises 5 units or less under the discretion of the local planning authority
  - Where development consists of the construction of a residential annex or extension.
- 1.4 It further stated that in designated rural areas where there is a reduced threshold, affordable housing and tariff style contributions sought from developments of between 6 and 10-units should be in the form of cash payments which are commuted until after completion of units within the development. Rural Exception Sites were specifically exempted from this new approach.
- 1.5 The statement also required local authorities to offer a financial incentive to bring back vacant buildings into use by allowing them to reduce the requirements for affordable homes. This is referred to as 'Vacant Building Credit'.
- 1.6 In terms of affordable housing, the main effect of these changes has been to reduce the number of developments which will be expected to make a contribution – whether on-site or via commuted payments. If a contribution is required, the amount should be reduced if the site contained vacant buildings.

## **2. THE NEED FOR A CLARIFICATION NOTE**

- 2.1 As a result of these changes to national policy, Officers prepared a 'Clarification Note' to be published alongside the Council's existing affordable housing policies. This was required to ensure that all parties - developers, landowners, affordable housing providers and Council Officers in Development Management, Strategic Planning, Strategic Housing and Legal, together with Members - interpreted and applied these policy changes in a consistent manner when dealing with planning applications and providing pre-application advice.

- 2.2 The Clarification Note was adopted by Cabinet in March 2015 and has been used since that date as a material planning consideration for relevant planning applications.

### **3. IMPLICATIONS OF SUBSEQUENT HIGH COURT DECISION**

- 3.1 West Berkshire District Council and Reading Borough Council lodged a challenge to the Government policy changes in the High Court. This challenge was heard in April and the Judgement issued on 31 July. The Judge clearly found in favour of the two Councils.
- 3.2 The actions agreed to remedy the case are as follows:
- (a) Declaration by the Court that the Ministerial Statement must not be treated as a material planning consideration in development management and development plan procedures and decisions or in the exercise of powers and duties under the Planning Acts more generally; and
  - (b) The removal of the relevant paragraphs introduced to the PPG (with immediate effect).
- 3.3 The Affordable Housing Clarification Note makes it clear that it was drawn up as a direct result of the Ministerial Statement and changes to the PPG that no longer apply. It also clearly states that *'The Council's approach will be kept under review and this Clarification Note amended as necessary in the light of any further guidance or clarification received either direct from the Government or as a result of decisions issued by the Planning Inspectorate or High Court.'*
- 3.4 Officers advise that the only option for the Council in the light of this High Court decision is to revoke the Clarification Note and revert to the adopted policy position, as set out in the Core Strategy and Affordable Housing SPD. The Council cannot legally continue to apply the clarification note when the justification for this approach has been removed as a result of the judgement.
- 3.5 Officers from Strategic Planning, Strategic Housing, Development Management and Legal Services therefore recommend that following steps should be taken:
- 1. Seek Cabinet and Council approval to revoke the Clarification Note, pending the outcome of any appeal by Government (see below); and
  - 2. Place a short statement on our website explaining the above and making it clear that applications received after the date of the Judgement (31 July) will be expected to comply with the adopted policy position (see Appendix 1).
- 3.6 In advance of this formal decision, Officers have already ceased to apply the Clarification Note through the authority of an Officer Decision Sheet, for the reasons set out above.

**4. REVIEW**

- 4.1 Government have stated that they intend to appeal the judgement. There is therefore the potential that the previous approach could be re-established. If this does occur, then Council will be asked to reinstate the Clarification Note for use in Development Management decisions from the date of the appeal decision.
- 4.2 A full review of the Council's approach to the delivery of affordable homes and collection of commuted sums will be carried out as part of the early partial review of the Core Strategy. It is the intention that the Affordable Housing SPD will also be updated either in parallel, or immediately following this process. This will ensure consistent and comprehensive guidance is provided for use by landowners, developers and Planning Officers.

**Appendix 1:**

**STATEMENT FOR COUNCIL'S WEBSITE**

**Dacorum's approach to calculating affordable housing contributions**

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In March 2015 Dacorum's Cabinet agreed a clarification note to accompany the Affordable Housing SPD. This clarification note was required to set out how the Council would reflect changes to Government policy relating to affordable housing, including the introduction of 'Vacant Building Credit.' These changes in policy were set out in a Ministerial Statement (reference HCWSS50) and reinforced by changes to the Planning Practice Guidance (PPG).

West Berkshire District Council and Reading Borough Council lodged a challenge to these policy changes in the High Court. This challenge was heard in April and the Judgement issued on 31 July.

The Judgement found in favour of the appellants and as a result the court has declared that the Ministerial Statement must not be treated as a material planning consideration in either development management or development plan procedures. Relevant paragraphs introduced to the PPG have also been deleted with immediate effect.

As a consequence of this judgement, Dacorum Borough Council has withdrawn the Affordable Housing Clarification Note issued in March 2015. The policy position regarding the provision of affordable housing from the date of the judgement (i.e. 31 July 2015) therefore reverts to the position prior to this date. This means that decisions will be made in accordance with Core Strategy Policy CS19: Affordable Housing of the Core Strategy and associated Affordable Housing Supplementary Planning Document (both adopted September 2013).

If you would like further advice regarding how this judgement may affect consideration of current applications, please contact your allocated Case Officer.