



AGENDA ITEM: 10

SUMMARY

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| Report for: | Cabinet |
| Date of meeting: | 26 July 2016 |
| Part: | 1 |
| If Part II, reason: | |

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| Title of report: | Affordable Housing Clarification Note |
| Contact: | <p>Cllr Graham Sutton, Portfolio Holder for Planning and Regeneration.</p> <p>James Doe, Assistant Director, Planning, Development and Regeneration (extension 2583); and</p> <p>Laura Wood, Team Leader, Strategic Planning and Regeneration (extension 2661).</p> |
| Purpose of report: | To agree the re-adoption of the Affordable Housing Clarification Note setting out how the Council will apply the changes to national affordable housing policy set recent changes to the national Planning Practice Guidance (PPG), and as a result of a Court of Appeal judgement. |
| Recommendations | <p>It is recommended that Cabinet recommend to Council to:</p> <ul style="list-style-type: none"> (a) Re-adopt the Affordable Housing Clarification Note as a material planning consideration in relevant planning decisions and for use in the preparation of future planning documents; and (b) Delegate authority to the Assistant Director, Planning, Development and Regeneration to make any necessary minor editorial changes to the current Clarification Note, prior to its re-issue. |
| Corporate Objectives: | The Affordable Housing Clarification Note supports the 'Dacorum Delivers' and 'Affordable Housing' objectives. It will 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. It also demonstrates that the Council is able to respond to changes in national policy in a prompt and effective manner. |

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| <p>Implications:</p> | <p><u>Financial</u></p> <p>There are no direct financial implications for the Council in relation to this guidance note, although there will be a limited number of cases where the revised approach to affordable housing may reduce the ability to secure either on-site provision or commuted payments. The requirements to apply 'vacant building credit' may also reduce CIL income.</p> <p>The application of the Clarification Note will however assist in the efficient determination of planning applications within the statutory decision periods, which will assist with the overall financial efficiency of the planning service. It will also reduce the risk of the Council having to defend appeals which may have occurred should measures not have been taken to bring the Council's approach in-line with revised national planning policies.</p> <p><u>Value for Money</u></p> <p>Up-to-date guidance on affordable housing will ensure the Council secures contributions from development where appropriate, but does not spend unnecessary time and money fighting appeals where there is a mis-match between the policies within the adopted Core Strategy and revised national guidance.</p> |
| <p>Risk Implications</p> | <p>There are no direct risk implications related to this guidance note. The note provides detailed guidance to support the application of policies within the adopted Core Strategy and Affordable Housing SPD. A separate 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 in due course.</p> |
| <p>Health And Safety Implications</p> | <p>There are no health and safety implications relating to this Clarification Note.</p> |
| <p>Monitoring Officer/S.151 Officer Comments</p> | <p>Monitoring Officer:</p> <p>The clarification note will ensure that the Council is applying the most up to date and relevant government guidance and will assist consistent decision making on planning applications.</p> <p>S.151 Officer</p> <p>No further comments to add.</p> |
| <p>Consultees:</p> | <ul style="list-style-type: none"> • Development Management (Paul Newton) • Strategic Housing (Julia Hedger, Sam Bramley) • Strategic Planning and Regeneration (Francis Whittaker, Heather Overhead, Robert Freeman) • Legal Governance (Christopher Gaunt) |

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| <p>Background papers:</p> | <ul style="list-style-type: none"> • National Planning Policy Framework (NPPF). • Planning Practice Guidance (PPG). • Dacorum Borough Council's Core Strategy – Adopted Sept 2013. • Affordable Housing SPD – adopted September 2013. • Ministerial Statement (reference HCWSS50) – November 2014. • Cabinet Report (March 2015) – Affordable Housing Clarification Note • High Court Judgment (reference CO/76/2015) re West Berkshire District Council and Reading Borough Council vs Department for Communities and Local Government (31 July 2015) • Cabinet Report (15 September 2015) Disapplication of the Affordable Housing Clarification Note, • Appeal Court Judgment (reference C1/2015/255) re West Berkshire District Council & Anr v The Secretary of State for Communities and Local Government (11 May 2016). |
| <p>Glossary of acronyms and any other abbreviations used in this report:</p> | <p>NPPF – National Planning Policy Framework PPG – Planning Practice Guidance SPD – Supplementary Planning Document DBC – Dacorum Borough Council LDF – Local Development Framework (also referred to as the LPF – Local Planning Framework) CIL – Community Infrastructure Levy S106 – Developer contributions secured via legal agreements under s106 of planning act.</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.

Recent Changes to National Policy

- 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 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 are now material planning considerations.

1.3 The revisions 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 are 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'. No advice was been provided (either through the Ministerial Statement or subsequently) regarding the methodology that should be used to calculate this credit.

1.6 As a result of these changes, the Council prepared a clarification note to accompany the Affordable Housing Supplementary Planning Document (SPD). This was agreed by Cabinet in March 2015 and subsequently ratified by full Council.

1.7 In September 2015 Cabinet and Council were however asked to revoke the Clarification note due to a successful legal challenge brought by West Berkshire District Council and Reading Borough Council in the High Court. This challenge was heard in April 2015 and the Judgement issued on 31 July 2015.

1.8 The Judgment was clearly in favour of the two Councils and 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).

1.9 The Government decided to appeal this High Court decision. The judgment from the Court of Appeal was issued on 11th May 2016 (*R (West Berkshire District Council and Reading Borough Council) v. Secretary of State for Communities and Local Government* [2016] EWCA Civ 441, and, somewhat unexpectedly bearing in mind the previous judgement, upheld all four appeal grounds brought

by the Government, and reversed the earlier decision to quash the policy. Following this appeal Court Judgement the PPG as again been amended to reinstate the relevant paragraphs previously deleted and bring the previous policy changes back into effect.

1.10 There are two options open to the Council in terms of a response to the Court of Appeal judgment:

- 1) Continue to apply adopted policy (as set out in the Core Strategy and Affordable Housing SPD) without regard to the Court of Appeal decision and subsequent changes made to the NPPG; or
- 2) Reinstate the Affordable Housing Advice Note, with any necessary updates to the background text.

1.11 Officers strongly recommend that Option 2 is the appropriate course of action, as the Council is in effect in exactly the same position as when it originally drew up the Clarification Note in March 2015 and the note makes it clear that it was drawn up as a direct result of the Ministerial Statement and changes to the PPG that once again apply.

2. THE NEED FOR A CLARIFICATION NOTE

2.1 As a result of the above, Officers consider that a 'Clarification Note' needs to be reissued and referred to alongside the Council's existing affordable housing policies in relevant decisions. This will ensure that all parties - developers, landowners, affordable housing providers and Council Officers in Development Management, Strategic Planning, Strategic Housing and Legal, together with Members - all interpret and apply these policy changes in a consistent manner when dealing with planning applications and providing pre-application advice.

2.2 The Council's current policy is to secure financial contributions towards affordable housing from residential schemes comprising a single dwelling or greater in accordance with Policies CS19: Affordable Housing, CS6: Selected Small Villages in the Green Belt and CS35: Infrastructure and Developer Contributions of the Core Strategy. In the case of affordable housing contributions these may be waived for small scale schemes in accordance with the Affordable Housing SPD. These contributions are normally sought prior to the commencement of development.

2.3 The Clarification Note proposes a number of changes to how the Council secures affordable housing. These are the same as those set out in the original Advice Note agreed by Cabinet and Council in 2015. Whilst none of these changes are ideal in the context of seeking to increase the delivery of affordable homes in the Borough, as Ministers have made clear their intention that both the changes to the PPG are to be treated as national policy, Officers consider that the Council has little option but to amend how it applies its adopted policies accordingly. This approach is supported by recent appeal decisions issued by the Planning Inspectorate and advice from the Council's legal team.

2.4 Key changes to the policy approach set out in the Core Strategy which would be brought back into effect by the Clarification Note include:

Contributions made by developments within Hemel Hempstead, Berkhamsted and Tring:

- The authority will no longer seek to secure affordable housing either directly or in kind from schemes of 10 units or less within the key settlements within the Borough. This may result in a small reduction in affordable housing delivery within Tring and Berkhamsted. However, the Strategic Housing team have advised that the overall impact of this change in approach will be very limited, due to the relatively small number of schemes that fall within this size category.

Developments within the 'Rural Area'

- Developments within the 'rural area' will only be required to contribute towards affordable housing delivery (whether on-site or through commuted sums) when the site comprises 6 or more units (gross). For Dacorum, the Government's definition of 'rural' area covers all land within the Chilterns Area of Outstanding Natural Beauty (AONB), plus a number of other parishes. The Clarification Note lists and maps these. As a result of this change, the Council will no longer be able to require 'infill' developments in Chipperfield, Flamstead and Potten End and Wigginton to be affordable (in accordance with Policy CS6: Selected Small Villages in the Green Belt).

Timing of collecting contributions:

- For eligible schemes, affordable housing contributions are usually payable on commencement of development. Under the Government's new requirements, the payment trigger would need to be delayed until the occupation of the units in questions.

Vacant Building Credit:

- The newly introduced 'Vacant Building Credit' in-effect applies a discount to the affordable housing contribution that would otherwise have been sought from certain types of development. It applies to all qualifying residential schemes, irrespective of their size and location. In the absence of both a statutory definition of 'vacant building' and a nationally prescribed format for calculating the credit, the Clarification Note sets out how the Council will define and apply this approach.

2.5 The Council's Planning Lawyer previously advised that it is not necessary to undertake public consultation on the Clarification Note as:

- (a) The changes are required to comply with the Ministerial Statement and PPG; and
- (b) The changes brought in via the Ministerial Statement and PPG have been subject to consultation themselves (by Government).

This advice still stands.

3. UPDATING AND REVIEW

3.1 Whilst the Clarification Note that Cabinet and Council are being asked to re-adopt remains unchanged in broad content from the March 2015 version previously in-effect. The revised version now before does include a few changes

to the background text to ensure it fully explains the legal context. The revised clarification note (dated July 2016) is appended to this report.

- 3.2 It should be noted that there is still potential for the issues covered by the Clarification Note to be considered again by the courts – should the Councils who brought the original challenge seek to challenge the decision of the Court of Appeal. However, Officers are not aware of any intention to bring such action.
- 3.3 Further changes to the Affordable Housing Clarification Note may also need to be made should there be any further Government announcements relating to affordable housing in advance of the Council's Core Strategy policies being formally reviewed. Any updates required to the Clarification Note will be referred back to Cabinet for approval.
- 3.4 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, as part of the new Borough Local Plan. 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.