

CHANGES TO GOVERNMENT GUIDANCE ON PLANNING OBLIGATIONS – IMPLICATIONS ON SDC’S AFFORDABLE HOUSING POLICIES

Housing and Community Safety Advisory Committee – 10 February 2014

Report of Chief Officer Housing and Chief Planning Officer

Status: For Decision

Also considered by: Cabinet – 5 March 2014

Key Decision: No

Executive Summary:

The Government has recently published changes to the National Planning Practice Guidance and a written ministerial statement was issued on planning obligations. In most areas, contributions to affordable housing should not now be sought from developments of 10-units or less. In designated rural areas, local authorities can choose to seek financial contributions on developments of 6-10 dwellings in designated rural areas. In addition, where developments involve the conversion or demolition of existing buildings the contribution should be proportionate to the net increase in floorspace. Therefore, developments that do not increase the amount of floorspace on a site will not have to make an affordable housing contribution. These changes will have a significant impact on the Council’s ability to secure the delivery of affordable housing. There are not currently considered to be any opportunities for the Council to ‘work-around’ these changes to national policy. As a result, it is considered that the Council should lobby the Government to rescind or amend these policy changes.

This report supports the Key Aim of Sustainable Economy from the Community Plan.

Portfolio Holder Cllr. Lowe

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Recommendation to Housing and Community Safety Advisory Committee:

That the recommendation to Cabinet is endorsed.

Recommendation to Cabinet:

- a) That the Council lobbies Government to rescind or amend recent changes to national policy on the use of planning obligations for securing affordable housing.
 - b) That the Council seeks financial contributions to affordable housing consistent
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with the percentages applied in Core Strategy policy SP3 on developments of 6-10 units in designated rural areas in the District.

Reason for recommendation:

The changes to national policy on the use of planning obligations will have a significant impact on the Council's ability to secure new affordable housing in the District.

Introduction and Background

1. Since February 2011 the Council has sought both financial contributions towards affordable housing and on-site provision in new developments under policy SP3 of the Core Strategy. All developments that lead to a net increase in the number of dwellings are liable to make a contribution or provide affordable housing on-site. The following thresholds are applied:

Sites of 15 dwellings or more	40% on-site affordable housing
Sites of 10-14 dwellings	30% on-site affordable housing
Sites of 5-9 dwellings	20% on-site affordable housing
Less than 5 units	Equivalent to 10% financial contribution

2. Planning permission can be refused where the required level of contribution/provision has not been made and the applicant has not proven to the Council's satisfaction that this is justified on the basis of viability.
3. The Affordable Housing Viability Assessment sets out how the 10% financial contribution is calculated, amongst other things.
4. Financial contributions can be used in the following ways:
 - Provision of new affordable housing, through adding to on-site provision on development sites or bringing forward stand alone developments;
 - Initiatives to make better use of existing stock;
 - Management of need - homelessness prevention and benefit advisory services;
 - Assisting those in need to access low cost home ownership; and
 - Supporting the development of rural exception sites.
5. A joint portfolio holder decision between the planning and housing portfolio holders is made on an annual basis to determine how the money that has been received is to be spent. The money has been used, amongst other things, to deliver the highly successful bespoke shared-ownership project (A Home of Your Own) with Moat (24 purchases funded, assisting families onto the property ladder) and the under-occupation initiative with West Kent Housing Association (WKHA) (which up to October 2014, has assisted 37 households to downsize and in 60% of cases, the ensuing freed up home has been used to house a homeless family).

Changes to National Planning Practice Guidance

6. On 28 November 2014, the Government published changes to the National Planning Practice Guidance and a written ministerial statement was issued on planning obligations. The key changes for SDC are:

- In most areas, contributions should not be sought from developments of 10-units or less (where the combined gross floorspace is no more than 1000sqm);
- In designated rural areas, the Council can choose to apply a lower threshold and require financial contributions (not on-site provision) on sites of 6 units or more. Rural areas are defined under the Housing Act 1985 and in Sevenoaks District are Areas of Outstanding Natural Beauty and areas exempt from right to acquire / right to enfranchise.
- Where planning permissions involve bringing a vacant (but not abandoned, as defined by planning law) building back into lawful use or it is demolished to be replaced by a new building, the developer should be offered a ‘financial credit’ equivalent to the building’s floorspace, which can offset part of the contribution. Therefore, contributions should be proportionate to the increase in floorspace, regardless of the use of the buildings.

Development Scenario Examples

7. The changes to the NPPG affect both the financial contributions that SDC has sought from smaller sites and on-site provision on larger sites. All of these scenarios are purely hypothetical. It must also be noted that a variation on scenario A is likely to be very common across the District and will significantly reduce the financial contributions that the Council can secure in the future.

A. Development of 4 2-bed houses in one of the District’s main urban areas on a greenfield site	
Total floorspace = 400 sq m Total existing non-abandoned floorspace to be demolished = 0 sq m Value of each house = £250,000	
Contribution previously due = £44,620 (or £11,115 per unit)	Contribution now due = £0
Reason: The development falls below the new threshold for the number of dwellings in urban areas and is below 1000 sq m total development.	

B. Development of 4 6-bed houses in one of the District's main urban areas on a greenfield site

Total floorspace = 1010 sq m
 Total existing non-abandoned floorspace to be demolished = 0 sq m
 Value of each house = £1,000,000

Contribution previously due =
 £262,200 (or £65,550 per unit)

Contribution now due =
 £262,200 (or £65,550 per unit)

Reason: The development is above the 1000 sq m threshold and, therefore, the contribution is due on all of the new floorspace. In reality, the developer is likely to ensure that the total floorspace is below 1000 sq m in a situation like this. The Council would not be able to refuse permission on the basis that the developer is proposing smaller units.

C. Development of 6 3-bed houses in one of the District's smaller villages on a greenfield site

Total floorspace = 800 sq m
 Total existing non-abandoned floorspace to be demolished = 0 sq m
 Value of each house = £500,000

Contribution previously due =
 1 unit on site

Contribution now due =
 £262,200 (or £43,700 per unit)

Reason: The development is in an identified rural area and the lower threshold applies. However, on-site provision can no longer be sought under this lower threshold.

D. Development of 6 3-bed houses in one of the District's smaller villages on a brownfield site

Total floorspace = 800 sq m
 Total existing non-abandoned floorspace to be demolished = 400 sq m
 Value of each house = £500,000

Contribution previously due =

Contribution now due =

1 unit on site	$(£262,200 \times 0.5) = £131,100$ (or £21,850 per unit)
Reason: The development is in an identified rural area and the lower threshold applies. However, on-site provision can no longer be sought under this lower threshold. Because the existing floorspace represents 50% of the proposed new floorspace, the contribution is halved	

E. Development of 15 3-bed houses in one of the District's main urban areas on a brownfield site	
Total floorspace = 1800 sq m Total existing non-abandoned floorspace to be demolished = 450 sq m Value of each house = £300,000	
Contribution previously due = 6 units on site	Contribution now due = $(6 \times 0.75) = 5$ units on site
Reason: The site is not affected by the new thresholds but is affected by the 'vacant building credit'. The floorspace to be demolished is 25% of the floorspace to be built as part of the development. Therefore, the number of units on site is reduced to 5 (4.5 rounded up, as per the Affordable Housing SPD)	

F. Development of 300 units of a variety of sizes on a brownfield site	
Total floorspace = 50000 sq m Total existing non-abandoned floorspace to be demolished = 50000 sq m Value of average house = £500,000	
Contribution previously due = 120 units on site	Contribution now due = 0 units on site
Reason: The site is not affected by the new thresholds but is affected by the 'vacant building credit'. The floorspace to be demolished is equal to the floorspace to be built as part of the development. Therefore, the number of units on site is reduced to 0.	

Sites with existing planning obligations

8. Where a developer has an existing legal agreement but has not implemented the permission then they will be bound by it unless they apply to vary it. However, the developer could apply for a minor material amendment to the planning permission and renegotiate the s106 agreement. In these circumstances, the Council would have no choice but to agree to amend the obligation so that it is consistent with the new guidance. The vacant building credit could only be applied if the buildings were on-site at the time that the application to vary the planning permission is made (i.e. not if they have already been demolished).
9. Developers that have made contributions or provision already as part of a development will not be entitled to a refund.

Financial Implications

10. It has been estimated that approximately £2.5m of affordable housing contributions are currently expected on sites of 10 units or less (or 5 units or less in rural areas) where the planning permission has yet to be implemented. If developers apply to vary these agreements then it is likely that the Council will receive very little of this money (if anything).
11. To date, £2.45 million has been collected in financial contributions towards affordable housing. In 2013/14, the Council received £1,351,111, which was up from £356,032 in 2012/13. The sums received per annum were expected to continue to increase as more developments permitted after the affordable housing policies came into effect were built out and house prices increased. Therefore, it is likely that the Council stands to forego at least £1.5m per annum in affordable housing contributions as a result of these changes. The range of projects and initiatives that the Council is able to fund to deliver key priorities, under the Community Plan and Housing Strategy, will therefore be severely curtailed.
12. Of approximately 1500 new dwellings allocated on sites in the emerging Local Plan: Allocations and Development Management Plan (including land west of St Johns Way, Edenbridge, and Fort Halstead), approximately 1000 are on sites with existing buildings. This will reduce the on-site affordable housing provision required on these sites, in some cases significantly.

Potential to Overcome the Issues?

13. It is considered that there is no realistic prospect of the Council winning appeals if it was to refuse planning applications on the basis that developments are not providing the level of affordable housing contribution/provision required by the

Core Strategy policy. This would have a considerable impact on the Council's performance in planning appeals and also, because of the additional work pressures on officers, on performance targets for determining applications. Both of these performance indicators are used to determine authorities that the Government is going to place in 'special measures', where applicants can apply for planning permission directly to the Planning Inspectorate. It must be acknowledged, however, that some local authorities are taking this route.

14. It has been questioned whether there is anything that can be done to increase site densities and require sites to accommodate numbers of dwellings that would put them above these thresholds where possible. The Core Strategy affordable housing policy does contain a section that reads 'permission will be refused where the size of the development is artificially reduced to fall below the threshold requiring provision of affordable housing'. This is now likely to take on greater importance.
15. It has also been questioned whether reviewing the Core Strategy would help to resolve this issue. Unfortunately, new local plan documents must be consistent with national policy in order to be found sound. Therefore, a revised Core Strategy would not be able to include lower thresholds unless national policy/guidance was changed first. As a result, there doesn't seem to be any possibility of overcoming the issues caused by these changes to national policy.

Next Steps

16. Given the significant impact on affordable housing delivery in the District and the apparent lack of opportunities to work around the policy change, it is recommended that the Council lobbies Government to rescind or amend changes to national policy on the use of planning obligations. The Council objected to the proposed changes when they were consulted on in early 2014, as did the LGA and the District Councils Network, amongst others. The points made in these consultation responses could form the basis for any lobbying action that the Council takes. The Council should also use its contacts at Member and Officer levels to encourage those organisations that previously objected to the changes to lobby on this issue. The Council's previous response included the following points:
 - Affordable Housing contributions and the projects that they can deliver are crucial in an area with as limited opportunities for new development as Sevenoaks District.
 - The Council has local evidence (the Affordable Housing Viability and CIL Viability Assessments) that demonstrates that seeking affordable housing contributions on sites of less than 10 units and on sites with existing buildings does not make them unviable.

- The Council's policy affordable housing policy offers developers the opportunity to provide viability evidence to show why the development would not be viable with the required level of affordable housing and to negotiate a lower (including nil) provision/contribution. Therefore, the Government's blanket approach is completely unnecessary.
 - Sevenoaks District regularly achieves its Core Strategy annual average housing target and has a very healthy 5 year housing land supply when judged against it. Small sites continue to make a significant contribution to this even with affordable housing requirements in place.
 - The implementation of this top-down policy is clearly contrary to the principles of localism in the context of Sevenoaks District, where a sound and flexible affordable housing policy is operating effectively without compromising housing delivery or viability.
 - Rather than incentivise brownfield development, the Government's approach will see planning applications for change of use or redevelopment of brownfield sites resisted by local communities, who will see that local authorities have no way of securing much needed affordable housing as part of developments.
 - A combination of the proposed 10 unit threshold and the restriction on requiring provision or contributions from brownfield developments will have a catastrophic effect on the delivery of affordable housing in the District.
17. The Council's Legal Services Manager has advised that it has no legal obligation to directly inform those developers that have a signed agreement but have not yet begun the development that national guidance has changed. The Planning Department is, however, updating guidance on the Council website and, in due course, will need to review the Affordable Housing SPD.
18. Training on this issue for the Development Control committee was held on Thursday 18 December, when two applications that previously would have been required to make an affordable housing contribution were considered.

Other Options Considered and/or Rejected

19. The Council could choose to simply accept these changes and do nothing in response to them. However, given the impact that the change to national policy will have on the Council's ability to deliver affordable housing, it is considered that lobbying Government to rescind the recent changes and applying the lower threshold in rural areas is the appropriate approach.
20. There is considered to be no realistic prospect of the Council winning appeals if it was to refuse planning applications on the basis that developments are not

providing the level of affordable housing contribution/provision required by the Core Strategy policy.

Key Implications

Financial

21. The financial implications of the changes to national policy are set out in the report. The recommendations seek to reduce the expected negative impact.

Legal Implications and Risk Assessment Statement.

22. The recommendations have legal implications. The application of a lower affordable housing threshold in rural areas is consistent with Government policy and the Council's adopted Core Strategy.

Equality Assessment

23. The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Conclusions

24. Given the impact of the change to national policy on the use of planning obligations on the Council's ability to deliver affordable housing, it is considered that it should lobby Government to rescind or amend these changes and apply the lower threshold of 6 units for seeking affordable housing contributions in rural areas.

Appendices

None

Background Papers:

SDC's response to the Planning Performance and Contributions Consultation

[LDF Core Strategy](#)

[Affordable Housing SPD](#)

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