

## APPROVAL TO SEEK ADDITIONAL DESIGNATION OF PARISHES/AREAS UNDER SECTION 157(1) OF THE HOUSING ACT 1985

Housing & Health Advisory Committee - 23 November 2021

**Report of:** Chief Officer - People and Places and Chief Officer - Planning and Regulatory Services

**Status:** For Decision

**Also considered by:**

- Cabinet - 9 December 2021

**Key Decision:** Yes - significant in terms of its effects on the communities living or working in an area comprising of 2 or more wards in the District.

**This report supports the Key Aim of:** Delivering a sustainable economy through the provision of new affordable housing, particularly new homes for rent in rural areas which are genuinely affordable by local people. This aim can be assisted through increased S106 commuted sum funding.

**Portfolio Holder:** Cllr. Kevin Maskell and Cllr. Julia Thornton

**Contact Officers:** Rebecca Wilcox, Head of Housing, x7272 and James Gleave, Strategic Planning Manager, x7326

**Recommendation to Housing & Health Advisory Committee:**

To give support for a report to be made to Cabinet seeking approval for an application to be submitted to the Secretary of State for Levelling Up, Housing and Communities, seeking additional areas/parishes in the Sevenoaks District (shaded green and blue in Appendix A) to be designated under section 157(1) of the Housing Act 1985.

**Recommendation to Cabinet:**

That approval be given for an application to be submitted to the Secretary of State for Levelling Up, Housing and Communities, seeking additional areas/parishes in the Sevenoaks District (shaded green and blue in Appendix A) to be designated under section 157(1) of the Housing Act 1985

**Reason for recommendation:** To enable the District Council to maximise its designated rural areas under Section 157 (1) of the Housing Act 1985, thereby ensuring the opportunity to secure affordable housing contributions is maximised in order to assist with the delivery of genuinely affordable homes and its rural exceptions housing programme protected.

## Introduction and Background

- 1 Under Core Strategy 2011 policy SP3, any net residential addition on a planning application site triggered an affordable housing contribution. For sites of six or more homes, an element of affordable housing was to be provided on site. For sites of one to five homes, a commuted sum payment in lieu was payable. A sliding scale of contribution levels was set out in the accompanying Affordable Housing Supplementary Planning Document, such sliding scale having been previously viability tested.
- 2 Policy SP3 compliant levels of affordable housing were secured between 2011 and 2014. A Written Ministerial Statement (WMS) was issued in November 2014 (and following its eventual success in the High Court), this introduced a national threshold of 10 homes or more, above which affordable housing contributions could be sought. The WMS allowed local planning authorities to set a lower site threshold to those rural areas described under section 157(1) of the Housing Act 1985, which included National Parks and Areas of Outstanding Natural Beauty (AONB). In such cases, a commuted sum payment could be sought on these smaller sites.
- 3 In Sevenoaks District, S157 designation applies in over 60% of the District, as these areas are located within AONBs. On 5 March 2015, Cabinet approved a lower site threshold of six to nine homes, to apply in the rural areas designated under S157.
- 4 In February 2019, the National Planning Policy Framework was updated and this maintained the 10 homes (“major site”) threshold. It re-iterated the S157 designations for smaller sites.
- 5 The District Council is unable to apply the lower site threshold to those rural parishes/areas located outside of the AONBs, even where these areas are designated as “rural” under S17 of the Housing Act 1996 (statutory Right To Acquire).
- 6 Guidance from the Department for Levelling Up, Housing and Communities (DLUHC) advises that local authorities may apply to the Secretary of State to have additional areas designated as ‘rural’ under S157. Parishes must meet the criterion of a population density of less than two persons per hectare and any settlements in them must have a population of fewer than 3,000 inhabitants. The first criteria can be applied flexibly. For example, some parishes just over these limits may be designated in order to avoid a ‘patchwork’ situation where some parishes are designated while others, broadly similar, are excluded. The Appendix shows those parishes, shaded green and blue, where whole parish designation would meet the above criterion. An application seeking such designation is therefore recommended. The application process for local authorities appears very straightforward. The time taken for DLUHC to approve applications is constrained as it requires the laying of a statutory instrument. In recent years, successful applications have been made by various local authorities, including Chichester DC, Malvern Hills DC and Shropshire Council.

- 7 The primary purpose of rural designation under S157 is to restrict the consequences of the Right to Buy. It allows the local authority to put restrictive covenants in place so that the home can only be sold on to someone who has been living or working in the parish for 3 years. Alternatively the local authority may require the tenant to offer the home back to them if the tenant wishes to sell within 10 years of buying. A local authority can decide not to implement any such restrictive covenants.
- 8 Designation of all rural parishes under S157 will enable the council to apply the lower site threshold to all new market housing sites for 6 - 9 homes, within these parishes. This will maximise the opportunity for S106 commuted sum payments towards the delivery of new affordable housing.
- 9 The designation of additional rural parishes under S157 will also help to protect the District Council's Rural Exceptions Housing programme, as set out in Core Strategy policy SP4. This programme is benefiting from a 5 year local needs survey programme, in which all 31 parishes will be surveyed. Under a new WMS issued in May 2021 in respect of First Homes, areas designated under S157 are excluded from consideration as First Homes Exceptions Sites. This exclusion will help to ensure that in these areas, sites will continue to come forward as rural exceptions sites only, with their associated greatly restricted land values (as set out in the Kent Rural Housing Protocol, February 2021). This will ensure the delivery of genuinely affordable housing that meets the identified housing needs of the Parish and Housing Register customers.

### **Other options Considered and/or rejected**

Leave as current and do not apply for additional rural designations. This would prevent the District Council from maximising S106 contributions to enable new affordable housing and, with the advent of First Homes, is likely to adversely impact on the rural exceptions housing programme. Rejected.

### **Key Implications**

#### Financial

With additional designations, the District Council will be able to seek S106 affordable housing commuted sum payments on a greater number of sites. These funds can then be invested to enable new affordable housing.

#### Legal Implications and Risk Assessment Statement

Consideration has been given as to whether the very few remaining WKHA tenants with a contractual Right to Buy following the Large Scale Voluntary Transfer (LSVT) of the housing stock in 1989, would be adversely affected by additional designations. The Housing Act 1985 Section 157(1) states, "...the conveyance or grant may contain a covenant limiting the freedom of the tenant (including any successor in title of his and any person deriving title under him or such a successor) to dispose of the dwelling-house..."

Legal advice is that it can therefore be concluded that rural designation does not imply a statutory restriction but one that can be applied by a local authority or housing association on disposal of a property under the Right to Buy legislation.

To ensure parity with Right to Buy sales that have occurred since the LSVT, it is proposed to not introduce any restriction on tenants with a contractual Right To Buy who live in any newly designated areas.

### Equality Assessment

Additional rural designation under S157 will have a positive impact on the availability of affordable housing to local people, through additional S106 contributions and the protection of the rural exceptions housing programme.

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.

### Consultation

Extensive consultation was undertaken on the threshold level for affordable housing contributions as part of the Core Strategy process and the emerging Local Plan.

This proposal has been discussed with housing, planning and legal officers, as well as Kent Rural Housing Enabler and rural housing specialists.

### **Conclusions**

If the Council does not apply for additional rural designations under S157 of the Housing Act 1985, it will be unable to apply the lower threshold in rural parishes outside of the AONB. This will reduce the contribution to affordable housing from market housing development in those rural parishes. Based on an analysis of the existing Core Strategy ADMP and the emerging Local Plan allocation sites that are not in the AONB and which are proposing sites of between 6-9 homes, these will deliver 45 new homes overall. Based on the level of affordable triggered under policy, this means commuted sum payments in lieu of 9 affordable homes, will be lost. Any windfall sites will only add to this number.

Additional designation of rural parishes under S157 will also help to protect and promote the District Council's rural housing programme. Designation will mean only Rural Exceptions Housing Sites will be permissible in these areas and the overriding housing need addressed by the vast majority of these is genuinely affordable homes for rent. First Homes Exception Sites will not be permitted. It should be noted however, that subject locally identified housing needs, DLUHC guidance indicates Rural Exceptions Housing Sites can include First Homes.

It is therefore recommended that an application be submitted to DLHC seeking further designations under S157, as set out in Appendix A, shown by blue and green shading.

**Appendices**

Appendix A - Table to show those additional rural parishes where designation under S157 of the Housing Act 1985 is sought.

**Background Papers**

None.

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