

EAST HERTS COUNCIL

DISTRICT PLANNING EXECUTIVE PANEL – 10 SEPTEMBER 2015

REPORT BY LEADER OF THE COUNCIL

AFFORDABLE HOUSING – AMENDMENT TO POLICY

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- To outline the recent changes in national planning policy relating to the provision of affordable housing;
- To explain the implications of this policy change for the Council's current Affordable Housing policy

<u>RECOMMENDATIONS FOR DISTRICT PLANNING EXECUTIVE PANEL:</u> That Council, via the Executive, be advised that:	
(A)	the change in national planning policy through the removal of paragraphs in planning policy guidance related to affordable housing thresholds be noted;
(B)	the affordable housing thresholds as amended in 2012 under the 2007 Local Plan HSG3 Affordable Housing policy be re-introduced; and
(C)	the Starter Homes exemption policy, as introduced by Central Government in March 2015, be included as part of the amended 2012 HSG3 policy, as set out in this report.

1.0 Background

1.1 In December 2012 Council agreed to introduce an amendment to the affordable housing policy HSG3 contained in the Local Plan 2007. This introduced a revised threshold to provide affordable housing and a percentage amount to be sought from development schemes, in Category 1 and 2 Villages. Affordable housing provision in the main settlements stayed the same as set out in the 2007 Local Plan policy HSG3 (II) (a).

- 1.2 The following thresholds in Category 1 and 2 Villages were therefore introduced:
- Developments of between 4 and 14 units or between 0.12 and 0.5ha would require up to 25% affordable housing;
 - Developments of 15 plus units or over 0.5ha would be required to provide up to 40% affordable housing;
- 1.3 In November 2014, the Government introduced new national planning policy on the use of Section 106 planning obligation agreements with immediate effect. The Government introduced this change of policy through a Ministerial Statement and the insertion of several new paragraphs into its Planning Practice Guidance (usually referred to as PPG), an online set of planning guidance notes which supplements the National Planning Policy Framework (NPPF).
- 1.4 This set out thresholds whereby development contributions could not be sought from developments of 10-units or under and having a combined gross floorspace of no more than 1000 square metres. Exceptions were made to designated rural areas. Following this announcement, East Herts noted the changes and introduced these amendments in March 2015.
- 1.5 On the 31st July 2015 Central Government revoked the changes made to affordable housing provision as introduced in the PPGs in November 2014. This was following a high court decision which supported a quashing order in respect of the November 2014 affordable housing and social infrastructure contributions and the vacant building credit (R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government EWHC 2222 (Admin)).
- 1.6 As a result, LPAs are able to formulate their own affordable housing thresholds. This report therefore recommends that East Herts reverts to the 2012 affordable housing provision policy position.

2.0 Report

Results from the high court decision

2.1 West Berkshire District Council and Reading Borough Council challenged the amendment to affordable housing provision in order to persuade the High Court to quash the paragraphs related to affordable housing thresholds set out in PPG. The two councils challenged the case based on the following grounds:

- The thresholds did not take into account the local context and evidence base that local planning authorities have in place;
- It did not take into account the impact it would have upon affordable housing provision and how that shortfall would be delivered;
- The lack of a transitional time period in which the LPA can introduce these policies in light of existing and emerging policy;
- That the consultation process undertaken by the Secretary of State was unfair; and,
- It failed to comply with Section 149 in the public sector equality duty of the Equality Act 2010.

2.2 Having reviewed the evidence, the High Court ruled in favour of a quashing order. As a result of the high court decision, Central Government removed the paragraphs from the PPG setting out the thresholds. Consequently, LPAs are once again able to set their own thresholds for affordable housing provision.

2.3 The removal of the vacant building credit policy was also included as part of this decision.

Starter Home Exceptions Policy 2015

2.4 In March 2015, Central Government through a Ministerial Statement introduced a Starter Homes policy, which has been incorporated into the PPG. Starter Homes are aimed at supporting first time buyers entering the housing market as any house must be sold at a minimum of 20% below its open market value. To deliver the minimum 20% discount, LPAs cannot seek section 106 affordable housing and other tariff-based contributions for these sites. Starter Homes can be developed on under-used or unviable industrial and commercial land that has not been currently identified for housing. Sites that are actively being used for employment purposes are not contained within this definition, and any existing employment site must be able to demonstrate that

they have failed to attract any interest following a reasonable period of marketing.

Amendment to East Herts Affordable Housing Policy

- 2.5 It is proposed that following the recent removal from PPG of the relevant paragraphs on affordable housing thresholds, it would be pragmatic to revert back to the 2012 Affordable Housing thresholds with the inclusion of the Starter Homes exceptions policy. This policy was originally amended on 12 December 2012 and was anticipated to remain in force until replaced with a new policy in the forthcoming District Plan.
- 2.6 Consequently, the policy position would be as follows:

Temporary Policy HSG3

- (I) Affordable housing is defined as housing provided, with subsidy, both for rent and low cost market housing, for people who are unable to resolve their housing requirements in the local private sector housing market because of the relationship between local housing costs and incomes
- (II) Affordable housing provision will be expected on sites:
 - (a) proposing 15 or more dwellings, or over 0.5 hectares, in the six main settlements; and
 - (b) proposing 4 or more dwellings, or over 0.12 hectares, in the category 1 and 2 Villages.
- (III) On suitable sites (in accordance with policy HSG4)
 - (a) in the main settlements the inclusion of up to 40% affordable homes will be sought as part of the proposed development of the site.
 - (b) in category 1 and 2 Villages the inclusion of up to 25% affordable homes will be sought for schemes which comprise between 4 and 14 units inclusive (or between 0.12ha and 0.5ha inclusive) as part of the proposed development of the site and up to 40% affordable homes will be sought for schemes which

comprise 15 or more units or over 0.5ha in size as part of the proposed development of the site.

- (IV) The time period for the commencement of development of any planning permissions that come forward as a result of this policy change shall be one year.
- (V) Planning applications for Starter Homes, as defined in the PPG, are exempt from the provisions outlined in (II) and (III).

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

- (R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government EWHC 2222 (Admin))
<http://www.bailii.org/ew/cases/EWHC/Admin/2015/2222.html>
- Planning Practice Guidance 'Planning Obligations'
<http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/>
- Planning Practice Guidance 'Starter Homes'
<http://planningguidance.planningportal.gov.uk/blog/guidance/starter-homes/starter-homes-guidance/>

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