

Report to Sustainable development panel

Item

24 September 2014

Report of Head of planning service

6

Subject Affordable housing supplementary planning document –
draft for consultation

Purpose

This report is about the draft *Affordable Housing supplementary planning document* (SPD). Members are asked to consider and make comment on the document before it is published for public consultation. Following consideration of the consultation responses it is expected that the document will be revised and reported back to the panel before being finalised and formally adopted by Cabinet to augment the *Development management policies plan* (DM policies plan) which are expected to be adopted in November. The document provides additional detailed advice and guidance to support Joint Core Strategy policy 4 (Housing delivery) and policy DM33 of the DM policies plan, dealing in particular with the approach to be taken when considering and determining applications which involve affordable housing when viability is a material consideration.

Recommendation

To comment on the *Affordable Housing supplementary planning document* (SPD) before publication as a draft for consultation for a period of four weeks, commencing as soon as reasonably practicable after the date of this meeting.

Corporate and service priorities

The report helps to meet the corporate priority decent housing for all and the service plan priority to implement the local plan for the city.

Financial implications

There are no direct financial consequences for the council regarding commenting on this document and agreeing it for consultation.

Adoption of the SPD, is likely to result in additional Section 106 funding being received by the Council. Any such funding will be ring fenced and only able to be spent on the provision of affordable housing. If the SPD increases the amount of planning and development activity there may also be financial impacts associated with planning fees and new homes bonus payments to the Council.

Ward/s: All wards

Cabinet member: Councillor Stonard – Environment and transport

Contact officers

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Background documents

None

Report

Introduction

1. This report presents the *Affordable housing supplementary planning document* (SPD) for members to consider, make comments on, and agree as a draft for consultation. The SPD provides guidance on implementation of Joint Core Strategy policy 4 (Housing Delivery) and emerging policy DM33 of the *Development management policies plan* (DM policies plan).
2. JCS policy 4 sets out the criteria for provision of affordable housing on sites of 5-9 dwellings, 10-15 dwellings, and 16 plus dwellings. Emerging policy DM33 sets out the planning obligations not covered by the Community Infrastructure Levy (CIL) and the circumstances in which negotiation of planning obligations will occur where non-viability of development can be demonstrated.
3. The proposed document, and its parent policies, provides a consistent framework to ensure that planning decisions involving affordable housing provision are made positively, flexibly, and promote housing delivery. The SPD clearly outlines the Council's preferred approach to affordable housing delivery being on-site provision.
4. The SPD provides guidance on the Council's approach to prioritisation of planning obligations and the circumstances in which provision of affordable housing via a commuted sum will be accepted when non-viability of development can be demonstrated.
5. The SPD makes clear that off-site provision will only be accepted in the following circumstances:
 - Where it can be demonstrated that development of on-site affordable housing, or reduced levels of on-site provision of affordable housing are not viable, or
 - Where it can be demonstrated that a registered provider (RP) is not willing to take on management of the units or
 - Where highly exceptional site specific factors exist which would render the site unattractive to an RP.
6. The SPD outlines how the Council will approach viability review where non-commencement of development occurs in an effort to incentivise delivery of housing.
7. In addition, submission requirements for viability assessments are outlined to address varying quality of submissions since 2011.
8. The 2011 Interim Statement on Affordable Housing and the corresponding Prioritisation Framework will be superseded in full by this document.
9. The draft document is attached as Appendix 1.

National and local policy context

10. National planning policy in the National Planning Policy Framework (NPPF) requires local authorities to 'deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive, and mixed communities'. In order to achieve this local authorities should:

- Plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);
- Identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand, and;
- Where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example, to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.

11. Policy 4 of the Joint Core Strategy (JCS) seeks to achieve the following proportion of affordable housing on sites of 5 or more dwellings¹;

- On sites of 5-9 dwellings (or 0.2-0.4ha), 20% with tenure to be agreed on a site by site basis (numbers rounded upwards from 0.5);
- On sites for 10-15 dwellings (or 0.4-0.6ha), 30% with tenure to be agreed on a site by site basis (numbers rounded upwards from 0.5), and;
- On sites of 16 dwellings or more (or over 0.6ha) 33% with approximate 85% social rented and 15% intermediate tenures (numbers rounded upwards from 0.5).

12. The policy also states that the proportion of affordable housing may be reduced, and the balance of tenures amended, where it can be demonstrated that the site is unviable in prevailing market conditions.

13. Members should note that The Government recently consulted on a proposed change to the threshold for affordable housing contributions so that only developments of 10 or more dwellings, or a 1,000 square metre gross floorspace, would be liable for affordable housing contributions through S106 agreements. The Government considers that this will aid the delivery of housing small-scale sites.

14. Further details of the consultation can be found here:

<https://www.gov.uk/government/consultations/planning-performance-and-planning-contributions>

15. The consultation closed in May 2014 and the results have not yet been published but the Government intention appears to have significant implications for the

¹ See Appendix 1 for a full version of JCS policy 4.

implementation of policy 4 of the JCS. If the Government announce a change in legislation to increase the threshold for affordable housing contributions then bullet point 1 of JCS policy 4 could not be applied.

Why is SPD needed?

16. It is recognised that affordable housing provision through JCS policy 4 is dependent on the overall viability of development. In turn, this is dependent upon a wide range of site specific circumstances.
17. In 2009 the Prioritisation Framework was agreed by Executive with an update agreed in March 2011. This Framework sought to provide guidance for Development management officers and members of planning applications committee on how to prioritise requirements for developer contributions covered by Section 106 agreements, planning conditions and planning obligations. This list included essential policy requirements such as transport contributions, education and library contributions, play and open space provision/contributions and affordable housing amongst others.
18. An Interim Statement on off-site affordable housing provision was adopted by Cabinet in December 2011 following adoption of the JCS which saw a significant change in policy in respect of housing provision and particularly affordable housing in JCS policy 4. At that time, the scale of the challenge involved in meeting the requirements of JCS policy 4 was significant with housing completions down significantly on the annual requirement.
19. The purpose of the Interim Statement was to identify the issues relating to implementation of JSC policy 4 and introduced a payment contribution in lieu of provision of affordable housing on site in certain circumstances.
20. The criteria outlined in the interim statement for accepting contributions in lieu of on-site provision of affordable housing provision have been successfully applied to several development schemes across the city, ultimately helping to deliver much needed homes.
21. Two successive reports to Sustainable development Panel regarding the JCS Annual Monitoring Report (AMR) have discussed the threshold for affordable housing and the problems of securing affordable housing on site in smaller developments.
22. The first, in February 2013 advised that *'There would appear to be very little affordable housing provision resulting from the introduction of the lower threshold requirements introduced through JCS policy 4 on small sites (which reduced the threshold for provision from sites of 25 to sites of 5), especially in relation to sites providing less than 15 homes. In this context it is questionable whether the costs (both to the applicant and the planning authority) of seeking to enforce JCS policy 4 in relation to smaller sites is worthwhile in the current market, particularly as this requirement may slow the redevelopment of small brownfield sites. There may be a case to consider whether to temporarily suspend the implementation of JCS in relation to smaller sites. This is being investigated further and may be the subject of a further report to the SD Panel if this idea is considered worthwhile to pursue.'*

<http://www.norwich.gov.uk/CommitteeMeetings/Sustainable%20development%20panel/Document%20Library/20/REPSDP06AnnualMonitoringReport20130227.pdf>

23. A second report in January 2014 again advised that *'Affordable housing completions are down on last year (although last year's high levels can be attributed to development of the Council's garage sites), but still up on the preceding 2 years. This may be partly the result of the low threshold requirement for providing some affordable housing in the JCS (the requirement is triggered at 5 dwellings) acting as a disincentive to private small scale housing development. Last year's AMR highlighted that there had been limited affordable housing delivery on small scale private housing developments. This trend appears to have continued. Detailed work is planned to provide firm evidence on this issue. Once this evidence is gathered, a review of our approach to affordable housing policy will be undertaken through an Affordable Housing Supplementary Planning Document. Any subsequent recommendations will be reported to SD Panel as necessary'*.

<http://www.norwich.gov.uk/CommitteeMeetings/Sustainable%20development%20panel/Document%20Library/30/REPSDP5ReportJCSAMR20131218.pdf>

24. Local evidence has highlighted that this trend continues. In the prevailing market conditions, it is proposed that the approach in the interim statement on affordable housing provision is continued, updated to reflect current circumstance, and formalised in this SPD.

Key points

Criteria for accepting off-site provision

25. The SPD builds on the approach introduced in the 2011 Prioritisation framework and the 2011 Interim statement on affordable housing. In June 2013 the City Council adopted the Community Infrastructure Levy (CIL). CIL is a planning charge, introduced by the Planning Act 2008, as a tool for local authorities in England and Wales to help deliver infrastructure to support the development in their area. It came into force through the Community Infrastructure Levy Regulations 2010.
26. The introduction of CIL effectively renders the Prioritisation Framework of 2011 null and void as many of the essential policy requirements now have contributions paid under the mandatory levy rather than through Section 106 agreements. However, this SPD highlights those planning obligations which remain under Section 106, namely the provision of affordable housing, on-site open/play space and on-site transport improvements.
27. The SPD outlines the circumstances where provision of affordable housing off-site will be accepted. These are broadly similar to those in the 2011 interim statement but have been updated. Off-site affordable housing will be accepted:

Criterion 1:

On **any site** where after an open-book viability appraisal has been conducted and accepted by the Council after independent assessment where necessary (based on a Residual Method) it can be demonstrated that site is not sufficiently viable to enable the provision of a single affordable dwelling on site.

Criterion 2:

On relatively **small sites** proposed for flatted developments (typically developments of 15 or fewer units on sites of 0.2ha or less) where it can be demonstrated that RPs are reluctant to take on the management of affordable units.

In these cases developers will be expected to provide written evidence that no RP is willing to take on the unit(s) and that their preferred scheme design has difficulty accommodating affordable housing on site and that they have considered alternative arrangements which would be more attractive to RPs. The housing development team will contact the relevant RPs on behalf of the developer if requested. A list of contact details for local RPs is listed in appendix 5 of this document;

Criterion 3:

On **any site** with exceptional site specific factors which would not be attractive to RPs (evidence of which will be required), such as inappropriate floor areas or high service charges.

It will be up to the developer to demonstrate that the constraints associated with development of the site make it impractical for development to be brought forward in a form which may be more attractive to RPs and that RPs are not prepared to manage units as proposed. City Council Officers can advise further about the level of evidence that will be necessary to be submitted in relation to both matters.

28. The interim statement set out a schedule of the level of payments which would be accepted in lieu of provision of affordable housing on site. This schedule is carried forward here. At this time it has not been updated to reflect current cost figures and values due to limited resources. However, these figures will be updated by the end of the consultation period and any significant changes highlighted to members in the report to SD Panel following the conclusion of the consultation period.

Section 106BA applications

29. The government has recently introduced a new clause within the Town and Country Planning Act 1990 to allow applicants to renegotiate affordable housing contributions as part of previously approved developments. The SPD outlines the Council's approach to assessing such applications.
30. Under such applications, the Council has 28 days to determine whether the proposals are acceptable. The process for considering these applications will be similar to that for considering the viability of new planning applications in that a viability appraisal and associated supporting information is required to be submitted and this in turn needs to be verified by an independent third party.
31. Any proposed changes to the amount of affordable housing approved as a result of previous committee resolutions, would need further committee authorisation. In such cases it is unlikely that such applications would be determined within the initial 28 day period specified by the legislation and so the SPD states that the Council would look to agree alternative timescales for consideration of the application with the applicant in a planning agreement.

Review and viability

32. Until recently the Council has advocated the approach of using an overage clause in Section 106 agreements (informally referred to as a 'top-up' payment). Where a commuted sum is agreed, but where the developer cannot afford to pay the full sum, the overage clause would "kick in" if more than 21% profit was made over projected sales values in the viability assessment.
33. This requires a further viability assessment to be carried out, prior to completion of the development. Where an overage clause has been used in the past, no sites have yet got to a point where the second viability assessment is required. The only site where an overage clause has been used which is nearing the point of a second viability review is Westlegate Tower. It is unclear at this time how the process will work, how much officer time is involved, and, most importantly, whether the Council will secure any further funding for provision of affordable dwellings.
34. Guidance produced by the Royal Institute of Chartered Surveyors (RICS) suggests that rather than an 'overage' clause, a review of the viability assessment should be made where non-commencement occurs.
35. Such an approach would have significant benefits for housing delivery and positive resource implications:
- More incentive for developers to build out schemes and complete them within a specified time period, thereby boosting housing delivery, and;
 - Less officer time negotiating complicated overage clauses with developers.
36. The S106 agreement for any development would have a 'review' clause which would come into effect in the following circumstance:
- If there has been no commencement of the permission within 12 months of the date of the decision being issued, or;
 - If commencement has occurred within 12 months of the decision being issued but where there has been no occupation within 12 months of commencement.
37. Advice has been sought from the District Valuer on the issue of overage versus review. At the time of writing this report a response has not been received. Officers will update members verbally at the meeting if a response has been forthcoming.

Viability assessment requirements

38. Finally, the SPD outlines the Council's minimum requirements for viability assessments. Since 2011 the Council has received varying qualities and quantities of data in viability assessments. As such, it was felt that it would be helpful for developers and agents if minimum submission requirements for viability assessments were outlined. This will aid the planning application process, ensuring that applications can be dealt with in a timelier manner.

Conclusions and next steps

39. Officers consider that this SPD makes clear the Council's preference for provision for affordable housing to be made on site, but also outlines why, in prevailing market conditions a more flexible approach is required.
40. Subject to any changes requested by the panel, this draft of the *Affordable housing SPD* will be issued for public consultation for a four week period (in accordance with the requirements of the Statement of Community Involvement). Comments and suggestions for change will be assessed and incorporated, as appropriate into the final version of the document which will then be reported back to a future meeting of this panel before being reported to Cabinet for adoption (alongside the development management policies plan) in late 2014.