

## Worthing Local Plan – Threshold for Affordable Housing Contributions

### Report by the Director for the Economy

#### 1.0 Summary

- 1.1 The Council's existing affordable housing policy requires the provision of 10% affordable housing (sought via a financial contribution) on sites of 6-10 dwellings. Since the adoption of the Core Strategy the Government has raised concerns about this form of tariff based contribution particularly for smaller developments where, it is felt, they can impose a disproportionate burden on development viability.
- 1.2 In 2014 the Government updated Planning Practice Guidance (PPG) which in effect sought a policy exemption from such contributions so that only sites of 11 or more new homes would have to contribute. Although a legal challenge to this amendment was successful the Secretary of State has since appealed the Planning Court judgement and succeeded on all grounds. The Government's view of the judgement was that the 'policy' on small sites not having to make affordable housing contributions had been restored. However, more recent legal views on the judgement reach a different conclusion in that the changes made to guidance, whilst being a material consideration, can still allow local authorities to use their discretion. In exceptional circumstances local evidence could be used to support the collection of contributions from smaller schemes providing this would not impact on viability.
- 1.3 In light of the uncertainty relating to these recent changes local authorities across the country with small sites affordable housing policies have been considering whether to amend their policies in light of the revised national guidance. This report summarises these issues and concludes that, supported by evidence, there is no compelling reason at this stage to alter adopted policy (for all applications) which seeks contributions from smaller developments (schemes less than 11 dwellings).

#### 2.0 Background

- 2.1 Policy 10 of the Worthing Core Strategy (2011) seeks to deliver a mix of affordable housing to meet local needs on all but the smallest of sites. The policy sets out differing levels of on and off site provision for small, medium and large schemes. On sites of 6-10 dwellings the policy requires the provision of 10% affordable housing sought via a financial contribution.

- 2.2 In line with policy CS10 the contribution is subject to: the economics of providing affordable housing; the extent to which the provision of affordable housing would prejudice other planning objectives to be met from the development of the site; and the mix of units necessary to meet local needs and achieve a successful development.
- 2.3 Since the adoption of the Core Strategy the Council has successfully collected affordable housing contributions from small and large scale developments subject to the viability of individual schemes. However, in November 2014 the Government introduced a Ministerial Statement and updated Planning Policy Guidance (PPG) which in effect sought a policy exemption from such contributions so that only sites of more than 1,000 square metres of residential floorspace or sites involving 11 or more new homes would have to contribute. The Government put forward these changes to stop tariff based contributions as, in their view, they can impose a disproportionate burden on smaller developments.
- 2.4 In 2015 a legal challenge to this amendment was successful and text related to small sites not having to make affordable housing contributions was removed from the Planning Practice Guidance. As a consequence the Council was again able to collect contributions from sites of 6-10 dwellings in line with Core Strategy policy 10.
- 2.5 The Secretary of State then appealed the Planning Court judgement and succeeded on all grounds. Therefore, Planning Practice Guidance has again been amended to reflect this judgement. In May 2016 the Government's view of the judgement was that the 'policy' on small sites not having to make affordable housing contributions had been restored. However, more recent legal views on the judgement in the planning press reach a somewhat different conclusion.
- 2.6 Legal opinion is that the PPG paragraphs do not, and cannot, have this effect because government policy and guidance are not in themselves determinative; they represent 'other material considerations' in planning law – albeit, ones which are very important. Accordingly, there is a view that local planning authorities may continue to seek affordable housing contributions where development sites are for 10 or less units, if they can demonstrate compelling circumstances which should prevail, principally that their Development Plan has an up-to-date evidence base in support of this approach. In summary, in these instances local authorities could continue to seek affordable housing in relation to small sites as long as the requirements are supported by evidence, are viable and that the contributions would not stall the delivery of housing schemes.
- 2.7 Given the differing views as to the weight that should be applied to the recent changes to Planning Practice Guidance, local authorities across the country with small sites affordable housing policies are now considering how to proceed. Some authorities have formally agreed to stop collecting affordable housing contributions from smaller schemes whilst others are continuing to apply their relevant policies.

2.8 In the light of a recent Court of Appeal decision, recent Planning Inspectorate decisions and Planning Policy Guidance would normally regard the Ministerial Statement as overriding inconsistent policies. However the Council's adopted policies still carry significant weight and small sites contributions could still be required if supported by up to date evidence. A local planning authority would need to have clear and compelling reasons why their local policy should be given greater weight than a Ministerial Statement.

### 3.0 Worthing Borough Council's Policy Position

3.1 Worthing Borough Council has an adopted Development Plan which was based on robust evidence. Whilst the more recent Planning Practice Guidance and Written Ministerial Statement are material considerations in the determination of an application, the Council's adopted policies still carry some weight and a small sites contribution could still be justified. In this regard, it is of the view of your officers that there is strong evidence that demonstrates a clear need for affordable housing in the Borough and evidence that such a policy approach would not prevent development coming forward on these smaller sites.

3.2 The Worthing Housing Study (June 2015) highlights that the median house prices in the Borough are 7.8 times median earnings which is a level well above national averages. For UK first time buyers, the average house price is 5.1 times average earnings. In the Centre of Cities report (2016) Worthing is in the top 10 cities for increased house prices and by consequence is in the top 10 cities with the highest affordability ratio as set out below in the following table.

Rank	City	Affordability ratio	House prices, 2015 (£)	Yearly wages, 2015 (£)
10 cities with highest affordability ratio				
1	Oxford	16.2	453,500	28,000
2	London	16.2	530,100	32,800
3	Cambridge	15.9	469,600	29,500
4	Brighton	12.6	339,900	27,000
5	Bournemouth	11.7	295,200	25,100
6	Aldershot	11.2	331,300	29,600
7	Exeter	10.5	247,500	23,700
8	Reading	10.5	343,500	32,900
9	Worthing	10.1	262,300	25,900
10	Bristol	9.7	249,200	25,700

Extract from Centre of Cities report 2016.

3.3 The housing register in Worthing shows 932 households currently awaiting housing. This very high level of affordable housing need is further evidenced within the Worthing Housing Study which calculated an affordable housing need for Worthing of 435 dwellings per annum (or a total of 8,700 dwellings between 2013-2033).

- 3.4 This level of need compares to an annualised housing delivery rate over the last 9 years of 257 dwellings for all tenures of housing. In the same 9 year period a total of 469 affordable housing dwellings were delivered which represents 20% of the total. This clearly demonstrates that the delivery rate of affordable housing in the Borough falls significantly below the identified level of need. Not meeting affordable housing needs is not uncommon for many local authorities, particularly in the South East of England but this is more extreme for very constrained areas (such as Worthing) where opportunities for significant levels of new housing, particularly on greenfield sites, are extremely limited. There is no realistic prospect of this trend ending which emphasises how vital it will be to maximise the delivery of affordable housing from appropriate sites.
- 3.5 A comprehensive study of the economic viability of affordable housing options was used to inform the requirements for affordable housing incorporated within Core Strategy Policy 10. That study concluded that in addition to large schemes (15+ dwellings) the evidence supported an approach whereby smaller sites (in the range of 6 to 14 units) should also contribute towards meeting affordable housing needs. The study advocated a tiered approach (whereby sites of 6-10 units provided 10% off-site affordable housing contribution) which was adopted in the Local Plan. The tiered approach that is applied for to contributions / on-site delivery across a range of sites helps to ensure that the requirements do not place a disproportionate burden on smaller schemes.
- 3.6 The viability of all liable schemes is taken into account when any affordable housing contribution/provision is agreed during the determination of relevant planning applications. Although the starting position is full compliance of Policy CS10 it should be noted that, where supported by robust evidence, the Council has taken a flexible approach and that this applies to small and large sites. There is no local evidence that demonstrates that the tiered approach being applied in Worthing places a disproportionate impact on smaller developments when compared to other forms of development in the Borough.
- 3.7 Smaller sites form a vital component of the Borough's housing land supply. A very tightly drawn Borough boundary and very sensitive environmental constraints outside the built up area boundary means that there are very limited opportunities for significant development and growth around the town. Whilst the small number of greenfield sites around the edge of the town are being positively tested for development as part of the Local Plan review it is inevitable that a significant proportion of the housing that will be delivered in the coming years will be on previously developed sites within the existing built-up area boundary.
- 3.8 The majority of these sites tend to be smaller in nature and, as has been the case in recent years, many of these will deliver less than 10 dwellings. A total of 1,050 dwellings have been completed in the Borough in the last 5 years of which 421 (40%) are on sites of 1-9 dwellings. As a consequence, if the Council were to lose the ability to collect financial contributions for the delivery of off-site affordable housing from schemes of between 6 and 10 dwellings it would lose an important source of funding for affordable housing that could not easily be replaced by other schemes. It is important that every effort is taken to secure a reasonable level of affordable housing to ensure that, in line with the NPPF, Worthing is able to deliver

a wide choice of high quality homes and create sustainable, inclusive and mixed communities.

- 3.9 Whilst it is acknowledged that the Core Strategy was adopted in 2011 it is important to note that the impact of affordable housing policy compliance on development viability across the Borough has been tested more recently. A range of residential development scenarios across different parts of the Borough formed part of a detailed viability assessments progressed to inform the setting of a Community Infrastructure Levy (CIL). In each of these tests the assessment factored in full compliance with the adopted affordable housing policy. The conclusions reached in that study demonstrated that for each development scenario tested there was sufficient viability to meet, in full, the affordable housing requirements. Furthermore, in nearly every scenario there was sufficient 'headroom' (in addition to the affordable housing provision) to justify the setting of CIL at a rate of £100 sqm. However, at the CIL examination, the Inspector did not consider that the evidence supported CIL being adopted across the whole Borough. In particular, the Inspector did not feel that developments in three wards - Selden, Broadwater and Castle would be viable if affordable housing and development contributions together with CIL were required for brownfield redevelopment sites.
- 3.10 Your Officers are currently negotiating on a site in Selden Ward and the Agent has argued that in view of the Inspector's conclusions during the CIL examination, at the very least affordable housing contributions should not be collected in the Wards where CIL is zero rated as the only financial evidence suggests that to do so would result in developments being unviable, Whilst, house prices have increased since the CIL examination, the Agent strongly suggests that construction costs and land value has also increased significantly and, therefore, viability is still a key issue in the zero rated CIL Wards.
- 3.11 In response to the Agent's arguments in the above case, your Officers have stated that other issues such as the vacant building credit are also relevant and that the high level viability assessment at the CIL examination should not be applied to individual sites where particular circumstances affect development viability. The Agent, in this particular case, has been requested to submit a viability assessment to demonstrate that an affordable housing contribution will affect overall development viability.
- 3.12 Following the High Court judgement in May 2016 Officers gave careful consideration to how Core Strategy policy 10 should be applied for smaller schemes. Whilst there was a very clear message from Government that local authorities should not be collecting contributions from schemes where viability was marginal there is also a legal view that there is still a level of flexibility over how local planning authorities might apply government policy regarding small site affordable housing contributions. As such, and given the significant levels of affordable housing need in the Borough, the Council has continued to apply policy CS10 for schemes. Since May there has been one permission granted for a scheme of between 6 and 10 dwellings which has secured contributions for affordable housing and another proposal is waiting for the signing of the legal agreement to secure the development contribution.

- 3.13 In this regard it should be noted that whilst the Council has continued to seek contributions from proposals of 6-10 dwellings, in line with the existing policy, the contribution is subject to a level of flexibility depending on the economic viability of providing affordable housing. As has previously been the case, if an applicant is able to provide clear evidence as to why the viability of the scheme might be jeopardised by the affordable housing contribution Officers would have regard to this and are likely to recommend that a more flexible approach is taken particularly if supported by independent evidence that corroborates the submitted viability assessment. The level of contribution required has been adjusted accordingly in one such scheme approved following the Appeal Court decision.
- 3.14 Furthermore, the introduction of the Vacant Building Credit (May 2016) will, in effect, reduce the level of affordable housing contribution that can be sought for a large number of sites. The 'credit' is intended to incentivise brownfield development on sites containing vacant buildings. In these cases the developer would receive a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. As has been the case for some recent applications in the Borough, affordable housing contributions will only be required for any net increase in floorspace over vacant building floorspace lost.
- 3.15 Also relevant to the delivery of affordable housing have been other changes to planning system brought in by the Government which have had the effect of narrowing the opportunities to seek affordable housing contributions. Prime examples are the relaxations to Permitted Development which allows business uses such as offices, light industry and warehousing to convert to housing without the need for any affordable housing to be provided.
- 3.16 Given the changes since the CIL Examination, it would be sensible to undertake some further financial viability testing for small sites to support the approach suggested i.e. that we should still collect affordable housing contributions. This will also assist in reviewing collecting CIL in connection with potential greenfield sites being considered as part of the emerging Local Plan.

#### **4.0 Summary**

- 4.1 The Court of Appeal judgement made clear that the Written Ministerial Statement (and by association the Planning Practice Guidance) should not be applied in a blanket fashion in the determination of planning applications. The comparative weight given to these changes is a matter of discretion for the decision taker on a case-by-case basis taking into account the particular characteristics of the site, the proposed development and the local development economy.
- 4.2 With regard to developments in Worthing it is considered that there is no compelling reason at this stage not to apply (for all relevant schemes) the part of the adopted policy which seeks contributions from smaller developments. However, it will now be increasingly important to take a flexible approach and consider, on a case-by-case basis, any available evidence as to whether these contributions are imposing a disproportionate burden and preventing small sites from coming forward. In these cases the Council will continue to require developers to demonstrate

through a viability assessment that the policy of a 10% financial contribution imposes a disproportionate burden on bringing forward a particular site for development.

- 4.3 Officers will continue to review relevant case law/appeal decisions from across the Country as it emerges and pay close attention to how these changes impact on planning in practice. At the present time your Officers are aware of some appeals that have been allowed on the basis that Inspectors were not satisfied that there was significant justification for not following current national guidance but equally there have been a couple of appeals where planning authorities have demonstrated exceptional local circumstances. A recent appeal decision has been attached to highlight the arguments for and against adherence to Government guidance. To help support the suggested approach, your Officers will instruct Consultants to undertake further viability testing on smaller brownfield sites to help demonstrate that such contributions would not prevent such sites coming forward for development.
- 4.4 In the meantime, it is considered that there is sufficient evidence to justify the continuation of the policy that will to seek off-site contributions towards affordable housing in relation to sites of 6-10 units as long as they are viable. There clearly is a risk that this approach may not be supported at appeal and the Council is already aware of a developer seeking to challenge the suggested approach. Clearly if the Council cannot uphold this policy approach then the situation would need to be reviewed again.

## **5.0 Legal**

- 5.1 Section 70(2) of the Town and Country Planning Act 1990, requires local planning authorities in determining planning applications to “have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”
- 5.2 For the purposes of s.38(6) of the 2004 Act and s.70(2) of the 1990 Act, the Planning Practice Guidance and Written Ministerial Statement are material considerations and will no doubt be given considerable weight by Planning Inspectors, but they will not necessarily have overriding effect.

## **6.0 Financial implications**

- 6.1 The Council could continue to apply its 10% affordable housing financial contribution to sites with 6 to 10 dwellings and refuse permission on such a basis. However, there could be a financial risk of costs awards against the Council if the evidence / grounds used to justify the contribution are deemed to be insufficiently compelling. In the event that appeals are lost, that Council would not usually be liable for costs unless an Inspector finds that the Council has behaved unreasonably resulting in unnecessary costs to the other side.

## **7.0 Recommendation**

### **7.1 The Executive Member is recommended to:**

- i) Agree that, in line with Core Strategy Policy 10 and subject to viability considerations, the Council should continue to seek 10% affordable housing (sought via a financial contribution) on sites of 6-10 dwellings.**
- ii) Note that further viability assessments will be undertaken to demonstrate that smaller brownfield sites would not be affected by seeking affordable housing contributions, particularly having regard to the application of the vacant building credit.**

### **Local Government Act 1972 Background Papers:**

Worthing Core Strategy 2011

Planning Practice Guidance – paras 16,17, 20 and 31

### **Contact Officer:**

Ian Moody (Principal Planning Officer)

Planning Policy Team

Contact No: 01273 263009

Email: [ian.moody@adur-worthing.gov.uk](mailto:ian.moody@adur-worthing.gov.uk)



## **Schedule of Other Matters**

### **1.0 Council Priority**

1.1 The Council's affordable housing policy supports the council priority that seeks to meet the housing needs of our communities.

### **2.0 Specific Action Plans**

2.1 None directly relevant

### **3.0 Sustainability Issues**

3.1 Matter considered and no issues identified

### **4.0 Equality Issues**

4.1 The provision of affordable housing is one way in which local planning policies can promote and deliver equal opportunities.

### **5.0 Community Safety Issues (Section 17)**

5.1 Matter considered and no issues identified

### **6.0 Human Rights Issues**

6.1 Matter considered – no specific issues identified.

### **7.0 Reputation**

7.1 Matter considered and no issues identified

### **8.0 Consultations**

8.1 The Worthing Core Strategy was subject to a number of stages of consultation that were undertaken in line with the Council's Statement of Community Involvement.

### **9.0 Risk Assessment**

9.1 Matter considered and no issues identified

### **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified.

### **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified

## **12.0 Partnership Working**

12.1 Matter considered and no issues identified.