



## **Affordable Housing and the impact of changes made to national planning guidance**

### **Report by the Director for the Economy**

#### **1.0 Summary**

- 1.1 In recent years the Government has been keen to incentivise house building, particularly for small sites. To help achieve this aim, national policy has been amended so that smaller scale developments would be exempt from making contributions towards affordable housing. The legal status of these changes has been somewhat confused and, as a result, a number of authorities, including Worthing Borough Council, have continued to apply a local policy position that set a lower threshold. In addition, giving the significant affordable housing need in the borough a decision was made to not apply Vacant Building Credit to applicable schemes.
- 1.2 However, recent changes have reaffirmed the Government's position. This report explains these recent changes and the reasons why it is now considered appropriate to clarify the local position and update the Interim Position Paper (published in February 2018) so that it conforms with national planning policy and reflects the emerging Worthing Local Plan.

#### **2.0 Background**

##### Affordable Housing Threshold

- 2.1 Worthing Core Strategy Policy 10 (affordable housing) seeks to deliver a mix of affordable housing to meet local needs on all but the smallest sites. The adopted policy requires the following:
- on all sites of 6 to 10 dwellings, 10% affordable housing will be sought via a financial contribution

- on all sites of 11 to 14 dwellings, 20% affordable housing will be sought via a financial contribution
  - on all sites of 15 or more dwellings, 30% affordable housing will be sought
- 2.2 This stepped approach, which was informed by evidence, ensured that a disproportionate burden was not placed on smaller developments in the borough. Since the adoption of the Core Strategy the policy has been applied to all liable (and viable) sites and in many instances affordable housing has been delivered either 'on-site' or by way of a financial contribution.
- 2.3 However, in more recent years the Government has been keen to incentivise house building, particularly for smaller sites and local builders. One such change to national planning policy, advanced in 2014 via a ministerial statement, was a message that tariff style contributions should not be sought for sites of 10-units or less. If enforced, this would have limited the Council's ability to collect contributions from developments of 6-10 dwellings as required by Core Strategy Policy 10.
- 2.4 Although the Government advanced this change in 2014 a number of legal challenges and appeals meant that it only became set in national Planning Practice Guidance (PPG) in 2016. However, even when put in place at the national level a High Court judgement made it clear that it was still up to the decision maker (the local planning authority) to decide how much weight should be given to the national policy in light of local circumstances. Although it was acknowledged that the precise effect of this would be unclear the judgement confirmed that there would be cause for exception in some circumstances.
- 2.5 Whilst it was acknowledged that there are many areas of the country with high levels of affordable housing need, there was evidence available to demonstrate that this situation is even more acute in Worthing. As explained within a report to Worthing Planning Committee (10 January 2018) it was therefore felt that the level of affordable housing need was so great in the borough that an exception could be justified. For this reason, the January 2018 report sought agreement to continue to apply the full provisions of Core Strategy Policy 10 and to therefore continue collecting contributions for affordable housing delivery from developments of between 6-10 dwellings. This position was reiterated within a Position Statement that has been available to view on the Council's website since February 2018.
- 2.6 In July 2018 the Government published an update to their planning policy guidance within the revised National Planning Policy Framework (NPPF). This helped to reaffirm the Government's view that contributions should not be collected from developments of less than 10-units. Paragraph 63 of the revised

NPPF states: *‘Provision of affordable housing should not be sought for residential developments that are not major developments.....’* Major developments are defined in the Glossary to the NPPF as: *‘development where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more.’*

- 2.7 It is the view of your officers that this amendment to national guidance significantly strengthens the Government’s position on affordable housing thresholds and it is ‘formally’ now a material planning consideration. As a result of these changes the vast majority of local authorities have now decided not to pursue affordable housing contributions for less than 10 dwellings. Given that the adopted Core Strategy policy is now out of date (in that it has not been tested against the new NPPF), the Council would be very vulnerable to challenges made at appeal and, therefore, its current approach has to be reviewed.
- 2.8 Strong and compelling evidence would be required to justify any exception to the current published national planning advice. In this regard, despite significant affordable housing needs in Worthing it is not felt that sufficient evidence exists that would allow the Council to collect affordable housing contributions from anything other than major developments.
- 2.9 It is also very relevant that, even before the strengthening of the Government’s position, the Adur Local Plan sought to take forward an Affordable Housing policy that would have seen financial contributions required from some minor developments. However, following consideration of the evidence submitted to the Examination (which would be similar to the information that could be provided for Worthing) the Inspector did not accept that exceptional circumstances existed that would allow for a lower threshold. As a consequence, the Affordable Housing policy within the Adopted Adur Local Plan now only requires contributions from development of more than 10 dwellings. In this regard it should be noted that Adur District Council is currently considering a minor change to their adopted policy so that contributions would be sought from developments of 10 or more dwellings (rather than ‘more than 10 dwellings’). This will ensure that it conforms to the revised NPPF. This will also reflect the policy position being advanced within the emerging Worthing Local Plan.
- 2.10 Councils that previously sought financial contributions from minor developments are now acknowledging that this will now be extremely challenging under the backdrop of the national policy position. To persist with the policy position that was established in the Core Strategy (2011) and reaffirmed in the Interim Position Statement would now be contrary to the revised NPPF. Without strong enough justification it is the view of officers that any refusal of a planning

permission (for 6-9 dwellings) for reasons relating to a lack of financial contribution would run the risk of being overturned at appeal (with potential costs against the Council).

- 2.11 In response to the changing policy position at the national level, the emerging policy position in the Draft Worthing Local Plan proposes a policy that is in line with the revised NPPF and, as such, only seeks affordable housing contributions from major development. No comments to this approach (either for or against) were received when the Draft Local Plan was published for consultation at the end of 2018.

### Vacant Building Credit

- 2.12 Vacant Building Credit (VBC) was introduced by the Government to promote and incentivise development on brownfield sites that contain vacant buildings. It allows the floorspace of existing buildings that are to be redeveloped to be offset against the calculations for Section 106 affordable housing requirements (whether financial contribution or provision). It applies to any building that has not been abandoned and is brought back into any lawful use, or is demolished to be replaced by a new building.
- 2.13 The report to Planning Committee 10th January 2018 provided further detail on VBC and how and when it should be applied. Much like the threshold issue (summarised above) there was previously a lack of clarity as to the status of VBC and, as a consequence, it was felt that there was clear local circumstances / justification for Worthing not to apply this credit. The rationale for this was to ensure that, subject to viability considerations, affordable housing contributions could be maximised. The Interim Position Statement (Feb 18) clarified this position.
- 2.14 Weight has since been added to the Government's position on VBC following the revisions made to the NPPF. Paragraph 63 states: *'To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.'* As such, the Council's position to VBC established in the Interim Position Statement is no longer considered to be appropriate and it is proposed that the statement is revised accordingly.

## **3.0 Proposals**

- 3.1 For the reasons set out above it is proposed that the Interim Position Statement on housing is updated as follows so that it clarifies the thresholds for affordable housing that will be sought from relevant developments (see Appendix A).

*New residential development (including conversions and changes of use with the capacity to provide 10 or more self-contained units will be expected to provide an appropriate mix of affordable housing according to the following site size thresholds:*

- i. on sites of 10-14 dwellings (gross) 20% affordable housing will be sought;*
- ii. on sites of 15 (gross) dwellings or more 30% affordable housing will be sought.*

3.2 Reference to the Vacant Building Credit will be removed from the Position Statement and it will be made clear that, in this regard, the national policy position will apply to all relevant developments in the Borough.

3.3 The work being undertaken to inform the emerging Worthing Local Plan will assess both housing needs and viability. If the up-to-date evidence can demonstrate that exceptional circumstances exist that would help to override national guidance and not prevent smaller developments coming forward, the policy position taken by the Council could then be reconsidered. Until such time, the position outlined in the updated Interim Position Statement will clarify the Council's approach ensuring that the Council is consistent with the latest NPPF.

#### **4.0 Legal**

4.1 Affordable Housing contributions are secured under Section 106 of the Town and Country Planning Act 1990 (as amended) and The Community Infrastructure Levy Regulations 2010.

4.2 The Court of Appeal in the case of SoS v Reading and West Berkshire Councils, backed the Government's Small Sites Affordable Housing Exemption Policy, which means that Local Authorities will have to amend their policies in line with this ruling.

4.3 A risk associated with the Council making effective the new NPPG is that of a future successful legal challenge to the government's policy guidance. The benefits however outweigh this risk even allowing for the recent history of this policy initiative. When planning policy guidance changes the new guidance becomes a material consideration in any planning decision as discussed above.

4.4 An Equalities Impact Assessment (EIA) is not required in respect of making planning policy compliant with government requirements. The EIA is considered in the making of the new national guidance.

#### **5.0 Financial implications**

- 5.1 The proposed change to policy will have no financial cost to the Council. The position taken (in line with national policy) will help to mitigate against the potential loss at appeal and related costs that could be awarded against the Council.
- 5.2 It is accepted that the change outlined may result in a decrease in S106 / CIL contributions collected for affordable housing from a limited number of developments. This is a change that has made at the national level and that Worthing BC now needs to reflect within it's policies. There will however be an opportunity to revisit all appropriate thresholds for affordable housing as viability assessments are progressed to inform the Worthing Local Plan.

## **6.0 Recommendation**

- 6.1 That, the Committee recommends to the Executive Member for Regeneration that the existing Interim Position Statement on Affordable Housing is updated. The revised Statement will clarify how the local policy position has had to be amended to reflect changes made at the national level. Contributions for affordable housing (including any Vacant Building Credit that might apply) will be sought in line with the revised National Planning Policy Framework (2018). This position also reflects the policy approach being advanced within the emerging Worthing Local Plan that only seeks financial contributions or on-site delivery of Affordable Housing from 'major developments' (10+ dwellings).**
- 6.2 Financial contributions will therefore not be sought from developments of 6 to 9 dwellings which would have been the case under the full provisions of Core Strategy Policy 10.**

## **Local Government Act 1972**

### **Background Papers:**

- Appendix A - Proposed Interim Position Statement (July 2019)
- Existing Interim Position Statement (Feb 2018)
- Worthing Core Strategy 2011
- Written Ministerial Statement - Brandon Lewis 2014
- DCLG - Planning Practice Guidance - 'Planning Obligations'
- National Planning Policy Framework (2018)
- Report to Worthing Planning Committee (10/01/2018)

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## **Schedule of Other Matters**

### **1.0 Council Priority**

- 1.1 'Platforms for Our Places' in particular, Our Social Economies. Although the minor change in approach at the local level may result in slightly less affordable housing units being delivered the change will ensure that the policy remains compliant with national guidance.

### **2.0 Specific Action Plans**

- 2.1 The approach outlined in this report will be reflected in policy within the emerging Local Plan. In line with the requirements of the NPPF, the cumulative impacts of all policies to be included in the Plan will be tested to ensure that the scale of obligations and policy burdens would not threaten the viability and delivery of sustainable development

### **3.0 Sustainability Issues**

- 3.1 The provisions of revised Core Strategy Policy 10 will continue to apply to all types of residential development. The Core Strategy has been (and the emerging Local Plan will be) the subject of a formal Sustainability Appraisal.

### **4.0 Equality Issues**

- 4.1 Issues relating to race, disability, gender and equality have been considered and it is not felt that the approach outlined in this report will have an adverse impact on any social group.

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

- 5.1 Matter considered and no issues identified.

### **6.0 Human Rights Issues**

- 6.1 Everyone has a fundamental human right to housing, which ensures access to a safe, secure, habitable, and affordable home. Although the minor change in approach at the local level may result in slightly less affordable housing units being delivered the change will ensure that the policy remains compliant with national guidance.

### **7.0 Reputation**

7.1 The approach outlined within this report will ensure that local policy will continue to be in line with national guidance and that the risk of losing appeal decisions is reduced. This, in turn, will help to ensure that the Council's reputation is not damaged.

## **8.0 Consultations**

8.1 The issue relating to the affordable housing threshold has been discussed with Members at the Local Plan Working Group and covered in a previous report to Planning Committee (10/01/18). In addition, consideration was given to the draft Affordable Housing policy (which updated the threshold in line with the revised NPPF) included within the emerging Local Plan which was published for consultation at the end of 2018.

## **9.0 Risk Assessment**

9.1 If the approach outlined in this report was not taken there is a risk that the Council may lose appeal decisions which may, in turn, result in costs being awarded against the Council.

## **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.



**Interim Position Statement**  
**Clarification of the application of Worthing Core Strategy Policy 10**  
**(affordable housing)**

To reflect the national policy position set out in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) the Council will only seek contributions from major developments (10+ dwellings). To reflect this change, and the policy being taken forward in the emerging Worthing Local Plan, the affordable housing policy established in the Core Strategy (Policy 10) will apply to developments as follows:

***New residential development (including conversions and changes of use with the capacity to provide 10 or more self-contained units will be expected to provide an appropriate mix of affordable housing according to the following site size thresholds:***

***i. on sites of 10-14 dwellings (gross) 20% affordable housing will be sought***

***ii. on sites of 15 (gross) dwellings or more 30% affordable housing will be sought***

Calculations for affordable housing contributions (including any Vacant Building Credit that might apply) will be made in line with the NPPF, PPG and the above draft policy position and will be informed by the Councils Developer Contributions SPD (2015).