

Local Plan Affordable Housing Policy - Statement on the Exemption of Small Sites From Development Contributions

Report of the:	Head of Place Development
Contact:	Karol Jakubczyk
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	N/A
Annexes/Appendices (attached):	Annexe 1: Draft Statement on the Exemption of Small Sites from Development Contributions (Affordable Housing) Annexe 2: Planning Appeal Inspectors' Decision Letters

Other available papers (not attached):

Report Summary

The government has introduced changes to National Planning Practice Guidance in the wake of a Written Ministerial Statement (WMS) on whether local planning authorities can continue to seek developer contributions (for affordable housing) from development proposals of ten or fewer dwellings. The introduction of this approach will restrict our ability to meet the local demand for affordable housing. It will further exacerbate need and over time has the potential to significantly impact on our role as the local housing authority.

In response, the Council prepared a position statement that set out the justification and evidence for its continued application of its own adopted policy, which allows the Council to access contributions from proposals of five or more dwellings. Following recent appeal decisions we have revised our position statement so that our justification and evidence is clearer and concise.

Recommendation (s)

That the Committee:

- (1) Considers the current situation relating to this matter in the aftermath of the publication of the WMS and recent planning appeal Inspector decision letters; and**

- (2) Agrees to adopt the Statement on the Exemption of Small Sites from Development Contributions (Affordable Housing), subject to any revisions and additions, as the Council's position on the WMS for deployment in negotiations on developments on small sites and in any associated planning appeals.**

1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 Our Local Plan provides the spatial planning mechanism for implementing the vision set out by our Key Priorities. The Core Strategy sets out our planning policy for delivering new additional affordable housing units through the development process. While the affordable housing contribution from small sites has been relatively small (in the past) this position is changing as the availability of larger sites diminishes.
- 1.2 The Annual Service Plan includes related planning policy objectives and an overarching objective of Quality of Life, the achievement of which will be affected by our ability to meet affordable housing need.

2 Background

- 2.1 The Council's Core Strategy sets out (under Policy CS9) our affordable housing target for the Plan Period. Up to 2022 the Core Strategy envisages that we would achieve 35% of the total housing delivery as affordable housing. Our policy states that we will seek contributions (either on-site or financial) for affordable housing on development where there is a net gain of 5 units. Since its introduction, most housing developments (of five or more dwellings) have provided some form of contribution towards meeting housing need.
- 2.2 Since its adoption, we have strived to meet this target. This has proved to be challenging for a number of reasons. The turbulent economic conditions experienced in the wake of the 2007/ 2008 economic downturn have nationally had a significant impact on the development industry, which has typically manifested itself in a slow-down in house building. It is noteworthy that house building rates in Epsom & Ewell have not been as adversely impacted as they have elsewhere.
- 2.3 Our ability to meet our affordable housing target has been further constrained by repeated interventions from the Secretary of State. These interventions started with a Written Ministerial Statement (WMS) introduced in November 2014. This first WMS sought to change national planning policy by preventing local planning authorities from seeking financial contributions towards affordable housing from development proposals comprised of ten dwellings or fewer. This first WMS was successfully challenged in the High Court by a consortium of local planning authorities. This allowed us to return to our Core Strategy policy position.

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- 2.4 However, during May 2016 the Court of Appeal quashed the High Court's decision. This allowed the Secretary of State to introduce a fresh WMS and made associated changes to national Planning Practice Guidance. These reinstated the position that developments of ten dwellings or fewer be exempted from making financial contributions towards meeting affordable housing need. The Secretary of State has said that the justification for this intervention is to help small and medium sized enterprise house builders – unburdening them so that they can build more new homes, faster.
- 2.5 In order to establish the impact of the second WMS on our Local Plan policy, we were quick to seek a legal opinion. This concluded that the second WMS is part of the national planning policy cannon, and is therefore an important material consideration for decision makers. As such, we are advised that we can legitimately weigh it against other factors, in the planning balance, provided that those factors are fully justified by relevant evidence. Ultimately it is for a local planning authority to decide on each relevant application where there are sufficient local circumstances to allow the implementation of local policy.

3 Position Statement on the Exemption of Small Sites from Development Contributions

- 3.1 After taking account of the legal opinion provided by Counsel we prepared a full statement setting out how we would continue to apply our Core Strategy policy. This document was published at the end of 2016. It was accompanied by a full justification as to why we had taken this decision. Two neighbouring planning authorities; Elmbridge and Reigate & Banstead; took a similar approach. At the time of publication we firmly believed that this initial statement was robust and sound – particularly as it draws heavily on primary evidence. We have referenced our initial statement at application and appeal.
- 3.2 While Elmbridge Borough Council has enjoyed success in the use of their position statement, Reigate & Banstead Borough Council have not – in contrast they have lost a number of planning appeals on this issue. Consequently, Reigate & Banstead Borough Council are no longer seeking developer contributions towards affordable housing from proposals of ten dwellings or fewer.
- 3.3 To date our initial statement has been considered in three planning appeal Inspector's decision letters. These are included under Annexe 2. In the first of these (chronologically), the Inspector took the view that the content of the WMS was national planning policy. It is particularly noteworthy that the Inspector writing the second appeal decision (again chronologically) took a more thorough position on the status of the WMS. The Committee are asked to note that Inspector agreed with our legal opinion, conceding that the WMS is a material consideration that can be weighed against other material considerations; including evidence of local conditions. Unfortunately, that Inspector was not fully convinced by our evidence –

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although he did acknowledge that the Borough is an unaffordable place to live. In the third decision letter (to consider this issue), the Inspector concerned referred to the status of the WMS as national policy, and did not accept that our evidence was sufficient to override this.

- 3.4 In the wake of the three decision letters we could have responded in one of two ways. We could have taken them as a rejection of our policy approach and therefore ended all attempts to seek affordable housing contributions from proposals on small sites. However, we maintain that our position on this matter is strongly supported by local evidence. Our Local Plan evidence base very clearly demonstrates the acute scale and nature of affordable housing need across the Borough. Wider evidence; including that prepared and referenced in the government's recent "Planning for the Right Homes in the Right Places"; fully supports the position that we are one of the most unaffordable locations to buy homes in the country. Furthermore, our evidence demonstrates that the application of our local plan policies has not had an adverse financial impact upon the local development industry (including SME house builders). On that basis, we continue to strongly believe that our approach is robust and sound.
- 3.5 Consequently the decision was made to re-draft our statement, in order for the evidence to read more clearly and concisely – for the benefit of applicants and Inspectors. The latest draft of our position statement is included under **Annexe 1**.
- 3.6 The Statement explains and provides justification for our continued approach of seeking affordable housing contributions on developments of 10 units or fewer. We are taking this approach because of the exceptional local circumstances relating to housing affordability, delivery and supply. We believe that these are material considerations that are supported by relevant evidence, which have a bearing on development management decisions and any subsequent appeals. We also believe that our policy approach has neither had an adverse impact upon the delivery of new homes on small development, nor has it been financially harmful to small and medium enterprise developers.
- 3.7 The Statement focuses upon the following key issues – affordable housing need; house prices, land supply and viability; and an overview of the role played by small sites (in meeting affordable housing need) and what would happen if our access to such sites was restricted. The Statement also sets out the increasing importance of the role small sites will have to play as sources of housing land supply. While it is possible that we may, as part of the emerging revision to the Local Plan, consider the allocation of larger housing development sites, it is unlikely that such sites will be coming forward for development in the short-medium term. This places a higher responsibility on those sites, including small sites that are available for construction now. We maintain that this is a strong local material consideration that should be taken into account on a proposal by proposal basis.

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4 Financial and Manpower Implications

4.1 None for the purposes of this report.

4.2 **Chief Finance Officer's comments:** *The financial implications are as set out within the report*

5 Legal Implications (including implications for matters relating to equality)

5.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 provides that "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

5.2 Section 70(2) of the Town and Country Planning Act 1990 provides that "In dealing with an application for planning permission or permission in principle the authority shall have regard to:

(a) the provisions of the development plan, so far as material to the application, ... and

(c) any other material considerations."

5.3 National planning policy can be communicated in many forms, including circulars, ministerial statements, White Papers, appeal decisions and other means. National policy takes on a particularly important role in the plan preparation process. However, it has long been established that policy constitutes a material consideration, which must be weighed in the balance when determining applications. If newer national policy supersedes local policies, the national policy should normally be given significant weight, often overriding weight, unless other considerations indicate otherwise.

5.4 **Monitoring Officer's comments:** *It is undoubtedly the case that small site developments could make an important contribution to the delivery of affordable housing in the Borough. It is, however, considered that we will have an uphill task to convince an inspector on appeal that the balance of considerations favours requiring provision of affordable housing (on-site or by way of commuted sum) on developments of between 5 and 10 homes. We sought advice from leading counsel, who suggested ways in which we could seek to provide evidence which might tip the balance in favour of requiring contributions.*

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6 Sustainability Policy and Community Safety Implications

- 6.1 Meeting our local housing needs is a key component of securing a sustainable pattern for new development across the Borough. Our Local Plan evidence base clearly demonstrates that the greatest area of housing demand is for affordable (social rented) accommodation. National planning policy (NPPF Paragraph 14) sets out the basis for presumption in favour of sustainable development.
- 6.2 There are no community safety implications of this report.

7 Partnerships

- 7.1 None for the purposes of this report.

8 Risk Assessment

- 8.1 There is a risk that we will be unable to meet affordable housing demand should we lose the ability to access small sites as a source of affordable housing land supply. The likelihood of this happening has increased proportionality to the availability and supply of major housing sites. In simple terms, the potential contribution from smaller sites has become more important to meeting need. This position is likely to be sustained for at least the five years – as the process for considering and allocating larger housing development sites catches-up with demand. Maintaining our existing affordable housing policy is a sound response to this area of risk.
- 8.2 While we are confident that our approach is sound – in terms that is positively prepared, justified and effective (as per NPPF Paragraph 182) – the potential that an Inspector considers our approach inconsistent with national planning policy (the WMS) remains. Our legal opinion has concluded that the WMS is a material consideration, as is the acute level of affordable housing demand that we experience. Nevertheless, there remains a risk that Inspectors may give the WMS overriding weight on their basis of their individual judgement.

9 Conclusion and Recommendations

- 9.1 Our evidence, and indeed evidence from government continues to demonstrate that affordability is the most significant housing issue facing the Borough. The current shortage in available, deliverable and developable sources of housing land supply means that we need to optimise every potential source of affordable housing contribution that we legitimately can. Maintaining our existing policy, which provides applicants with the opportunity to submit open-book viability appraisals appears to offer a sound way forward. The Committee are asked to consider the situation that the Borough Council finds itself – particularly in the aftermath of the WMS and recent planning appeal decision letters.

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- 9.2 Subject to the Committee agreeing to maintain the Borough Council's adopted planning policy approach that they agree to the publication and use of the revised position statement (subject to any additions or amendments).

Ward(s) Affected: (All Wards);