



CABINET

13 April 2016

Subject Heading:

Affordable Housing - a draft planning guidance note setting out the Council's approach to commuted sum payments

Cabinet Member:

Councillor Osman Dervish

Lead Member for Regulatory Services and Community Safety

CMT Lead:

Andrew Blake-Herbert

Deputy Chief Executive Communities & Resources

Report Author and contact details:

Martyn Thomas

martyn.thomas@havering.gov.uk

01708 432845

Policy context:

Planning and Housing Bill (2015)

London Plan (2015)

National Planning Policy Framework (2012)

Havering Local Development Framework (2008)

Financial summary:

The report identifies and recommends the adoption of a financial formula to provide a clear and robust approach to the Council securing funds from developers that it can put towards the provision of more affordable homes in Havering in lieu of affordable homes being provided 'on-site'. The recommended formula is intended to be 'cost neutral' to prospective developers.

The formula does not provide a direct link between amounts collected and the cost of re-providing future housing units elsewhere.

Other developer contributions received by the Council for site specific infrastructure contributions will be unaffected by the commuted sum proposal.

Is this a Key Decision?

Yes

When should this matter be reviewed?

March 2018

Reviewing OSC:

Towns and Communities

The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for
People will be safe, in their homes and in the community
Residents will be proud to live in Havering X

SUMMARY

The provision of affordable housing remains a key part of the overall delivery of housing and the Council remains committed to providing more affordable homes in the borough.

This report seeks Member approval for a non-statutory planning guidance note (Appendix 1) which sets out the circumstances in which the Council may accept commuted sum payments to the Council in lieu of affordable housing being provided on-site or on an alternative site agreed by the Council. Such an approach would be in line with the flexibility provided by planning policies from the Government and the London Mayor.

The guidance note sets out the Council's approach to securing affordable housing and makes clear that it will be the Council that determines whether a commuted sum payment to the Council is appropriate.

The note emphasises that the Council's starting point will continue to be for affordable housing to be provided on site.

The circumstances where commuted sum payments to the Council may be appropriate are listed in the guidance note and include situations where on-site affordable housing would prejudice other planning and regenerations objectives being achieved, would work against the development of a 'mixed and balanced' community, and would be poorly located relative to transport and jobs. Additionally, the report suggests that affordable housing on-site may be inappropriate where it would result in a modest number of new homes that would be difficult to manage and maintain.

The note sets out a financial formula to enable the Council and the developer to calculate a commuted sum payment to the Council in lieu of provision on-site or at an alternative site agreed by the Council.

The note confirms that the proposed approach is being followed by many other authorities. It highlights some of the benefits that may follow from its adoption.

The report makes clear that the policies of the Havering Local Development Framework will continue to provide the formal policy context for the consideration of such proposals and will retain the statutory pre-eminence afforded by Section 38(6) of the Planning and Compulsory Purchase Act 2004.

The report and the recommended draft guidance note deal only with commuted sums to be paid to the Council for affordable housing. It does not encompass developer contributions for other purposes such as site specific mitigation

measures linked to a proposed development. These remain outside of the scope of this report and its contents and will continue to be sought in appropriate circumstances.

It is recommended that the guidance note is adopted on an interim basis and is concurrently the subject of public consultation so that the Council can be certain that the proposed financial basis of the approach is robust and reasonable.

RECOMMENDATIONS

That Cabinet:

- (1) **Approve** the planning guidance note (as set out in Appendix 1) for public consultation purposes;
- (2) **Approve** the use of the note on an interim basis as ‘good practice’ guidance to show the circumstances in which commuted sum payments to the Council may be appropriate in lieu of on-site / off-site provision pending full adoption by Full Council;
- (3) **Approve** publication of the guidance note on the Council’s website as an interim guide pending formal adoption by Full Council; and
- (4) **Note** that recommendations 1 and 2 notwithstanding, the current national planning legislation will continue to afford the policies in the Havering Local Development Framework (as part of the statutory Development Plan) greater weight than the guidance note in the formal planning decision making process.

REPORT DETAIL

1. Background

- 1.1 There remains a high level of need for affordable housing across London including attractive and prosperous Outer London boroughs like Havering. The Council’s Housing Need and Demand Assessment (2012) identified that a total of 6,650 households will require an affordable housing option over the then next three years.
- 1.2 To address this, the Havering Local Development Framework (LDF) includes policies to secure affordable housing. The policies set out the circumstances where affordable housing will be required and the scale of provision necessary.

Cabinet – 13 April 2016

- 1.3 As part of its commitment to securing more affordable homes, the thrust of the Council's policies is to secure the provision of affordable housing on the site within the overall housing scheme that has prompted the provision of affordable units.
- 1.4 In this regard, the Council's approach in the LDF is wholly consistent with current national and London-wide planning policy as set out in the National Planning Policy Framework (2012) and the latest London Plan (2015) even though the LDF was prepared and adopted some time before these.
- 1.5 It may not always be appropriate for affordable housing to be provided 'on-site' and in some circumstances it may be that the Council and its partners and prospective developers will be justified in considering a different approach. For example, despite the best efforts of local planning authorities, there are situations where affordable / social housing is provided within a scheme of market housing and there are clear and apparent differences between the design and quality of the respective tenures. In some cases, this can give rise to the tenants of the affordable housing not integrating successfully with the wider scheme and difficulties with the management and maintenance of the affordable housing. In other instances, the overall layout of a mixed tenure scheme may give rise to difficulties because the affordable homes have been provided in a separate, remote and inaccessible part of the site adversely affecting the scope for a successful and balanced community to be achieved in line with national planning policy objectives.
- 1.6 National and Mayoral planning policies provide for this more flexible approach and it is this that underpins the approach contained within this report and the linked planning guidance note which is recommended for formal adoption.
- 1.7 The Council may, for example, wish to look at whether affordable housing should be provided on an alternative site to be agreed by the Council. In other cases, it may be that the payment of a commuted sum to the Council in lieu of the affordable housing being provided will be appropriate. In the latter, the money would be 'ring fenced' towards the provision of affordable housing in the future to ensure that it is used for this purpose. In both cases the objective will be to ensure that the provision of affordable housing is secured.
- 1.8 The approach proposed is not unique and many other local authorities are developing and implementing similar approaches and setting it out in planning guidance to assist developers.
- 1.9 The recommended draft guidance note will be used alongside other existing measures to help the Council support the delivery of more affordable homes in Havering.

2. What is the purpose of this report and the recommended draft planning guidance note

- 2.1 Notwithstanding the opportunity provided by the flexibility underpinning national and Mayoral planning policy, it would not be appropriate for the Council to adopt an 'ad hoc' approach to how it secures commuted sum payments from affordable housing.

Cabinet – 13 April 2016

2.2 This is because such an approach:

- would be incompatible with planning policies which are clearly focussed on securing affordable housing on-site
- could prejudice the delivery of 'mixed and balanced communities' as set out in the national planning policy framework and London Plan
- could harm the overall delivery of affordable housing across the borough in terms of both quantum and quality
- would be confusing and unhelpful for prospective developers and agencies involved in the provision and delivery of affordable housing

2.3 In particular, it is considered important that prospective developers and other agencies involved in the provision of affordable housing should be clear about the circumstances in which the Council may wish to consider commuted sum payments to the Council in lieu of affordable housing on site or at an alternative site agreed by the Council.

2.4 Appendix 1 is a draft planning guidance note which aims to set out in a clear and unambiguous manner the circumstances in which the Council may wish to consider commuted sums to be paid to the Council in lieu of affordable housing being provided on-site or at an alternative site agreed by the Council. It is intended that the note will considerably enhance the Council's approach to securing housing development including particularly affordable homes.

2.5 It is recommended that the note be prepared for formal adoption by the Council to ensure that it has the status of a material planning consideration.. It is envisaged that the draft guidance note in Appendix 1 would be used to provide guidance to prospective developers where on-site affordable housing provision is not possible.

2.6 The adoption of the guidance note will assist the Council in the delivery and management of affordable homes. The 'pooling' of commuted sum payments, and their 'ring-fencing' for affordable homes provision, will also potentially strengthen the Council's ability to deliver its own new build housing programmes. Once such housing is in place, the Council, as provider, should be far better able to determine and manage how the properties are occupied which will have social and management benefits. Taken across the borough, the approach will provide the Council with scope to ensure there is an appropriate balance of tenures across Havering and will assist in securing social inclusion.

2.7 Because the note includes a financial formula as a methodology to establish the quantum of commuted sum payments where it is considered appropriate for these, it is recommended that the note is the subject of public consultation and is first adopted on an interim basis in parallel with the consultation taking place.

2.8 The consultation will provide the opportunity for other stakeholders and agencies to review the Council's approach and comment upon it particularly the suitability and robustness of the recommended commuted sums methodology.

2.9 Following public consultation/towards the end of public consultation, the document shall be considered by Full Council for full adoption subject to any

changes that may be required to the guidance note arising out of the public consultation. It should be noted that as the document is setting out the plan/strategy to be followed by the Council, the document shall be required to be presented to Full Council to consider the adoption of the guidance note rather than Cabinet.

3. What does the planning advice note say?

- 3.1 The draft planning guidance note (Appendix 1) sets out the formal planning policy position with regard to the provision of affordable housing.
- 3.2 It highlights the approach in the National Planning Policy Framework (2012) and the latest London Plan from the London Mayor (2015).
- 3.3 It confirms the position with regard to the Council's own planning policies as set out in the Havering Local Development Framework (2008).
- 3.4 It explains that the Council will continue to take a negotiated approach to the provision and delivery of affordable housing to recognise factors such as the importance of securing the most appropriate form of affordable housing, viability issues linked to development in Havering and the specific circumstances linked to individual proposals and sites.
- 3.5 The content of the note recognises that within the Council's negotiated approach, there may be circumstances where the provision of affordable housing on-site or on an alternative site agreed by the Council may not be the most appropriate approach.
- 3.6 The note sets out the circumstances where commuted sums to be paid to the Council in lieu of affordable housing may be appropriate. It explains the recommended financial formula that the Council will use to establish the quantum of these.
- 3.7 The note confirms that there will be monitoring and reporting of the approach set out so that there is a clear and robust audit trail.

4. Where commuted sum payments to the Council in lieu of affordable housing may be appropriate

- 4.1 The draft guidance note is quite clear that the starting point for affordable housing provision should be on-site followed by consideration of provision on an alternative site to be agreed by the Council. It is also clear that the decision about this will be made by the Council and will not be the way forward because that is what the developer or community want to happen.
- 4.2 The draft guidance note sets out the circumstances where it is suggested that the Council may consider that developer contributions in the form of a commuted sum payment to the Council will be appropriate.
- 4.3 The list is not exhaustive since other circumstances may arise and the list does not imply that the Council will automatically accept a commuted payment to it if these circumstances arise.

4.4 They include circumstances where:

- the inclusion of on-site affordable housing would prejudice the achievement of other important housing, planning or regeneration objectives (including those of the London Mayor) or other Council approved programmes such as the delivery of the Romford and Rainham Frameworks
- the inclusion of on-site affordable housing would financially undermine significant development proposals in the vicinity of the proposal which are critical to economic and / or business growth such as within Romford Town centre
- the need for a development to reflect the overriding character of the surrounding area would result in low density development which may not be suited to maximising affordable housing provision on site
- the inclusion of affordable housing may conflict with other planning policy objectives such as the integrity and sustainability of development that is most suited to the site
- the development is in, or close to, an area where the Council considers there is already a high proportion of affordable housing and to require more would work against the development of a mixed and balanced community
- the location of the development is poorly located relative to public transport, local and community facilities and employment
- a financial contribution would better fund affordable housing development elsewhere in Havering in line with the evidenced housing needs / local requirements
- as a result of factors influencing the site's viability (including other planning obligations), development would result in the creation of homes that will not in practice be affordable (such as development involving higher value sites in higher value areas)
- it would provide funding for specialist forms of affordable housing to enable specific housing needs to be provided more effectively elsewhere
- it would provide a 'top up' subsidy and make it possible for a higher proportion of affordable homes to be provided elsewhere by contributing towards the forward funding / 'kick-starting' of schemes or by reducing funding gaps within pipeline / current affordable housing schemes
- the scale of development would result in a modest number of affordable housing units and there would be practical difficulties surrounding the delivery, design or on-going management of these and / or a mix of tenures
- the affordable housing units would be expensive to create and maintain / service (such as in a conversion of an existing building or a site or building involving a heritage asset) and this cannot be satisfactorily

overcome or avoided by alternative design, massing or separate new build for the affordable housing

- mixed community objectives / housing priorities will be better met in an alternative location (for example where family sized (3 + bedroom, outdoor space) units are needed)

5. What is the basis of the financial model in the planning guidance note?

5.1 In the circumstances where it is agreed that a commuted sum payment to the Council is appropriate, it will be necessary to establish the value of the payment in lieu of 'on-site' affordable housing. The Council's approach will be to base this calculation on a methodology that seeks to be 'cost neutral' for the developer.

5.2 It is proposed that the process to calculate a commuted sum will commence with an acceptance by the developer of a policy compliant provision of affordable housing, **or** as is required for of on-site provision currently, the developer must provide a financial viability assessment in a recognised format demonstrating the levels of affordable housing that can be provided. In the case of the latter, the Council will validate and agree with the developer the viability assessment.

5.3 The commuted sum calculation method will then be applied using the formula set out below:

(a) The Open Market Value of the Units Designated as Affordable Housing

Less

(b) Value of the Affordable Housing

Less

(c) Additional Developer Costs

Equals

(d) The Commuted Sum Payment

5.4 The "*Open Market Value of the Units Designated as Affordable Housing*" is the value that the 'Affordable Units' would sell for if they were sold on the open market as private units. If the developer proposed a private rented sector scheme then an alternative valuation method is to be applied.

5.6 The "*Value of the Affordable Housing*" is the capitalised value of the net rental stream for Social and Affordable Rent or the value of the first tranche sale plus the capitalised value of the net rental stream for shared ownership units.

5.7 The "*Additional Developer Costs*" are reasonable additional costs to be agreed between the Council and developer. Inclusion of the element will allow the developer to apply a reasonable level of cost that they will incur through taking on additional private sale units – this could include additional marketing costs, sales incentives, increased specification for example and relate only to the additional private units.

5.8 The Council will require applicants to pay for an independent review of any viability case submitted in regard to affordable housing and an independent review of the inputs used in the commuted sum calculations.

Cabinet – 13 April 2016

5.9 Through application of this approach the financial impact of the developer will be neutral. In this way developers are neither encouraged nor penalised through the application of the policy.

6. How will the guidance note be used?

6.1 The draft note highlights that the Council already takes a negotiated approach to the provision and delivery of affordable housing and this will continue. Hence, it will be on the agenda when prospective developers are discussing proposals which generate an affordable housing requirement.

6.2 Members should note, however, that the policies of the Local Development Framework will remain the primary planning policy context for the consideration of planning applications and must carry greater weight in the formal planning decision making process.

6.3 The use of the note will be kept under review particularly in the light of the progress with the Housing and Planning Bill (2015) and the preparation of the new Havering local plan. The local plan will need to take account of the Bill and the recommended guidance note and its implementation.

6.4 Officers consider that the guidance note is the most effective and time efficient way of the Council showing its approach to establishing the quantum of commuted sum payments without preparing a formal alteration to the Local Development Framework because the guidance note could be in place as soon as it has been approved by Members for the purposes of public consultation.

7. Commuted sum payments – evidence from Havering

Appendix 2 of this report includes some case studies of examples where it would have been helpful for the Council to have a clearly set out approach to circumstances where it would consider commuted sum payments.

8. Implications for the new Havering Local Plan

8.1 The Council is preparing a new local plan for Havering to replace the Havering Local Development Framework.

8.2 In due course, if the recommended planning guidance note is adopted, consideration will need to be given as to how best to reflect this in the new local plan document.

8.3 As mentioned above, the local plan will also have to take account of the Housing and Planning Bill (2015) (See sections 6 and 9 of this report).

9. Implications from the Housing and Planning Bill 2015

9.1 The Government has set out in its Housing and Planning Bill 2015 a commitment to promote the development of starter homes.

9.2 The Bill defines a 'starter home' as 'a new dwelling which is only available for purchase by qualifying first time buyers and at a price which is at least 20% below the market value'. Regulations may be introduced which specify

additional characteristics that first time buyers should have (such as minimum age or nationality). The Bill includes a duty on Councils to ensure that 'starter homes' become a common feature of new residential developments and it is likely that certain residential developments will only receive planning permission if specified requirements on starter homes are met. This may be a specified number or proportion of starter homes on site or the payment of a commuted sum to the local planning authority for the provision of starter homes.

- 9.3 The Bill is scheduled to be considered by the House of Lords in March 2016. Officers will follow the progress of the Bill and consider if it raises implications for the draft guidance note.

10. Next steps

- 10.1 Subject to Member approval, it is recommended that the draft guidance note be the subject of public consultation so that a wide range of stakeholders and interested parties have the opportunity to review the proposed approach.
- 10.2 Consultation will also be a means for the Council to help ensure that the financial underpinning to the approach is reasonable and robust.

REASONS AND OPTIONS

Reasons for the decision:

To provide the Council with a robust, transparent and practical methodology for establishing how much commuted sum payments should be in cases where it is not appropriate for affordable housing to be provided on site or on an alternative site. The guidance note identifies the circumstances where such an approach may be appropriate.

Other options considered:

The absence of explicit criteria setting out where commuted sum payment may be appropriate and a financial formula model for calculating such payments is unhelpful for both the Council and prospective developers and may adversely affect the successful delivery of more affordable homes.

Alternative approaches to calculating a commuted sum provision have been considered and rejected as they are not considered to be financially neutral and would incentivise the developer to provide a commuted sum in lieu of on-site provision, fail to achieve the maximum viable levels of affordable housing contribution or alternatively fail to sufficiently recognise the importance of assessing viability at a scheme by scheme level.

IMPLICATIONS AND RISKS

Financial implications and risks:

This report identifies and recommends a financial formula for establishing the commuted sum payments that a prospective developer would pay to the Council. If this approach is agreed by the Council it is intended to be 'cost neutral' to the developer.

As such it should not be a more, or less, attractive option in financial terms to the developer than providing the necessary affordable homes on-site or at an alternative site to be agreed by the Council.

The Council will then use these funds to provide affordable housing in the future. The formula does not provide a direct link between amounts initially collected from a developer and the cost of re-providing future units elsewhere which will be dependent on the Council development proposals prepared.

This report focuses on commuted sums received from developers for housing development purposes but other contributions are received from developers to contribute towards the funding of new infrastructure. These will be secured by legal agreements alongside any commuted payments to the Council in lieu of affordable housing being provided on-site or at an alternative site to be agreed by the Council.

Legal implications and risks:

The legal weight afforded to the Advice Note in determining planning applications is limited as it is not part of the formal Havering Local Development Framework.

Only adopted Development Plan Documents which fall within Regulation 5(1)(a)(iv) of the Town and Country Planning (Local Planning) (England) Regulations 2012 can be used as *“development management and site allocation policies, which are intended to guide the determination of applications for planning permission”*.

The Advice Note cannot lawfully set out the Council's policies relating to the development and use of land unless formally adopted as a Development Plan Document in compliance with Section 17(3) of the Planning and Compulsory Purchase Act 2004.

However, the Council is nevertheless entitled under its ancillary powers under Section 111 of the Local Government Act 1972 to produce research documents and analysis, including good practice guides (for example for shop fronts and trees) without the need to include the guidance as a Development Plan Document.

The public consultation being proposed is good practice for the Council and as consultation is to be carried out, it is important for the Council to consider the responses received even though it is a non-statutory process that will be taking place.

Recommendation 3 sets out the document is required to go before Full Council for full adoption due the nature of the content of the guidance note which although is a

Cabinet – 13 April 2016

non statutory document, it shall set out a plan/strategy for the council to follow and accordingly falls within the provisions of Regulation 5 of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 which sets out that in respect of the adoption of a plan or strategy, its adoption cannot be the responsibility of the Executive and accordingly it must be placed before Full Council.

Human Resources implications and risks:

None specific to this report, the Advice Note can be prepared and implemented using existing staff resources.

Equalities implications and risks:

The application of the guidance will follow as appropriate the statutory requirements of the Equality Act 2010 and in particular the requirements set out in Section 149 of the Equality Act 2010.

BACKGROUND PAPERS

None.