

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
1 December 2015

Subject: AFFORDABLE HOUSING THRESHOLDS – WITHDRAWAL OF MINISTERIAL STATEMENT

All Wards
Portfolio Holder for Environmental and Planning Services: Councillor B Phillips

1.0 PURPOSE:

- 1.1 This report advises on the implications for Council decision making in light of the High Court's decision regarding the Ministerial Statement of November 2014 and the related changes to national policy in respect of the provision of affordable housing and infrastructure.
- 1.2 It recommends withdrawal of the Council's policy to implement the lower threshold triggering the requirement for affordable housing and tariff style contributions on sites of six or more units in 'designated rural areas' which was adopted in July 2015.

2.0 BACKGROUND:

- 2.1 In November 2014 the Government made changes to national policy with regard to Section 106 planning obligations and affordable housing and tariff style contributions no longer allowing them to be sought on sites of ten units or less, or on developments that had a combined gross floor area of no more than 1,000sqm. However, for designated rural areas under Section 157 of the Housing Act 1985, local authorities could choose to implement a lower threshold of five units. If the lower threshold was implemented then the affordable housing and tariff style contributions on developments of between six and ten units could be sought as a cash payment only and be commuted until after completion of units within the development. The changes did not apply to Rural Exception Sites.
- 2.2 The guidance also stated that in respect of brownfield sites a financial credit, equivalent to the existing floorspace of any vacant buildings brought back into lawful use or demolished for redevelopment should be deducted from the calculation of any affordable housing contributions sought from relevant development schemes, unless they were vacant buildings which had been abandoned. The aim of this was to help improve the viability of development on brownfield sites.
- 2.5 On 27 July 2015 the Council chose to adopt the lower threshold triggering the requirement to make cash payments towards the provision of affordable housing on housing schemes of between six and ten units for those parts of the District that are Designated Rural Areas (i.e. all areas except for the five market towns and Great Ayton).
- 2.6 The Government's policy was the subject of a High Court challenge by West Berkshire District Council and Reading Borough Council. This challenge was upheld on 31 July on the grounds that:
- The Secretary of State had failed to take into account material considerations
 - The Statement was inconsistent with the NPPF
 - The consultation process had been unfair

- The Public Sector Equality Duty had not been complied with and,
- There were questions around the rationale of the decision to introduce the new national exemptions from affordable housing

2.7 As a consequence:

- Relevant parts of the on-line guidance were quashed
- The adoption of the policy by means of a Ministerial Statement was quashed
- The Secretary of State's decision to maintain the position following an Equalities Impact Assessment in February 2015 was quashed
- The Court declared that the Ministerial Statement must not be treated as a material consideration

2.8 The Government has been granted leave to appeal and this will be heard in March 2016. In the interim Hambleton has received Counsel advice in respect of the implications for Hambleton District Council decision making. This states that no material weight should be attached to the revised affordable housing threshold and that any decision based on the revised threshold could be successfully challenged in the courts on the grounds that it would be unlawful. The advice concluded that there is no rational basis for affording the affordable housing threshold more weight than the adopted Development Plan and that greater weight should be attached to the Core Strategy policy. Counsel also advised that any decision to keep the revised thresholds should be progressed as a formal revision to the Core Strategy.

2.9 The Council is preparing a new Local Plan which will consider appropriate thresholds, subject to evidence. In the meantime planning applications will be determined within the context of the Council's adopted LDF policies. Policy CP9 sets out the Council's affordable housing targets and includes provisions to allow viability to be taken into account when negotiating on individual sites.

3.0 **LINK TO COUNCIL PRIORITIES:**

3.1 Providing affordable housing for Hambleton's residents is a key priority of the Council. The Economic Study published in April 2014 recommended that the provision of additional housing, including affordable housing, could benefit the area by attracting additional workforce and supporting the continued vibrancy and vitality of the town centres.

4.0 **RISK ASSESSMENT:**

4.1 The key risk in approving the recommendation is:

Risk	Implication	Prob*	Imp*	Total	Preventative action
Fewer smaller schemes for market housing may come forward.	Could negatively impact on the Council's housing delivery.	3	4	12	CP9 allows for viability to be considered when determining individual planning applications.

4.2 The key risk in not approving the recommendation is shown below:-

Risk	Implication	Prob*	Imp*	Total	Preventative action
Any decisions based on the revised threshold could be successfully Challenged because it would be unlawful.	Decisions made by the Council would be quashed by the courts.	5	5	25	Withdraw the policy for the lower threshold in Designated Rural Areas

Prob = Probability, Imp = Impact, Score range is Low = 1, High = 5

5.0 FINANCIAL IMPLICATIONS:

5.1 There are no financial implications for the Council.

6.0 LEGAL IMPLICATIONS:

6.1 These are set out in paragraph 2.8 of the report.

7.0 EQUALITY/DIVERSITY ISSUES:

7.1 The Council's LDF policies maximise the opportunity to deliver affordable housing across Hambleton. This will assist those residents who wish to remain in their local community but who are unable to purchase or rent a home on the open market and who would otherwise be more disadvantaged

8.0 RECOMMENDATION:

8.1 Cabinet recommends that the Council withdraws the policy for the lower threshold triggering the requirement to make cash payments towards the provision of affordable housing on schemes of between six and ten units for those parts of the District that are Designated Rural Areas.

MICK JEWITT

Background papers: None

Author ref: SWT

Contact: Sue Walters Thompson
Housing Manager
Direct Line No: 01609 767176