

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
7 June 2016

Subject: AFFORDABLE HOUSING THRESHOLDS - SUPPORT FOR SMALL SCALE DEVELOPERS, CUSTOM AND SELF-BUILDERS

All Wards
Portfolio Holder for Planning: Councillor B Phillips

1.0 PURPOSE:

- 1.1 This report advises on the Court of Appeal's decision of 11 May 2016 regarding the Ministerial Statement of November 2014, the related changes to national policy and the implications for Council decision making.
- 1.2 It recommends reintroduction of the Council's policy to implement a lower threshold triggering the requirement for affordable housing and tariff style contributions on sites of six or more units in 'designated rural areas'.

2.0 BACKGROUND:

- 2.1 In November 2014 the Government made changes to national policy with regard to Section 106 planning obligations whereby affordable housing and tariff style contributions could no longer be sought on sites of 10 units or less, and which had a combined gross floor area of no more than 1,000sqm. This was to support small-scale developers. However, for Designated Rural Areas under Section 157 of the Housing Act 1985, authorities could choose to implement a lower threshold of 5 units. If the lower threshold was implemented then the affordable housing and tariff style contributions on developments of between 6 and 10 units should be sought as a cash payment only and be commuted until after completion of units within the development.
- 2.2 In July 2015 Cabinet adopted the application of the lower threshold for Hambleton. However, 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 2015 on the basis that the Secretary of State had failed to take into account material considerations. As a consequence the Court declared that the Ministerial Statement must not be treated as a material consideration.
- 2.3 The Government was subsequently granted leave to appeal and in the interim the Council withdrew its decision to apply the lower threshold in December 2015. This followed Counsel's advice 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.
- 2.4 The Court of Appeal gave its ruling on 11 May and upheld the Government's appeal on all four counts. In light of the latest decision material weight must now be given to the Ministerial Statement of 2014. The changes do not apply to Rural Exception Sites.
- 2.5 The most relevant impact of the reinstatement of the Ministerial Statement is that the Council could again choose to adopt the lower threshold in those parishes designated rural areas under Section 157 of the Housing Act 1985 (i.e. all areas except for the five market towns and Great Ayton), triggering the requirement to make cash payments towards the provision of affordable housing on housing schemes of between 6 and 10 units.

- 2.6 Provision of affordable housing is a Council priority. It is a strategic objective of the Council Plan and also the Local Development Framework. Delivery of affordable housing is identified as a key performance indicator in the Strategic Housing Service Plan. The Council published a new Strategic Housing Market Assessment for Hambleton in March 2016 which confirmed a need for affordable housing.
- 2.7 There is clear evidence of housing need to support the Council adopting the lower threshold. The commuted sums obtained could then be used to assist Registered Provider partners to develop more new affordable homes or to purchase homes on the open market.
- 2.8 Provision of good quality affordable housing is critical to the delivery of the Council's Economic Strategy. 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.
- 2.9 The guidance will also impact on delivery of affordable housing on some brownfield sites in that financial credits will need to be deducted from the calculation of any affordable housing contributions sought from relevant development schemes for any vacant buildings brought back into lawful use or demolished for re-development.
- 2.10 The Ministerial Statement is a material consideration in determining planning applications. It post-dates the adoption of the Council's Development Plan and therefore carries significant weight. It is expected that Planning Inspectors would base their decisions on Government policy.
- 2.11 In April 2015 the Council approved an Interim Planning Policy Guidance Note (IPGN) aimed at providing more flexibility towards development, particularly housing development, within smaller settlements in the District. Choosing to adopt the lower threshold in rural areas may impact on the number and the size of schemes that come forward, albeit the Council will only be able to require a commuted sum contribution towards affordable housing provision. However, the majority of schemes coming forward as a result of the IPGN will be small scale (5 or less units) falling below the 6 unit threshold and therefore any impact is likely to be low.

3.0 LINK TO COUNCIL PRIORITIES:

- 3.1 Providing affordable housing for Hambleton's residents is a key priority of the Council. The Council is committed to the North Yorkshire Rural Housing Enabler Programme which seeks to increase the supply of rural affordable housing. Provision of affordable homes helps sustain the vibrancy of our communities and plays an important role in supporting delivery of the Council's Economic Strategy.

4.0 RISK ASSESSMENT:

- 4.1 There are no significant key risks in approving the recommendation.
- 4.2 The key risk in not approving the recommendation is shown below:-

Risk	Implication	Prob*	Imp*	Total	Preventative action
Commuted sum contributions (including for affordable housing) and tariff style obligations could not be sought on sites of 6 - 10 units	Fewer affordable homes will be delivered and fewer contributions received for infrastructure projects	5	4	20	Implement lower threshold

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

5.0 FINANCIAL IMPLICATIONS:

5.1 There are no financial implications to the Council of implementing the lower threshold other than the continued costs associated with consultancy fees to review development appraisals when required and officer time/resource in respect of negotiating cash payments. These costs will be met from existing budgets.

6.0 LEGAL IMPLICATIONS:

6.1 The Council should ensure that it gives the appropriate weight to the Ministerial Statement in light of the Court of Appeal decision.

7.0 EQUALITY/DIVERSITY ISSUES:

7.1 Adopting the lower threshold will increase the opportunity to deliver affordable housing in rural areas. 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 adopts the lower threshold triggering the requirement to make cash payments towards the provision of affordable on housing schemes of between 6 and 10 units for those parts of the District that are Designated Rural Areas and that the change is then publicised.

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Background papers: None

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