

**Report of Director of City Development**

**Report to Executive Board**

**Date: 4 January 2012**

**Subject: Interim Affordable Housing Policy**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. Scrutiny Board is seeking a change to the Interim Affordable Housing Policy targets agreed by Executive Board in May 2011. The change sought is that these lower targets should not apply to greenfield sites; instead the higher targets from the 2008 Policy should apply. Scrutiny Board suggests that developers are taking advantage of the lower targets when they had previously committed to providing affordable housing at the higher target levels.
2. The Director of City Development considers that it will not be straightforward to treat greenfield planning applications differently because the current evidence of viability concludes that greenfield sites would not be viable at higher levels. Until the housing market improves, the viability situation is also unlikely to improve. In any case, early indications from applications submitted suggest that the policy is having an effect in stimulating early starts on site which in turn should result in a meaningful increase in the number of affordable homes which will be delivered through S106 Agreements.

**Recommendations**

3. Executive Board is requested to:
  - retain the existing 2011 Interim Affordable Housing policy targets as agreed by Executive Board in May 2011
  - receive a monitoring report on progress of the revised policy in Summer 2012.

- Clarify that the implementation period is 2 years from the date of the decision to grant planning permission subject to Section 106 obligations to secure the early delivery of affordable housing and that at the end of 2 years if not implemented the % of affordable housing will revert to whatever the policy is at the time.
- On those Greenfield sites granted at appeal with higher levels of affordable housing, and where lower levels of affordable housing is sought in accordance with the interim policy, regard is had to the content of the overall package of Section 106 package and local priorities in consultation with Ward Members and local communities.

## **1 Purpose of this report**

- 1.1 This report provides a response from the Director of City Development to the recommendation of Scrutiny Board (Regeneration). This asks that Executive Board:

“reconsiders this interim housing policy as a matter of urgency with a view to reinstating the 2008 affordable housing targets in relation to Greenfield sites”

## **2 Background information**

- 2.1 At its meeting on 18 May 2011, Executive Board approved an amended interim Affordable Housing Policy which introduced revised affordable housing targets across Leeds. All other aspects of affordable housing policy remained unchanged. This change was made in the light of the findings of the Economic Viability Appraisal carried out by DTZ consultants on behalf of the Council which provided an up to date assessment of what affordable housing can be delivered in the current market.
- 2.2 Prior to adopting the revised policy, a four week public consultation exercise was carried out. Details of the draft policy were placed on LCC’s website and notifications were sent to hundreds of consultees and circulated in Renew’s monthly newsletter. An Equality Impact Assessment was carried out. Twenty eight responses were received including three from City Councillors.
- 2.3 The Draft Policy was revised to address a number of comments received. In particular, a time limit of 2 years for schemes permitted was introduced. This was to deter speculative schemes taking advantage of the low targets and land banking until the housing market improves.
- 2.4 After the policy was adopted, a number of developers who already had planning permission with agreements for provision of affordable housing at the previous higher percentage targets submitted new planning applications to take advantage of the lower percentage targets of the interim policy. This included some of the UDP Phase 2 and 3 Allocated Sites, which were granted planning permission on appeal with schemes that included provision of affordable housing at the higher target levels. Scrutiny Board members are critical of this practice, expecting housebuilders to honour the terms of the original permissions; they believe the interim policy should be modified to prevent this practice. They are concerned that these developments might still be viable at the higher affordable housing target levels.

### **3 Main issues**

#### Why the interim policy change was necessary

- 3.1 The main reason for revising the affordable housing targets was to reflect the state of the housing market after the credit crunch; first time buyers were unable to get mortgages and developers found it more difficult to raise finance for new developments. Housebuilding dried up, particularly for schemes aimed at investors or first time buyers and particularly for higher risk schemes either in lower market areas or with brownfield land costs. It appeared that developers were unable to build housing schemes at all, let alone with affordable housing.
- 3.2 In the context of Leeds City Council preparing a Supplementary Planning Document on affordable housing, the perilous state of the housing market was a prompt for commissioning consultants DTZ to undertake an Economic Viability Assessment (EVA) of affordable housing policy targets. This concluded that in current market conditions, next to no affordable housing would be viable in the city centre and inner areas, that up to 15% would be viable in outer areas and up to 40% viable in the “Golden Triangle” area.
- 3.3 It was understood that as soon as the DTZ Economic Viability Assessment report became public, developers would expect the amount of affordable housing they provide on their schemes to reflect the amount concluded to be viable in the report. It was understood that developers would seek this regardless of whether there is an interim policy or not. The evidence provided a strong case to over-ride the prevailing higher targets set out in the informal policy of 2008.
- 3.4 Hence, the introduction of lower affordable housing targets would have been very difficult to contest. At least if introduced through a policy, the application of the viability evidence would be consistent, there would be a clarity of expectation and it would provide opportunity to introduce additional policy provisos, including the limiting of permissions to 2 years to help kick-start the market and deter speculative schemes which could be land banked and not built out in the short term.
- 3.5 Getting the house building market moving is a key aim which will provide homes at a time when the supply has substantially diminished and help towards the targets for new housing set in regional and local policy to meet the needs of the city in the years ahead. Of equal importance is that increased supply at a time of economic downturn will provide construction jobs and help stimulate the local economy. Allowing schemes to proceed with lower affordable housing levels in the short term will aid the delivery of market housing and the provision of some affordable housing delivered as part of those schemes which otherwise might not be built.

#### Distinction between previously approved schemes and new schemes

- 3.6 Scrutiny Board members are concerned that developers who already have the benefit of planning permissions with affordable housing agreed at higher levels are submitting new planning applications in order to obtain permissions with lower affordable housing requirements according to the interim policy. The legal position is that a planning application must be judged on policy and material considerations applicable at the time.

A new planning application cannot be rejected on the basis that the applicant should be expected to implement an earlier planning permission. If there are new and changed circumstances which are material to a decision these have to be taken into account in determining any new planning applications.

- 3.7 In this case, the new circumstances include new evidence and new affordable housing policy targets. The new evidence on viability (the DTZ Report) provided the reason for introducing the revised targets. The new interim policy does not expressly encourage developers to submit new applications for sites with extant permissions; but it has no way of preventing or refusing re-submissions that accord with the new policy.

#### Distinction between Greenfield and Brownfield land

- 3.8 The Economic Viability Assessment (EVA) did not conclude that greenfield sites should be treated differently. The EVA assessed viability on the basis that developments have no abnormal development costs. In that sense, the EVA conclusions reflect greenfield assumptions and are a “best case” scenario. Existence of abnormal development costs – eg demolition, remediation, decontamination – in individual development proposals would reduce viability further.

- 3.9 If the policy targets were to be changed to apply only to brownfield land, there would need to be a justification for that approach supported by evidence. Further public consultation may also be required on that change.

#### National Government’s stance

- 3.10 In the lead-up to Executive Board agreeing the interim affordable housing policy in May 2011, the Government urged local planning authorities to respond positively to developers who want to renegotiate section 106 commitments to reflect the current harsher economic climate.

- 3.11 On 31 March the Government’s Chief Planner wrote to all Chief Planning Officers. The letter included two Annexes, one from Gregg Clark on Planning for Growth (Annex A) and the other on Planning Obligations (Annex B). Annex A states:

“To further ensure that development can go ahead, all local authorities should reconsider, at developers' request, existing section 106 agreements that currently render schemes unviable, and where possible modify those obligations to allow development to proceed; provided this continues to ensure that the development remains acceptable in planning terms.”

- 3.12 Annex B advises that:

“Understanding the impact of planning obligations on the viability of development will be an important consideration when obligations are reviewed, particularly where they were reached in different economic circumstances. An appropriate review of obligations, which takes account of local planning priorities, could allow development to proceed on stalled schemes.”

- 3.13 Not satisfied with only *urging* local authorities, the Government has now set in motion commitment to *require* local authorities to renegotiate S106 Agreements.

The Government's new housing strategy "Laying the Foundations: A Housing Strategy for England" published in November 2011 states:

"We will encourage action on stalled development by allowing developers to require local authorities to reconsider those S106 agreements agreed in more prosperous market conditions prior to April 2010. We will consult on this proposal shortly. We will ensure that any resulting appeals are dealt with promptly by the Planning Inspectorate, to give certainty to both developers and local communities. The Government will also encourage a flexible approach to planning obligations, to safeguard against substantial and unexpected change in market conditions."

- 3.14 It is clear that the Government is providing a strong message to local authorities that they need to have regard to the changed economic conditions and the need to kick start development and this should be reflected in the level of s106 obligations required. A policy shift by the Council now, to increase the amount of affordable housing provided by developers would appear to run contrary to that approach and would need to be clearly distinguished on a robust and credible evidence base. Otherwise, there would be a strong possibility that the Council would find that refusals based on the failure of a developer to provide the higher level of affordable housing would be successfully appealed against by developers.

#### The importance of encouragement

- 3.15 Whilst it is considered that the Council cannot refuse to consider new planning applications that are submitted in respect of sites with extant planning permissions, the Council is able to exert influence in other ways. The interim policy makes it clear that permissions granted with the benefit of the revised affordable housing targets will normally be time limited to two years implementation to ensure that permissions are implemented reasonably swiftly. It is also clear that the City Council expects to review the affordable housing targets again through a Supplementary Planning Document, and it is hoped that the housing market will have strengthened to justify higher targets. Whilst developers cannot be compelled to make early commencements, the 2 year implementation period is one way of encouraging it. There are already examples of where developers, in seeking approval for schemes with lower affordable housing, have been prepared to commit to early starts on site and to provide additional financial contributions for other matters as a result of updated policies since permission was originally given.

#### Stimulating the housing market to deliver affordable housing

- 3.16 One of the effects of lowering affordable housing targets is to make it easier for housing development to come forward now. This generates a number of potential benefits, such as employment and potential business for related firms, but it should not be overlooked that this will create opportunity to deliver more affordable housing in absolute terms than would otherwise have been the case. In 2010/11 only 40 affordable dwellings were completed using planning powers. In the 6 months since the Interim Policy has been in operation, ten applications have been or are being determined which, if implemented, will deliver 120 affordable dwellings at the new percentage target levels.

Whilst all of these are unlikely to complete within the next 2 years, the policy to apply a 2 year implementation period would help achieve commencements of a large proportion of the affordable dwellings on site. And if the next 6 months sees a similar level of activity with further greenfield sites and brownfield sites, an equivalent amount of affordable dwelling commitments may be expected.

### Practicalities

- 3.17 If Executive Board were to agree to the Scrutiny Board recommendation, a number of practicalities need to be borne in mind. Without any public consultation on the change, the return to the 2008 affordable housing targets would have diminished status in determining planning applications. Of particular significance, the 2008 targets do not reflect the up to date evidence on viability. Also, as a matter of protocol, it is normal procedure to undertake Equality Impact Assessment for changes in policy. To revert back to the 2008 targets for greenfield sites, would create potential for confusion, particularly if the change cannot be effected immediately because of the need for further public consultation and EIA.
- 3.18 There is a great need for clarity and consistency on the issue amongst members and officers. At present the interim policy agreed in May is being applied in West Plans Panel and approval has been given in recent months to Greenfield housing schemes at Netherfield Road, Guiseley (87 dwellings with 15% affordable provided in the first phase on the site frontage) and Greenlea Close, Yeadon (30 dwellings with 15% affordable housing) where commitment has been given to an early start on site by the house builders involved. Both sites were originally granted permission on appeal for 30% affordable housing. In addition West Plans Panel have received a pre application presentation at Holt Avenue, Adel for a detailed housing proposal for 45 dwellings on a Greenfield site allowed on appeal in May but now proposing 15% affordable housing in accordance with the present policy and are hoping to be on site in spring 2012. Members at East Plans Panel have been more critical of the interim policy and requested that it be referred back to Executive Board and this is now creating uncertainty and protracted timescales in considering some applications and will be delaying some developments which might otherwise have been brought forward for implementation. At the last East Plans Panel meeting on 2 December Members did resolve to approve an outline application on a phase 3 greenfield site at Haigh Moor Road, West Ardsley, with 15% affordable housing in accordance with the Interim Policy. The site had not been to appeal and the developer had not previously committed to a higher level affordable housing provision.
- 3.19 The Scrutiny recommendation is in relation to Greenfield sites but it is clear that the prime concern is with sites where developers have previously committed to higher levels of affordable housing and now seek to take advantage of lower levels because the policy has changed. In total there are 10 allocated Phase 2 sites and 34 allocated Phase 3 sites specified in the UDP (Review 2006). Of these 12 sites have planning approvals granted on appeal – 4 on Phase 2 sites and 8 on Phase 3 sites. Of the 12 sites 2 are not large enough to require affordable housing ( below 15 dwellings) and a further 1 is in the Outer area where in the interim policy the affordable housing requirement has increased. Of those where previous commitments have been given in legal agreements therefore there are 9 sites where the interim policy could result in a lower provision of affordable housing.

Bagley Lane at Farsley is now on site and under construction and the house builder has not sought to change the affordable housing requirement.

Two of the other sites have been granted a lower percentage through detailed applications approved at West Plans Panel and a further site has been to members at pre application stage with a lower percentage which has resulted in a much improved layout which Members were supportive of. That leaves 5 sites. There are 32 other Phase 2 and 3 sites where applications have not yet been determined for housing and the Section 106 ask for affordable housing established in a legal agreement.

- 3.20 Of the 5 sites that have permissions granted at appeal but which have not yet submitted new planning applications for reduced contributions there is scope for the Local Planning Authority to reconsider the Section 106 package as a whole and what needs to be provided in accordance with local priorities in consultation with local Members and communities. Members can, therefore, seek increased affordable housing contributions as a priority, at the expense of other funding areas, so long as the total cost of these contributions is not increased.
- 3.21 In implementing the Interim Policy officers have been stressing to developers the emphasis on delivery and seeking to ensure that an early start on site and delivery of both market and affordable housing is reflected in the S106 agreement.
- 3.22 A question was raised recently by Members about the 2 year implementation period and how this is interpreted i.e. 2 years from the 1 June 2011 or that the interim policy should be seen as such until the Core Strategy is published but that adequate time needs to be allowed for implementation – 2 years from the date of decision is therefore reasonable with commitment for early delivery being secured through the relevant S.106 Agreement. We will report back to Executive Board in Summer 2012 on the impact of the revised policy.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.11 The Interim Affordable Housing Policy approved by Executive Board in May 2011 had been subject to a 4 week period of public consultation that ended Friday 18<sup>th</sup> March 2011.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An Equality Impact Assessment screening has been carried out and is detailed in the Background Papers. The conclusion is that if the policy is not changed, as recommended by the Director of City Development, it is likely that fewer housing units will be delivered and consequently, fewer affordable housing units. This will be to the detriment of those on lower incomes seeking access to new homes.
- 4.2.2 If Executive Board decide that the City Council ought to change the policy as recommended by Scrutiny Board (Regeneration), a full equality impact assessment and public consultation of the new proposed policy should be undertaken before a decision is taken to adopt a new policy.

### **4.3 Council Policies and City Priorities**

4.3.1 Part of the Vision for Leeds 2011-30 that expects Leeds' economy to be prosperous and sustainable by 2030 expects sufficient affordable housing to be provided. Planning policy in the Unitary Development Plan expects affordable housing to be negotiated on development sites to meet identified needs. Further supplementary and informal policy targets on how much affordable housing is the subject of this report.

### **4.4 Resources and Value for Money**

4.4.1 There are no resource or value for money considerations

### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 Legal advice has been taken into account in the drafting of the report.

### **4.6 Risk Management**

4.6.1 The risk concerns the strength/status of policy and the robustness of underlying evidence to determine planning applications.

## **5 Conclusions**

5.1 It is understandable that in respect of those Greenfield sites where planning permission was granted on appeal with a higher proportion of affordable housing, some Members may feel aggrieved that developers are now being seen to take advantage of the lower 2011 policy targets by re-submitting planning applications. However, the interim policy targets merely reflect underlying evidence, and in this case, the Economic Viability Assessment concludes that higher levels of affordable housing are not currently viable in most areas of Leeds. As such, even if the 2011 policy were changed to raise targets back up to 2008 policy levels, officers consider that given the underlying evidence this could not be made to work in practice. Developers making re-submissions would challenge any attempt to apply the higher targets and would seek to rely on the national policy position and Leeds' own Economic Viability Assessment in support.

5.2 The current interim affordable housing policy is only intended to provide a transitional policy position which will be reviewed and replaced by the Core Strategy and Affordable Housing SPD. Permissions granted which benefit from the reduced affordable housing targets are linked to requirements for earlier commencement of development compared to extant permissions and experience to date is that through negotiations, developers are starting to provide real commitments to early starts on site. Any change in affordable housing policy without a robust evidence base would be putting the Council at risk of appeal with associated costs. Members are therefore urged to retain the current policy position previously agreed in May 2011.

## **6 Recommendations**

6.1 Executive Board is requested to:



- retain the existing 2011 Interim Affordable Housing policy targets as agreed by Executive Board in May 2011
- receive a monitoring report on progress of the revised policy in Summer 2012.
- Clarify that the implementation period is 2 years from the date of the decision to grant planning permission subject to Section 106 obligations to secure the early delivery of affordable housing and that at the end of 2 years if not implemented the % of affordable housing will revert to whatever the policy is at the time.
- On those Greenfield sites granted at appeal with higher levels of affordable housing, and where lower levels of affordable housing is sought in accordance with the interim policy, regard is had to the content of the overall package of Section 106 package and local priorities in consultation with Ward Members and local communities.

## **7 Background documents**

### 7.1 Equality Impact Assessment

### 7.2 Report to Scrutiny Board (Regeneration), 29<sup>th</sup> November 2011, entitled, 'Inquiry to Consider Affordable Housing by Private Developers - Interim Recommendation to Executive Board'