

**Joint Report of Directors of City Development and Environment & Neighbourhoods**

**Report to Executive Board**

**Date: 7 November 2012**

**Subject: Scrutiny Inquiry into Affordable Housing by Private Developers**

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. This report provides the joint response of the Director of City Development and the Director of Environments and Neighbourhoods to the report of the Scrutiny Inquiry into Affordable Housing by Private Developers. It has been prepared in consultation with the Executive Members for Development and Environments and Neighbourhoods.
2. The report is welcomed as a helpful analysis of the housing market's ability to deliver affordable housing and private rented housing.
3. In the main the recommendations can be accepted. The exceptions are recommendations 1, 2, and 7 and this report explains why those recommendations present difficulties as currently drafted and suggests alternative approaches.

**Recommendations**

3. Executive Board are requested to:
  - Agree the responses to the recommendations set out in section 3 of the report.

## 1 Purpose of this report

- 1.1 This report provides a joint response from the Director of City Development and the Director of Environments and Neighbourhoods to the nine recommendations made by the Scrutiny Inquiry into Affordable Housing by Private Developers.

## 2 Background information

- 2.1 The Executive Board at its meeting on 22nd June 2011 asked Scrutiny Board (Regeneration) to undertake an inquiry to consider the population and household projection information including the land banking practices of developers that will underpin the Core Strategy on housing growth
- 2.2 Scrutiny Board identified that there was a second specific piece of work needed to review the Council's approach to provision of affordable housing by private developers.
- 2.3 The Scrutiny Board Working Group undertook an Inquiry which explored affordable housing policy and practice, barriers to general housing and affordable housing provision, the potential for a model to stimulate housing development for private rent and the role of the Leeds City Region.
- 2.4 In particular, the Scrutiny Board Working Group made an immediate recommendation to Executive Board to reinstate the 2008 affordable housing targets in relation to green field sites. The 4 January 2012 meeting of Executive Board decided to retain the interim targets, but asked for a report in Summer 2012 on the effectiveness of the interim policy in stimulating housing growth and securing affordable housing.

## 3 Main issues

### Recommendation 1

- 3.1 **That as the Executive Board sets the policy in relation to the number of affordable homes required by housing area we believe any variations from that policy should be referred back to the Executive Board for approval. However, this should only take place after the relevant Plans Panel has reviewed the financial viability assessment submitted by developers. The Executive Board is asked to approve this approach.**
- 3.2 To help keep Executive Board informed of the effectiveness of affordable housing policy annual reports will be provided to Executive Board. Executive Board's overview will be welcome on the effectiveness of the policy.
- 3.3 Decisions on the appropriateness of individual S.106 Agreements are taken by the Plans Panel as they are integral to the process of determining planning applications and as to whether or not planning permission should be granted in the light of all material circumstances. S.106 Agreements cannot therefore be separated from the planning consent as suggested. In addition, affordable housing is usually only one of a number of obligations and these need to be judged in the round, rather than in isolation as the recommendation suggests.

- 3.4 Plans Panels are constituted for the purpose of taking decisions on planning applications, including S.106 Agreements. Therefore Executive Board is requested to support the proposal for annual review but recognise the role of Plans Panel in determining individual planning applications and associated s.106 Agreements.

## **Recommendation 2**

- 3.5 **That the Executive Board withdraws the 2011 interim housing policy as a matter of urgency and reinstate the 2008 affordable housing targets in relation to green field sites.**
- 3.6 The Directorate recognises the concern raised by Scrutiny about the delivery of affordable housing on greenfield sites and in the case of the applications which were the subject of Public Inquiries, that developers are required to prove why they cannot meet agreed obligations. However, rather than reinstate the original policy targets now it is suggested that we assess the effectiveness of the interim policy. The reasons for this are set out below:
- 3.7 The National Planning Policy Framework (NPPF) establishes the approach for local authorities to assess the viability of policies for schemes that provide affordable housing. Para 173 states, "...to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable."
- 3.8 In relation to the housebuilder evidence quoted in the Scrutiny report, whilst it is accepted in theory that landowners would be the prime beneficiary of reductions in affordable housing requirements, land will only come forward for development if a landowner gets a reasonable price for his land. Therefore, in practice, a reduction in the affordable housing requirement is likely to stimulate the availability of land for the delivery of new homes.
- 3.9 The evidence which led to the introduction of the interim policy – the Economic Viability Assessment (EVA) by DTZ 2010 was prepared using a methodology which is consistent with NPPF guidance. Economic conditions do not appear to have improved. The EVA was based on hypothetical sites with no abnormal development costs; effectively, the EVA assumed that all sites were green field.
- 3.10 All the evidence, including any changes in market conditions, and monitoring of actual numbers will be reported to the Executive Board when it reconsiders the interim policy.
- 3.11 As lead-in times for housing development are long, sufficient time needs to be taken for the new policy to be monitored. Dwelling *completions* are only likely to be affected by the interim policy over the next 12-18 months, so it would be more useful for any evaluation to look at *permissions* as well as *completions*.
- 3.12 In terms of schemes *permitted*, indications are that the policy so far has had marginal success in stimulating housing development overall and increasing

numbers of affordable dwellings secured. An exercise has been carried out to compare the total amount of housing permitted and the total number of affordable dwellings agreed in the two financial years of 2010/11, which came before adoption of the interim policy, and 2011/12, which came largely after the adoption. The exercise excluded housing proposals that would not generate affordable housing, such as small schemes of less than 15 units, student schemes and 100% affordable housing schemes.

Year	Dwellings Permitted	
	Total Housing	Affordable Housing
2010/11	419	118
2011/12	761	148

- 3.13 We will also examine the impact of the economic situation since the EVA 2010 was undertaken on housing policies.
- 3.14 Executive Board concluded in January 2012 that a report on the effectiveness of the interim policy should be taken back to Executive Board in the summer of 2012. However, as indicated in para 3.11 it will be some time before a meaningful number of schemes based on the new targets have received planning permission with a reasonable lead in time for development. A monitoring report will therefore be prepared for Executive Board in due course.
- 3.15 In addition it should be recognised that the work being undertaken by GVA on viability in association with the CIL proposals will need to factor in affordable housing requirements. This will provide the most up to date information on viability that we have and any change in the position on affordable housing should await this study and emerging views on CIL charging rates.

### Recommendation 3

- 3.16 **i) That the Executive Board request the Directors of City Development and Environment and Neighbourhoods as appropriate to undertake further work and review the opportunities and potential for a visionary new housing management role for the Council or external provider to remove the barriers around investment in residential properties and affordable homes in the city.**
- 3.17 The potential for institutional investment to support housing growth in Leeds through the expansion of the private rented sector needs further exploration and the proposed review is supported.
- 3.18 There are several elements which need to be considered as part of the approach – the numbers of units required to make the investment attractive to the institutions, the type of delivery vehicle adopted and timescale, property types, tenure and location, demand and revenue risk in addition to the housing management arrangements. Management of an expanded private rented sector will need to reflect the requirements of this new housing product and meet the needs of the investors in terms of the revenue stream.

- 3.19 **ii) That the Executive Board request the Directors of City Development and Environment and Neighbourhoods as appropriate to include in that review whether there are any benefits to Leeds adding affordable rents in the tenure split of intermediate and social housing, to determine whether there would be any benefit from the variation of transfer values in the calculations for the provision of affordable homes.**
- 3.20 Affordable rent is a delivery model that is already possible using current affordable housing policy and practice. The City Council would need to be satisfied that rents charged (up-to-80% of local market rents) would be genuinely affordable to households in need. The review will examine how best to use “affordable rent” as a form of affordable housing and set out the circumstances where it would be best employed.
- 3.21 The methodology for establishing “transfer values” used in Leeds was established around 10 years ago through consultation with Registered Providers and housebuilders. Although annual updates have taken place there has not been a full review. As Scrutiny Board has recommended, a review would be worthwhile now. It would need to consider best practice in other local authorities, local evidence of housing need and earnings and the HCA’s rent/affordability models and policies. It would also consider the relationship between rents and transfer rates. This would need to evaluate whether any gains in the number of affordable dwellings delivered are not outweighed by reductions in their affordability to households in need. Consultation with registered providers and housebuilders would take place through preparation of the Supplementary Planning Document on affordable housing.
- 3.22 **iii) That the Executive Board request the Directors of City Development and Environment and Neighbourhoods as appropriate to consider in consultation with Ward Members if a reduction in affordable housing could be achieved in one area to benefit another through a strategic regeneration approach. Where such agreements are reached a higher rate of CIL should be retained in the host area. For example if a site attracts 35% affordable housing; by negotiation with Ward Members 20% may be ‘passported’ to a priority regeneration area. In return the CIL retention to the donor area would be no less than 85%.**
- 3.23 The NPPF cautions that agreements for off-site affordable housing provision need to “...contribute to the objective of creating mixed and balanced communities.”
- 3.24 Any changes to the Council’s approach would need to have regard to this objective and be considered on a site by site basis. As recognised by the Scrutiny Working Group, however in certain circumstances off-site provision could provide a very beneficial outcome for the Council and can support wider regeneration objectives and the recommendation will be actively considered.
- 3.25 The proposal to retain such a high proportion of CIL for the local community is premature until a full review of the CIL Charging Regime is completed. This will include consideration of the meaningful proportion of receipts that it is appropriate to retain locally.

#### **Recommendation 4**

- 3.26 **That the Directors of City Development and Environment and Neighbourhoods; as appropriate; work closely with all relevant financial institutions to identify and report back to the appropriate Scrutiny Board on ways to deliver the affordable homes needed in the city.**
- 3.27 Agreed, the potential role for institutional investors is being explored both locally and at City Region level.

#### **Recommendation 5**

- 3.28 **That the Directors of City Development and Environment and Neighbourhoods; as appropriate; work closely with all our partners including financial institutions develop an investor model for large scale institutional investment in the rented sector and report on progress to the relevant Scrutiny Board by the Autumn of 2012.**
- 3.29 Agreed, the potential role for institutional investors is being considered both locally and at City Region level. This is a complex exercise which needs to consider the numbers of units required to make the investment attractive to the institutions, the delivery vehicle and timescale, property type, tenure and location, demand and revenue risk as noted above. Also, in order for the institutions to be able to spread their expose to risk beyond a single housing market area, the potential for developing the model in conjunction with other authorities within the city region may need to be considered.

#### **Recommendation 6**

- 3.30 **That the Director of Environment and Neighbourhoods and the Director of City Development; as appropriate; work with the Homes and Community Agency to assist local authorities to meet their housing targets and work with financial institutions to purchase suitable repossessed properties at discounted prices as a way of meeting the housing needs of people in this city particularly those in the most deprived areas.**
- 3.31 Agreed, this could be a useful tool where repossessed properties are of an appropriate type to meet housing need and the purchase price is affordable to the local authority. However the authority will also need to take into account the management costs of dispersed properties and repair and maintenance costs for non standard property types. The financial implications of ensuring individual properties meet public sector decency energy efficiency standards will need to be borne in mind.

#### **Recommendation 7**

- 3.32 **That the Scrutiny Board reaffirms that the percentage allocation to be made available to communities from the Community Infrastructure Levy (CIL) should be 80% and that the Executive Board be asked to consider this matter again.**
- 3.33 The Departments recognise Scrutiny Board's concern that communities are sometimes adversely affected by development impacts. One of the mechanisms to

help mitigate these effects is available now and will continue to be available in the form of S106s that deal with site impacts. CIL is a new mechanism which the Government intends, "...to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable". This purpose could be compromised if 80% were to be allocated to locality projects especially as a large number of communities are located in commercially unviable and marginal locations where it would not be possible to generate a CIL levy. The government has indicated that a 'meaningful' proportion should go to local communities. The government published (10 October 2011) a consultation paper inviting views amongst other things on a minimum level for "meaningful" but also suggesting a cap. Whilst the Government has not yet published its response to the consultation nor indicated when it will do so, it can be expected that the matter will be subject to formal regulation in due course. It is suggested that the Council will need to review its position in the light of future government regulations and that this will be most appropriately addressed as part of the development of the Leeds CIL scheme.

- 3.34 Whilst the government has still to publish regulations on this issue it should also be noted that work is progressing on the scale of the strategic funding gap. Executive Board will need to consider the appropriate rate at which to set CIL in the light of that gap and the viability evidence provided by the GVA study. The outcome will be subject to consultation and eventually examination. Further consideration of this issue would be more appropriate once the regulations are in place and the Council is further advanced with its CIL proposals.

#### **Recommendation 8**

- 3.35 **That the Director of City Development submit; at an early stage in the process; a draft of the proposed Charging Tariff/Schedule for the CIL to the appropriate Scrutiny Board in accordance with the agreed CIL timetable so that it can be examined at inquiry.**
- 3.36 Prior to examination of the CIL charging schedule by an independent inspector, Executive Board will have opportunity to consider and "sign-off" proposals both for the "Preliminary Charging Schedule" which will be subject to public consultation and the subsequent Draft Charging Schedule which will be subject to consultation and examination. Members will be fully consulted on these proposals.

#### **Recommendation 9**

- 3.37 **i) That the Director of City Development and Director of Environment and Neighbourhoods press for a reduction in the Council's housing target as a consequence of the revised population projection by the Office for National Statistics and report back to the appropriate Scrutiny Board on the outcome.**
- 3.38 In tandem with Scrutiny Board's concern about the realism of population forecasts, Leeds has already set a reduced housing requirement which was lower than the 2008 ONS Population Forecasts. This was based on the Strategic Housing Market Assessment (SHMA) which identified a number of weaknesses in the ONS methodology. The recent ONS forecasts addressed these weaknesses. Leeds' population forecasts which underpin its housing requirement are still lower than the recent ONS forecasts. ONS figures released in March 2012 using the revised

methods suggest a 2026 population for Leeds of 885,000 people and we will have the benefit of census data later this year. It would perhaps be most useful therefore to consider this recommendation at this time.

**3.39 ii) That the Director of City Development and Director of Environment and Neighbourhoods request an increase in the windfall figure for Leeds as a result of the publication of the National Planning Policy Framework.**

3.40 Leeds made strenuous representations to national government for a change to national planning policy on the acceptability of windfall allowances and this contributed to the changes set out below. According to the NPPF, Leeds City Council must be able to justify any windfall allowance in its Core Strategy which is subject to public examination. The NPPF states:

“Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.”

3.39 Whilst Leeds has a strong historic track record of windfall delivery it may be argued that this, at least in part, is due to its policy of greenfield restraint. The NPPF will help Leeds to sustain the case for a realistic allowance to be set in the Core Strategy.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.11 The Scrutiny inquiry has implications for the affordable housing interim policy and the future development of the Council’s Core Strategy and SPD on affordable housing. The interim policy was subject to 4 weeks public consultation before adoption in 2011. The Core Strategy has been subject to 4 stages of public consultation since its inception in 2006. The SPD on affordable housing will be subject to a round of public consultation on a draft.

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

4.2.1 The Scrutiny inquiry has implications for the affordable housing interim policy and the future development of the Council’s Core Strategy and SPD on affordable housing. The interim policy was subject to EIA. The policies and proposals of the Core Strategy and the SPD on affordable housing will continue to be subject to equality consideration during their preparation.

4.2.2 If Executive Board decide that the City Council ought to change the interim policy as per recommendation 2, 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 The general housing and affordable housing issues considered through the Scrutiny inquiry are important components of the Vision for Leeds and the objectives of the City Priority Plan .

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

4.4.1 The Scrutiny inquiry is part of the on-going process of developing the Council's Core Strategy for which resource provision has already been made.

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

4.5.1 The Core Strategy is subject for a formal process defined by legislation. The Core Strategy will be subject to examination by an independent inspector to assess its "soundness". One test of 'soundness' is whether due process has been followed.

### **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. Policies in the Core Strategy need to be supported by the evidence base if they are to pass the examination process. There is therefore a risk to the process if the direction given through the Scrutiny recommendations is not adequately evidenced.

## **5 Conclusions**

5.1 Scrutiny Board Working Group's recommendations have been helpful in drawing attention to policies and practices and potential new initiatives to help increase the delivery of housing and, in particular, affordable housing; in most cases the Departments have been able to agree to recommendations. Where recommendations cannot be wholly supported, for example recommendation 1, the Departments have proposed changes which go some way toward addressing the substance of the issue raised.

## **6 Recommendations**

6.1 Executive Board are requested to:

- Agree the responses to the recommendations set out in section 3 of the report.

## **7 Background documents<sup>1</sup>**

7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.