

OFFICER DECISION RECORD SHEET

Name of decision maker: Assistant Director of Planning, Development & Regeneration

Service Area: Strategic Planning & Regeneration

Title of Decision: Disapplication of the Affordable Housing Clarification Note (March 2015).

Decision made and reasons:

Decision:

To cease to apply the Affordable Housing Clarification Note (March 2015) and revert to the adopted policy position set out in the Core Strategy and associated Affordable Housing Supplementary Planning Document (SPD).

Reason:

In April 2015 Council agreed a clarification note to accompany the Affordable Housing Supplementary Planning Document (SPD). This clarification note was required to set out how the Council would reflect changes to Government policy relating to affordable housing. These changes in policy were set out in a Ministerial Statement (reference HCWSS50) and reinforced by changes to the Planning Practice Guidance (PPG). This policy announcement also introduced the concept of 'vacant building credit,' whereby where a vacant building is brought back into lawful use, or is demolished and replaced by a new building, the developer is given a financial credit equivalent to the existing gross floorspace when the local planning authority calculates the required affordable housing contribution.

The changes also affected the collection of s106 contributions towards social infrastructure.

In terms of affordable housing, the main effect of these changes was to reduce the number of developments which will be expected to make a contribution – whether on-site or via commuted payments. If a contribution is required, the amount would also be reduced if the site contained vacant buildings.

West Berkshire District Council and Reading Borough Council lodged a challenge to these policy changes in the High Court. This challenge was heard in April and the Judgement issued on 31 July.

The Judgement was clearly in favour of the two Council and, the actions agreed to remedy the case are as follows:

- (a) Declaration by the Court that the Ministerial Statement must not be treated as a material planning consideration in development management and development plan procedures and decisions or in the exercise of powers and

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duties under the Planning Acts more generally; and

- (b) The removal of the relevant paragraphs introduced to the PPG (with immediate effect).

The Affordable Housing Clarification Note makes it clear that it was drawn up as a direct result of the Ministerial Statement and changes to the PPG that no longer apply. It also clearly states that *'The Council's approach will be kept under review and this Clarification Note amended as necessary in the light of any further guidance or clarification received either direct from the Government or as a result of decisions issued by the Planning Inspectorate or High Court.'*

There appear to be three options open to the Council in terms of a response to the Judgement:

- (a) Continue to apply the Clarification Note in its entirety;
- (b) Continue to apply the thresholds in the Clarification Note but stop applying any vacant building credit discount; or
- (c) Stop applying the approach in the Clarification Note and revert to the adopted policy position (as set out in the Core Strategy and Affordable Housing SPD).

Officers agree that Option 3 is the only appropriate course of action as the Council cannot continue to apply the clarification note when the justification for this approach has been removed as a result of the High Court judgement.

Officers from Strategic Planning, Strategic Housing, Development Management and Legal Services therefore recommend that following steps should be taken:

1. Cease to apply the Clarification Note, pending the outcome of any appeal by Government.
2. Place a short statement on our website explaining the above and making it clear that applications received after the date of the Judgement (31 July) will be expected to comply with the adopted policy position.
3. Ensure all Officers who deal with planning applications and provide advice on affordable housing matters are aware of the above.
4. Request Cabinet to recommend Council to agree to the formal revocation of the Clarification Note.

Reports considered:

- Ministerial Statement (reference HCWSS50)
- Cabinet Report (March 2015) – Affordable Housing Clarification Note
- High Court Judgement (reference CO/76/2015) re West Berkshire District Council and Reading Borough Council vs Department for Communities and

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Local Government (31 July 2015)

Officers/Councillors/Ward Councillors/Stakeholders Consulted:

- Director of Housing and Regeneration
- Assistant Director – Planning, Development and Regeneration
- Group Manager – Legal Governance
- Group Manager – Strategic Planning and Regeneration
- Group Manager – Strategic Housing
- Officers from Strategic Planning and Regeneration, Strategic Housing and Development Management teams.

Deputy Monitoring Officer Comments:

Following the High Court decision the Council has no option but to cease to apply the Affordable Housing Clarification Note to ensure that it is applying the most up to date policy position to the determination of planning applications.

However, as the decision to adopt the Clarification Note was made by Council on the recommendation of Cabinet, a report should be taken to Cabinet/Council seeking formal revocation as soon as possible.

Deputy S151 Officer Comments:

Further work will finance colleagues will be required to fully determine all of the financial consequences of this decision but there is no immediate direct financial impact.

Implications:

Value for Money: N/A.

Financial: Reverting to our adopted policy (as set out in the Core Strategy and associated Affordable Housing Supplementary Planning document) will allow higher levels of contributions towards affordable housing to be sought and therefore help deliver a key corporate objective.

Risk: Government have stated that they intend to appeal the judgement. There is therefore a risk that the previous approach could be reinstated. If this does occur, then Cabinet will be asked to reinstate the Clarification Note for use in Development Management decisions from the date of the appeal decision. Officers consider that it would be a much greater risk to continue to implement an approach to calculating affordable housing contributions based on a Ministerial Statement which a High Court Judge has clearly stated should not be referred to as a material planning consideration, or to sections of the Planning Practice Guidance that have been deleted by Government.

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Officer Signature:

Date: