

To: Council
Date: 25 July 2016
Report of: Head of Planning & Regulation
Title of Report: Update concerning affordable housing requirements and national planning policy

| Summary and recommendations | |
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| Purpose of report: | To explain the impact of the Secretary of State for Communities and Local Government's successful appeal concerning his national affordable housing policy. |
| Key decision: | No |
| Executive Board Member: | Councillor Alex Hollingsworth, Planning and Regulatory Services |
| Policy Framework: | Policies HP3 and HP4 of the Sites and Housing Plan (Feb 2013). |
| Recommendation: That Council: | |
| 1. Notes the consequences of the decision of the Court of Appeal and national planning policy applicable to affordable housing contributions. | |

| Appendices | |
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| Appendix 1 | Judgment – Secretary of State for Communities and Local Government and (1) West Berkshire District Council (2) Reading Borough Council [2016]EWCA Civ 441 |
| Appendix 2 | Planning appeal decision – 20 Blenheim Drive |

Introduction and background

- Members will recall that in July 2015 the High Court quashed the Planning Policy Guidance issued by the Secretary of State for Communities and Local Government concerning affordable housing contributions from small sites and the vacant building credit. The High Court also declared that the written ministerial statement to the same effect was not material to planning.
- In May 2016 the Court of Appeal allowed the Secretary of State's appeal. The effect of this is that the Planning Policy Guidance changes are in effect and the written ministerial statement is material to planning.

National Policy

3. The current national planning policy is that;
 - a. affordable housing contributions should not be sought from sites of 10 or fewer dwellings with a maximum combined gross floorspace of no more than 1000 sq m, and
 - b. on larger sites, any existing vacant building floorspace to be demolished or brought back into use should be deducted from proposed floorspace for the purpose of calculating affordable housing contributions. This is usually referred to as the vacant building credit
4. The Court of Appeal decision has made it clear that this does not alter either the development plan or the requirement that applications be determined in accordance with the development plan unless material considerations indicate otherwise. The national policy is a material consideration to which the Secretary of State considers that very great weight should be attached. The Court of Appeal also made it clear that although the policy is expressed in absolute terms it must allow for exceptions.
5. On behalf of the Secretary of State it was said in Court that *“In the determination of planning applications the effect of the new national policy is that although it would normally be inappropriate to require any affordable housing or social infrastructure contributions on sites below the thresholds stated, local circumstances may justify lower (or no) thresholds as an exception to the national policy. It would then be a matter for the decision-maker to decide how much weight to give to lower thresholds justified by local circumstances as compared with the new national policy.”*
6. It was also said on behalf of the Secretary of State that, *“if in future an LPA submits for examination local plan policies with thresholds below those in the national policy, the Inspector will consider whether the LPA’s evidence base and local circumstances justify the LPA’s proposed thresholds. If he concludes that they do and the local plan policy is adopted, then more weight will be given to it than to the new national policy in subsequent decisions on planning applications.”* (paragraph 27)

Application of National Policy

7. Clearly the Council must have regard to national policy. It is also clear that although the Secretary of State cannot instruct councils as to how much weight should be given to national policy he has expressed his view and it would be unrealistic not to assume that “very significant weight” will be given to it both on appeal and in the examination of local plans.
8. As set out above, the Secretary of State has clarified that the policy is not a blanket policy to be applied in all circumstances and, to use the Secretary of State’s example, local circumstances may justify lower (or no) thresholds. Members will be aware of the extreme nature of the local affordable housing need and, adopting the often used average local income: average local house price ratio, the evidenced fact that Oxford is the most unaffordable area of the country. Members will also be aware of the importance of smaller sites in contributing to the provision of affordable housing the nature of the City meaning that a higher proportion of housing comes forward from smaller sites than is normal across the Country.

9. These are the reasons, together with viability evidence, that have resulted in Inspectors appointed by the Secretary of State (before the current national policy) reporting that the development plan affordable housing policies were sound.
10. Officers will therefore follow the Secretary of State's guidance and proceed to determine applications for planning permission and report them to committee on the basis that local circumstances justify the lower thresholds set out in the adopted development plan and will continue to apply Policies HP3 and HP4 in their entirety.
11. The Council has received one relevant appeal decision letter (20 Blenheim Drive). The appeals were dismissed but the Inspector considered the consequences of this national policy upon the Development Plan. He stated (paragraph 19) that *"Extensive evidence is also submitted by the Council concerning the affordability or otherwise of housing in the City. This details various reports and sources over the levels of affordability in Oxford, with average house prices being more than 16 times the annual average wage. This clearly presents a problem for the City, its residents and its businesses. Notwithstanding this however, national planning policy, which postdates the publication of the Core Strategy and the SHP, defines the specific circumstances where contributions for affordable housing should not be sought"*. The specific circumstances referred to are the floorspace and dwelling numbers criteria mentioned in paragraph 3(a) of this report. He went on to conclude that a contribution to affordable housing would not be required to make the scheme acceptable
12. This is not the approach as explained on behalf of the Secretary of State to the Court of Appeal. The Inspector has disregarded local circumstances and simply applied the national policy as a blanket policy which the High Court, the Court of Appeal and the Secretary of State have all acknowledged to be unlawful.
13. The Council cannot challenge this appeal decision as it "won" the appeals. Should a subsequent appeal be allowed on the basis of a similar blanket application of national policy the question of whether a challenge should be made to that allowed appeal would be considered at that time.
14. The Blenheim Drive planning appeal did not address the vacant building credit issue. Although the West Berkshire litigation concerned both the smaller sites threshold and the vacant building credit it focussed on the first. The core principles are equally applicable to both. That is: the development plan is unaltered and, the national policy is a material consideration to which the Secretary of State can be expected to apply very significant weight but not in a blanket way and subject to local circumstances justifying lower (or no) thresholds (or vacant building credit).
15. The Council will have full regard to the up-to-date evidence with regard to the local situation as well as both the government's National Planning Policy Framework and its Planning Practice Guidance in considering the inclusion of policies relating to the provision of, and contributions to, affording housing in formulating the local plan.

Financial implications

16. As this is a report for noting there are no direct financial implications arising from this report.

Legal issues

17. As this is a report for noting there are no legal implications arising from this report.

Level of risk

18. As this is a report for noting there are no particular risks resulting from it. Risks arising from decisions made in relation to the determination of particular applications will be considered in the context of those decisions.

Equalities impact

19. As this is a report for noting there are no equalities implications arising from this report.

Conclusion

20. Officers are of the view that being the most unaffordable area of the Country coupled with a higher than normal dependence upon smaller sites must be precisely the sort of local circumstances contemplated by the Secretary of State as justifying departure from his national policy.
21. The Council will continue to determine applications for planning permission in accordance with the development plan unless material considerations indicate otherwise. It will specifically take account of national policy as to affordable housing contributions from smaller sites and the vacant building credit and the scope for exceptions justified by local circumstances.
22. The decision as to the weight to be applied to the national policy has to be made in the determination of each individual application. On the basis of the evidence as to local circumstances currently available officers are of the view that those circumstances justify the continued application of HP3 and HP4 consistently with the Secretary of State's explanation of his policy's effect.
23. The Council will also have full regard to the up-to-date evidence with regard to the local situation as well as both the government's National Planning Policy Framework and its Planning Practice Guidance in considering the inclusion of policies relating to the provision of, and contributions to, affording housing in formulating the local plan.

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Background Papers: None