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REPORT

Cllr Noeken : Cabinet Member for Planning & Econ Development

AFFORDABLE HOUSING SUPPLEMENTARY PLANNING GUIDANCE

RESULTS OF CONSULTATION EXERCISE & SUBMISSION OF GUIDANCE FOR ADOPTION

Summary of the Report

This report addresses the issues raised in a public consultation exercise which was held in respect of the Council's draft Supplementary Planning Guidance (SPG) on Affordable Housing. The consultation period, which ran from 26th February to 8th April 2004, attracted 20 responses from a range of individuals and organisations. [Appendix 1](#) of the report sets out all the issues raised in the consultation exercise and provides responses from officers. Key issues, which warrant further, more detailed attention, are set out Section 3.

Subject to the acceptance of the changes proposed, members are asked to consider the formal adoption of the guidance as SPG which will make it a significant material consideration in the determination of relevant planning applications.

1. Background

In light of the publication of the Council's Housing Needs Survey, and following on from the Scrutiny Review of Affordable Housing, members will recall that the Forward Planning service was tasked with drawing up Supplementary Planning Guidance to improve the delivery and implementation of affordable homes. The aim of the exercise was to clarify the requirements of affordable housing policies in the Local Plan and improve understanding of how sites, or components of sites, should deliver affordable homes. The principal aim of the SPG was to put in place a comprehensive document which set out how the Council would apply its policies and facilitate the delivery of sites for the benefit of landowners, developers, housing providers and other stakeholders.

2. Summary of the Previous Draft Guidance

During 2003 officers from a range of Council departments, including Forward Planning, Housing Strategy Legal Services and Development Control, undertook a wide ranging review of the issues involved in the delivery of affordable housing. The starting point for any guidance in this area was to gain a clear understanding of the issues involved. The opening section of the guidance is intended to give a definition of what the subject area is concerned with and the reasons why it has become of such importance. The section includes a brief summary of the problems imposed by rising property values when compared with modest local wage levels.

Section 2 then went on to examine the planning policy background at national, regional and local level as a means to define the parameters of the guidance. The key point to note in this section is that government

policy gives substantial weight to the delivery of mixed and balanced communities and that, where there is a demonstrable lack of affordable housing, policies should be used to secure a proportion of such accommodation within suitable developments.

Sections 3, 4 and 5 of the guidance were concerned with what the Adopted Local Plan's affordable housing policies require. The policies concerned have critical components which have been the subject of varying interpretations, particularly by developers. The most important tool the Council has to secure affordable housing is Policy H25 which requires developments of a certain size to provide an element of affordable housing in line with identified housing need. The draft guidance put forward that the minimum 25% requirement in the policy would be supplemented by a maximum 40% requirement – in effect creating a range. Furthermore, the guidance in respect of policy H25 sought to reduce the site size at which a requirement for affordable housing be triggered which was in line with draft government proposals published in the autumn of 2003. A final point of note was the acknowledgement that higher affordable housing requirements on developments could render them financially unviable. The guidance set out that the Council would take this into account, but that where it was considered that provision was being evaded as a result of this excuse, studies would be required for the developer to justify their position financially.

Following on from Policy H25, the guidance then examines the issues surrounding Rural Exception sites (policy H26) and provision of affordable housing in the New Forest (policy HA2). Both of these sections were concerned with helping developers and landowners to understand what the planning issues are likely to be if such sites are brought forward as well as the restrictions which need to be imposed to keep properties in the affordable sector.

The final section of the guidance was concerned with implementation issues which are relevant to all affordable housing schemes. The section includes a full explanation of the types of tenure which are appropriate, the role and importance of Registered Social Landlords, funding priorities, legal expectations, and so on, to provide a guide to all the details which need to be properly tied up in such schemes.

3. Results of the Public Consultation Exercise.

A formal period of public consultation was undertaken in respect of the draft SPG between the 26th February and 8th April, 2004. In seeking to ensure that a wide a spectrum of interests were consulted, the District Council notified over 100 different individuals and organisations which ranged from developers and agents operating in Salisbury District, national organisations including government departments, the House Builders Federation, and the Housing Corporation, as well as local groups, particularly Parish Council. Further to this the guidance was publicised in the local press and made available online and at local libraries.

The consultation exercise resulted in the submission of 20 individual representations were received from interested parties and the District Council would take this opportunity to thank those individuals and organisations for participating. A full summary of all the issues raised by respondents is set out in the table at Appendix I of this report. Minor changes to the brief are set out in the appendix and have been incorporated into the revised version of the guidance which is now presented to members.

The following sections now go on to examine key subject areas which warrant more careful consideration.

a) Do the proposals go beyond what is permitted to be included within SPG ?

A number of objectors, including the Government Office for the South West, were concerned that elements of the guidance went beyond what is allowed in Supplementary Planning Guidance and that the exercise was being used to avoid public scrutiny. The principal areas of concern were that a 40% affordable housing requirement was being introduced, and that affordable housing site size thresholds were being adjusted. The latter of these issues is addressed in section b) below.

On the matter of the 40% threshold, officers were aware that the SPG could not seek to introduce a new policy requirement. However, in seeking to clarify what was meant by a 'general target' (see supporting text to Local Plan policy H25) or 'a minimum of 25% affordable housing' (see Local Plan Policies H2D, H2F, H2G, H11A, etc.) officers were advised that it would be appropriate to indicate the level to which the Council would negotiate up to where material considerations (particularly in the form of acute housing need) could be demonstrated. Effectively, the intention was always to make it clear, for all parties involved, what the parameters for negotiation were in respect of the 'general target' or 'minimum' of 25%.

In response to the representations received the Council would accept that the wording used in the original draft SPG may have suggested that policy was being amended to require affordable housing to be provided within a range of 25% to 40%. There is a fine distinction to be made here and in seeking to understand the issues raised and to propose a solution, the following passage is quoted from PPG12 which sets down the ground rules for preparing SPG. Sections have been marked up in bold to identify them for further consideration.

- 3.15 Supplementary planning guidance (SPG) does not form a part of the plan. It can take the form of design guides or area development briefs, or supplement other specific policies in a plan. **SPG must itself be consistent with national and regional planning guidance, as well as the policies set out in the adopted development plan.** It should be clearly cross-referenced to the relevant plan policy or proposal which it supplements. It should be issued separately from the plan and **made publicly available; consultation should be undertaken, and the status of the SPG should be made clear.** SPG should be reviewed on a regular basis alongside reviews of the development plan policies or proposals to which it relates.

In light of the above, SPG must,

- a) Be consistent with national, regional and particularly local plan policies

As indicated above, the original draft may have been seen by some to be introducing a new requirement for the provision of affordable housing, and furthermore that the Council could use as a blanket policy in relevant planning applications. In response, officers, on the advice of Legal Services and in consultation with GOSW, have agreed amendments to section 3.1 of the guidance. Officers would point out that the emphasis of the amended passage remains similar but the key point to note is that reference in section 3.1 to a 'general' or 'minimum' 25% requirement is the clarifying the wording of the policy, however, on a case by case basis, material considerations (particularly the acute need for affordable housing) may justify negotiation which could extend as high as 40%. At this level, in line with table 2 of the guidance, the Local Plan's expressed target of delivering 150 units per year will be more achievable.

It needs to be added that any negotiation for affordable housing must still take into account the following factors.

- i) That there is demonstrable housing need to justify the requirement for any element of affordable housing
- ii) That in negotiation, account must be taken of other costs and planning obligations which are required to secure a successful housing development.

- b) Be properly consulted upon and that the status of the SPG should be made clear

Any suggestion that the Council has used the SPG process to avoid public scrutiny of proposals is unwarranted. The Council circulated the draft guidance to all developers and landowners with current interests in the district as well as to agents and consultants who have been active in the District over the last 5 years. Furthermore, national and regional organisations concerned with development and affordable housing provision were notified along with housing associations and parish councils. The publication of the draft SPG was publicised through local press notices and was

placed on the District Council's website, linked by a headline on the home page. As a final signpost, Development Control officers had been advised to refer all customers considering schemes which would include affordable housing to the guidance or to the Forward Planning service.

The detailed examination of all the issues raised, undertaken with an open mind, should also demonstrate that officers have not sought to ignore or overlook the view of respondents where they are in conflict with what was stated in the draft guidance which was issued for consultation.

As regards the status, the draft SPG included a clear section in its introduction which spelled out how the guidance would be progressed and subsequently used.

In conclusion, the amendments to section 3.1, as set out in the [revised SPG attached to this report](#) do not conflict with the intentions of PPG12.

b) Should the SPG take on board draft changes to PPG3 regarding a reduction in qualifying site size thresholds for affordable housing ?

In the autumn of 2003, the ODPM published draft changes to PPG3 which related to two areas of policy. In brief, the two policy areas addressed the reuse of employment land for housing and measures to address the need for affordable housing. The Council submitted responses on both points – in objection of the first matter and support for the measures proposed in the second area.

The affordable housing changes proposed, amongst other things, that site size thresholds at which an affordable housing requirement would be triggered should be lowered across the board to 15 unit or 0.5 hectares. Such a change in Planning Policy Guidance would have had an immediate effect. Furthermore, as part of the next review of policies (within the new Local Development Framework (LDF) system) local authorities could seek to introduce lower thresholds where extreme need could be demonstrated. The 15 unit/0.5ha threshold was, as part of the SPG drafting process, immediately taken on board on the basis that by the time the SPG was adopted this new requirement would be adopted nationally. However, throughout 2004 the ODPM have regularly moved back the timetable for the adoption of the PPG3 changes and has perpetuated uncertainty in this area.

As a result of this, and in light of consultation responses, officers concede that the inclusion of a reduced 15unit/0.5ha site size threshold should be removed from the SPG. However, by means of keeping people aware of its possible introduction when the changes to PPG3 are made officers consider it appropriate to retain reference to it. Section 3.2 of the SPG has been amended as set out in [the attached revision](#).

c) Requirements for Development Viability Testing

A number of respondents from the development industry objected to a requirement for independent studies to assess the viability of development proposals in light of affordable housing expectations.

Section 3.4 of the draft SPG set out that the Council would have due regard to the full range of costs and other planning obligations involved in a development proposal when negotiating the affordable housing requirement which would be appropriate for individual sites. This approach is entirely reasonable in that costs and other requirements will vary from site to site. For example, a brownfield site will have added costs involved with remediation which need to be taken into account, whilst other sites might need to provide significant infrastructure. It can be concluded that the Council will take a reasonable view of development economics, but will not permit developers to evade the provision of appropriate social infrastructure for their own financial gain.

In terms of setting out the basis for the ultimate requirement for a Viability Assessment, it should be noted that the Council has been negotiating the delivery of affordable housing and other planning obligations for a number of years. But in such negotiation with developers a constant theme is relayed

that developments will be rendered unviable by onerous planning obligations, including affordable housing requirements. In light of the fact that very little evidence has been provided to justify this assertion, the Council has tended to view this with suspicion.

The SPG represents an appropriate vehicle to set out how the Council will negotiate with developers to achieve the requirements of the Local Plan policy. This, in the same way that developers require information to justify why they should provide a proportion of affordable housing, the Council is now seeking to require justification as to why a developer cannot provide an appropriate proportion of affordable housing. If this cannot be established during the course of normal negotiations, the last resort will be to require a Viability Assessment to be undertaken by an independent specialist at a cost to the developer.

The expressed concerns of the objectors appear to come from the viewpoint that the Council is replacing dialogue and negotiation with a purely financial appraisal, or that the appraisal of viability will be undertaken on the Council's own terms. Neither of these views reflects what is trying to be achieved. In considering development proposals, it is now the case that officers have at their disposal a financial model which allows them to confidently predict, (with a relative degree of caution to the developers/landowners interests) what level of affordable housing (and other planning obligations) can be secured from any particular development scheme. In opening negotiations, Officers can now feel much more confident in their position and as a result the onus is placed more firmly on developers to demonstrate why they cannot deliver. Throughout discussions, honest justification of the developer's position will enable the model to be refined, hopefully to a point where all parties can agree. This approach is not designed to maximise the share of development value which the Council will secure, but instead will underpin negotiation about an appropriate contribution which is applicable for any development scheme to provide to meet identified needs in any community.

The alternative to positive negotiation, and this will be a choice for the developer to make, is that the approach is negative, misleading and not backed by appropriate information. In such situations where a lack of trust will inevitably develop, it is not unreasonable for officers (in seeking to secure an appropriate level of benefits for the community) to require a proper examination of the costs by an independent expert.

In conclusion, officers reject the suggestion that it is not appropriate for Viability Assessments to be used as a last resort to settle disputes between developers and the Council where the provision of affordable housing is concerned.

d) Funding

The key issues raised by respondents in respect of this matter can be grouped into two areas.

- I. *That increasing the proportion of affordable housing required on a scheme at a time when subsidy has been removed taken no account of developer profitability and/or landowners incentive to bring sites forward, and That schemes will be rendered unviable by excessive affordable housing requirements*

The SPG does point toward the fact that the material consideration of acute housing need does require the Council to negotiate for more affordable housing provision from qualifying sites. More affordable houses means that more land needs to be provided at nominal or nil value and that this is acknowledged to act to reduce the price at which development land will be purchased. From a social justice perspective there would appear to be nothing wrong with the view that landowners should take a lesser share of the financial gain they have been given through the allocation of land or the grant of planning permission. However, in response to the views of those commenting on the SPG, the Council is mindful that land values cannot sustain an ever upward spiral of affordable housing requirements. Ultimately, if the requirements are tipped too far, the supply of land being made available for housing will be reduced and this would ultimately impact upon housing

provision as a whole. In response to these concerns, officers would point out that a ceiling 40% level for future negotiation has taken a balanced view of the way forward and it is disappointing that the development industry responses do not concede this fact.

Officers are also disappointed that respondents have made a knee jerk reaction to the headline figure of negotiation extending 'up to 40%', when the guidance clearly states that the Council will have regard to the ability of developments to deliver affordable housing on a case by case basis. Thus, for the small developer who is redeveloping a brownfield site, a 25% requirement may well be acceptable (subject to there being identified housing need), whereas for greenfield sites there is no reason why a higher proportion is not deliverable, subject to the burden of other planning obligations being taken into account.

2. *That there is no requirement for developers to makeup the shortfall in grant,*

Both Housing and Planning officers would accept that the funding of affordable housing is currently one of the most difficult issues to address. Since April 2003, all parties in the delivery of affordable housing have been frustrated by the removal of Social Housing Grant (SHG). SHG was a means for Local Authorities to fund affordable housing and then reclaim their financial input. This system allowed affordable housing to be delivered, subject to relatively few limitations, on an 'as and when' basis in line with a formula which controlled the amount of grant per unit which could be given over to a scheme. In seeking to replace this system the government has created a lot of uncertainty.

Section 6.10 of the original guidance set out a clear statement of how the District Council would consider funding issues. The principal thrust of the argument was that affordable homes provided through planning obligations should be transferred to a Registered Social Landlord (RSL) at a price they can afford in order to maintain rent levels at an affordable level. This position effectively sets out the bottom line for negotiation and puts the onus on developers to work with Registered Social Landlords (or other bodies with demonstrated RSL credentials) to agree a price, whether that is with or without public subsidy. In terms of support, the Council's Housing Strategy service is looking into this area as a means to assist developers with funding, although it should be noted that the principal focus will be on maintaining overall viability rather than maintaining the land value which landowners might be expecting, or that which developers might have promised.

Ultimately however, the guidance makes it clear that where there is no grant support available developers (and landowners) must find a way to deliver their affordable housing requirement in order to gain their planning permission. To this end the Council will work with the developer to identify a compromise position; however this should not be interpreted to mean that the affordable housing requirement will set aside or reduced.

e) Tenure

Affordable housing is an umbrella term which takes in a wide range of housing tenures. For those on the lowest incomes, Social Rented housing is the most appropriate type of accommodation to provide as it is characterised by below market rents which are fixed by the Housing Corporation. For those on average incomes, market housing remains out of reach for many and so tenures such as shared ownership and low cost for sale provide a stepping stone for people to buy into the housing market at a reduced value. Section 6.1 of the guidance gives a fuller explanation of the nature of these tenure types.

Respondents to the consultation exercise highlight that the Council is being too inflexible in its tenure demands by seeking the majority of affordable housing in a Social Rented format which, in effect, requires the greatest amount of subsidy. In terms of illustrating this, the table below gives a very generalised view of the mathematics involved.

	Social Rented (owned and maintained by RSL - rents fixed at below market rates)	Shared Ownership (Occupant buys 50% share, RSL owns remainder and charges nominal rent on share)	Low Cost For Sale (reduced price housing with occupancy and resale controls to ensure benefit of price reduction is passed to successive occupants)
Total Cost of unit (NB This is made up of the build cost - note that land is normally provided for nominal or nil value)	£70,000	£70,000	£70,000
RSL Mortgage Input (Based on repayments via rents)	£35,000	£15,000 estimate of the mortgage the RSL can raise of the nominal rent of the remaining property share	-
Occupant Mortgage	-	£70,000 based on a 50% equity share	£77,000 Value in line with what local incomes can afford (see appendix D of the revised SPG)
Total Funding	£35,000	£85,000	£77,000
Surplus / Shortfall to the developer/landowner	- £35,000	+ £15,000	+ £7,000

The figures in the table support the respondents view on this matter in that Social Rented units do require the highest level of subsidy (whether this is provided by public grant or by developer input). Shared ownership and Low Cost for sale do generate a nominal surplus which, it should be noted, is used to offset some of the grant requirements needed for Social Rented units.

However, despite this fact one must refer back to the Housing Needs Survey which points out that the highest demand is for Social Rented properties, and so in order to address actual identified housing need the SPG has identified that the majority of affordable homes provided should be in this tenure.

On this basis, Officers do not consider that it is appropriate to make any change to the SPG in respect of the ratio of tenure types, but would point out that this area is one which may be the subject of negotiation on particular schemes and that this will be informed by housing waiting list data which does provide an indication of the willingness of recorded individuals to accept shared ownership accommodation.

4. Views of the Planning & Economic Development Overview and Scrutiny Panel

The Planning & Economic Development Overview and Scrutiny Panel considered the issues raised by the consultation exercise in their meeting on 9th August. The meeting was also attended by members of the Community and Housing Overview and Scrutiny Panel which enabled a wide range of planning and housing issues to be discussed. The draft minutes of that meeting are attached as [Appendix 2](#) of the report, however the members of the panel indicated that the changes made effectively addressed the points raised in the consultation phase. The Panel resolved to recommend the revised draft guidance to Cabinet for formal adoption as SPG.

5. Recommendation

That the revised guidance attached to this report be formally adopted by the Cabinet as Supplementary Planning Guidance to the adopted Salisbury District Local Plan.

6. Background Papers:

Salisbury District Local Plan (June 2003)

Consultation Draft Affordable Housing Supplementary Planning Guidance (Feb 2004)

Salisbury District Housing Needs Survey (Dec 2002)

Implications:

- **Financial:** None at this stage
- **Legal:** Addressed in report
- **Human Rights:** Article 6 (the right to a fair hearing) may apply. The consultation process contributed to compliance with this.
- **Personnel:** None at this stage
- **Community Safety:** None
- **Council's Core Values:** Excellent service, thriving economy, fairness & equality, open council & willing partner, communicating with the public, supporting the disadvantaged, protecting the environment.
- **Ward(s) Affected:** All.