



**Planning Committee**  
23 July 2015

**Report of Head of Planning**

For Action

Wards affected:  
ALL

**Update on Planning Matters for Planning Committee -  
Affordable Housing July 2015**

**1.0 Summary**

- 1.1 The paper provides an update on affordable housing issues as it relates to the Planning process. It seeks to set out to the Planning Committee that the concerns that Committee have raised during the determination of applications within the last year are being addressed by officers.

**2.0 Recommendations**

- 2.1 That Planning Committee agrees the publication on the website of a position statement requiring affordable housing viability assessments to be provided in a form that is open to public scrutiny as much as possible, including an easily understandable Executive Summary.
- 2.2 That Planning Committee agrees in principle closer work with London Boroughs on an affordable housing protocol and joint procurement of a consultants' panel.

**3.0 Detail**

Strategic Overview

- 3.1 Committee will be aware that the National Planning Policy Framework (NPPF) sets out the need for local planning authorities to plan to meet affordable housing needs. This is subject to taking account of the normal cost of development and mitigation to provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. (para 173). Viability as it

relates to affordable housing is set out in the associated Planning Practice Guidance (NPPG) in the section ‘How should viability be assessed in decision making?’

- 3.2 The London Plan seeks to maximise affordable housing provision as set out in Policy 3.11 Affordable Housing Targets. The Mayor has also issued a Housing Supplementary Planning Guidance (currently subject to consultation on an updated Draft Interim version) that gives significant additional guidance on delivery of affordable housing. Brent’s Core Strategy Policy CP2 sets out that the Borough will attempt to achieve the target that 50% of new homes should be affordable in the Plan period. This is a target and not a requirement and is subject to subsequent higher level policy that has been published, notably NPPF paragraph 173 and London Plan policy 3.12. These both reflect the need to take account of development viability when determining the amount of affordable homes that it is considered reasonable for a site to deliver.
- 3.3 Notwithstanding the increases in values and delivery rates within the housing market and the viability of housing developments, Government still wants to be seen to be encouraging additional housing development. Recent policy announcements such as the Starter Homes Initiative and the Vacant Buildings Credit both see normal affordable housing planning requirements as an expendable component in the delivery of this aim. In addition developers can still appeal agreed Section 106 affordable housing levels on the basis of viability direct to the Secretary of State through changes introduced by the Growth and Infrastructure Act 2013. The adoption by the Council of the Community Infrastructure Levy (CIL) reduces the element of discretion that the Council has in relation to infrastructure matters that previously would have been captured through S.106 obligations. This means that when viability is raised as an issue, affordable housing represents a larger cost within what is a smaller contributions ‘pot’ around which there is flexibility to negotiate.
- 3.4 Brent’s performance in delivering affordable housing has been good. In the period 2008-2014 it delivered 3446 starts (the 6<sup>th</sup> highest in London) and 3091 completions (the 8<sup>th</sup> highest in London). This has been against a background of significant reductions in Central Government (now issued through the Mayor) grant funding support for affordable housing provision. The average amount of grant for non-S.106 dwellings has fallen to approximately 30-40% of levels achieved around 2007. These grant levels and Government/Mayor policy to seek value for money from Registered Providers as developers has created a push away from social rent to affordable rent and intermediate tenures. Subtle changes to definitions, e.g. affordable rent was originally regarded as ‘up to’ 80% of market rent, whereas now it is a flat 80% of market rent mean the ability for affordable providers with a grant funded development programme to provide lower cost rent products are diminishing.
- 3.5 Local authorities’ ability to control rents in S.106 obligations, following the move away from social rent as the preferred rented product, have been hindered by a judgement supporting the Mayor’s London Plan policy position of restricting such an approach. (LB Islington & Others v Mayor of London & Another - CO/16997/2013). The general assumption at national level (and followed through by the Mayor) is that affordable tenants should be paying higher amounts of rent more reflective of market levels. Where tenants find this unaffordable, they are initially supported by benefits. When benefits become insufficient, tenants should move on to options that they find

affordable. Whatever the merits of this approach Planning has to work within these parameters.

- 3.6 In the period 2010-2014 Brent achieved 34% affordable housing negotiated as part of S.106. However, it is recognised that this is below the 50% target set in the Core Strategy and, consistent with London Plan policy, that there is a need to pursue maximum levels of delivery from qualifying sites. Planning Committee has indicated its concerns related to affordable housing provision in applications before it over the last year. Officers have been reviewing these concerns and are seeking to address them in a number of ways by working with other divisions within the Council and also other London Boroughs. The following sections indicate how these are being addressed.

#### Gaining contemporary evidence of housing needs.

- 3.7 Local planning authorities are required to identify the needs for residential accommodation within their areas across all tenures and also for specialist forms of housing. To this end the National Policy and associated Practice Guidance identify Strategic Housing Market Assessments (SHMA) as the means to do this. It also sets out the methodology to be employed. In updating the London Plan, a SHMA was undertaken for London. This identified London's housing needs but wasn't Borough specific. The last Brent specific assessment was the West London SHMA 2010.
- 3.8 The Council (Planning and Housing joint procurement) is in the process of commissioning a SHMA. This should be concluded in time (end of 2015) to be evidence to support the Development Management Policies Development Plan Document and updates to the Housing Strategy. This should assist in negotiating both affordable and market housing mixes within development proposals. Without seeking to pre-judge its outcomes, price rises and wage levels in Brent mean that in all probability from a needs perspective it will support the policy approach of seeking a 70/30 social or affordable rent / intermediate split in Brent, which is a variation of the assumed London wide 60/40 split. However, it is also likely to show a large increase in the need for intermediate products. Price rises mean that households with incomes between £58,000-73,000 are now considered appropriate for 25% shared ownership properties.

#### Increasing robustness of approach to demonstrating viability

- 3.9 Consistent with London Plan policy, the level of provision of affordable housing on development sites is one that all London Boroughs are actively seeking to maximise. Similar to Brent most Councils are seeking to improve levels of delivery in S.106 agreements. In order to provide greater consistency and learn from others, officers are working with other London Boroughs. The Mayor's Housing SPG and its proposed replacement provide greater clarity on what is expected from viability assessments across London than is within NPPG.
- 3.10 Within the group of London Boroughs there appears to be a willingness to proceed with a London Borough Development Viability Protocol to supplement the Housing SPG. This will provide greater clarity around some of the things that are variables within viability assessments, such as assumed benchmark

land values, amount of profit a developer can reasonably expect and how profit is measured. It will also clarify the extent to which the viability assessment assumptions remain confidential. Case law in this respect is evolving and starting to encourage greater transparency in the process particularly for members of the general public. In reality the majority of assessments rely on standard industry practice, build costs, profit levels, benchmark sales prices, etc.

- 3.11 Officers are actively engaged in inputting into the protocol, as a multi-agency approach has some benefits. If its terms are agreeable and there is appetite across the Councils for it to be regarded as a material planning consideration, it will be brought forward for the Council to consider for adoption at some point in the future.

#### Making viability assessments and outcomes more transparent to the public

- 3.12 Notwithstanding the potential progression of the protocol it is recommended to Committee that Brent in the mean time issues a position statement/guidance that seeks to ensure that as much of the information contained in viability assessments and ideally all can be viewed by the public. Where the developer is adamant that commercially sensitive information is contained within that they do not want to be disclosed, the Council will require an document that provides as much information as possible in the public domain. An easily understandable Executive Summary document should also be provided to be made available so that the opportunity for greater transparency exists.
- 3.13 Committee reports will make greater reference to affordable housing as an issue in a specific section which will cover matters relevant to the application, such as tenure mix, size of dwellings, location, design and the extent to which where the 50% target is not met on site this has been re-evaluated assuming different scenarios, e.g. reducing other S.106, altering the tenure or size mix, challenging developer assumptions about profit, build costs, residual site value, etc.

#### How proposed Brent development plan policy is addressing affordable housing issues

- 3.14 The proposed Affordable Housing policy within the Development Management Policies DPD and associated policy justification specifically addresses some issues. These include:
- a) the requirement for the developer to underwrite the Council for appointing a viability assessor when viability is being used as a reason to reduce the amount of affordable housing to be provided
  - b) a review mechanism within the S.106 for phased sites that will take many years to develop, or a re-evaluation after 18 months if development has not commenced after permission
  - c) Using Existing Use Value + as the preferred benchmark residual land value against which to assess viability.

- 3.15 The Development Management Policies DPD identifies information to be submitted in association with an application. It states the need for applicants to submit a viability assessment, if this is used as a reason for departure from the preferred affordable tenure/size mix, or for the residential mix for market housing. Complying with this requirement should ensure sufficient time for its scrutiny/evaluation as part of the application process.
- 3.16 The Development Management Policies DPD in the information to be submitted in association with an application encourages consideration of the provision of affordable housing at the outset of a housing development. It identifies the need for applicants to submit within the design and access statement how the preferred size and tenure mix was taken into account in the initial design of the scheme and subsequent amendments.

#### Joint Approach to Commissioning Viability Consultants

- 3.17 The joint approach discussions with the other Councils are also considering the potential for joint commissioning a panel of consultants. Currently the Council commissions its consultants on an 'as and when' basis, ensuring that there are no conflicts of interest for the consultant on undertaking the work. The panel approach if taken forward will remove the Council having to go through its own procurement process and potentially provide access to a wider resource. In addition more favourable rates will potentially be available from panel consultants due to the volume of work they will achieve through the arrangement. The outcomes of this will be reported to the Committee in the future.

#### Tenure Blind development

- 3.18 There have been concerns and media coverage about 'poor doors' and highlighting differences in tenure related to design. The current Mayor's Housing SPG in paragraph 1.3.18 is clear: *"Schemes should be designed to maximise tenure integration and all affordable housing units should have the same external appearance and entrance arrangements as the private housing."* The Draft Interim Housing SPG recently issued for consultation has a slightly different approach to entrances. It states: *"In some higher density schemes, separate provision of entrance and circulation spaces for different tenures may enable affordable housing provision which might otherwise be made unviable given high service charges and management arrangements. All entrances will need to be well integrated with the rest of the development..."*
- 3.19 Both documents are clear about the design being the same but reflect the real practicalities of dealing with management charges in particular. Case law has clarified that cross-subsidisation between tenures for management charges are not legal. Many private occupiers/tenants expect the prices they are paying for properties to reflect additional levels of service/standard related to the communal areas. Unsurprisingly Registered Providers are not keen for management charges to be higher than they need to be for their tenants/leaseholders. They want to control the charges as much as possible.

They are also reluctant to be reliant on a third party freeholder/managing agent in managing those costs.

- 3.20 Compared to some rents, service charges can provide significant additional cost. For the purposes of benefits they are also regarded as part of the affordable rent charged. This increases risk to the Registered Provider of having to meet the cost out of other funds, thus impacting on overall affordable housing delivery. If there are risks of high charges, it will also affect the interest of Registered Providers in purchasing the affordable dwellings. Officers will seek to ensure that wherever possible tenure blind development occurs, however there may well be practical reasons why there may need to be differentiation in approach or physical separation between tenure types.

#### Keeping Committee informed of affordable housing issues

- 3.21 Committee has received training on affordable housing in the last year. The Committee will be informed of progress on the London Borough's joint protocol and approach to joint commissioning of a viability consultants' panel. Additional reports and training will be provided to the Committee at intervals that officers regard appropriate or in response to requests from the Committee.

#### The importance of LB Brent/Brent Partnership Homes Development

- 3.22 The need to seek to continue to seek to maximise affordable housing by private and registered providers is clear. However, the issues set out in this paper highlight the on-going difficulties with achieving Brent's target. Some authorities have significant property holdings which offer the scope for new development to make a major contribution to new affordable housing. Brent does not have such a large portfolio but is seeking to maximise this where possible by bringing forward infill and redevelopment schemes. This option could become increasingly important to Brent's overall affordable housing supply.

### **4.0 Financial Implications**

- 4.1 The provision of affordable housing within developments has important financial considerations for the Council. Additional affordable housing within the Borough better equips residents in dealing with a variety of their needs which reduces cost burden on the Council for service provision. The most obvious is in its statutory duties related to homelessness. The Council spends significant sums on emergency temporary accommodation for the homeless due to the needs compared to limited affordable housing available. Less tangible but also likely to be of relevance are for instance poorer educational attainment of children due to living in poor housing conditions which will ultimately impact on life chances and potentially provide the need for greater Council support.
- 4.2 In terms of the planning process, it is considered that the costs of the Council in relation to external evaluation of viability assessments submitted by

developers can be recouped from the developers submitting the planning application.

- 4.3 If and when a planning application is refused on the basis of its affordable housing amount or composition, the Council will have to be able to show that it has taken a reasonable and proportionate approach. To do otherwise could open the Council up to additional resource associated with appeals it is likely to lose and associated claims for costs.

## **5.0 Legal Implications**

- 5.1 See 4.3.

## **6.0 Diversity Implications**

- 6.1 Affordable housing is likely to have a higher proportion of people with protected characteristics than the general population due to their lower average earning levels.

## **7.0 Staffing/Accommodation Implications (if appropriate)**

- 7.1 None

## **8.0 Environmental Implications**

- 8.1 The promotion of high quality affordable housing in mixed communities will create longer term sustainable neighbourhoods, reducing the potential for environmental, social and economic blight with its associated impacts and costs.

## **Background Papers**

National Planning Policy Framework  
National Planning Practice Guidance  
Brent Core Strategy July 2010

## **Contact Officers**

Any person wishing to inspect the above papers should contact Paul Lewin, Planning Policy & Projects Manager 0208 937 6710

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