

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

13th June 2013

**REPORT OF CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION/CABINET DECISION/KEY DECISION

**Portfolio - Regeneration and Transportation – Lead Cabinet Member – Councillor
Smith**

DRAFT SUPPLEMENTARY PLANNING DOCUMENT 8 – PROVISION OF AFFORDABLE HOUSING AND THE NEED FOR VIABILITY EVIDENCE

1. Summary

The Council's affordable housing requirement is set out in Core Strategy Policy CS8. The Core Strategy (2010) recognised that the Council's Planning Obligations SPD (2008) would require updating to reflect the new Core Strategy policy. This Supplementary Planning Document will provide clear planning guidance on determining appropriate 'affordable housing' contributions.

SPDs must be subject to public consultation prior to their adoption as part of the Borough's Development Plan. It is intended that the draft SPD will undergo public consultation between July and September 2013. At a recent public inquiry the appellant put forward an interpretation of Policy CS8 which differed from the Local Planning Authority's (LPA) interpretation of that policy. This SPD will assist in clarifying the correct interpretation.

The SPD is attached at Appendix A, and is accompanied by a Habitats Regulations Assessment (HRA) Scoping Report (Appendix B) and an Equalities Impact Assessment (Appendix C). The HRA Scoping Report concludes that a full HRA is not required for this SPD. These documents are also available in the members' library. Appendix D is the draft Consultation Statement which must be produced alongside an SPD.

2. Recommendations

It is recommended that Cabinet:

1. Note the contents of this report.
2. Agree the 'Draft Supplementary Planning Document 8 – Provision of Affordable Housing and the need for Viability Evidence' for public consultation.
3. Delegate to Officers minor amendments to the contents of the document prior to the public consultation period.

3. Reasons for the Recommendations/Decision(s)

To provide clear guidance on the application of planning policies relating to affordable housing planning obligations

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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MANAGEMENT TEAM**

COUNCIL DECISION/CABINET DECISION/KEY DECISION

**SUPPLEMENTARY PLANNING DOCUMENT 8 – PROVISION OF AFFORDABLE
HOUSING AND THE NEED FOR VIABILITY EVIDENCE**

SUMMARY

The Council's affordable housing requirement is set out in Core Strategy Policy CS8. The Core Strategy (2010) recognised that the Council's Planning Obligations SPD (2008) would require updating to reflect the new Core Strategy policy. This Supplementary Planning Document will provide clear planning guidance on determining appropriate 'affordable housing' contributions.

SPDs must be subject to public consultation prior to their adoption as part of the Borough's Development Plan. It is intended that the draft SPD will undergo public consultation between July and September 2013. At a recent public inquiry the appellant put forward an interpretation of Policy CS8 which differed from the Local Planning Authority's (LPA) interpretation of that policy. This SPD will assist in clarifying the correct interpretation.

The SPD is attached at Appendix A, and is accompanied by a Habitats Regulations Assessment (HRA) Scoping Report (Appendix B) and an Equalities Impact Assessment (Appendix C). The HRA Scoping Report concludes that a full HRA is not required for this SPD.

RECOMMENDATIONS

It is recommended that Cabinet:

1. Note the contents of this report.
2. Agree the 'Draft Supplementary Planning Document 8 – Provision of Affordable Housing and the need for Viability Evidence' for public consultation.
3. Delegate to Officers minor amendments to the contents of the document prior to the public consultation period.

DETAIL

1. This report relates to 'Supplementary Planning Document 8: Provision of Affordable Housing and the Need for Viability Evidence'. This document is being produced by the Council to provide planning guidance on determining appropriate 'affordable housing' contributions. The report sets out what SPDs, planning obligations and affordable housing are, whilst explaining the Council's established policy, the requirement for and

content of this SPD. The report concludes by setting out the next steps in the production of the SPD, which relate to the recommendations before Cabinet.

Supplementary Planning Documents

2. A Supplementary Planning Document (SPD) is a part of the Council's Development Plan, which is the starting point for determining all planning applications. SPDs generally provide amplification and guidance on policies within the above documents. Policies in an SPD must not conflict with the adopted development plan. Unlike a Local Plan or Neighbourhood Plan, there is no legal requirement for an SPD to be scrutinised at an examination in public conducted by an Inspector appointed by the Secretary of State.

Planning Obligations

3. A planning obligation is a legally binding agreement between the Local Authority and a developer, made under section 106 of the Town and Country Planning Act (1990). Planning obligations can be used to enable a development to be permitted which would otherwise be unacceptable, for example through the provision of transport infrastructure. All planning obligations must be:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.

Affordable Housing

4. It is established practice that affordable housing delivery is an appropriate developer contribution which can be sought through a planning obligation. The National Planning Policy Framework (2012) provides multiple references on the matter, specifically paragraph 174 which explains that 'Local planning authorities should set out their policy on local standards in the Local Plan, including requirements for affordable housing'.
5. The NPPF also provides a lengthy definition of affordable housing for planning purposes; this is repeated within section 3 of the draft SPD. In short, affordable housing is provided to eligible households whose needs are not met by the general housing market, based on local incomes and house prices. Types of affordable housing include social rented, affordable rented and intermediate housing.

Stockton Borough Council and Affordable Housing

6. Affordable housing planning policy was set out by the Local Authority in policy HO4 of the adopted Local Plan (1997). This policy was deleted in September 2007 under legislation introduced in the Planning and Compulsory Purchase Act (2004). At this time the Council was in the process of producing the Core Strategy and a Planning Obligations SPD which was based on Government advice in Government circular 05/05. Circular 05/05 was revoked by the publication of the NPPF.

7. The Planning Obligations SPD was adopted in May 2008. This set out detailed guidance on affordable housing requirements, developments exempted, and on-site delivery of dwellings. The document recognised that it would be subject to regular reviews as policies, strategies and legislation changed.
8. The Core Strategy was adopted in 2010 and policies CS8 and CS11 provided the Council's updated policy on affordable housing. These stated, amongst other things, that:
 - Affordable housing provision within a target range of 15-20% will be required on schemes of 15 dwellings or more and on development sites of 0.5 hectares or more (Policy CS8.5);
 - One of the priorities for planning obligations in the Borough is affordable housing (Policy CS11.2)

The Need to Produce this SPD

9. The Inspector's report, which was produced following the 'examination in public' of the Core Strategy, noted that the draft Core Strategy included a target range for the provision of affordable housing of 15-20%, and that a target of 20% affordable housing provision may be less ambiguous.
10. Whilst recognising the Council's willingness to amend the affordable housing target to the 20% figure, the Inspector was satisfied that "*a range of 15-20% would be viable for certain schemes in favourable market conditions, it is less certain that this would hold true for a figure of 20%*". At the same time, the Inspector recognised that expressing the affordable housing requirement as a target range may result in applicants treating the bottom of the range as a maximum. Given this concern, the Inspector agreed with the Council's intention to publish a guidance note setting out what is meant by the 'robust justification' that an applicant would need to produce to provide less than the target level (20%) of affordable housing. This guidance is contained in Appendix 4: Housing Viability Guidance Note in the Regeneration and Environment Local Development Document Preferred Options (July 2012).
11. The Council is currently involved in a major planning appeal which, amongst other things, relates to whether a development should aim to deliver a 15% or 20% affordable housing target. In the view of Council officers, the appellant has not interpreted Policy CS8 correctly. This document aims to restate and clarify the policy position and will be adopted within the time frame set out below (paragraph 19).

The SPD

12. The SPD seeks to ensure that the highest possible proportion of affordable housing is achieved, whilst taking market conditions, site constraints and scheme specific issues into account in a fair and consistent way. The initial sections set out the legal framework for achieving affordable housing provision through development and the national and local policy context. Subsequent sections provide detail on the Council's affordable housing requirements, the evidence required to demonstrate the viability of affordable housing provision where the Council's requirement is not met and the delivery of affordable dwellings.

13. The SPD provides additional guidance on the thresholds set out in Policy CS8, above which affordable housing provision will be required. This includes the site area, the number of dwellings and the type of dwellings which are included in the development scheme. The SPD also states that the type and tenure of the affordable units provided should be determined by the latest Strategic Housing Market Assessment (SHMA) and should comply with the Homes and Communities Agency space and quality standards.
14. The SPD also gives further guidance on the application of the 15 to 20% affordable housing target range identified in Policy CS8. The standard target for all developments is 20% affordable provision. Proposals which seek to meet a target affordable housing contribution below 20% must be accompanied by robust evidence that market conditions mean that provision at the standard target would make the scheme economically unviable. The market conditions affecting sites will be assessed on a case by case basis, taking into account local circumstances such as average house prices, land prices and the findings of the latest SHMA. The minimum target for affordable housing provision is 15%.
15. Having established the target affordable housing provision that a scheme will seek to achieve, taking into account local market conditions, it is acknowledged that there may be exceptional site or scheme specific circumstances where the agreed affordable housing target cannot be achieved. In these circumstances, the Council will consider a reduction in the affordable housing provision required where robust justification showing that meeting the target would make the scheme unviable is provided. The SPD details how scheme viability will be calculated (Gross Development Value Calculation), the information applicants will be required to submit for consideration and details of the development costs which will be taken into account.
16. In summary, where affordable housing provision is required, the guidance in the SPD regarding affordable housing targets and provision has four potential outcomes:
 - A 20% affordable housing target is agreed based on local market conditions and provision is made to meet this target
 - The developer demonstrates that local market conditions mean that a 20% target is not achievable and negotiates a lower target (minimum of 15%) and provision is made to meet this target
 - A 20% affordable housing target is agreed based on local market conditions, but the developer demonstrates the exceptional site or scheme specific circumstances mean that the agreed target cannot be achieved – reduced provision is agreed
 - The developer demonstrates that local market conditions mean that a 20% target is not achievable and negotiates a lower target (minimum of 15%) and demonstrates the exceptional site or scheme specific circumstances mean that the agreed target cannot be achieved – further reduced provision is agreed.
17. Finally, the SPD provides guidance on the Council's requirements for affordable housing delivery. Provision is required on-site unless it can be demonstrated that this would make the site unviable or would not promote sustainable mixed communities. In

addition, the Council's phasing requirements within developments are set out, as are the requirements for the transfer of land to the Council or a Registered Social Landlord. The limited circumstances in which commuted sums or other payments may be accepted instead of a developer building affordable units are also detailed.

18. The SPD stresses the importance of developers entering in to pre-application discussions to ensure that adequate information is submitted for assessment. Proposals which do not meet the Council's affordable housing requirements which are not supported by robust viability evidence will normally be recommended for refusal.

Next Steps

19. Approval is sought to publish the SPD for a six week consultation between 22 July and 2 September 2013. A slightly longer consultation than the statutory four week period is recommended, as the consultation falls over the holiday period. Officers will review consultation responses, amend the document and aim to report back to Cabinet and Council in autumn 2013.

FINANCIAL IMPLICATIONS

Provisions for the consultation period and subsequent adoption and publication of Supplementary Planning Document 8 – Provision Of Affordable Housing And The Need For Viability Evidence can be made within existing budgetary provision.

LEGAL IMPLICATIONS

The Provision Of Affordable Housing And The Need For Viability Evidence Supplementary Planning Document has been prepared under the relevant provisions of the Planning and Compulsory Purchase Act 2004 as amended by the Planning Act 2008 and the Town and Country Planning (Local Planning) (England) Regulations 2012. Failure to comply with the provisions of the Act or Statutory Regulations may result in all or part of the document being challenged in the High Court under section 113 of the 2004 Act, which if successful may lead to all or part of an adopted Supplementary Planning Document being quashed.

RISK ASSESSMENT

The Provision Of Affordable Housing And The Need For Viability Evidence Supplementary Planning Document has been categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

The 'Provision Of Affordable Housing And The Need For Viability Evidence Supplementary Planning Document' is part of the Borough's development plan, which seeks to provide guidance on the implementation of policies contained in the Borough's adopted Core Strategy. The Core Strategy aims to create developments comprised of inclusive communities where all residents have access to the best in housing, education and training, health care, employment opportunities, sport, recreation and cultural activities in safe, healthy, prosperous, inclusive and sustainable communities.

EQUALITIES IMPACT ASSESSMENT

This report has been subject to an Equality Impact Assessment and has been judged to have a positive impact. No remedial actions are required.

CONSULTATION INCLUDING WARD/COUNCILLORS

The Provision Of Affordable Housing And The Need For Viability Evidence Supplementary Planning Document is equally applicable in all parts of the Borough, therefore there was no consultation with specific wards or ward councillors. Relevant Council officers have been consulted and further input will be welcomed during the period of public consultation.

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Education related? No

Background Papers

Appendix A - DRAFT SUPPLEMENTARY PLANNING DOCUMENT 8 – PROVISION OF AFFORDABLE HOUSING AND THE NEED FOR VIABILITY EVIDENCE

Appendix B – HRA SCREENING REPORT

Appendix C - Equalities Impact Assessment

Appendix D – Draft Consultation Statement

Stockton on Tees Borough Core Strategy (2010)

National Planning Policy Framework (2012)

Town and Country Planning Act (1990) as amended

Planning Compulsory Purchase Act (2004) as amended

Planning Act (2008) as amended

The Town and Country planning (Local Planning) (England) Regulations 2012

Ward(s) and Ward Councillors: N/A

Property: N/A