

**Meeting: Overview, Scrutiny and Policy Development Committee**

**Date: 3 July 2017**

**Title: Affordable Housing Provision**

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**Service:** Environment, Housing & Leisure

**Wards affected:** All

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## **1. Purpose of Report**

To provide the Overview, Scrutiny and Policy Development Committee with information as to how the Authority ensures that developers, who have been granted permission for housing developments, on condition that affordable homes are included, fulfil their legal agreements to provide the agreed number of affordable homes. The report was requested by the Chair following the publication of an article in the Sunday Times on 23 April 2017 regarding this issue.

## **2. Recommendations**

The Overview, Scrutiny & Policy Development Committee are asked to note the information provided in this report which explains the process of securing the delivery of affordable housing.

## **3. Details**

### **3.1 On what basis is the number of affordable homes required to be delivered by a developer calculated?**

Current planning policy set out in the Unitary Development Plan (2002) provides the basis for seeking affordable housing based on site suitability and an assessment of housing needs. This policy is reaffirmed and more detailed guidance set out in published Supplementary Planning Document, LDD 8 "Planning Obligations". The Strategic Housing Market Assessment (SHMA) and Area Wide Viability Assessment provide the evidence as to the level of affordable housing which should be sought, which is 25% of the overall development. In this context, 25% affordable housing is sought on development sites of 15 or more new homes. Based on data collated within the SHMA a tenure split within the affordable housing of 75% affordable housing for rent and 25% intermediate tenure (such as

shared ownership, shared equity or discounted from open market sale) is sought.

The emerging Local Plan reflects this approach but will seek 25% affordable housing provision on development sites of 11 units or more.

To ensure that the delivery of affordable housing is viable, there is flexibility in both the overall percentage of affordable housing secured and the tenure split. This is in line with national and local planning policy.

### **3.2 How is the agreed affordable housing secured?**

Based on a resolution of the Planning Committee, the applicant is required to enter into a legal agreement which secures the delivery of the affordable housing, before any planning permission is issued. The legal agreement and planning permission run with the land so that the requirements are binding on any subsequent land owners / developers. The legal agreement is recorded as a land charge so its existence is revealed when land is bought and sold.

It is normal practice for the final details of the affordable housing to be submitted pursuant to the legal agreement being signed. This will detail the plot numbers and, for rented homes, the identified registered provider (RP) who will own and manage the homes. The legal agreement also sets out the basis on which affordable housing can be occupied. This includes eligibility criteria to ensure that affordable housing is prioritised for residents who cannot meet their housing requirements in the market, without assistance. These are generally households in greatest need. Eligibility criteria, (such as household income), must be met, and this criteria is checked by developers and confirmed to the Authority's Strategic Housing Function.

Where houses are subject to a discount from open market value to make them affordable, a covenant is attached to the property to ensure that all successive purchasers comply with the affordable housing restrictions which limit the sale price.

When development commences, site visits are undertaken to monitor housing completions. This allows the construction of homes to be monitored and enables the review of trigger points set out in legal agreements to be monitored for compliance.

In reviewing housing completions data no developer has failed to construct the agreed number of affordable homes.

### **3.3 Can the developer revise the amount of affordable housing it has agreed to provide?**

Specific legislative provision was made for the renegotiation of affordable housing requirements in legal agreements in order to ensure that housing schemes did not stall because they were economically unviable. The legislation was not used to renegotiate schemes in North Tyneside before it was repealed in 2016.

A developer can seek a voluntary renegotiation of planning obligations with the agreement of the LPA at any time and there is a process to submit revisions on agreements pre-2010 if they no longer serve a useful purpose. There are no examples of affordable housing obligations being subject to any voluntary re-negotiation in the Borough.

Agreements are varied and appropriately re-assessed if there are changes to the development for which permission has been granted. This would be through the process of considering a revised planning application with a final decision made by the Planning Committee. There are examples of revisions having been made to the provision of affordable housing this way.

### **3.5 How is affordable housing monitored to ensure it remains affordable?**

Homes offered for affordable rent are generally owned and managed by an RP in compliance with the terms of the legal agreement. This ensures they remain affordable units in perpetuity and their rent level is regulated by the sector's regulator, the Homes and Communities Agency (HCA).

Homes for shared ownership are generally also (part) owned and managed by an RP. The Council receives information annually from RPs to confirm their stock and detail any acquisitions and sales.

Owner occupied property sold as discounted from open market value are, as noted above, subject of restrictive covenants, (which detail discount) registered as land charges. This is acknowledged by solicitors acting for vendors and purchasers, who ensure compliance on all subsequent sales. The Council often receives enquires regarding the eligibility criteria, and discount rates associated with such properties. Only in exceptional circumstances, can the criteria be relaxed.

### **3.6 Section 106 affordable housing and the 'right to buy' (RtB)**

No RPs who operate in North Tyneside offer tenant's access to any RtB scheme. Therefore, properties delivered via section 106 agreement remain so in perpetuity.

However, the Government's manifesto committed to extending the RtB to RP tenants, and a pilot scheme with five associations has been operated since October 2015. This is viewed as successful and the Government's set out proposals to extend this nationally in the Housing White Paper which in February 2017.

This still may not include properties delivered within section 106 agreements as RPs will be legally bound by the terms of Section 106 agreements and the restrictive covenants attached to the sale, and acquisition of land. Obligations could exempt affordable homes from RtB to ensure they are retained as affordable units.