

Housing Delivery Clause Technical Guidance Note

Report of: Cllr Nigel Young, Executive Member for Regeneration
(nigel.young@centralbedfordshire.gov.uk)

Responsible Director(s): Jason Longhurst, Director of Regeneration and Business
jason.longhurst@centralbedfordshire.gov.uk

This report relates to a decision that is Key

This report asks Executive to endorse the Housing Delivery Clause Technical Note as planning guidance. The note provides guidance on delivery rates within Section 106 legal agreements to ensure the expedient delivery of new homes.

RECOMMENDATIONS

The Executive is asked to:

- 1. endorse the Housing Delivery Clause Technical Note as planning guidance for Development Management purposes; and**
- 2. delegate authority to the Director of Regeneration and Business, in consultation with the Executive Member for Regeneration and Business to make any minor amendments to the Housing Delivery Clause Technical Guidance Note.**

Overview and Scrutiny Comments/Recommendations

1. The note is purely procedural and therefore has not been considered by the Overview and Scrutiny Committee.

Overview

2. The Council is committed to providing everyone with the opportunity to live in a suitable home and to planning for suitable housing to meet identified need. This technical note sets out the Council's approach to securing the delivery of new homes on consented sites within the first five years, through the use of section 106 agreements (legal agreements which determine developer contributions).

3. These agreements have already been used successfully in Central Bedfordshire; but the aim of this note is to provide a policy framework with a clearly defined, consistent and transparent approach to dealing with s106 agreements, which include these clauses specifying rates of housing delivery.
4. This guidance applies to all deliverable housing developments (developments that are capable of delivery in years 1-5 of the rolling plan period) and any others where it is considered that delivery should be specifically stipulated in a legal agreement.

Background

5. This approach supports the expedient delivery of new homes and allows the local planning authority (LPA) to exercise some degree of control and certainty, where largely the role of the LPA in contrast to that of the developer, is to determine applications for housing development and issue permissions, rather than to directly influence the timing of delivery.
6. The Housing Delivery Test was introduced by the government as part of the revised National Planning Policy Framework in July 2018 and is an annual measurement of housing delivery in the area of relevant plan-making authorities.
7. The Housing Delivery Test is a percentage measurement of the number of net new homes delivered against the number of homes required, as set out in the relevant strategic policies for the areas covered by the Housing Delivery Test, over a rolling three-year period.
8. It is therefore the case, that LPAs are measured in relation to delivery, with the consequences ranging from a requirement to produce an action plan to increased buffers and most severely, the triggering of the presumption in favour of sustainable development for new development proposals. This therefore makes it necessary for LPAs to do everything that is possible to ensure the timely delivery of consented new homes and good placemaking.
9. Best practice in relation to section 106 agreements has historically been to set out the timing and provision of affordable housing, so it is now appropriate in this context of increasing scrutiny of delivery rates, that all tenures are subject to direction with regard to the timing of delivery where appropriate.
10. In a climate where the performance of LPAs is measured in relation to the completion of new homes; it is therefore absolutely critical that the Council ensures that permissions are implemented swiftly, both to ensure an appropriate supply of new homes to meet local need, and to maintain a rolling five-year housing land supply. This guidance enables the Council to directly influence rates of delivery.

Approach

11. For any applicable site, the Council will seek a delivery timetable to be put forward by the site promoter which will then form part of the accompanying section 106 agreement. Ideally this should be submitted as early in the process as possible at pre-application stage or planning application stage, as it will be a material consideration in decision making that will be weighed up in the overall planning balance.
12. This should provide a delivery schedule for both market and affordable housing to ensure the timely delivery of the balance of homes that it is considered can be realistically delivered within the first five years following the signing of the agreement.
13. It is accepted that there may be a time lag between the signing of an agreement and any dwellings being built on site, so it is feasible that the Section 106 may not stipulate any completions in the first 2-3 years. The Council/Site Promoter will therefore use reasonable assumptions to determine the likely delivery of individual development sites taking into consideration competing sites, likely commencement, and any enabling works that need to be undertaken in advance of development.

Engagement

14. The Council has previously engaged with the Agent's Panel which is made up of a cross-section of local agents and developers, in relation to this approach and the initiative has been well received.
15. The technical note will also be shared and discussed at the next Infrastructure and Delivery Board on 1st February 2019. This Board provides a well-balanced sample of the local and regional development industry and so following this feedback, a verbal update will be provided to Executive noting any salient points raised.

Reason/s for decision

16. If the revised guidance note is not endorsed to be used in the determination of planning applications, there is a risk that the Council could be challenged if it seeks to secure delivery rates through section 106 with no endorsed up to date planning guidance to support the approach.
17. By introducing this revised guidance, it also provides the necessary clarity to agents and developers on the Council's approach to housing delivery.

18. Furthermore, the guidance allows the Council to comply with national planning policy which requires local policy that boosts the supply of housing (Paragraph 59, National Planning Policy Framework, July 2018) and reduces the risk of not meeting the Housing Delivery Test as outlined in paragraphs 6-7.

Council Priorities

This supports the Council's priority of 'creating stronger communities'.

19. This guidance will enable the Council to influence and accelerate the delivery of new homes, including affordable housing. This will help to create stronger communities by ensuring greater diversity, choice and the ability to access a decent home for all residents.
20. A better mixed social composition in our communities can create a new dynamic which leads to increased land values, a better-functioning housing market, increased social sustainability and a reduction in overall concentrations of social deprivation. Neighbourhoods are thus less likely to be reliant on repeated 'regeneration' and or local authority intervention.

Corporate Implications

Legal Implications

21. The delivery rates are agreed under Section 106 of the Town and Country Planning Act 1990 (as amended) by way of planning obligations, and makes a development proposal acceptable in planning terms that would not otherwise be acceptable.
22. Section 106 planning obligations are formal commitments entered into and are legal deeds between a landowner (and subsequent owners) and the local authority. If the S106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. The S106 can be enforced by injunction or by direct action, with the recovery of expenses.
23. Without this guidance in place, there will be no policy framework in place to further reinforce the policy basis on which these delivery rates are sought under section 106.
24. In addition, Counsel opinion has previously been sought in relation to the approach outlined in this guidance.

Financial and Risk Implications

25. The financial implication is in relation to the New Homes Bonus. The amount paid to local authorities is linked to the number of new build homes and there is also an extra payment for affordable housing, so it crucial that new homes are delivered as swiftly as possible.
26. In terms of risk, without this guidance note in place, it could be more difficult to secure agreed delivery rates through section 106 agreements, thus making the Council more vulnerable to failing to meet the Housing Delivery Test ,which is based directly on the delivery of homes, rather than the number of planning consents issued.

Equalities Implications

27. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
28. The Council is strongly committed to providing everyone with the opportunity of a decent home and to providing market and affordable housing which meets demonstrated local needs.
29. This guidance will help to ensure that much needed new homes are delivered sooner, to meet the identified needs of all residents, including those in more vulnerable groups.

Sustainability

30. Providing an appropriate level of housing is part of ensuring social sustainability. Specifically, in relation to social inclusion issues, this guidance addresses the need to ensure that supply and need for affordable housing are related in policy terms.
31. In addition, by implementing permissions that have been issued sooner, it also indirectly protects other greenfield sites from development and ensures the best use of available land for development.
32. It is considered that there are no potential conflicts between this guidance note and overall sustainability.

Conclusion and next Steps

33. If the recommendations are agreed, the guidance note will be used as a material planning consideration in the determination of planning applications.

Appendices

The following Appendix is attached:

The Housing Delivery Clause Technical Note (January 2019)

Background Papers

None