

<b>Committee(s):</b>	<b>Date(s):</b>
Planning & Transportation – for Decision Community & Children’s Services – for Information Housing Management & Almshouses Sub – for Information	3 February 2015 13 February 2015 27 April 2015
<b>Subject:</b> Implications for the City Corporation of amended Government policy on affordable housing	<b>Public</b>
<b>Report of:</b> Director of the Built Environment	<b>For Decision</b>
<b>Summary</b>	
<p>The City of London Local Plan requires new housing development to make a contribution towards the provision of affordable housing, seeking either 30% of the proposed units as affordable if delivered on-site, or a financial contribution equivalent to 60% of the proposed units as a commuted sum. This approach has been successful in generating financial contributions of £19.7m over the past 10 years out of total developer contributions towards affordable housing of £39.9m.</p> <p>On 28<sup>th</sup> November 2014, the Government announced a package of national planning policy changes to support small scale residential developers. Included within these changes were:</p> <ul style="list-style-type: none"> <li>• The introduction of a national minimum development threshold, of 10 units or less with a gross floorspace of less than 1,000 sqm, below which affordable housing contributions cannot be sought; and</li> <li>• The introduction of a vacant building credit, requiring local planning authorities to give developers a financial credit equivalent to the existing gross floorspace of any vacant buildings being brought back into use.</li> </ul> <p>Whilst the national minimum threshold should have a negligible impact on the City Corporation’s ability to seek affordable housing contributions, the vacant building credit could potentially significantly reduce future affordable housing receipts through s106 planning obligations, introducing significant risk to the City Corporation’s ability to deliver new affordable housing to meet local and wider London housing needs.</p> <p>The changes in national policy do not affect s106 contributions already received or those that are generated through commercial development.</p> <p>Counsel’s advice has been sought on the weight to be attached to the Government’s new policies and the scope to seek exemption for the City of London. This advice indicates that the Government and the Planning Inspectorate are likely to attach significant weight to the new national policy and would be unlikely to allow the policy to be undermined by existing local development plan policies. If the City Corporation wishes to seek an ‘exemption’ from the new national policy this would need to be promoted and</p>	

justified through a review of the recently adopted City of London Local Plan.

### **Recommendation**

Members of the Planning & Transportation Committee are asked to:

- a) note the implications of the Government's revised policies for affordable housing in the determination of future planning applications for residential development in the City, and
- b) authorise officers to commence scoping work on the potential for a Local Plan Alteration to make a locally specific case that the vacant building credit should not apply in the City of London.

## **Main Report**

### **Background**

1. The City of London Local Plan, Policy CS21, requires new housing development in the City of 10 or more units to make a contribution towards affordable housing. The policy requires 30% of the units provided to be affordable on-site, or exceptionally, allows for off-site provision or a commuted payment to be made equivalent to 60% of the units proposed. The City's Planning Obligations Supplementary Planning Document requires the commuted sum to be calculated at a rate of £165,000 per unit of affordable housing required.
2. In March 2014, the Government consulted on proposed changes to planning obligations, seeking views on proposals to introduce a national minimum development threshold below which affordable housing could not be sought, and proposals to exclude buildings being brought back into use from the need to make s106 contributions towards affordable housing. The City Corporation responded to this consultation, objecting to the principle of reducing the scope for seeking affordable housing contributions from existing buildings, highlighting the potential adverse impact this could have on future affordable housing delivery in the City, where all development takes place on previously developed land.

### **Current Position**

3. On 28<sup>th</sup> November 2014, the Minister for Housing & Planning announced a package of national planning policy changes to support small scale residential developers. These changes were announced by means of a Ministerial Statement, supported by changes to the national online Planning Practice Guidance. The key changes are:
  - a. The introduction of a national minimum threshold of 10 units or less, with a gross floorspace of less than 1,000 sqm, below which affordable housing could not be sought, This differs slightly from the City's Local Plan threshold of 9 unit or less.

- b. The introduction of a vacant building credit, which requires local planning authorities to give a financial credit to developers equivalent to the existing gross floorspace of any vacant buildings when the affordable housing requirement is calculated. The effect is that, for vacant buildings, or those that have been demolished, an affordable housing contribution can only be sought on any uplift in floorspace as a result of the development. This differs from the approach set out in the City's Local Plan which is based on the total number of new housing units created.

### **Implications for the City of London**

4. The new policy requirements came into effect on the date of the Ministerial Statement and do not impact on any planning decisions issued, or s106 contributions for affordable housing received, by the City Corporation prior to this date.
5. In addition, the new policy only affects proposals for residential development and not commercial development. The City of London Local Plan requires new commercial development to make a contribution towards affordable housing, based on the uplift in floorspace. These contributions will be unaffected by the changes announced by the Government.

### **Threshold Change**

6. Although this will require an amendment to be made to the recently adopted City of London Local Plan and the Planning Obligations Supplementary Planning Document, the effect of an increase of 1 unit in the threshold is likely to be negligible in terms of future affordable housing delivery.

### **Vacant Building Credit**

7. All new residential development in the City takes place on previously developed land. Although the revised policy only affects vacant buildings, the guidance does not set out a clear definition of what is meant by 'vacant', e.g. whether a building should be vacant at the time of application or determination, or whether it should have been vacant for a specified period of time. As a result, the vacant building credit could be applicable to most new residential development within the City.
8. Application of the vacant building credit to a residential development will normally mean that any contribution towards affordable housing can only be based on the uplift in floorspace and not the total number of new residential units proposed. This will usually lead to a lower financial contribution and impact significantly on future affordable housing receipts.
9. An analysis of affordable housing contributions from all development since 2004 shows that a total of £39.9m has been received by the City Corporation, with an approximate 50/50 split between contributions received from commercial development (£20.2m) and those received from residential development (£19.7m).
10. Projecting the future financial impact is difficult as affordable housing contributions are subject to a number of variables, including whether the number of residential units is above the government's threshold, whether the existing building is vacant (bearing in mind the lack of definition in guidance as to what constitutes a vacant building) and assessments of the impact of

any affordable housing contributions on development viability. However, the vacant building credit could introduce the potential for significant risk to the City Corporation's ability to maintain affordable housing contributions and, ultimately, the delivery of new affordable housing to meet the needs of both City residents and those in neighbouring boroughs.

### **Status of the Policy Changes**

11. The Town and Country Planning Act requires that planning applications should be determined in line with the Development Plan, having regard to other material considerations. Government planning policy, as set out in the National Planning Policy Framework (NPPF), is a material consideration which must be taken into account.
12. As the revised affordable housing policy has the potential for significant impact on developer contributions towards affordable housing and was announced via a Ministerial Statement, rather than through a change to the NPPF or planning regulations, Counsel's opinion has been sought as to the weight that should be attached to the revised policy in determining planning applications in the City. Advice from Counsel indicates:
  - a. That it would be difficult to mount a legal challenge to the Government's decision to introduce the new policy;
  - b. The national policy is a material consideration that should be taken into account in determining planning applications. It is likely that the Secretary of State and Planning Inspectors would give considerable weight to the national policy and they would be unlikely to allow the policy to be undermined by existing local development plan policies;
  - c. The policy came into effect from the date of the Ministerial Statement and is applicable to all planning applications that have not been determined or where there is a resolution to permit subject to the agreement of a planning obligation. It is likely to be necessary to reconsider applications where there has been such a resolution to permit but a planning obligation has not yet been agreed.
  - d. Vacant building credit has been introduced by the Ministerial Statement, supported by amended Planning Practice Guidance, with no amendment to statutory regulations. Consequently, there is no opportunity or requirement to obtain a local exemption from the policy similar to that granted to the City of London to national permitted development rights for the change of use from offices to housing;
  - e. If the City Corporation wishes to be 'exempt' from the application of the national policy, a change to the City's Local Plan should be sought. Such a change would need to be justified through formal public consultation and public examination on the grounds that particular local circumstances in the City justify an exception to national planning policy.

### **Relationship to the Community Infrastructure Levy**

13. The Government's vacant building credit approach does not apply to the Community Infrastructure Levy and will not affect CIL contributions required from developers for new infrastructure. National CIL regulations prevent CIL funds from being used to provide affordable housing and there is no scope to

seek an increase in CIL charges on residential development to generate 'replacement' affordable housing funds.

### **Proposed Actions**

14. The City of London Local Plan was adopted by resolution of the Court of Common Council on 15<sup>th</sup> January 2015. The Government's announcement of changes to affordable housing policies and Counsel's advice on its implications came too late to be considered as part of the preparation of the Local Plan. The consequences of the Government's policy for affordable housing delivery in the City will have to be considered through an alteration to the Local Plan. Counsel has advised that it may be possible to use such an alteration to make a locally specific case that the vacant building credit should not apply in the City of London. It is therefore proposed that officers be authorised to commence work on scoping the potential for such an alteration, including the evidence base necessary to support a locally specific argument. An alteration would not provide an immediate solution to the potential loss of s106 income, since it could take a minimum of 18-24 months to progress through the statutory plan making process and there is no guarantee that a locally specific case could be sustained through consultation and examination. Subject to the Committee's agreement that such an alteration should be investigated, officers will prepare a more detailed work programme which will be brought back to this Committee for approval.

### **Conclusion**

15. The Government has introduced changes to national policy for seeking contributions towards affordable housing through planning obligations. These changes do not affect planning decisions issued, or s106 contributions received, prior to the Ministerial Statement. They also only impact on residential development and will not affect contributions towards affordable housing sought from commercial development.
16. The minor amendment to the threshold below which contributions towards affordable housing can be required should have a negligible impact on the delivery of affordable housing in the City, although it will require a change to be made to the recently adopted City of London Local Plan.
17. The introduction of the vacant building credit, however, means that future contributions towards affordable housing from residential development are likely to be based only on the uplift in floorspace and not the total number of new residential units proposed. This could potentially significantly reduce future affordable housing receipts through s106, introducing significant risk to the City Corporation's ability to deliver new affordable housing to meet local and wider London housing needs.
18. Due to the significance of the impact of this national policy change, Counsel's advice has been sought on the status of the Government's new policy and its weight as a material consideration in the determination of planning applications. This advice suggests that the policy is likely to be afforded significant weight by the Government and Planning Inspectors and will need to be applied within the City. To address the changes in policy, it is proposed that officers be authorised to scope the potential for an alteration to the Local Plan.

**Background Papers:**

Ministerial Statement, 28<sup>th</sup> November 2014 – Small scale developers

<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141128/wmstext/141128m0001.htm#14112842000008>

**Peter Shadbolt**

Assistant Director (Planning Policy)

T: 020 7332 1038

E: [peter.shadbolt@cityoflondon.gov.uk](mailto:peter.shadbolt@cityoflondon.gov.uk)