

11<sup>th</sup> February 2015

## Email and Post

Daphne Wood (Programme Officer),  
On behalf of Claire Sherratt, (Shropshire SAMDEV Inspector),  
Shropshire Council  
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Dear Ms Sherratt,

### **SHROPSHIRE SAMDEV EIP: INVITATION BY THE INSPECTOR TO PARTICIPANTS FOR COMMENTS TO GOVERNMENT'S AFFORDABLE HOUSING STATEMENT AND SHROPSHIRE COUNCIL'S REPLY.**

Thank you for your invitation to comment on the Government's (1<sup>st</sup> December 2014) statement on Affordable Housing thresholds and Shropshire Council's response to the document. This Government policy change, (and the Council's reaction to it), raise genuine concerns for the 'soundness' of the SAMDEV plan which I feel will be impossible for you to ignore.

The Council's formal response highlights the scale and emphasis of the impact on Shropshire and shows that the shift in policy will have a critical bearing on both the Core Strategy (at local policy level) as well as the SAMDEV (at allocation and implementation level). Their approach towards delivery in Shropshire is unashamedly 'localist', whereby communities have tended to opt for small sites designed to deliver homes, and especially affordable housing, to meet the local needs of specific villages. This strategy has now been completely undermined by the Government's Affordable Housing policy change.

#### **The Government's Affordable Housing Statement: 1<sup>st</sup> December 2014.**

The Government's 2013 Autumn Statement, made a commitment to reduce the planning costs to developers, including through a proposed new 10-unit threshold for section 106 affordable housing contributions. This was intended to help address the disproportionate burden being placed on small scale developers, including those wishing to build their own homes, which was seen as preventing the delivery of much needed, small scale housing sites.

The Government consultation paper "*Planning Performance and Planning Contributions*" issued in March 2014 picked up this initiative with the aim of improving planning performance, enhancing the delivery of housing and cutting unnecessary 'red tape'. It proposed to improve delivery of homes by introducing a 10 dwellings threshold for affordable housing contributions and other tariff contributions. These measures were designed to bring forward measures contained within the Growth & Infrastructure Act 2013 in response to the pressures faced by small builders.

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The Government's response to the consultation in November 2014 and the formal statement issued on 1<sup>st</sup> December 2014 introduced a policy constraint limiting Councils from seeking affordable housing contributions and tariff style contributions on sites of 10 or more dwellings (or schemes of 1000 square metres or less). This policy also applies to all residential annexes and extensions.

Under the new guidance, within designated rural areas under section 157 of the Housing Act 1985, (which includes National Parks and Areas of Outstanding Natural Beauty), authorities may choose to implement a lower threshold of 5-units or less, beneath which affordable housing and tariff style contributions should not be sought. Within these designated areas, if the 5-unit threshold is implemented then payment of affordable housing and tariff style contributions will be made through financial contributions.

The Government has made it clear that by lowering the construction cost of small-scale new build housing and home improvements, the reform will help increase housing supply. The new measures are expected to encourage development on smaller brownfield sites and help to diversify the house building sector by providing a much needed boost to small and medium-sized developers. But this boost will only occur if the Council allows such sites to come forward without obligations for affordable housing. Furthermore, any structural change in the building industry will obviously occur over a longer timescale.

This new Government policy statement has resulted in a formal change to the Planning Practice Guidance which must clearly override the policy in Local Plans (whether the Core Strategy or the SAMDEV). There is no scope for local authorities to simply ignore Government policy without running the risk of facing legal challenges and/or losing cases on appeal.

### **The Council's reply to the Government Statement: 21<sup>st</sup> January 2015.**

**Delivery implications:** The Council's response (dated 21<sup>st</sup> January 2015) explains the policy position within the Core Strategy. It points out that Policy CS1 aims to deliver 9000 dwellings as affordable housing as part of a total provision of 27,500 dwellings between 2006 and 2026 and that this is linked to Policy CS11 which aims to deliver 33% affordable housing through seeking contributions from **all** sites (subject to a viability assessment) including those as low as a single dwelling.

Other than the larger strategic sites within the towns, especially Shrewsbury, the Council's affordable housing strategy relies on the delivery of mainly small sites, sourced locally, (by local consent), which would deliver affordable housing on all sites (down to a single dwelling), either by on-site provision or through financial contributions. However, this will no longer be feasible in future. In order to be effective locally, the Government's objectives need to be reflected in the policy position within the Local Plan and in the delivery strategy within the SAMDEV. Additional brownfield sites and smaller schemes cannot come forward within the context of the current local plan policy climate. Council's policies, as set out in the SAMDEV are almost directly contradictory to this stance.

Whilst the affordable housing policies in the SAMDEV are designed to complement the Core Strategy policies not to replace them, if the Core Strategy policies are now incompatible with Government policies, then the SAMDEV policies will be inconsistent with Government policy too, and both will be unsound.

The Local Plan Core Strategy (and the SAMDEV) has been subject to a Sustainability Appraisal which matches the delivery of affordable housing against other economic, social and environmental criteria. With such a fundamental change in Government policy which precludes the delivery of affordable housing on smaller sites, the Sustainability Appraisal would also become unsound.

The Council's statement indicates that of the 1001 residential applications submitted between January 2012 and December 2014, some 928 (or 92.2%) were for 10 dwellings or less. Subtracting the pure

affordable housing schemes (which might expect to be unaffected) - agricultural consents, replacements, annexes and holiday lets - leaves 616 schemes. Of these, 566 (or 91.7%) were for 10 dwellings or less.

It is not clear how many affordable homes would have been yielded from these sites, in particular what size the sites were. (One might expect the majority to have been single dwelling plots). What perhaps would have been more revealing then, would have been to assess the number of affordable dwellings which would have been 'at risk' from the difference in policy. It is possible that some landowners and developers might have been prepared to volunteer affordable housing, maybe as an incentive to secure consent, but in view of the costs and delays in setting up S106 agreements, they would have been few.

It must be assumed however that provided the Council would have been prepared to release the same sites without affordable housing, most if not all of those affordable houses which would have been lost would have emerged as market homes instead. Indeed, what is unknown is the extent to which additional schemes would have been generated, releasing more market housing in the area, or perhaps slightly fewer homes on marginal sites around 10 dwellings – to enable developers to avoid the threshold.

On the plus side, the statement acknowledges that some developers of smaller sites may have been holding back in the expectation that the Government will raise the affordable housing threshold, as signalled in the March 2014 consultation paper. In future therefore, there may be some latent demand for development at more profitable levels, provided that the Council adheres to Government policy.

**S106 implications:** The Council's statement also makes an assessment of the S106 contributions which would also have been lost under the new policy. (Albeit it is not clear whether the Council figures are correct in this respect, since the new policy does not remove all S106 contributions from sites of 10 dwellings or less, only the tariff-style contributions). The report suggests that since 2010, £1.87million of monies were generated from 104 affordable homes. It also states that at present £1.2million has been deposited with the Council from enacted permissions with £6.2 million on permissions awaiting implementation or reaching the trigger date for payment.

The £6.2m figure is revealing in that it signifies a malaise whereby huge sums of money are locked in to the system and demonstrates the sharp increase in S106 contributions being borne by the developers. More important, it suggests that either large numbers of housing completions are being held back due to the onerous expectations from S106 agreements or that the Council has been inefficient or unsuccessful in collecting the S106 monies. This may explain the motive for the Government introducing the change of policy in the first place – to improve output, to limit the burden on builders and reduce waste and delay.

**Detailed concessions:** The Government policy allows local authorities with sites in National Parks and Areas of Outstanding Beauty (AONB's) to seek affordable housing on sites of 5 – 9 dwellings, but only in the form of financial contributions. Much of South Shropshire, including Church Stretton and the Shropshire Hills, lie with an AONB. But these are not areas where there are a large number of housing sites. The Council's research does not try to identify the number of sites (or dwellings) which would have been affected by this change.

As the Council's statement points out, the vacant building allowance which can be deducted from any calculation of eligible floorspace, means that even sites larger than 10 dwellings in the towns may be immune from affordable housing contributions.

**Conclusions;** Ultimately, the implications of the change to the affordable housing threshold is purely speculative. What must be clear though is that unless the SAMDEV allocation policy is amended to introduce more sites above 10 dwellings in size, there will be a substantially lower delivery of affordable housing, albeit possibly a slightly larger number of new homes overall, subject to approval.

**The Council's formal response:** The Council's formal response is outlined in the Decision Note of the 21<sup>st</sup> January 2015 Cabinet Meeting which is attached to the Inspector's request for comments. It states

- a. That the Council lobbies the Minister to review his statement to take account of differing conditions nationally and locally.
- b. That the Council notes the Ministerial statement and amendments to the National Planning Practice Guidance as a material consideration in determining a planning application.
- c. That the Council continues to give full weight to Policy CS11 of the adopted Core Strategy and Type and Affordability of Housing SPD and continues to seek on site provision of affordable housing and/or developer contributions to the provision of affordable housing in relation to all sites.

The decision has therefore been taken to acknowledge the Government statement as a 'material consideration' in decision making but to defy the Government by ignoring their new affordable housing policy threshold and continuing to seek affordable housing on all sites (inc. those of 10 dwellings or less).

This therefore represents the 'worst of all worlds' in terms of the delivery of housing. Against the background of the new policy climate, few developers are likely to willingly offer affordable homes on sites of 10 dwellings or less. However, since the Council has resolved to seek affordable housing (or contributions) on all such sites, it seems likely that cases will be refused (thereby losing potential housing altogether) which may then be subject to appeal – therefore incurring additional costs and delay for both sides, without securing any additional affordable housing.

Two authorities – Reading and West Berkshire – have already jointly lodged a High Court Challenge to resist the Government's policy change – and we understand other local authorities are supporting this stance. However, this will only succeed if the High Court finds the Government's position unlawful or there has been a procedural error. If the challenge is successful, that too will lead to further uncertainty and delay, depending on whether any case is referred to the Court of Appeal.

A change of Government might well lead to the reversal of the policy change – the Lyons Report commissioned by the Labour Party recommends that the imposition of a 10+ dwelling threshold be abandoned. However, even if a majority Labour Government is returned, it cannot be guaranteed that this will necessarily be introduced immediately, if at all. The new Government, of whatever colour, may choose to retain the 10 dwelling threshold policy in order to cap costs and support small businesses.

**Implications on soundness:** The Council concludes in their report that the Government's policy change will not influence the policy wording of the SAMDEV policies, since the affordable housing policies lie within the Core Strategy. But this cannot be the case. Government policy clearly 'trumps' Local Plan policy. Hence the SAMDEV policies will need to adapt to the revised Government policy not expect the Government to adapt to Shropshire's policy approach.

The Council's statement acknowledges that output of affordable housing would be influenced by the introduction of a 10+ dwelling threshold, not just in the loss of affordable housing from smaller sites but also from the additional impact from developers reducing densities on marginal sites to avoid breaching the threshold. The Council's statement suggests that the Council cannot influence this implication unless there choose to allocate more sites above 10 dwellings. However, the Council rejects this option in favour of firstly, pursuing exception sites, secondly, changing the Council's policy approach and thirdly, seeking additional public funding in the form of subsidy. It considers that choosing more sites would be a blunt tool and that it is too late in the process to consider this solution.

## Conclusions from the Statements and the implications for the SAMDEV plan.

1. The change in Government policy to establish a 10 dwelling threshold for affordable housing is a legitimate response to a growing problem of onerous affordable housing and S106 contributions which has undoubtedly stifled small scale development, raised costs and delays on smaller schemes and had a longer term detrimental effect on the house building industry, and especially the smaller builders who are so prominent in Shropshire. The evidence of falling completion rates in Shropshire demonstrates the difficulties faced by smaller firms. This has been a consequence of obligations being ratcheted up during the boom times, and then becoming unsustainable following the recession. The Council's expectation to seek affordable housing on small sites, down to a single dwelling is therefore both unreasonable and unrealistic as well as being counter-productive.

2. The SAMDEV Plan is already grossly deficient in terms of its Housing Land Supply position, as clearly demonstrated in the updated evidence from Berrys and other participants. The debates surrounding Housing Land Supply and the Area policies during the EIP sessions, showed that the Council clearly regard the Housing Land Supply position as a constantly moving target which relies heavily on 'windfall sites' and the 'goodwill' of local communities to accept development, through a 'localist' philosophy. Most of the sites released tend to be small scale and hence they will not capture affordable housing in future. There is a danger that the new policy may dissuade communities from releasing sites in future.

3. The National Planning Policy Framework (NPPF) identifies 4 tests of 'soundness' for the consideration of Local Plans; they should be: positively prepared, justified, effective and consistent with national policy. It is abundantly clear that the Council's current position on the SAMDEV is **neither positively prepared** (in that it fails to respond to needs), is **not justified** (since it is not logical in the circumstances), it is **not effective** (since it will fail to deliver sufficient affordable houses without further changes) and quite clearly it is **not consistent with (new) Government policy**. The Council's SAMDEV policies therefore fail all the 'soundness tests' since without more sites above 10 dwellings, the Council cannot deliver sufficient affordable housing to meet the Plan's objectives.

4. The Council is far too complacent in its attitude towards the policy wording of the SAMDEV Plan. In our view policies MD1 and MD3 both need to be adapted to respond to the new circumstances. These are in addition to the changes recommended to Policy MD7a. The Council cannot simply assume that they can carry on in spite of the new policy, or that they will be successful in campaigning for its reversal. In our view an Inspector cannot support the Council in taking this stance. Therefore In order to ensure the SAMDEV is sound, a deferral of the SAMDEV plan to call for additional housing sites is now essential.

5. The Council has not demonstrated a valid case for the delivery of sufficient affordable housing using alternative approaches within their response paper. Firstly, the use of exceptions sites can only be used sparingly otherwise the SAMDEV plan would simply be a 'non-plan' – a recipe for chaos. Secondly, the Council cannot engineer their policies to thwart or undermine Government policies. This is not the role of local Government, and thirdly, the Council cannot rely on public funding to pick up the tab through subsidy. There will not be Government grants available for this purpose and it would be illogical to subsidise the loss of affordable housing from raising the threshold to 10 dwellings when alternative measures are available.

6. The Council has not presented a convincing case why the most logical option – to increase the number of allocated sites of 10 dwellings or more – should not be adopted. Firstly, there is already a severe shortfall in housing supply which needs to be addressed. This therefore 'kills two birds with one stone', secondly, the Council argues that it would be a blunt instrument. But in practice it will better enable the Council to target areas which are in need of housing, and thirdly, it suggests that allocating more sites would result in a delay in adoption. But the alternative is likely to result in an 'unsound' Local Plan which

will either need to be withdrawn or will have to be suspended in any event whilst the Council undertakes a further site search in order to meet its housing land supply requirements.

7. In our view, there is much still to be done to rectify the SAMDEV in order to make it genuinely 'sound'. We would suggest that the implications of the Government statement and the Council's response to it, coupled with the parlous housing land supply position in the SAMDEV and the difficulties of adapting the Plan's 'Localist' policy to these new circumstances, suggests that a re-opening of the EIP to debate these matters would probably be sensible and could possibly save time in the longer term. We therefore urge you to consider this matter carefully and ensure that the SAMDEV plan is genuinely fit for purpose before issuing your report.

Please don't hesitate to come back to me if you have any queries about the content of this letter.

Yours sincerely

John Acres Msc DipTp MRTPI

**For Richborough Estates**

**Consultant to Turley**